

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,

v.
BRAAHEIM REED,
HAKEEM NESBITT

ID
Nos. 1310006496
1310018849

Defendants.

BEFORE: HON. WILLIAM C. CARPENTER, JR., J.

TRANSCRIPT OF OCME HEARING

JOHN P. DONNELLY, RPR
CHIEF COURT REPORTER
SUPERIOR COURT REPORTERS
500 N. KING STREET WILMINGTON, DELAWARE 19801
(302) 255-0563

1 August 19, 2014
2 Courtroom No. 8B
3 10:14 a.m.

4
5 SARITA R. WRIGHT, ESQUIRE
6 MORGAN T. ZURN, ESQUIRE
7 DEPARTMENT OF JUSTICE
8 Wilmington, Delaware 19801
9 for State of Delaware

10 BETH D. SAVITZ, ESQUIRE
11 NICOLE M. WALKER, ESQUIRE
12 GERARD SPADACCINI, ESQUIRE
13 BRENDAN O'NEILL, ESQUIRE
14 PUBLIC DEFENDER'S OFFICE
15 Wilmington, Delaware 19801
16 for Defendants
17
18
19
20
21
22
23

INDEXWITNESS :PAGE :

1		
2		
3		
4		
5		
6	ANGELA ROBYN QUINN	5
7	DIRECT EXAMINATION	5
8	BY MS. WRIGHT	
9	CROSS EXAMINATION	27
10	BY MS. SAVITZ	
11	REDIRECT EXAMINATION	99
12	BY MS. WRIGHT	
13	RE CROSS EXAMINATION	106
14	BY MS. SAVITZ	
15		110
16	JAMES DANESHGAR	
17	DIRECT EXAMINATION	111
18	BY MS. WRIGHT	
19	CROSS EXAMINATION	133
20	BY MS. WALKER	
21	REDIRECT EXAMINATION	153
22	BY MS. WRIGHT	
23	RE CROSS EXAMINATION	155
24	BY MS. WALKER	
25		156
26	JEFFREY SCHWAGEL	
27	DIRECT EXAMINATION	156
28	BY MS. WRIGHT	
29	CROSS EXAMINATION	169
30	BY MS. WALKER	
31	REDIRECT EXAMINATION	178
32	BY MS. WRIGHT	
33		180
34	ANDREW LLOYD	
35	DIRECT EXAMINATION	180
36	BY MS. WRIGHT	
37	CROSS EXAMINATION	187
38	BY MS. WALKER	
39	REDIRECT EXAMINATION	206
40	BY MS. WRIGHT	
41		207
42	RICHARD R. PARKER, JR.	
43	DIRECT EXAMINATION	207
44	BY MS. WRIGHT	
45	CROSS EXAMINATION	213

1 BY MS. SAVITZ
2 RECROSS EXAMINATION
3 BY MS. SAVITZ

221

4 *****

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 THE COURT: Good morning.

2 MS. WRIGHT: Good morning, Your Honor. For
3 the record, Sarita Wright for the State. These are the
4 hearings for State versus Braaheim Reed and State
5 versus Hakeem Nesbitt. A few preliminary matters. The
6 State has gone through the Exhibits it intends to
7 introduce. We premarked them without objection. Your
8 Honor, if I may request I can move about the courtroom
9 I can introduce those exhibits.

10 THE COURT: You may.

11 MS. SAVITZ: Good morning. That is correct.
12 We have no objection to the Exhibits thus far shown.
13 If we could also have permission to wander about, it
14 would be appreciated. Does Your Honor know
15 Mr. Spadaccini.

16 THE COURT: I have seen him along the way.

17 MS. WRIGHT: The State calls Angela Robyn
18 Quinn.

19 ANGELA ROBYN QUINN,

20 having been first called by the State was sworn on
21 oath, was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MS. WRIGHT:

1 Q. Good morning, Ms. Quinn.

2 A. Good morning.

3 Q. For purposes of the record your full name is
4 Angela Robyn Quinn?

5 A. It is.

6 Q. You go by Robyn?

7 A. I do.

8 Q. By whom are you employed?

9 A. Employed by the State of Delaware, Department
10 of Safety, Homeland Security, Division of Forensic
11 Science.

12 Q. Prior to that, did that office have another
13 title?

14 A. We were under the Department of Health and
15 Social Services. We were the Office of the Chief
16 Medical Examiner.

17 Q. What is your current position?

18 A. Laboratory manager for controlled substances,
19 arson and forensic evidence unit.

20 Q. Briefly describe your educational background?

21 A. I have a bachelor of science from Ursinus
22 College and a master of science with a concentration of
23 forensic science from the University of Florida.

1 Q. I am approaching with what's been marked
2 State's Exhibit 1 without objection. Take a look at
3 this. What is this?

4 A. This is my CV.

5 Q. Is that a fair and accurate copy?

6 A. It is.

7 Q. May I publish this on the projector?

8 THE COURT: You may.

9 BY MS. WRIGHT:

10 Q. Ms. Quinn, if I can direct your attention to
11 the first page of your CV, specifically under
12 professional experience for Office of the Chief Medical
13 Examiner. Tell us when did you first become lab
14 manager for the controlled substance lab?

15 A. Initial date was October 20, 2013.

16 Q. Describe for us the typical responsibilities,
17 day-to-day duties as a lab manager for the controlled
18 substance lab?

19 A. Yes. For controlled substances, I am
20 responsible for ensuring that the controlled substance
21 and arson units are in compliance with international
22 standards 17025. Also responsible for implementing and
23 developing validation studies, as well as policies and

1 procedures for the controlled substance lab.

2 Q. Can you tell us, generally, what kind of
3 specialized training did you receive in order to have
4 this position?

5 A. This is a laboratory manager position. So the
6 training that I had was approximately 13 years of
7 experience in the DNA unit as a laboratory manager in
8 the CODIS section. I am also an assessor for Forensic
9 Quality Services. So I assess against international
10 standards for 17025 and 17020. I'm also an auditor
11 against DNA standards for the FBI quality assurance
12 standards. I also have a supervisory development
13 certificate from the State of Delaware, and have taken
14 management courses through the University of
15 California.

16 Q. If I can direct your attention to State's
17 Exhibit 2 marked without objection. Can you tell us
18 what this is?

19 A. Looks like an organizational chart for the
20 Medical Examiner's Office.

21 Q. If I can direct you to the bottom right corner
22 of State's Exhibit 2. That section, can you point out
23 for us where your name comes up.

1 A. Yes. I am right here (indicating).

2 Q. On the right who is also a laboratory manager
3 for controlled substance lab?

4 A. That was Caroline Honse.

5 Q. When you started on October 20, 2013, were you
6 the sole lab manager for the controlled substance lab
7 or were you working with Caroline Honse.

8 A. The purpose of the dual incumbency was the
9 transfer of knowledge from Caroline to myself, prior to
10 her leaving in mid November for her retirement. I was
11 also continuing to do some of my duties in DNA at the
12 same time. Unfortunately, this transfer of knowledge
13 did not take place because Ms. Honse was rarely at
14 work.

15 Q. Tell us, Ms. Quinn, when you first started as
16 lab manager, the dual incumbency role, walk us through
17 what you noticed about the controlled substance lab;
18 specifically problems that you noticed in the lab?

19 A. First thing I did was I wanted to get a lay of
20 the land, if you will. So I took a tour of the second
21 floor, which is where the controlled substance labs
22 are. And I also went into the evidence locker, which
23 is also on the second floor. I discovered that the

1 evidence locker had several people that had access to
2 it. That was the first thing that I requested from Hal
3 Brown was to remove everybody that was not necessary to
4 be in that office area, especially in the vault.

5 Other thing I did was there was no
6 communication up there at the time between the manager
7 and the employees. So I started having team meetings,
8 where they were able to discuss with me what they felt
9 needed to be changed with the new management.

10 Q. Start with the evidence locker and the
11 forensic evidence office area. I am going to hand you
12 what's been marked, again without objection, State's
13 Exhibits 3 through 5. What are these?

14 A. Three is looking from the hallway into the
15 forensic evidence office area. Four is the actual
16 Locknetics lock that is on the office area door. Five
17 is inside the office area. That is the evidence vault.

18 Q. May I publish 3 through 5?

19 THE COURT: You may.

20 BY MS. WRIGHT:

21 Q. Start with State's Exhibit 3. Can you tell
22 us, again, what that picture is?

23 A. This is the door to the evidence -- forensic

1 evidence office area, looking from the outside in.

2 THE COURT: Put a time frame, since the time
3 that you began in October of 2013, is this the way it
4 looked, or is there a time frame which it looked
5 differently, or was changed while you were in
6 management?

7 THE WITNESS: No, it looks this way, still
8 looks this way. Those files are gone. We actually
9 scanned all those in.

10 BY MS. WRIGHT:

11 Q. Explain the difference between the office area
12 and vault area so we are clear?

13 A. This is a, like I said, Locknetics key code on
14 the door. So there is only specific people are
15 authorized to enter into the office area. Once you get
16 in the office area, there is the evidence, drug
17 evidence locker, which is the door that I think was
18 number five. There is also a key fob, additional codes
19 to get into that locker.

20 Q. With regard to State's Exhibit 3, to be clear,
21 this is the door to the office area?

22 A. Correct.

23 Q. You told us that there were people in this

1 area that weren't supposed to be?

2 A. Yes.

3 Q. Who, just generally, would be in that area,
4 who was not supposed to be?

5 A. I discovered that Aretha Bailey was in there.
6 Once I got upstairs, when I went upstairs, she was
7 assigning cases. I took that duty away from her. I
8 took that over myself. So there was no need for her to
9 be there. I discovered an investigator in there one
10 day, because this key lock has a master key, so the
11 master key can give you entry into that area. One of
12 the investigators was in there using a computer.

13 I also at one time someone from toxicology was
14 in there just pretty much hanging out talking to one of
15 the other people.

16 Q. To be clear for the Court's purposes, who
17 would have access to that front door of the office
18 area?

19 A. Should only be forensic evidence specialists,
20 and lab managers for controlled substance.

21 Q. Only these people would have access, they
22 would only have the key code to get into this office
23 area?

1 A. Correct.

2 Q. Familiarize the Court with the time frames
3 here. You said that you started in your capacity in
4 October 2013. Can you walk through when did you start
5 implementing changes?

6 A. Probably immediately, the first week of
7 November I locked down this area. Not only the
8 entrance into the office area, but also the locker
9 itself.

10 As far as implementing new procedures and
11 policies, I really didn't have the authority to do that
12 until Mrs. Honse retired. So she retired the end of
13 November, and I started trying to do things in December
14 but, again, there is also chain of command I had to go
15 through to get some of the things I wanted implemented.

16 Q. But the first matter for you was to lock down
17 the area in terms of who had access?

18 A. Definitely, yes.

19 Q. Turn your attention to State's Exhibit 4.
20 This is just a zoom in of the office door
21 area?

22 A. Yes.

23 Q. Once you cut down the number of people who had

1 access, who would have access, specifically names?

2 A. Names would be James Daneshgar, Kelly Georgi
3 myself and Farnam Daneshgar.

4 Q. Farnam?

5 A. Daneshgar. He was my Lab Manager One.

6 Q. Turning your attention to State's Exhibit 5.

7 What are we seeing in State's Exhibit 5?

8 A. This is the door to the evidence locker where
9 the drugs were.

10 Q. Is there a difference between who had access
11 to the office area versus the vault area?

12 A. Yes.

13 Q. Explain what that difference is?

14 A. Only people that have access to the actual
15 evidence vault are the forensic evidence specialists
16 would be James Daneshgar, Kelly Georgi.

17 Q. When you did these changes, did any chemists
18 have access to this locker?

19 A. No.

20 Q. Including Farnam Daneshgar, did he have
21 access?

22 A. No, he did not either.

23 Q. Prior to the implementation of your changes,

1 can you tell us whether chemists had access to that
2 locker?

3 A. Chemists did not.

4 Q. You mentioned preliminary problems you saw
5 when you took over as lab manager between October and
6 November, when you were learning, getting the lay of
7 the land. Can you tell us what you noticed about any
8 policies, procedures, protocols that were in place for
9 the controlled substance lab?

10 A. Protocols in place for the actual science were
11 fine. The science is solid. They had been reviewed
12 off on the last time in 2013, I believe in February by
13 Ms. Honse. There was no policy in place for actual
14 evidence intake or return. They were using an evidence
15 guideline book that was published on our website. That
16 was never authorized or signed off on by anyone in
17 authorization.

18 Q. To be clear, were there any procedures in
19 place for courier duties, written?

20 A. Not that I know of. There were no written
21 procedures.

22 Q. What about the manner in which evidence was
23 logged in?

1 A. There were no written procedures except for
2 this 2008 guideline manual. However, it was pretty
3 much training from person to person, so the person that
4 left would train the new person.

5 Q. What, if any, issues did you notice with
6 regards to evidence being logged in?

7 A. First thing I noticed, and this came about
8 when all this came to light in January, was the there
9 was a gap in the chain of custody where the officer
10 would bring in the evidence, they would log it in on a
11 paper chain of custody by Aretha, Kelly, or J. Then
12 six days or so later they would log it into our FLIMS,
13 Forensic Advantage.

14 I asked Mr. Daneshgar about this, he said that
15 was just the way it was always done.

16 Q. What about the manner in which drug evidence
17 was moved within the controlled substance lab,
18 specifically from the evidence locker to the chemist
19 labs, what did you notice about that?

20 A. When I first got up there, the transfer would
21 take place from J to the chemists' general locker in
22 the general lab. And then the chemist would take it
23 from there, put it in their personal locker in the lab.

1 There was no documentation of the transfer from the
2 general locker to the personal locker space in the
3 chemist laboratory area.

4 Q. What, if anything, did you do to fix this
5 problem?

6 A. I immediately advised them and also sent a
7 follow-up e-mail that the personal lockers were to no
8 longer be used.

9 Q. What about Aretha Bailey, Kelly Georgi, what
10 if anything did you do to fix or change their rules
11 within the office?

12 A. With Aretha, after taking away her
13 responsibility to assign cases, there wasn't really
14 anything for her to do in controlled substance. So I
15 notified Mr. Hal Brown that her services were no longer
16 needed in controlled substances. He could do with her
17 what he wanted, as far as someplace else in the
18 building. Kelly Georgi has never been signed off on to
19 intake drugs for our unit, as far as our FLIMS system
20 is concerned. She has been in training for several
21 years at DNA, has not been signed off on. So the next
22 thing I did was J Daneshgar is the only one that can
23 intake and return drug evidence.

1 Q. Throughout your testimony you mentioned FLIMS.
2 Can you tell us what that is, who developed it?

3 A. It is actually a vendor in Virginia, The
4 Computer Solution Company, TCSC. LIMS stands for
5 Laboratory Information Management System and our
6 computer people called it FLIMS. It is technically
7 Forensic Advantage, which sounds a lot better. So it
8 tracks everything from evidence coming in, to evidence
9 going out the door. We have work sheets that the
10 chemist will use once we open up the evidence. It
11 tracks the weight, results, reports are printed out
12 from Forensic Advantage. We have several people in DOJ
13 that can access portions of Forensic Advantage to see
14 where the case is in the system.

15 We also have a pre-log module where the
16 submitting officers can pre-log in their evidence when
17 they bring it in, there is not as much to enter by
18 hand.

19 Q. If you can tell us what problems, if any, did
20 you notice about this system?

21 A. This system is not user friendly as we have it
22 at our office. There has been a lot of issues. This
23 has been a ten-year project, been a lot of issues with

1 money and actually developing what we need and the
2 modules we need. We pretty much have the basic model
3 of this system. I have seen it in other labs. I have
4 seen it work well. But in our current situation, it is
5 just not user friendly. It is accurate, for the most
6 part, we have been finding, especially after this all
7 came to light. We have been findings some bugs. So we
8 have to go to the vendor to have it either explained or
9 fixed.

10 Q. You just mentioned it's accurate for the most
11 part; what do you mean?

12 A. The State Police came in and took all the
13 evidence from our locker into their possession. We,
14 because it was such a massive amount, we decided to do
15 batch receipts. It was discovered that when you print
16 out a batch receipt, that the officer that submitted it
17 may not, in fact, be that officer. So you have to
18 actually go back into the individual case, and locate
19 who the submitting officer was. In that respect, it is
20 correct, it is just batch printing was not correct.

21 Q. When you say go into individual screens
22 individuals case, it is correct.

23 A. Yes.

1 Q. How do you make sure, what documents do you
2 refer to?

3 A. We have a paper chain of custody that the
4 forensic evidence specialist will check off from the
5 envelope that the submitting officer gives him, which
6 is on that chain of custody. So you can compare who
7 submitted it, then you can compare it to Forensic
8 Advantage.

9 MS. WRIGHT: May I have a moment, Your Honor.

10 THE COURT: Yes.

11 (Discussion held off the record.)

12 BY MS. WRIGHT:

13 Q. Direct you to January of this year. Can you
14 tell us what, if anything, you know about an internal
15 audit that was done at the Medical Examiner's Office?

16 A. I think approximately the second week of
17 January, Hal Brown got a phone call from the State
18 Police saying that a drug case down State was opened in
19 Court and what was supposed to be in there was not in
20 there. So we had to actually go back into our system,
21 this was in a Lotus notes system before Forensic
22 Advantage. We tried to research to see if at any point
23 we could find these red pills anywhere in there. We

1 couldn't. So February second -- last week of January
2 we had a top management meeting and decided we would be
3 proactive and have an internal audit of the drug
4 evidence locker. That commenced on February 2nd.

5 Q. How did that internal audit work, who was
6 responsible for it?

7 A. It was decided by Hal Brown and Dr. Callery
8 that Jack Lucy would spearhead that with the assistance
9 from Kelly Georgi and Laura Nichols, and there was also
10 to be oversight by our quality manager, Patty Monahan.

11 Q. Were you involved in any of the oversight of
12 this audit?

13 A. I asked to be involved and was told it would
14 be better that I not be involved. I did offer
15 suggestions, as far as how to open the envelopes, how
16 to photograph them, and the oversight I had, I guess,
17 was Kelly or Laura would come to me with questions, I
18 guess, complaints about how it was being done.

19 Q. What did you mean complaints about how it was
20 being done?

21 A. It was discovered that Jack Lucy was not
22 opening a different seal. So he was -- I have no idea
23 how many of these instances there are, but he would

1 reopen the original integrity seal by the officer.

2 Q. What, if anything, did you do to remedy this
3 problem?

4 A. I spoke to him. I followed up by e-mail, I
5 took an envelope that was actually drug evidence, DNA
6 evidence envelope, and showed him an example of how he
7 was supposed to actually reenter this envelope.

8 Q. What kind of tape did Jack Lucy use when he
9 was conducting this internal audit?

10 A. He used, I believe, red evidence tape with
11 Office of Chief Medical Examiner on it.

12 Q. I am placing on the screen what's been marked
13 State's Exhibit 9. Can you tell us what we are looking
14 at?

15 A. That is the tape that Jack used to reseal the
16 envelopes.

17 Q. With regard to the scope of the internal
18 audit, can you tell us how this started, in terms of
19 what were you looking for?

20 A. First only looking for pill cases,
21 specifically Oxycontin cases.

22 Q. You say at first?

23 A. Yes.

1 Q. What happened after that?

2 A. Then the scope broadened and we started
3 looking at all cases, based on troops and then based on
4 specific agencies going backwards by year.

5 THE COURT: I guess my question is: Since the
6 Medical Examiner decided it was best not to have you
7 involved in the audit, how do you know all this?

8 THE WITNESS: We got daily e-mail updates from
9 Jack and Kelly.

10 THE COURT: You were not present at all when
11 any of this was done?

12 THE WITNESS: No.

13 BY MS. WRIGHT:

14 Q. How long did this internal audit go for?

15 A. We started on February 2nd, and on
16 February 20th when the State Police came in and shut us
17 down.

18 Q. So the process was interrupted?

19 A. Yes.

20 Q. Never completed?

21 A. Never completed.

22 Q. You talked briefly about the chemist general
23 locker and lab lockers, if can I put on the screen --

1 THE COURT: It appears you are going to
2 another subject. Let me ask this question.

3 How was the audit documented?

4 THE WITNESS: It was actually an Excel spread
5 sheet was kept, was documented in Forensic Advantage by
6 Kelly who would put notes in that Jack took it out of
7 the locker for purposes of internal audit. She kept a
8 separate spread sheet what was supposed to be in the
9 envelope, and what was actually found in the envelope.

10 BY MS. WRIGHT:

11 Q. Ask a follow-up question to the Judge's
12 question. With regards to how it is documented, would
13 any note that Kelly Georgi put in appear in the FLIMS
14 chain of custody report?

15 A. Not to my knowledge. As far as comments, no.
16 The actual chain of custody from the evidence locker to
17 Jack and back in would be in the chain of custody, yes.

18 THE COURT: The only way to know whether or
19 not there was an issue with a particular envelope would
20 be the spread sheet?

21 THE WITNESS: Yes.

22 BY MS. WRIGHT:

23 Q. The actual drug evidence envelope was part of

1 the audit would be documented in the chain of custody,
2 correct?

3 A. Yes.

4 Q. I am going to put on the screen State's
5 Exhibit 6. Can you tell us what that is?

6 A. Those were the chemists' lockers in the
7 general lab.

8 Q. Those are general lockers or personal lockers?

9 A. General lockers.

10 Q. State's Exhibit 7, again, without objection?

11 A. That is an example of a personal chemist
12 locker in their lab space.

13 Q. Per your testimony, any transfer from the
14 general locker to the chemists' locker, personal locker
15 would not be documented?

16 A. Correct.

17 Q. State's Exhibit 8 without objection?

18 A. That is in the second floor hallway on the
19 outside there are considered pass through, that is
20 passing into the interior of the evidence -- drug
21 evidence locker.

22 Q. Can you tell us from this angle State's
23 Exhibit 8, that is not from within the locker, correct?

1 A. Correct.

2 Q. Per your testimony, chemists never had access
3 to that locker before and after you came in as lab
4 manager?

5 A. Correct.

6 Q. Other than forensic evidence specialists,
7 anyone have access to the drug evidence vault?

8 A. No.

9 Q. To be able to obtain any drug evidence that
10 the chemist would return through that pass through, how
11 would a forensic evidence specialist access that?

12 A. You have to have access to the outside door of
13 the evidence locker with the key fob, and additional
14 codes. Once you get into the locker, there is also an
15 additional key lock on the back of this pass through.

16 Q. How would you describe the difference of the
17 controlled substance lab from the time you first got
18 the lay of the land in October, to the time DSP came in
19 and secured the drug evidence locker?

20 A. Well, I think we were pretty much in a
21 transition period. Prior to me being in the position,
22 there was really no documentation of anything that took
23 place in the controlled substance unit. There was also

1 lack of communication between the chemists and the
2 supervisors, as well as forensic evidence specialists.
3 So I was in the process of reorganizing all that, had a
4 better, I believe a better, relationship with the AG's
5 office, as far as what cases were being assigned to the
6 chemists. Then right in the middle of all that is when
7 we were shut down.

8 MS. WRIGHT: May I have a moment, Your Honor.

9 THE COURT: Yes.

10 (Discussion held off the record.)

11 MS. WRIGHT: No further questions, Your Honor.

12 MS. SAVITZ: If we could have a minute.

13 THE COURT: You want a break?

14 MS. SAVITZ: We are good.

15 THE COURT: Okay.

16 CROSS EXAMINATION

17 BY MS. SAVITZ:

18 Q. Good morning, Ms. Quinn. How are you?

19 A. Fine.

20 Q. My name is Beth Savitz.

21 Put back up State's 8 for a second.

22 A. The pass through.

23 Q. This is a pass through and back, what is this

1 (indicating)?

2 A. There are several doors that there is a little
3 button here, and you can open it from the outside, it
4 pops open. The chemists can put in their completed
5 case. You close it. Once they close it, they cannot
6 reopen it. It only can be opened from inside.

7 Q. That giant door next to the lockers. What is
8 that room?

9 A. I can't tell. The only thing next to the
10 locker when you looking at it this way, there is a
11 second floor conference room.

12 Q. So that just could be that conference room?

13 A. Could be. I can't tell from that angle.

14 Q. You mentioned earlier that someone has a
15 master key?

16 A. Yes.

17 Q. You found that person in the FES office?

18 A. Yes.

19 Q. Does that master key open any of these pass
20 through boxes?

21 A. It did not.

22 Q. Did that master key open this State's 6, any
23 of these personal lockers?

1 A. Did not.

2 Q. These are general lockers?

3 A. General.

4 Q. This is State's 7, which is the personal
5 locker within a lab like a testing lab, right?

6 A. Yes.

7 Q. The master key did not open those?

8 A. Did not.

9 Q. Did it open the door to the FES office?

10 A. Correct.

11 Q. Did it open the vault?

12 A. No.

13 Q. Now, you stated a couple minutes ago that only
14 the FES people or person have access to the vault.
15 Right?

16 A. Since I have been up there, yes.

17 Q. But there is nothing other than maybe the
18 wrath of Ms. Quinn to prevent someone from bringing
19 someone else in there?

20 A. At this time, correct.

21 Q. So you also had indicated earlier that someone
22 was in there just sort of hanging out talking to people
23 who were working?

1 A. Yes.

2 Q. Does the master key still open the office?

3 A. I believe it does.

4 Q. And the general lockers that we saw all had
5 pad locks on them?

6 A. Yes.

7 Q. Are they all keyed the same?

8 A. That I don't know.

9 Q. Who has keys for those lockers?

10 A. They are combinations.

11 Q. Okay. All have the same combination?

12 A. They should all be the same combination for
13 each chemist, each chemist should have separate --

14 Q. So a chemist has three lockers, all three
15 locks should be the same combination?

16 A. Correct.

17 Q. Is there a master list of the combination
18 somewhere in the office of the now division of forensic
19 sciences?

20 A. While we were in the transitional period, I
21 discovered there was a sticky note they left out with
22 all the -- the chemists knew where the sticky note was.

23 Q. Did other people know where the sticky note

1 was?

2 A. You still had to have access to get into the
3 lab to access these lockers. So if you didn't have
4 access to the lab itself, you could not see that sticky
5 note.

6 Q. If was sort of out there?

7 A. Yes.

8 Q. Was not under a separate lock and key?

9 A. No, it was, I believe, it was in a drawer.

10 Q. Was that the same situation as when you first
11 took over in October that sticky note?

12 A. Yes.

13 Q. When you took over in October, were you aware
14 then the container in which the couriers would
15 transport drug evidence back and forth up and down the
16 state?

17 A. No, I had not had a chance to look into the
18 courier service.

19 Q. Are you aware that they were using a lock box,
20 at least?

21 A. That was my understanding, yes.

22 Q. Do you know what type of lock box, what kind
23 of container it was?

1 A. I do not.

2 Q. Are you aware that the combinations to those
3 lock boxes were all the same?

4 A. I was not.

5 Q. Were you aware that there was a piece of
6 paper, like, in a folder with other papers for, like,
7 the next courier who would take over that job, a piece
8 of paper sort of sitting in a folder that had the
9 combination to all the lock boxes?

10 A. I did not.

11 Q. Would it surprise you that someone who was
12 interviewed, who is a current or former employee of the
13 entity formerly known as OCME told the police that?

14 A. What I have been through the last six months,
15 nothing would surprise me.

16 Q. Fair answer.

17 How long have you been employed by an entity
18 then or now known as the Office of the Chief Medical
19 Examiner?

20 A. Nineteen years.

21 Q. You started in the DNA lab?

22 A. I did.

23 Q. And would you tell us what sorts of things

1 were in place at the DNA lab, say, in 2013 that are not
2 in place in controlled substance?

3 MS. WRIGHT: Your Honor, the State objects.
4 Can we approach?

5 THE COURT: Sure.

6 (Discussion held off the record.)

7 (The following sidebar conference was held.)

8 MS. WRIGHT: Your Honor, the State's objection
9 is relevance at this point, the Public Defender's
10 Office raised issues with the controlled substance lab,
11 not the DNA lab. That is not an issue, completely
12 separate lab, different policies and procedures. For
13 Ms. Quinn to compare and contrast is not appropriate at
14 this point.

15 MS. SAVITZ: Your Honor, the reason for the
16 question, if I might, is this is someone who knows how
17 a lab is supposed to be run. That is why she runs the
18 lab now. She previously ran DNA. She knows what
19 things should be in place, what things that are missing
20 from controlled substance that should be there, can be
21 brought out comparisons as to what she did in the DNA
22 lab, what policies and procedures are in place in
23 writing in DNA.

1 THE COURT: You can ask her whether or not
2 there is any procedures or safeguards that are set
3 forth in the DNA lab that are not now implemented in
4 the drug lab. If there are, then you can explore with
5 her as to what those may be. If she says no, then it
6 is what it is. I think creating a foundation for,
7 first, there may be some difference how the DNA lab was
8 safeguarded versus the drug lab would be appropriate.
9 Ask her if there are any differences. If she says no,
10 then I think we have to move on. If she says yes, I
11 will let you explore.

12 MS. WRIGHT: Thank you.

13 (Sidebar conference concluded.)

14 BY MS. SAVITZ:

15 Q. There are policies and procedures in place in
16 the DNA lab for the handling of DNA evidence, right?

17 A. Yes.

18 Q. Are there policies and procedures in place in
19 the DNA lab, they are written, right?

20 A. Correct.

21 Q. Those written policies and procedures, are
22 there -- did they exist in the DNA lab and not in
23 controlled substance?

1 A. Yes.

2 Q. Was that a problem in controlled substance?

3 A. Yes.

4 Q. So what types of policies were -- may I have a
5 minute, Your Honor.

6 (Discussion held off the record.)

7 Q. DNA evidence is also used in court, right?

8 A. Correct.

9 Q. So is there a chain of custody policy in DNA?

10 A. Yes.

11 Q. Does the DNA lab use the same software as the
12 controlled substance lab?

13 A. Yes.

14 Q. Does it work for the DNA lab?

15 A. It does.

16 Q. How is the DNA lab set up different than the
17 controlled substance lab set up, I don't mean
18 physically, do they have the same types of it goes to a
19 vault, there is a vault within an office, chemists have
20 their labs, they have lockers in the lab, they have
21 personal, they have general lockers, does all that
22 exist in the DNA lab?

23 A. No.

1 Q. How does the DNA lab work if it does not have
2 all of this?

3 A. Evidence comes on from the submitting agency
4 to the forensic evidence specialist. They will then
5 place it in the DNA evidence locker in storage or in
6 the refrigerator or freezer. The technical leader will
7 assign the case and the DNA analyst will go get it from
8 the appropriate evidence locker.

9 Q. It only goes from the officer, to the FES, to
10 the locker, to the lab, period. There is not other
11 stops in between?

12 A. No.

13 Q. Is the evidence in DNA when an officer come in
14 with an envelope, say two swabs, wet swab, dry swab.
15 Hey, we swabbed from a handgun found at West 30th and
16 whatever in Wilmington. FES takes that envelope from
17 the officer at 11 o'clock, on August 19th, is it
18 entered into the computer at 11 a.m. on August 19th?

19 A. It is.

20 Q. Then that FES person takes that envelope,
21 walks over to the -- this is DNA, there goes in the
22 refrigerator or not refrigerator, which ever one,
23 that's it?

1 A. Correct.

2 Q. It is done. Everybody who needs to know where
3 it is can pull it up on the Forensic Advantage
4 software, know that those swabs submitted by some
5 Wilmington Police officer, are in the refrigerator?

6 A. Yes.

7 Q. The analyst goes into Forensic Advantage,
8 which everybody else calls FLIMS, right?

9 A. Yes.

10 Q. And the chemist says okay, I have three hours
11 I am going to work on that case they brought in from
12 Wilmington the other day. They go in and say transfer
13 from refrigerator to Joe the chemist?

14 A. Correct.

15 Q. Joe the chemist takes it out of the
16 refrigerator, and does magical things to make a DNA
17 sample, to create the report?

18 A. Correct.

19 Q. In the DNA lab, did evidence sit until someone
20 can find the time to enter it into the Forensic
21 Advantage?

22 A. No, it is done in realtime.

23 Q. Did you write those policies?

1 A. Some of them, yes.

2 Q. Did you -- you had the authority to do that?

3 A. Yes.

4 Q. You mentioned earlier the guidelines.

5 MS. SAVITZ: If I can have an Exhibit marked
6 Defense 1 without objection.

7 MS. WRIGHT: Correct, Your Honor.

8 THE CLERK: Defense Exhibit 1 so marked, Your
9 Honor.

10 THE COURT: Thank you.

11 BY MS. SAVITZ:

12 Q. I am handing you Defense 1. Are these -- take
13 a look through that. Tell us if you recognize that?

14 A. I do.

15 Q. Is that packet, which is 62 pages, is that the
16 guidelines to which you referred earlier?

17 A. It is.

18 Q. These are on the website?

19 A. DHSS has a website, there is a link for the
20 Medical Examiner's Office and there is a link to this.

21 Q. Who drafted these?

22 A. I believe it was the forensic evidence
23 specialist prior to James Woodson, Sara Yarnell.

1 Q. Listed being copyrighted by Dr. Callery?

2 A. Yes.

3 Q. Did he have anything to do with drafting the
4 guidelines?

5 A. Not that I am aware of.

6 Q. If you would turn in that Exhibit to page 40.

7 A. Okay.

8 Q. Talks about form DE dash OCME FE 150. Does
9 that form still exist -- did that form still exist in
10 use when you came to controlled substance in October of
11 '13?

12 A. Not that I am aware of.

13 Q. Do you have any idea what that form is?

14 A. I do not.

15 Q. There is mentioned in the guidelines, as well,
16 a form FE 100. Have you ever seen a form called FE 100
17 in the controlled substance lab?

18 A. I have not.

19 THE COURT: So I am clear as to what document
20 you have in front of you, that is the guidelines for
21 the DNA lab.

22 THE WITNESS: No, it is the guideline for the
23 collection and submission of forensic evidence.

1 MS. SAVITZ: Does the Court want another copy?

2 THE COURT: You went from DNA to something
3 else. I thought she had DNA guidelines in front of
4 her.

5 BY MS. SAVITZ:

6 Q. These guidelines cover all forensic evidence,
7 right?

8 A. Yes.

9 Q. Like it talks about if you turn to the table
10 of contents, which is at page five, general
11 instructions, instructions regarding a courier, right?

12 A. Yes.

13 Q. DNA submissions, tox submissions, controlled
14 substance and arson, right?

15 A. Yes.

16 Q. Those are from 2008, right?

17 A. Yes.

18 Q. When you took over there were too many people
19 that had access to the vault?

20 A. Yes.

21 MS. SAVITZ: If I could have this marked as
22 the next Defense Exhibit without objection.

23 THE CLERK: Defendant's Exhibit 2 so marked.

1 BY MS. SAVITZ:

2 Q. I am going to give you two documents together.
3 One is two pages. One is three. I will take the
4 guidelines. Take a look at what is now Defense 2.

5 Do you recognize these?

6 A. Yes.

7 Q. First two pages are -- what are they?

8 A. It's access to the controlled substance unit
9 lab evidence locker policy.

10 Q. Last three pages?

11 A. Policy for the access to controlled substances
12 unit computer files slash F drive.

13 Q. Have you seen these before today?

14 A. They are in the shared drive. They are
15 archived.

16 Q. Are they currently in use?

17 A. No.

18 Q. Did you make them to longer be in use?

19 A. I did not. I am in the process of writing the
20 quality manual because we are missing so many policies.
21 There is no way to track who had access. So this is
22 why this is archived.

23 Q. To the best of your knowledge, were those two

1 memos in place when you took over in October 2013?

2 A. Yes.

3 Q. According to this memo, how many people had
4 access to the controlled substances labs?

5 A. Laboratory there were eight.

6 Q. Are they all chemists?

7 A. Yes.

8 Q. Is Caroline Honse a chemist?

9 A. Yes.

10 Q. If you go to the second half part of that,
11 controlled substances computer files, who are those
12 people who had access?

13 A. To the F drive?

14 Q. Yes. What is the F drive?

15 A. A shared drive that we can access from our
16 personal computers at work. For example, there might
17 be a DNA folder that I don't have access to. I only
18 have access to the controlled substances folder.

19 Q. What would be in the folders, what kind of
20 information?

21 A. Just about everything to run the lab;
22 policies, memos, qualifications, continuing education.
23 It is our way of documenting pretty much everything in

1 the lab for audit purposes.

2 Q. Would it also contain proficiency testing
3 information?

4 A. Yes.

5 Q. Do all of these people still have the same
6 access now as they do as listed --

7 People who are listed in those two memos, do
8 they continue to have the same access now?

9 A. I would have to ask IRM or DTI to look into
10 that. I have no way of knowing that.

11 THE COURT: Are there two documents, one is
12 the list who has an access to the evidence locker, or
13 lab, are there two separate accesses there mentioned?

14 THE WITNESS: The first policy is for the lab,
15 arson and controlled substances.

16 THE COURT: Those people listed are chemists?

17 THE WITNESS: Correct.

18 THE COURT: Those chemists are still employed?

19 THE WITNESS: Except for Caroline.

20 THE COURT: They would now still have access?

21 THE WITNESS: To the lab. The second portion
22 of that is the evidence locker, which according to this
23 just Caroline and Karen Tzardus.

1 THE COURT: They no longer have access?

2 THE WITNESS: No, they do not.

3 THE COURT: So the other part of it, which is
4 the computer access, you don't know if they still have
5 access or not?

6 THE WITNESS: I would assume Caroline does
7 not, she cannot access from home. Everyone else is
8 still employed. I would have to research that.

9 THE COURT: Thank you.

10 BY MS. SAVITZ:

11 Q. When you came to controlled substances in
12 October, Caroline Honse was supposed to be training
13 you, right?

14 A. Yes.

15 Q. She was never there?

16 A. Right.

17 Q. And I guess we have all since learned in the
18 newspaper that Dr. Callery wasn't there very often?

19 A. Correct.

20 Q. How often was Hal Brown there?

21 A. He was there pretty often.

22 Q. Did you go to him when you took over to say
23 this place is a mess or similar?

1 A. I did.

2 Q. What was his reaction?

3 A. I think he sort of knew what I was walking
4 into, but not necessarily the level of it.

5 THE COURT: So the record is clear, Hal Brown
6 would be?

7 THE WITNESS: Deputy director under
8 Dr. Callery.

9 BY MS. SAVITZ:

10 Q. Like the number two guy for the lab?

11 A. Yes.

12 Q. When you told him, did you tell him there is
13 no written policies regarding the intaking of evidence
14 in controlled substances.

15 A. I did.

16 Q. What was his reaction?

17 A. He pointed me to the guidelines that you just
18 took back from me.

19 Q. 2008 ones?

20 A. Yes.

21 Q. Written by an FES?

22 A. I brought to his attention they were also not
23 signed off on or approved by Dr. Callery.

1 Q. You said signed off on before. I have a note
2 there. You said Kelly Georgi --

3 A. Yes.

4 Q. -- has never been, quote, signed off on for
5 intaking drugs, end quote. We all use signed off in
6 probably similar, but maybe different ways; would you
7 explain to us what that meant, what you meant by she
8 had not been signed off on?

9 A. Specifically for Kelly?

10 Q. Yes.

11 A. For training purposes, for a forensic evidence
12 specialist, we go through a series of mock cases they
13 have to watch. They will watch someone that has been
14 signed off on take in evidence, return evidence, and
15 then they are then supervised while they are doing it,
16 someone is watching them making sure they are doing it
17 correctly. There is a training process.

18 If the person that is training them,
19 supervisor in place feels that they are competent, a
20 memo is then created stating they are competent to
21 receive and return controlled substance evidence and
22 signed off on by the supervisor of that unit.

23 Q. That was Caroline Honse immediately before

1 you?

2 A. Yes.

3 Q. How long had Kelly been there when you took
4 over in October of 2013?

5 A. I think Kelly has been there for about ten
6 years.

7 Q. Do you know who was responsible initially for
8 training her?

9 A. Not in controlled substances. In DNA, yes.

10 Q. Had she previously been signed off on for DNA?

11 A. She is currently -- she's been trained -- no.

12 Q. Say what you were thinking of saying.

13 A. She has been -- it's been several years of
14 training, she has not been signed off on to receive or
15 return DNA.

16 Q. When did she start doing intake at controlled
17 substances?

18 A. I have no idea.

19 Q. Was it before you came into controlled
20 substances?

21 A. Yes, it was.

22 Q. Do you have a guess, was it days, weeks,
23 months, or years?

1 A. My guess would be years.

2 Q. She was also doing the controlled substance
3 job?

4 A. Intake, paper intake, not Forensic Advantage.

5 Q. She would be that person to whom -- because
6 Wilmington Police in 2012 early 2013 Vinny DiSabatino
7 would come in, have a boat ton of envelopes because it
8 was Wilmington. She would be the person to whom he
9 would bring those envelopes?

10 A. Yes.

11 Q. What was she supposed to do?

12 A. Supposed to compare the paper chain of custody
13 that Vinny would bring there with him with the actual
14 envelope, and transfer to her custody on paper, not in
15 the computer system.

16 Q. What about physically, what would happen to
17 those envelopes?

18 A. Physically place them in the evidence locker.

19 Q. Then someone else would enter them into the
20 Forensic Advantage system?

21 A. Yes.

22 Q. At some point?

23 A. Some point, yes.

1 Q. Some random time?

2 A. Yes.

3 Q. When they found them?

4 A. Yes.

5 Q. You had some other people you learned in
6 October of '13 that you had some other people who were
7 not qualified doing some intake, as well, right?

8 A. Yes.

9 Q. So you had an administrative assistant doing
10 intake, right?

11 A. Mrs. Bailey, yes.

12 Q. And was she putting things in FLIMS?

13 A. I believe she was.

14 Q. Was there a magical memo in the file --

15 A. I had not seen one.

16 Q. I think I asked you this, but I am not sure.
17 I will ask it again. Who allowed Kelly to do the
18 intake, paper intake?

19 A. Would have to be Caroline and Hal.

20 Q. Same for allowing Aretha to do this stuff?

21 A. Yes.

22 Q. She even had the computer access?

23 A. Yes.

1 THE COURT: I would ask for record purposes
2 that we use individual's last names. We will not be
3 able to figure out who those people are. Keep calling
4 them by their first name, both you and the witness
5 would do that, please.

6 BY MS. SAVITZ:

7 Q. Sorry about that, Your Honor.

8 So Mrs. Honse would have given both Ms. Georgi
9 and Mrs. Bailey some sort of permission?

10 A. Correct.

11 Q. To take, intake evidence, though you have
12 found no documentation that either of them had been
13 signed off on?

14 A. Yes.

15 Q. Do you remember speaking with the State
16 Police?

17 A. I do.

18 Q. Back in, I guess, March of this year?

19 A. I spoke with them several times.

20 Q. Do you remember speaking specifically with
21 Lieutenant Wallace and Laird on March 4th?

22 A. Yes.

23 Q. Do you remember discussing with them concerns

1 you had about Jack Lucy's competency?

2 A. I do.

3 Q. Would you tell the Court a little bit about
4 what Ms. Quinn thinks about Mr. Lucy and his competency
5 in the lab?

6 A. My experience with Mr. Lucy started in the DNA
7 lab. He was intaking and returning DNA evidence and
8 was not doing it to our standards, if you will.

9 Q. Is Mr. Lucy still employed there?

10 A. He is.

11 Q. How long has he been there?

12 A. I am not sure. Not long, a couple years
13 maybe.

14 Q. Do you know from whence he came?

15 A. I believe he was a Wilmington Police officer.

16 Q. When he was in DNA, were you his supervisor?

17 A. I was not.

18 Q. Were you a manager when he was in DNA?

19 A. Yes.

20 Q. DNA manager?

21 A. Of the CODIS section, yes.

22 Q. Did you work with him at all?

23 A. Yes.

1 Q. What were the problems?

2 A. There was lack of attention to detail. There
3 was a little bit of, I don't know if there was
4 disrespect, little bit of difficulty giving him
5 direction as a female.

6 Q. Did anybody ever say anything to him about,
7 Dude, you are not doing this intake and return stuff
8 correctly?

9 A. Yes.

10 Q. He just still is employed?

11 A. Yes.

12 THE COURT: Let me try to help this process.
13 You all know a lot more than I do about this matter,
14 because you have done lots of it. I don't. I don't
15 know who this gentleman is. I don't know what his
16 connection to the drug area is. So you should not
17 assume that I know as much as, perhaps, you do. That
18 is why we are having hearings so you can educate me on
19 what may be going on here.

20 So now I have a gentleman, best I can tell,
21 was not doing what he was supposed to do in the DNA
22 lab, which I have to idea what relevance he may have to
23 the issues that we have here. Other than asking

1 questions that have no relevance, I'm not quite sure
2 why we are going down this road. Perhaps start
3 questioning, so I have some clue as to what we are
4 doing that would be helpful. I will let you go. I am
5 telling you I don't know as much as you do. You
6 shouldn't assume I know things that should be relevant
7 to the matter, okay. That would be helpful. Thank
8 you.

9 BY MS. SAVITZ:

10 Q. You mentioned Jack Lucy in your testimony when
11 Mrs. Wright was asking you questions, correct?

12 A. Yes.

13 Q. Refresh us with his job was or what your
14 testimony was about him earlier?

15 A. We met the end of January and decided we are
16 going to do an internal audit of the evidence locker
17 and Mr. Lucy was given the responsibility of running
18 that internal audit.

19 THE COURT: Thank you.

20 BY MS. SAVITZ:

21 Q. He worked with Mrs. Georgi on that?

22 A. Yes.

23 Q. And Laura Nichols?

1 A. Yes.

2 Q. Had Laura Nichols, as of January of '14, been
3 signed off on to do intake and return of controlled
4 substances evidence?

5 A. I have not seen documentation of that, no.

6 Q. I am going to presume because you are now Lab
7 Manager Two for two different sections, that you know
8 how to do intake and return?

9 A. Yes.

10 Q. Of DNA and controlled substances evidence?

11 A. I do.

12 Q. And you would be, perhaps, one of the persons
13 going forward who might either write policies, or
14 conduct the actual training if new people are hired?

15 A. Correct.

16 Q. Or people who are still there today, that
17 would be you?

18 A. Yes.

19 Q. What, if you know, what experience in the
20 handling of forensic evidence does Hal Brown have?

21 A. I know his background, he was an, I believe, a
22 captain in the New Hampshire police.

23 Q. How long has he been with the Medical

1 Examiner's Office here?

2 A. I am not sure. I want to say ten years,
3 maybe.

4 Q. In his, if you know, in the however long,
5 maybe ten years he has been in Delaware with us, did he
6 work in any of laboratory sections or forensic evidence
7 sections where he would have been involved in the
8 intake and/or return of evidence?

9 A. He did not.

10 Q. Who else was involved in the audit, internal
11 one in January?

12 A. According to the meetings and subsequent
13 e-mail, Patty Monahan was supposed to have oversight of
14 it.

15 Q. I will put up State's Exhibit 2. Can you see
16 that okay?

17 A. Yes.

18 Q. It is sort of the right half of the whole
19 chart?

20 A. Yes.

21 Q. Hal Brown is that yellow rectangle in the top
22 right?

23 A. Yes.

1 Q. Not top top, but second line?

2 A. Correct.

3 Q. Then Patty Monahan is right behind him?

4 A. Yes.

5 Q. And Jack Lucy?

6 A. Right.

7 Q. Do any of people going down the line report to
8 either Mr. Lucy or Mrs. Monahan?

9 A. They do not.

10 Q. Report directly to Mr. Brown?

11 A. Yes.

12 Q. You were at the initial meeting regarding the
13 internal audit?

14 A. I was.

15 Q. Did you, the collective you, come up with
16 written policies or procedures about how that internal
17 audit would be conducted?

18 A. There were no written policies and procedures.
19 There was pretty much an agenda of what we expected
20 from it, and follow-up e-mails.

21 Q. What did you expect?

22 A. We expected, like I had said before, that when
23 you take it out of the evidence locker that he does not

1 use the same seal that was previously used. It all had
2 to be tracked in Forensic Advantage, which was what
3 Kelly was doing. She was his scribe. Photographs had
4 to be taken of the front and back of the envelope.

5 Q. Who was in charge of photographs; do you know?

6 A. Jack Lucy.

7 Q. You offered to be a part of this, right?

8 A. Yes.

9 Q. And who said no?

10 A. Hal Brown thought it was better that I not be
11 a part of it.

12 Q. Did he say why?

13 A. I think he felt it looked better if the lab
14 manager that was just coming into the situation was not
15 involved.

16 Q. How did you find out that Jack Lucy was
17 opening this -- I want to get this straight. It was
18 the same seal, by that do you mean tape?

19 A. Yes.

20 Q. That the submitting officer would have put on
21 the evidence envelope back at the police station?

22 A. Correct.

23 Q. Do you know whether he -- was he, like,

1 cutting it off with scissors, or was he using a letter
2 opener and slitting it open?

3 A. I am not sure.

4 Q. How did you find out he wasn't -- that he was
5 doing that?

6 A. Kelly and Laura in separate occasions came to
7 me and let me know that he was not following my
8 directions.

9 Q. Ms. Georgi was taking all the notes?

10 A. Yes.

11 Q. You mentioned an Excel spread sheet. Was she
12 doing the FA -- Forensic Advantage and Excel at the
13 same time?

14 A. She would actually take it from -- Jack would
15 take it out of the locker. He would document that in
16 Forensic Advantage with a note, then she would, as he
17 is counting, she would make notes of what was done in
18 the envelope, if there was any discrepancy on the
19 spread sheet.

20 Q. What was Laura doing, Mrs. Nichols doing?

21 A. They shared. So sometimes Laura would do the
22 FA portion and Kelly would do the spread sheet, and
23 vice versa. It was my understanding Laura pretty much

1 did all the FA and Kelly did the spread sheet.

2 Q. Did you say anything to Mr. Lucy about the
3 seal issue?

4 A. I did.

5 Q. What was his response?

6 A. He was confused as to what I was talking
7 about. So I had to actually go into the evidence
8 locker and pull out -- J had -- Mr. Daneshgar had some
9 DNA evidence in the locker area to be returned on the
10 run on Wednesday. So I took an envelope from DNA and
11 explained to him based on the size of the envelope how
12 he should open up the envelope.

13 Q. Did you actually open that envelope?

14 A. No.

15 Q. Pointed?

16 A. I showed him that the original envelope came
17 in, had tape on it from DSP, when Jamie Armstrong had
18 done the actual DNA analysis, she resealed it on the
19 opposite end with red tape that we use with OCME.
20 There were separate entries on the envelope.

21 Q. I will put up State's 9. That tape does not
22 actually say Office of the Chief Medical Examiner?

23 A. Correct. This one here is, I'm guessing that

1 is what he used because it is thicker. The box next to
2 it is thinner, that has OCME label on it.

3 Q. This little box here?

4 A. Yes.

5 Q. Is it also red, is that --

6 A. Yes, it is red, just a thinner tape.

7 Q. Says Office of Chief Medical Examiner?

8 A. I believe it says forensic science laboratory
9 under it, too.

10 THE COURT: That would be tape used by
11 chemists once to reseal the envelope after they had
12 examined it?

13 THE WITNESS: No, the chemists in the drug
14 section use white tape.

15 THE COURT: Thank you.

16 BY MS. SAVITZ:

17 Q. State Police use blue tape?

18 A. That is my understanding.

19 Q. What did Wilmington use, if you know?

20 A. I don't remember.

21 Q. Any other department with any other specific
22 colors come to mind?

23 A. Until this came up in all the years in DNA I

1 never really paid attention to the color of the tape.
2 I just knew I was resealing it correctly.

3 THE COURT: If it has red tape on it, should
4 the Court assume it has been opened up by the Medical
5 Examiner during the audit?

6 THE WITNESS: Yes.

7 THE COURT: If it only says evidence on it,
8 how should I know?

9 THE WITNESS: You can't really.

10 BY MS. SAVITZ:

11 Q. Where was the tape that we were just talking
12 about from State's 9; where was you that stored?

13 A. Thicker tape on the dispenser?

14 Q. Sure.

15 A. Stored in the forensic office area.

16 Q. When the FES received evidence envelopes from
17 the police, was he or she, they supposed to open the
18 envelope and thus the need for tape to reseal it?

19 A. No.

20 Q. So they were not supposed to open the
21 envelopes?

22 A. Correct.

23 Q. Really shouldn't be any need for the red tape,

1 right?

2 A. Correct. The reason that was in there prior
3 to the internal audit was sometimes we have police
4 officers bring in evidence that wasn't properly sealed.
5 At that point in time we would give them the
6 opportunity to seal it correctly using our tape,
7 because that is what we had. But they had to initial
8 and date that over that seal.

9 Q. Tape wasn't really -- no one was really
10 keeping track of the tape?

11 A. Not to my knowledge.

12 Q. Wasn't like an inventory?

13 A. No.

14 Q. DSP had to re-tape something, we used three
15 inches of tape?

16 A. No.

17 Q. Other tape, narrower tape that had OCME, where
18 was that stored?

19 A. We use that in DNA, also. It is a custom
20 order. We just disseminate it to the DNA lab, then the
21 evidence room.

22 Q. Locker or the --

23 A. No, the outside room, forensic evidence office

1 area.

2 Q. That is also not -- really no one really
3 keeping track of that?

4 A. No.

5 Q. There was nothing to prevent you, there was no
6 way to prevent someone from walking out with the tape
7 other than you are going to look silly carrying a big
8 dispenser, no one preventing someone from putting this
9 in their pocket?

10 A. It never crossed my mind that we would have to
11 actually monitor the tape we had.

12 Q. Do you now believe you have to monitor the
13 tape?

14 A. We have monitor everything now.

15 Q. Why?

16 A. First of all, as an internationally accredited
17 laboratory that is the way to correctly do things.
18 Secondly, pretty much guarantees something like this
19 won't happen again.

20 Q. So you give me a great segue. You talked
21 about standards, international 17025, right?

22 A. Yes.

23 Q. You also said that you are an assessor for

1 FQS, right?

2 A. I am.

3 Q. What is, if any, the relationship between FQS
4 and Delaware's Medical Examiner's Office?

5 A. Can you repeat that. I am not sure --

6 Q. How about I rephrase it and don't mumble. Is
7 FQS the body that previously accredited the Office of
8 the Medical Examiner?

9 A. It is.

10 Q. FQS stands for?

11 A. Forensic Quality Services.

12 Q. Is the current version of the OCME accredited
13 yet, is the new forensic services --

14 A. Division of Forensic Science has been
15 reaccredited by FQS for DNA, and toxicology. We, in
16 CS, are being reassessed in September.

17 Q. So until FQS gives you an accreditation or
18 says that you pass the assessment, there is no
19 controlled substance being stored there, right?

20 A. Correct. There can be no case work done.
21 That was my recommendation to our quality manager that
22 we be reassessed before we reopen.

23 Q. Aren't you required to be reassessed because

1 you are now a new entity?

2 A. No, it's just a name change. Just another
3 document you would have to submit.

4 Q. Are you generally familiar with the
5 accreditation requirements from FQS?

6 A. I am.

7 Q. Did you write any of them?

8 A. No.

9 Q. Part of being accredited is having your
10 chemists engage in proficiency testing; isn't that
11 true?

12 A. Yes.

13 Q. How often -- FQS, which is Forensic Quality
14 Services, is an accrediting body. In order to accredit
15 our lab here in Delaware, the lab has to follow ISO
16 17025, right?

17 A. Yes.

18 Q. ISO is formerly known as International
19 Standards Organization?

20 A. Yes, well it switches, International
21 Organization Standard, reads ISO.

22 Q. Like French or something.

23 A. Yes.

1 Q. So FQS says in order for your lab to be
2 accredited, it has to abide by these things set out by
3 ISO?

4 A. Correct.

5 Q. In this case, it is standard number 17025?

6 A. Yes.

7 Q. Part of that standard is proficiency testing?

8 A. Yes.

9 Q. Did the standard -- you said your arson lab is
10 accredited still?

11 A. Yes.

12 Q. Your DNA lab?

13 A. Yes.

14 Q. Section.

15 Do the science people who work in those two
16 areas also have to undergo the proficiency testing?

17 A. They do. It is standard ISO 17025.

18 Q. You were the manager for DNA?

19 A. One of them.

20 Q. Are you aware, did your scientists in DNA
21 undergo annual proficiency testing?

22 MS. WRIGHT: Objection on relevance.

23 THE COURT: I'm starting to lose you. There

1 is nothing to suggest that the chemists, work done by
2 chemists is in anyway inappropriate, or wrong, was not
3 done properly, that I have read. The issue is whether
4 or not the drugs that were brought into the lab are the
5 same drugs that were eventually tested or not tested at
6 all. So the fact that the chemists, there may be
7 proficiency testing, I am lost. Tell me what you think
8 your claim is here, because I don't think anyone has
9 said that chemist is at fault here. These two cases
10 wasn't drugs were not even tested at this lab.

11 MS. SAVITZ: Your Honor, defendants' argument
12 in these two cases is that the evidence that we have on
13 the back end now, that has now gone to NMS is not
14 reliable. Part of the whole argument is that it can't
15 be reliable because certain procedures are not in
16 place. We are not saying it's not reliable because a
17 chemist did not undergo proficiency testing, but the
18 testing is required for accreditation in a lab that
19 were accredited. There are so many problems from jump,
20 from that front door, where you have someone not
21 qualified looking at envelopes and going this looks
22 good to me and taking in what is alleged to be
23 evidence, and then it goes through, that we should at

1 least be allowed to establish that the chemists weren't
2 undergoing their required annual proficiency testing.

3 THE COURT: Assume none of them passed any
4 testing at all. On the motions that have you filed, it
5 is not relevant.

6 MS. SAVITZ: The Court has indicated, and
7 maybe we misunderstand the Court, that the opinion at
8 issues based on the State verse Nesbitt and Reed, State
9 versus, I think, Irwin is the one remaining for Mr.
10 Collins' case, there was hearing on Irwin and Nyala is
11 going to affect all of the drug cases that are
12 currently pending in the State of Delaware.

13 That's my understanding.

14 THE COURT: Perhaps, but the cases that you
15 are bringing here, are cases in which this lab has not
16 tested anything. So you have made the choice as to
17 which cases you would like to bring. These are cases
18 in which this lab, no chemists touched the drugs, as
19 far as I know, and so that is my concern as to why are
20 we talking about the proficiency of the chemists,
21 whether or not testing were done of them. As far as I
22 know, these cases that you have brought that you are
23 asking the Court to decide on. Now, maybe at some

1 point in time we will get to a case in which a chemist
2 has tested drugs, but that is not these two cases. I
3 didn't pick them, you all picked them.

4 MS. SAVITZ: Can I have a minute?

5 THE COURT: That is my concern. I understand
6 if I had a chemist who had examined drugs, maybe that
7 become little bit more relevant. That is not what I
8 think I have here.

9 Why don't you all talk about it over the break
10 and figure it out.

11 (A short recess was taken.)

12 MS. SAVITZ: I just would like to complete our
13 record. Among other things in this case, not in the
14 Nesbitt and Reed cases, but in the universe that is the
15 Office of the Chief Medical Examiner, we have people
16 who are indicted. One of those people is Farnam
17 Daneshgar, who previously and if the Court allows me, I
18 will bring this out through testimony, was previously
19 engaged in the practice of dry labbing. Does the Court
20 want an explanation?

21 THE COURT: No, I know what you are talking
22 about.

23 MS. SAVITZ: Basically committing a fraud on

1 everybody and goes, again, towards the pervasive nature
2 of the lack of controls, and, therefore, lack of
3 reliability that is present when the Court looks at the
4 totality of the circumstances that were the Delaware
5 Office of the Chief Medical Examiner crime lab prior to
6 it being closed in February.

7 All of these drugs were going through, it does
8 not matter that these drugs were not tested. What
9 matters in our case, what we are suggesting to the
10 Court is people had access to things that they
11 shouldn't have. The sticky notes that had everybody's
12 combinations on it for the lockers. So if you are
13 inside the lab, you can access anybody's locker. The
14 guy who had the master key to get in the vault. There
15 is all of this going on, and among other things you
16 have unqualified people doing intakes, unqualified
17 people handling evidence, and that's just on the
18 outside, before the envelope gets put in the vault.

19 Then you have potentially unqualified people
20 because we don't know they are qualified, who are going
21 to be engaged in testing at some point.

22 Who are -- some of them are still employed
23 there. I think that we should be allowed some limited

1 questioning regarding this proficiency testing and
2 really I think three questions I had about controlled
3 substances lab to give the Court that totality of the
4 circumstances picture.

5 THE COURT: Ms. Wright, you are dying to stand
6 up.

7 MS. WRIGHT: This is exactly why the Court has
8 divided up these cases in different categories. The
9 cases here before Your Honor today were only stored in
10 the locker, never even left the locker. If this was a
11 different fact pattern where the drugs went to the
12 chemist, chemist opened up the envelope, these would be
13 fair game. That is not the case here. If defendants
14 wanted to bring, have another hearing, which the State
15 is not suggesting, to that fact pattern, but for these
16 cases that we are here for today, they were only
17 stored. It's fair game how evidence was intaked,
18 handled in the locker, but testimony Your Honor heard
19 from both Irwin and Nyala hearing and today chemists
20 did not have access to the drug evidence locker.

21 So the State submits it's not relevant to the
22 question Ms. Savitz is going down with regards to
23 proficiency testing.

1 MS. SAVITZ: I think just very, very briefly,
2 we don't even know whether the envelopes were opened or
3 not by a chemist, if a chemist had access. What we do
4 know is a Grand Jury found probable cause, and the
5 State believes there is probable cause to believe
6 someone, maybe it is James Woodson, Jr., maybe Farnam
7 Daneshgar, maybe one of the other three people, maybe
8 someone not yet named who was stealing evidence.

9 And it goes to this whole pervasive nature of
10 lack of anything being supervised in that lab. I
11 understand the Court -- I'm guessing the Court is not
12 going to agree I am --

13 THE COURT: Well, try to make the record as
14 clear as you can. I know you have a thousand ghosts
15 that you would like to try get to in the Medical
16 Examiner's lab. The question that was asked is all
17 about whether or not there has been proficiency testing
18 with regards to chemists. That is the only question
19 that I raised concern about as to what relevance that
20 may be. You have been able to ask almost anything you
21 wanted to today about who had access, where they had
22 access, who had keys, who had combinations. I haven't
23 at all limited your ability to do. When we get to

1 proficiency testing of the chemists, best that I know,
2 there has been no question raised on these cases or
3 generally, that chemist testing was not done consistent
4 with what is the standard. Maybe your expert is going
5 to tell us that. I don't know how he is going to be
6 able to tell us that, maybe he will. Maybe that would
7 change the Court's opinion.

8 But at the moment, having had the benefit of
9 hearing the expert at one point in time, there is
10 nothing to suggest that chemists have done anything
11 wrong. In fact, that would be confirmed by the
12 subsequent testing done by the PA lab. I don't
13 understand -- at the moment find that the line of
14 questioning that I raise concern about has relevance.
15 If later it does, then I am more than happy to
16 reconsider it. At the moment the objection the State
17 raised is sustained.

18 MS. SAVITZ: I am happy to move on.

19 THE COURT: Thank you.

20 BY MS. SAVITZ:

21 Q. If a lab is accredited or a section is
22 accredited, whether it is arson, or DNA, or controlled
23 substances, and the situation changes so that that

1 section is no longer in compliance with ISO 17025, or
2 other accreditation standards from FQS, is there a
3 requirement from FQS that the lab, that section notify
4 that organization?

5 A. Yes.

6 Q. Do you know when FQS was notified about the
7 fact that someone is alleged to be stealing evidence
8 from the lab?

9 A. I am not positive, but I am pretty sure Patty
10 Monahan, our quality manager, did notify FQS our
11 accreditation manager pretty much immediately after --
12 I am guessing immediately after the State Police shut
13 us down.

14 Q. After February 20th?

15 A. She might have called, I'm not sure, called
16 them when the first case came to light to let them know
17 what is going on.

18 Q. That was the Walker case?

19 A. Yes.

20 Q. So after you guys starting doing your internal
21 audit, which you did not get to take part, do you
22 happen to know, you indicated earlier you broke it down
23 by troop, which I presume means within State Police,

1 then other non State Police agencies, right?

2 A. Yes.

3 Q. You broke it down by time. You start with the
4 most recent or eldest?

5 A. I believe we did the most recent.

6 Q. You have any idea how many cases were reviewed
7 during this internal audit?

8 A. Not off the top of my head. I know I have it
9 in my corrective action.

10 Q. You think it was tens, hundreds or thousands?

11 A. Probably hundreds.

12 Q. Do you know, did they only review State Police
13 cases, or did they actually get to other agencies?

14 A. I believe we got to other agencies.

15 Q. Do you have any information from other people
16 involved in the internal audit, or otherwise in the
17 controlled substances lab were not also opening the
18 same seal like Jack Lucy was doing?

19 A. Can you rephrase that?

20 Q. Do you have any means of, I guess,
21 guaranteeing that during the internal audit other
22 personnel were not also cutting open the same seal?

23 A. During the internal audit, Jack Lucy was the

1 only one handling envelopes.

2 Q. Do you have any way to guarantee that other
3 people in the lab who were opening envelopes were also
4 not opening the same seal?

5 A. In respect to the chemists in their case?

6 Q. Yes.

7 A. I can pretty much guarantee that. That is not
8 a policy, that is forensic 101. That is just innate,
9 as a forensic scientist you know not to reopen the
10 seal.

11 Q. You talked earlier about, mentioned sticky
12 note with combinations, did that note contain all
13 combinations to all of those lockers?

14 A. I was not privy to actually seeing the note.
15 I was just told it existed and where they found it.

16 Q. Do you know whether inventory had been
17 conducted of the keys, or key fobs to the building and
18 the lab and vault and office?

19 A. Should have been done at the last internal
20 audit.

21 Q. When was that?

22 A. We have an internal audit of the entire
23 building every year as part of ISO.

1 Q. Do you know that this was done -- do you know
2 that the internal audit of entire building actually
3 happened in 2013?

4 A. Yes.

5 Q. Has that happened -- I guess not. Do you know
6 is each department or section also supposed to conduct
7 an audit or inventory of its evidence on an annual
8 basis.

9 A. Not to my knowledge.

10 MS. SAVITZ: May I have a minute.

11 THE COURT: You may.

12 (Discussion held off the record.)

13 BY MS. SAVITZ:

14 Q. The spread sheet you talked about before, the
15 Excel spread sheet --

16 A. Yes.

17 Q. Laura Nichols and Kelly Georgi were dealing
18 with; do you know where that is now?

19 A. There is a copy on the shared drive, I also
20 gave a copy to Hal Brown.

21 Q. Did the Delaware State Police have that spread
22 sheet?

23 A. I am sure they do, yes.

1 Q. Did you give it to them?

2 A. I gave it to Hal Brown.

3 Q. Did you give a copy to the Department of
4 Justice?

5 A. I think I did, yes.

6 Q. We talked about that red tape, talked about
7 the OCME seal tape which was the smaller box. Was the
8 other tape that was also kept in the FES office, was
9 there white tape and blue tape, as well?

10 A. Shouldn't be.

11 Q. So if there was, that would raise some sort of
12 suspicion for you?

13 A. I would have noticed it, yes.

14 Q. I want to return to the access area line of
15 questioning again briefly.

16 You mentioned Mrs. Bailey earlier. Was she
17 also determined to have been coming into work on the
18 weekends?

19 A. That is what I have been told.

20 Q. Was she coming in by herself?

21 A. That is my understanding. Yes.

22 Q. She had access to the vault, yes?

23 A. Yes.

1 Q. She had access to the FES office?

2 A. Yes.

3 Q. Because the vault is inside?

4 A. Right.

5 Q. She have access to any of the labs?

6 A. Yes.

7 Q. Put back up State's 7, that is Patty Phillips'

8 locker, right?

9 A. Yes.

10 Q. This is a key hole, right?

11 A. Yes.

12 Q. That also?

13 A. Yes.

14 Q. Are all of those lockers keyed the same?

15 A. No.

16 Q. Who has keys to those lockers?

17 A. Individual chemist.

18 Q. What if, heaven forbid, the individual chemist
19 gets hit by a bus and cannot come to work. Who has the
20 ability to go in -- who has the extra key?

21 A. I don't believe there is one.

22 Q. We talked a little earlier there was no

23 written procedures in place for the courier, right?

1 A. Yes.

2 Q. Do you recall when you spoke to Lieutenant
3 Laird and Wallace telling them that you thought this
4 was a huge problem in the chain of custody?

5 A. I did.

6 Q. Explain what you saw as the problem, please?

7 A. As far as?

8 Q. The fact that the courier had no anything, no
9 guidelines?

10 A. Well, as, again, as an ISO accredited
11 laboratory, there should be documentation for
12 everything that we do. My understanding that the only
13 training that the forensic evidence specialists
14 received was from the previous person, in this case for
15 J Daneshgar would have been James Woodson when he
16 trained him.

17 Q. Part of Mr. James Daneshgar's duties involved
18 a courier?

19 A. Yes.

20 Q. It was a huge chain of custody problem. Why
21 specifically is that a chain of custody problem?

22 A. I said because the way question was asked was,
23 as far as the drug evidence being received by the

1 courier was not being done -- documented realtime.

2 Q. That is what you found when you came in to the
3 controlled substances, you looked and you said well,
4 this is not the same date you actually received it?

5 A. Correct.

6 Q. That is what you meant by it is not being done
7 in realtime?

8 A. Yes.

9 Q. You would agree there were hours and sometimes
10 several days between the actual realtime and the time
11 that actually showed up in Forensic Advantage?

12 A. Yes.

13 THE COURT: Ma'am, I assume does the courier
14 have the ability or remotely in the vehicle in his
15 vehicle since this is being picked up at drop off
16 spots, to input information at the time they receive it
17 at the courier location?

18 THE WITNESS: Yes, it's not in his vehicle.
19 At the down state office in Georgetown, there is a
20 module there, separate laptop it could be done.

21 THE COURT: Were all the down state, Kent and
22 Sussex cases required to come to the Georgetown
23 location?

1 THE WITNESS: They had several different drop
2 offs. I am not sure.

3 THE COURT: Does every drop off have an office
4 with a laptop?

5 THE WITNESS: I am not sure.

6 BY MS. SAVITZ:

7 Q. Is there a comment section when you are the
8 entering FES or intake person whether it is supposed to
9 be doing this or not, is entering information in
10 Forensic Advantage, or FLIMS, there is a spot for --
11 the program automatically creates the date and time,
12 right?

13 A. Yes.

14 Q. So if I was inputting evidence in a couple
15 seconds it would say 12:18 and six seconds?

16 A. Yes.

17 Q. Even though I received it yesterday?

18 A. Yes.

19 Q. There is a comment spot, right?

20 A. Yes.

21 Q. Would it be appropriate to put in the comments
22 spot I picked this up at DSP 4 in Georgetown yesterday
23 12/18 of 2014 at 1442 hours?

1 A. It would be.

2 Q. Therefore, it would become part of the chain
3 of custody, right?

4 A. Yes.

5 Q. Even if you were at -- you went to Dover PD,
6 to pick up their drug evidence, you didn't have access
7 then, you certainly are going to make a note hey, I
8 picked it up the 12:18:55 from Lt. Peyers, and I
9 brought it back, entering it tomorrow, that would be a
10 place to put that, right?

11 A. Yes.

12 Q. That didn't happen, though?

13 A. No.

14 Q. Do you remember, also, when you spoke with the
15 two Lieutenants on March 4th telling them that
16 information was not consistent in FLIMS versus the
17 actual envelopes?

18 A. Yes.

19 Q. Do you remember telling them the envelope
20 would say a few bags of heroin and you would open the
21 envelope there would be thousands of bags?

22 A. Yes.

23 Q. Is that still your opinion today that that

1 information would happen in that manner?

2 A. That is kind of hard to speak to since we
3 haven't received any evidence since February.

4 Q. You have not changed your mind since
5 March 4th?

6 A. I have not.

7 Q. When you took over by yourself, after Caroline
8 left, were you expected to move into her office?

9 A. I was.

10 Q. Did you do that right away?

11 A. No.

12 Q. Tell us why?

13 A. Caroline pretty much left, physically left
14 everything in her office behind. So the entire month
15 of December, it was a matter of having everybody
16 volunteer to remove everything from her office and
17 decide what was to be kept, what was to be shredded or
18 trashed. At that point we had to have it repainted and
19 cleaned. There was mold issues. There was a lot that
20 had to be done. It took a good month for me to get up
21 there.

22 Q. Do you recall who all was involved in making
23 the decisions about what should be kept, shredded, what

1 should be in different piles to be dealt with later?

2 A. I asked Karen Tzardis to spearhead it because
3 she was friends with Caroline. I wouldn't want to have
4 to go in there and remove something that shouldn't have
5 been removed of a personal nature, anything that Karen
6 felt was important, policy, personnel wise, she made
7 sure that I had that.

8 Q. Who is this Karen? What is her position? I
9 know was saw her name on the memo about what has
10 access. Who is she and what does she do?

11 A. She is an Analyst General Chemist Three.
12 Right now she is in the arson unit.

13 Q. She was someone friendly with Caroline before
14 Caroline left?

15 A. Yes.

16 Q. Other than papers, both relevant and
17 irrelevant to the job, what other kind of stuff did you
18 find in Caroline Honse's office?

19 A. To be frank and honest, it was like a
20 hoarder's episode. It was anything and everything was
21 in there.

22 Q. Did you find drugs in her office?

23 A. We did.

1 Q. Did you find evidence in her office?

2 A. We did.

3 Q. Did you find things that didn't belong to her
4 but belonged to Mrs. Bailey in her office?

5 A. Yes.

6 Q. Like what?

7 A. I don't remember particularly. Some reason I
8 remember boots and pocketbooks. Other than that, I
9 don't remember.

10 MS. SAVITZ: If I can have a minute, Your
11 Honor.

12 THE COURT: You may.

13 (Discussion held off the record.)

14 MS. SAVITZ: Your Honor, if I could have
15 another document marked, please, as the next Defense
16 Exhibit.

17 THE CLERK: Defense Exhibit 3 is so marked,
18 Your Honor.

19 THE COURT: Thank you.

20 BY MS. SAVITZ:

21 Q. I will hand you what's been marked, 84 pages
22 that have been marked as Exhibit 3. I'm going to take
23 back from you Exhibit 2, give this to the clerk.

1 Do you recognize that document?

2 A. I do not.

3 Q. You have never seen this document before?

4 A. I have not.

5 Q. If I suggested to you that is the evidence
6 unit operations manual for the Office of the Chief
7 Medical Examiner and that it is dated updated 12/22/
8 2008, you would at least agree with that?

9 A. I would.

10 Q. If you would go to page 32. You agree that
11 there is a section Roman numeral three, section A deals
12 with access to evidence room, temporary or long-term
13 property storage areas. It restricts access to those
14 areas to FES and analysts, right?

15 A. I would, but I would point out this is the
16 last page of this document. There is no approval or
17 sign off on this. Technically, this is not an official
18 document.

19 Q. If I suggested to you that this was given to
20 us by the State, would have you any idea -- State
21 meaning the Department of Justice, would you have any
22 idea from whence it came?

23 A. I would assume Hal Brown, maybe.

1 Q. So is it your opinion then that there is these
2 written policies floating out there, but they are not
3 implemented because there is no signature page?

4 A. Technically it is not a policy. There is no
5 official signature on it. It is not a policy or
6 procedure.

7 Q. So if you turn to page 41, just humor me for a
8 couple of minutes.

9 Where it talks about Roman numeral two on that
10 page called property inventories, right?

11 A. Yes.

12 Q. Subsection A says "Forensic Evidence
13 Specialist shall conduct a complete inventory at least
14 once a year, any time a personnel change is made in the
15 evidence room, or when requested by the deputy
16 director." That is there, right?

17 A. Yes.

18 Q. That is really a good idea, isn't it?

19 A. Great idea.

20 Q. To your knowledge, that did not happen ever,
21 right?

22 A. No.

23 Q. This is not even a policy?

1 A. Correct.

2 Q. And we have no idea when the last time an
3 inventory prior to Delaware State Police stepping in,
4 we have no idea the last time an inventory of the drug
5 vault was done?

6 A. Correct.

7 Q. Would you go to page 44?

8 THE COURT: Make sure I understand your
9 answer. Is the answer to that question, you don't have
10 any idea when an inventory was done, or are you saying
11 there has never been an inventory of that?

12 THE WITNESS: I would say it's never been
13 done, only knowing what the State Police found in the
14 locker from years past. That should have done been
15 caught at some point.

16 BY MS. SAVITZ:

17 Q. Does that include 705 pieces of evidence that
18 are sort of random and not attached to any case?

19 A. Yes.

20 Q. So before I go there, I want to keep you in
21 what is State's -- Defense 3, go to page 46.

22 This is where I saw this FES 100 form. You
23 have never seen an FES 100 form?

1 A. Correct.

2 Q. That would have included the date and time
3 that evidence was submitted?

4 A. Yes.

5 Q. That is a good idea, right?

6 A. Yes.

7 THE COURT: Can you tell me when the
8 electronic system was put in place?

9 THE WITNESS: I believe DNA was online in
10 2010. And CS was shortly thereafter.

11 BY MS. SAVITZ:

12 Q. When you say online, are you referring solely
13 to FLIMS or including the time period when the OCME was
14 using Lotus notes?

15 A. Your Honor asked for the electronic system. I
16 am assuming you are meaning Forensic Advantage?

17 THE COURT: Right.

18 THE WITNESS: So Lotus notes is pretty much a
19 data base. So prior to Forensic Advantage, we were
20 using Lotus notes. So I see where you are going. I
21 think in 2012 we still had some in Lotus notes.

22 BY MS. SAVITZ:

23 Q. 2012, you still have overlap?

1 A. Yes.

2 Q. 2010, you obtain software that is called
3 Forensic Advantage, that we call FLIMS?

4 A. Yes.

5 Q. Prior to 2010, OCME was using a data base
6 software called Lotus notes?

7 A. Correct.

8 Q. To do, essentially, the same functions?

9 A. Yes.

10 Q. That you currently use FLIMS?

11 A. Yes.

12 Q. For which you currently use FLIMS?

13 THE COURT: Do you know when that came online?

14 THE WITNESS: I have no idea. It predated me.

15 BY MS. SAVITZ:

16 Q. How long have you been there?

17 A. 19 years.

18 Q. If you would turn to page 53 --

19 MS. WRIGHT: At this point the State would
20 object to referring to this document that has never
21 been authorized. Ms. Savitz can clearly ask whether
22 certain things are in place, but going through a
23 document that this witness has never seen before, the

1 State would object.

2 MS. SAVITZ: The problem we have with that is
3 this document was given to us by the State. I want to
4 say after the first office conference we all had in
5 this case when we said, we are looking for standard
6 operating procedures. This was given in response to
7 that.

8 THE COURT: I will give you some leeway to ask
9 her questions recognizing she has never seen the
10 document, does not know how it was created, who created
11 it, but or even if it approved. I will let you ask
12 questions, but it has to be put in that. The Court has
13 it in that context. She does not know much about it.

14 MS. SAVITZ: Okay.

15 THE COURT: It would seem to me the document
16 has some relevance if you were to ask her about
17 particular sections and say, next question is; as far
18 as you know was it implemented when you took over the
19 lab? Is has some connection. Simply asking her pages,
20 what does that mean is not a good idea, probably not
21 particularly helpful.

22 MS. SAVITZ: Okay.

23 BY MS. SAVITZ:

1 Q. When you took over, I presume you will stay in
2 that position going forward?

3 A. I hope so, yes.

4 Q. That is your goal?

5 A. Yes.

6 Q. Are you being given the ability and the
7 authority to make the changes you believe are necessary
8 as Lab Manager Two?

9 A. Since transition to the Division of Homeland
10 Security, since that transition yes, I think I would
11 have the authority.

12 Q. Why don't you tell us some of the things that
13 you have already started to implement?

14 MS. WRIGHT: Your Honor, relevance.

15 THE COURT: Come to sidebar.

16 (Discussion held off the record.)

17 (The following sidebar conference was held.)

18 MS. WRIGHT: Your Honor, the State has given
19 great leeway throughout the hearing so far. In terms
20 of what has been implemented after February 20, 2014,
21 State would object to relevance. How is it relevant to
22 what the defense has been -- changing what was in place
23 before then?

1 MS. SAVITZ: Because they didn't have anything
2 in place, which is a big problem. They couldn't
3 control anything, which makes everything not reliable.

4 THE COURT: Focus on the question. The
5 question is, what relevance does the changes she may
6 have implemented since she became Homeland Security
7 have relevance to the issue of whether or not drugs
8 that were in the locked room are the same drugs that
9 are now being tested.

10 MS. WALKER: May I speak?

11 THE COURT: Sure.

12 MS. WALKER: I think the way we are coming out
13 of this witness by the State is not an expert but
14 someone they have put in place as fixing the problem.
15 She identified there were some problems, whatever
16 changes she will be making stem from, obviously,
17 problems she identified. And I think that is sort of
18 like, in a way, opinion as to here is what was wrong
19 and needs to be changed, if we can identify what was
20 wrong.

21 THE COURT: I guess my problem is she already
22 said it is wrong. She said it was not wrong and then
23 she implemented a change, then that would reflect that

1 on her opinion that it wasn't wrong. She already said
2 it is wrong. It is fair for the Court to assume that
3 since she has taken over she would have made changes to
4 correct that. That is where, I think, the issue is.
5 So ask her these questions, in things that she already
6 identified as problematic, I think is not relevant. So
7 that is how I came about it.

8 MS. SAVITZ: We will move on.

9 (Sidebar conference concluded.)

10 BY MS. SAVITZ:

11 Q. Go back to this magical 705 number --

12 THE COURT: The record should reflect I
13 sustained the objection. Thank you.

14 BY MS. SAVITZ:

15 Q. I mentioned 705 pieces of evidence earlier.
16 You knew what I was talking about, right?

17 A. Yes.

18 Q. So when the State Police did its review of all
19 the evidence in the drug locker, is it your
20 understanding that they found 9273 pieces of evidence?

21 A. I have no idea what the number is.

22 Q. Would you agree then that the State Police
23 found 705 pieces of evidence that were reflected

1 nowhere in FLIMS, or Lotus notes, or other OCME
2 records?

3 A. Yes, I believe that was in the AG's report.

4 THE COURT: You don't have any independent
5 knowledge?

6 THE WITNESS: I do not.

7 THE COURT: She doesn't have any independent
8 knowledge. She just knows that from the AG's report.

9 MS. SAVITZ: If I could have the preliminary
10 finding from AG's Office marked, please.

11 MS. WRIGHT: No objection, Your Honor.

12 THE CLERK: Defense Exhibit 4 so marked, Your
13 Honor.

14 THE COURT: Thank you.

15 BY MS. SAVITZ:

16 Q. Give you Defense 4, which is 36 pages. Is
17 that the report you just referred to?

18 A. Yes.

19 Q. Turn to page four?

20 MS. WRIGHT: State would note again to the
21 extent this witness has no independent knowledge, the
22 State would object to any future line of questioning.

23 THE COURT: We will have to --

1 MS. WRIGHT: Cross that bridge when we get
2 there.

3 BY MS. SAVITZ:

4 Q. Read the last paragraph of page 22 to
5 yourself, is that the same 705 pieces of evidence about
6 which we have just been speaking?

7 A. Last page of 22?

8 Q. Page 22, last paragraph.

9 A. Yes.

10 Q. Assuming that that is a true fact, there were
11 those 705 pieces of evidence that showed up in the
12 State Police review that did not exist in the Medical
13 Examiner's records, what is the significance of that to
14 you as a lab manager?

15 MS. WRIGHT: Your Honor --

16 THE COURT: Fact is a fact. I mean,
17 significance of it there is 705 pieces of evidence not
18 connected. Not quite sure what you want her to say,
19 could say. Go ahead.

20 (Discussion held off the record.)

21 MS. SAVITZ: Your Honor --

22 THE COURT: You want to rephrase?

23 MS. SAVITZ: I would like to.

1 BY MS. SAVITZ:

2 Q. Next week -- say it is now October you have
3 been reaccredited, you are the lab manager for
4 controlled substance, someone comes to you and says I
5 just found 705 evidence envelopes for which no record
6 exists in our system. Is that a problem for you as the
7 lab manager?

8 MS. WRIGHT: State would object again. We are
9 going down the --

10 THE COURT: The answer is yes. It would be a
11 problem. Where it goes from there.

12 MS. WRIGHT: In terms of the line of
13 questioning, Your Honor, the road that the defense is
14 going down, may have defense expert that can provide
15 their opinions as to this. That is why the State would
16 object.

17 THE COURT: The answer would be it is
18 problematic. Yes, she would probably take corrective
19 action. I am not sure where else we are headed.

20 MS. SAVITZ: Why it is a problem is important.
21 Because it is relevant to all of these cases to
22 establish totality of the circumstances, why nothing
23 that passed through the OCME is reliable. Regardless

1 of what happened to it since it left there.

2 THE COURT: If you want to ask her specific
3 questions, you may. You ask her a why question, the
4 objection will be sustained.

5 MS. SAVITZ: I am going to be finished, if I
6 can have a minute.

7 THE COURT: Thank you.

8 MS. SAVITZ: If the clerk can confirm I have
9 returned all the Exhibits.

10 THE COURT: DX four.

11 MS. SAVITZ: Thank you, Your Honor. Thank
12 you, Ms. Quinn.

13 THE COURT: States may redirect.

14 REDIRECT EXAMINATION

15 BY MS. WRIGHT:

16 Q. Mrs. Quinn, we talked about a lot of names,
17 lot of dates. If we can narrow down for record
18 purposes, when you came in in October 2013, start off
19 Kelly Georgi, what was her role at controlled substance
20 lab when you came in?

21 A. She was intaking and returning evidence using
22 paper chain of custody.

23 Q. Can you confirm whether or not she was

1 certified to do that?

2 A. I cannot.

3 Q. Jack Lucy, what, if any, role did he have in
4 the controlled substance lab when you came in
5 October 2013?

6 A. When I came in October 2013, he had no role in
7 the controlled substance laboratory.

8 Q. Aretha Bailey, in October 2013, what was her
9 role?

10 A. She was still assigning cases, and entering
11 evidence into Forensic Advantage.

12 Q. Was she certified to do that?

13 A. There was no documentation that she was.

14 Q. James Daneshgar, his role in October 2013?

15 A. He was intaking, returning controlled
16 substances evidence, as well as DNA evidence. He also
17 does the courier run down state.

18 Q. Does Mr. Daneshgar, James Daneshgar have
19 certification to do that?

20 A. He does.

21 Q. Laura Nichols was mentioned. What, if any,
22 role did she have with the controlled substance lab
23 when you came in in October 2013?

1 A. When I came in, it was my understanding she
2 was also intaking and returning drug evidence using
3 paper chain of custody.

4 Q. Can you tell us whether or not Laura Nichols
5 was certified for that role?

6 A. I have not seen documentation.

7 Q. You started to make changes in lab when you
8 came in you said the first week of November 2013?

9 A. Yes.

10 Q. You removed Kelly Georgi from that role?

11 A. Yes.

12 Q. Of intaking?

13 A. She still has the role of forensic evidence
14 specialist title, but she does not intake or return any
15 drug evidence.

16 Q. What about Aretha Bailey?

17 A. Same. I took her out of the actual office
18 itself and the vault.

19 Q. Laura Nichols.

20 A. Same.

21 Q. Only person intaking evidence, at least from
22 October 2013, to February 2014, was James Daneshgar?

23 A. Correct.

1 Q. You were questioned on cross a lot about
2 courier duties, policies and procedures. Can you
3 clarify for the Court out of all the police agencies in
4 New Castle County, were there any courier service for
5 Wilmington Police Department, Delaware State Police, so
6 on?

7 A. Not for Wilmington. They dropped it off at
8 our facility.

9 Q. There was also questioning about the --

10 THE COURT: She didn't answer. Troop two
11 Delaware State Police, do they drop it off, do they
12 have a courier come by?

13 THE WITNESS: New Castle County drops it off.
14 Down state is pretty much a convenience for down state
15 agencies.

16 THE COURT: Does Delaware State Police
17 criminal investigation unit at Troop 2, do they drop it
18 off?

19 THE WITNESS: Yes.

20 THE COURT: If I am in Dover at the troop in
21 Dover, do they have a courier service, they have
22 someone bring it?

23 THE WITNESS: They use a courier service.

1 THE COURT: So is it fair to say everybody in
2 New Castle County that is a big agency, not a town
3 agency comes and drops it at the Medical Examiner's
4 Office?

5 THE WITNESS: Yes.

6 THE COURT: So maybe Smyrna, or Newport, or
7 some of the smaller agencies would not come, they would
8 use the courier service?

9 THE WITNESS: I am not sure of that. I know
10 for DNA, they would drop it off.

11 THE COURT: So you think the courier service
12 is simply for --

13 THE WITNESS: Kent and Sussex.

14 THE COURT: If Mr. Daneshgar was not there,
15 beginning in November of 2012 -- November 2013, if he
16 is not there, who would take in the evidence?

17 THE WITNESS: For DNA, Kelly was being
18 trained. Controlled substance, nobody.

19 THE COURT: Wilmington comes on a particular
20 day, Delaware State Police comes on a particular day,
21 Mr. Daneshgar is sick. He can't come in, does someone
22 take the evidence in?

23 THE WITNESS: No, we would rearrange those

1 appointments.

2 THE COURT: Are you confident that none of the
3 other employees other than Mr. Daneshgar took evidence,
4 handwritten evidence in before -- after you took over?

5 THE WITNESS: I am not 100 percent sure. I
6 was still doing transition.

7 THE COURT: Is there more than one person now?

8 THE WITNESS: Again, Kelly Georgi still has
9 the title. She is not doing any forensic evidence
10 work.

11 THE COURT: Still only Mr. Daneshgar.

12 THE WITNESS: Yes.

13 THE COURT: You may proceed.

14 BY MS. WRIGHT:

15 Q. Thank you, Your Honor.

16 There was a lot of questions on cross asking
17 whether or not the controlled substance lab there was
18 an audit or inventory of the vault in the lab?

19 A. Yes.

20 Q. You said no?

21 A. Correct.

22 Q. What about the testimony you have on cross
23 about the ISO inventory of the lab?

1 A. ISO assessment they do not do inventory of the
2 evidence locker. They would just spot check.

3 Q. Cases that we are here for today, the Braaheim
4 Reed and Hakeem Nesbitt, did you have any opportunity
5 to look at any of the chain of custody documents for
6 those cases?

7 A. Yes.

8 Q. Can you tell us whether or not any of those
9 cases we are here for today, whether or not that
10 evidence left the drug locker, went to a chemist
11 locker, personal locker?

12 A. Did not.

13 Q. In light of all your testimony today about the
14 glitches and problems with the FLIMS system, how are
15 you able to say with certainty that the cases that we
16 are here for today Hakeem Nesbitt and Braaheim Reed,
17 that drug evidence did not leave the drug locker and go
18 to the chemist locker?

19 A. We actually looked at the individual case
20 chain of custody, and then to confirm to make sure we
21 spoke to the chemist that it was assigned to, Theresa
22 Moore, and she confirmed that she never received it.
23 If she had received it, it would have been in the chain

1 of custody.

2 MS. WRIGHT: No further questions.

3 RECROSS EXAMINATION

4 BY MS. SAVITZ:

5 Q. You said earlier that when evidence went from
6 the vault to the chemists' locker, there was nothing in
7 the chain of custody, right?

8 A. No, general locker there is.

9 Q. Then from the general locker to the lab
10 locker, chemist lab locker, there is no chain of
11 custody?

12 A. Correct.

13 Q. Did you review the chain of custody documents
14 for Mr. Nesbitt and Mr. Reed?

15 A. I did.

16 Q. Did you review police reports in Nesbitt or
17 Reed?

18 A. I did not.

19 Q. Did you review the NMS reports in Nesbitt or
20 Reed?

21 A. I did not.

22 Q. Would it surprise you to learn there is a
23 13-gram difference in the amount of heroin that was

1 brought to your lab and what NMS tested and NMS found
2 12 additional grams of heroin?

3 MS. WRIGHT: The State objects to this line of
4 questioning. The witness said she did not have
5 personal knowledge from the reports.

6 THE COURT: Even if she said yes that would be
7 surprising to me, I'm not quite sure. She did not test
8 it. She did not receive it. If there is a
9 significance to that, perhaps it is something that the
10 State will have to explain at some point in time. She
11 does not know. You could have -- if you asked her some
12 questions as to whether or not she has any knowledge,
13 or standards as to what would be the reasonable
14 deviations of things, perhaps.

15 MS. SAVITZ: May I have a minute.

16 (Discussion held off the record.)

17 BY MS. SAVITZ:

18 Q. Did you review --

19 Are you aware that there was a third case
20 originally scheduled for today, Antoine Cooper?

21 A. I am not sure.

22 Q. Did you review the chain of custody documents
23 in any other case other than Nesbitt and Reed?

1 A. I only know them by the FE number. I can't
2 really speak to that.

3 Q. Would it surprise you to learn that Officer
4 McCarthy --

5 THE COURT: Start the question with something
6 besides "would it surprise you." Lots of things
7 surprise you.

8 BY MS. SAVITZ:

9 Q. Can you explain why Officer McCarthy indicates
10 in the chain of custody paperwork for Antoine Cooper
11 that on December 17th, of 2013, you will agree that is
12 after the first week of November 2013, right?

13 A. Yes.

14 Q. Why then is Officer McCarthy from Delaware
15 State Police turning over heroin evidence to Laura
16 Nichols on December 17th of 2013, if she is taken out
17 of that position by you?

18 A. She wasn't technically taken out. I do not
19 have the authority to take her out. So I just tried to
20 narrow down the scope of what they were supposed to do.
21 That was still a transitional period, only talking
22 about a couple weeks after I got there.

23 Q. What you said on questioning by Ms. Wright was

1 the first week of November, after the first week of
2 November only person who had -- maybe it was a question
3 from the judge, but it wasn't from me, it was in the
4 past ten minutes where you said, after the first week
5 of November, the only person intaking and returning
6 evidence was J Daneshgar. Right?

7 A. Correct. That is what I wanted to happen.
8 But Carol was still there. So I didn't have the
9 authority to take anybody out of there.

10 Q. When did she leave?

11 A. Last week of November, I guess.

12 Q. Which you will also agree is prior to
13 December 17th?

14 A. True.

15 Q. You said after the first week of November
16 because the Court said what if after that, James
17 Daneshgar was out. Such and such an agency has a
18 standing appointment, who would take the evidence. You
19 said no one would take the evidence, we would say you
20 have to come back next Wednesday at 1 o'clock. You
21 have to come back next Thursday at 9:30. Why does
22 Laura Nichols accept evidence from Scott McCarthy from
23 Delaware State Police on December 17th?

1 A. Only thing I can say we were still
2 transitioning.

3 MS. SAVITZ: Thank you, Your Honor.

4 MS. WRIGHT: Nothing further, Your Honor.

5 THE COURT: You may step down, ma'am.

6 It's 1 o'clock. We will take our afternoon
7 recess. All right. 2 o'clock.

8 (A luncheon recess was taken.)

9 MS. WRIGHT: Good afternoon, Your Honor.
10 State's next witness will be James Daneshgar. For
11 purposes of streamlining his testimony, defense has
12 agreed to adopt Mr. Daneshgar's testimony from the last
13 hearing, that way we can streamline questions in terms
14 of background with OCME. State will ask standard
15 questions not as detailed as the last time.

16 MS. WALKER: That's correct.

17 JAMES DANESHGAR,

18 having been first called by the State was sworn on
19 oath, was examined and testified as follows:

20 MS. WALKER: We are going to ask the Court to
21 move that testimony in so it is in this record. We
22 will get transcripts and bring it in.

23 THE COURT: We will mark it as a Court

1 Exhibit.

2 MS. WRIGHT: As Mr. Daneshgar is coming in the
3 last witness, Robin Quinn, may she be formally excused
4 so she can sit for the remainder of the hearing?

5 MS. SAVITZ: We have no objection.

6 THE COURT: Okay.

7 DIRECT EXAMINATION

8 BY MS. WRIGHT:

9 Q. Good afternoon, Mr. Daneshgar.

10 A. Good afternoon.

11 Q. Just for purposes of the record, you work at
12 the Office of the Chief Medical Examiner, or it used to
13 go under that title, correct?

14 A. Correct.

15 Q. What is the new title?

16 A. Division of Forensic Science.

17 Q. What is your current duties?

18 A. Title is Forensic Evidence Specialist. I
19 accept evidence from officers, secure it in a locker,
20 transfer evidence to chemists for testing, return
21 evidence back to agencies after testing.

22 Q. When did you start that position?

23 A. September of 2013.

1 Q. Can you tell us, as a Forensic Evidence
2 Specialist, back in the Fall of last year, 2013,
3 specifically November, December, what were the days of
4 the week and times that you would receive evidence from
5 Delaware State Police?

6 A. Tuesday and Thursdays, 11 o'clock a.m. and
7 1 o'clock P p.m.

8 Q. What about the transporting officer, was there
9 a consistent officer for Delaware State Police?

10 A. Yes, it was Sergeant Scott McCarthy.

11 Q. Newark Police, can you tell us the date and
12 times of the week they were delivering?

13 A. Thursday at 9 a.m.

14 Q. Are you familiar with transporting officer for
15 Newark PD?

16 A. Yes.

17 Q. Who is that?

18 A. Jeffrey Schwagel.

19 Q. The purpose of your testimony today, we heard
20 from your previous testimony about how the evidence is
21 logged in at the Office of the Chief Medical Examiner,
22 but for purposes of today walk us through when a
23 transporting officer brings evidence in, where is it

1 logged in?

2 A. Is logged in our office.

3 Q. Mr. Daneshgar, I am going to be putting on the
4 projector State's 13. Can you tell me, do you
5 recognize this Exhibit?

6 A. This is the office area that evidence is
7 logged in.

8 Q. Can you describe for us when a transporting
9 officer comes in and drops off evidence to you, what
10 documentation, if any, do they bring with them?

11 A. He provides me with an Excel spread sheet
12 basically inventory of the cases that they are
13 submitting to our office.

14 Q. What do you do with that login sheet?

15 A. I cross check it with the defendant's name and
16 police complaint numbers with the evidence that's been
17 provided, make sure it all matches up.

18 Q. Can you tell us what, if anything, that you do
19 to examine the actual envelopes that are delivered to
20 you?

21 A. Yes. I, as well as looking at the defendant's
22 name, police complaint number for matching purposes, I
23 check over the seal to me make sure it had been sealed

1 properly; no rips, tears, or cuts have been put to the
2 envelope, as well as checking all containers to make
3 sure there is no tampering to any part of the envelope.

4 Q. With this Excel spread sheet that the officers
5 bring with them, is there an option to sign at the
6 bottom?

7 A. Yes, there is.

8 Q. Can you tell us whether or not you signed that
9 document, as well, when do you do that?

10 A. I sign it after we both agree that the
11 evidence that has been accepted matches the spread
12 sheet.

13 Q. During that time evidence is sometimes
14 returned to the transporting officers?

15 A. Correct.

16 Q. I am placing on the projector what's been
17 marked, I apologize, without objection, State's
18 Exhibit 14.

19 THE COURT: Thank you.

20 BY MS. WRIGHT:

21 Q. Can you tell us what is represented in State's
22 Exhibit 14?

23 A. Yes. Those are bankers boxes for evidence to

1 be logged in on the left-hand side. On the right side
2 are cases that are to be returned back to agencies
3 after they have been tested.

4 Q. On the left evidence to be logged in. What is
5 typically in those boxes?

6 A. Cases that have been received from our office
7 that have not been logged into our data base yet.

8 Q. Just the prior testimony explained that
9 evidence would not have necessarily been logged in
10 right away. Correct?

11 A. Correct.

12 Q. Can you point out to us where on State's
13 Exhibit 14 that evidence would be stored while pending
14 to be logged in?

15 A. (Indicating).

16 Q. Let the record reflect the witness touched the
17 left side of the screen in those boxes labeled evidence
18 to be logged in. Are those stored in the evidence
19 locker or in the office area?

20 A. They are in the secured vault.

21 Q. Turn to the specific cases that we here for
22 today. Those cases are State versus Hakeem Nesbitt and
23 State versus Braaheim Reed. Can you tell us, did you

1 have an opportunity to review the documentation in
2 terms of chain of custody for these two cases?

3 A. Yes, I have.

4 Q. Mr. Daneshgar, I am handing you without
5 objection State's Exhibits 10 through 12. Can you tell
6 me if you recognize these and what are they?

7 A. Yes, I do. I do recognize them. One is the
8 Excel spread sheet provided with our office from the
9 officer bringing in the evidence. There is a chain of
10 custody report that is generated through FLIMS, and a
11 submission receipt which is also generated through
12 FLIMS.

13 MS. WRIGHT: May the State publish these?

14 THE COURT: You may.

15 BY MS. WRIGHT:

16 Q. We can start with State's Exhibit 10.
17 Explain for us what this document is?

18 A. This is the Excel spread sheet that I
19 referenced that is provided with our office, the
20 officer is responsible for filling this out prior to
21 their submission.

22 Q. On the top left for agency, what is the agency
23 listed?

1 A. Delaware State Police Troop 2.

2 Q. Scroll down you see various entries on the
3 form. Who put in the entries?

4 A. Would have been Sergeant Scott McCarthy.

5 Q. Going to the bottom of State's Exhibit 10, can
6 you tell us whose signature is on the bottom of this
7 form?

8 A. My signature is present and so is Sergeant
9 Scott McCarthy's.

10 Q. Can you tell us whether this form is accurate
11 as to who delivered, who received the documentation for
12 Hakeem Nesbitt?

13 A. Yes, this is accurate.

14 Q. While we are on the topic of evidence
15 submission return worksheets, I am going to take things
16 out of order real quick and hand you State's
17 Exhibit 20.

18 MS. WALKER: Your Honor, I am going to object.

19 MS. WRIGHT: Sidebar, Your Honor.

20 (Discussion held off the record.)

21 (The following sidebar conference was held.)

22 MS. WRIGHT: Your Honor, if I can hand to Your
23 Honor, Ms. Savitz during her cross examination of Robyn

1 Quinn, suggested that James Daneshgar was not the one
2 who received evidence in Antoine Cooper. The State
3 pulled the evidence login sheet that shows, in fact,
4 that James Daneshgar did receive the evidence for
5 Mr. Cooper. Since Ms. Savitz raised this, the State
6 wants to since we have James Daneshgar on the stand to
7 testify that that is a fair and accurate copy of the
8 evidence he received for Antoine Cooper.

9 MS. WALKER: Your Honor, the whole problem,
10 these are incorrect documentations we are going to get
11 our file for Mr. Cooper's chain of custody has
12 Ms. Nichols' name on there. I am sure what happened
13 was Ms. Nichols took it in then Mr. Daneshgar, I don't
14 know what happened, her name is on the chain of
15 custody. So I would rather that.

16 THE COURT: We need a video in there.

17 MS. WALKER: She introduced the entirety of
18 the documents, this along with the chain of custody
19 along with the evidence receipt, in order to introduce
20 this, not just this one.

21 THE COURT: Well, there is a document like
22 this which is what the police officer allegedly creates
23 and since there is a computer chain of custody created

1 by FLIMS document, not sure what the third document is,
2 but I know those two exist. If we want to raise the
3 issue with Cooper to counter what was said before in
4 total document is included then I don't think there
5 should be a fair objection if this is not a total
6 document.

7 MS. WRIGHT: For purpose of the record, that
8 is the chain of custody. Mr. Daneshgar can explain
9 that.

10 MS. WALKER: Received by Nichols. I don't
11 think it is appropriate for impeachment purposes.

12 THE COURT: It's me. As long as the whole
13 document is in, I think it's a fair completion of the
14 record. So we know why questions were asked. I don't
15 have any objection as long as the full document is
16 in.

17 (Sidebar conference concluded.)

18 BY MS. WRIGHT:

19 Q. Mr. Daneshgar, I am approaching with what's
20 been marked as State's Exhibit 20.

21 If you can tell me if you recognize this
22 document, what it is?

23 A. Yes, I do. This is also another Excel spread

1 sheet that's been provided in cases that were submitted
2 to our office.

3 Q. What signature is on the bottom right?

4 A. That would be mine.

5 Q. Can you tell us what your signature on the
6 bottom right, what does that represent?

7 A. That I met with Sergeant Scott McCarthy to
8 receive this evidence from him.

9 MS. WRIGHT: May the State publish State's 20?

10 THE COURT: You may.

11 BY MS. WRIGHT:

12 Q. What is the last name, I will zoom that for
13 you, last entry on this login sheet?

14 A. Antoine Cooper.

15 Q. This was delivered to you by whom?

16 A. Sergeant Scott McCarthy.

17 Q. Date and time?

18 A. December 17, 2013, at 1 o'clock.

19 Q. Mr. Daneshgar, for purposes of this hearing,
20 we are adopting your testimony from the last hearing.
21 During the last hearing, you discussed how there were
22 entry problems with the FLIMS reports, correct?

23 A. Yes.

1 Q. Handing you what's been marked without
2 objection States's 31. Tell me if you recognize this,
3 and what is it?

4 A. This is a chain of custody report that is
5 generated through FLIMS.

6 Q. May I publish to the jury -- to Your Honor --

7 THE COURT: Same.

8 BY MS. WRIGHT:

9 Q. Mr. Daneshgar, during the last testimony you
10 explained in detail what each entry means on these
11 chain of custody reports. To be clear, I believe
12 defense agrees this is a chain of custody report for
13 Antoine Cooper. If you can tell us, under container A,
14 first entry, can you explain to us if you signed for
15 this, hand-to-hand, you received it from Sergeant
16 McCarthy, why would it say Laura Nichols on the chain
17 of custody report?

18 A. She would have been the employee who logged it
19 into our data base.

20 Q. Again, for purposes of the hearing today, I
21 know you explained this before. For clarity sake,
22 explain to us why would it say on that first entry that
23 Laura Nichols received it hand-to-hand transfer?

1 A. First entry for the chain of custody starts
2 when the case is logged in. So whoever, whichever
3 employee logged the case in it appears to be that case
4 was actually received by them, although it was not.

5 Q. Put back on State's 20 which is that login
6 sheet. It says date received December 17, 2013, at
7 1 p.m.

8 Take you back to State's 31, date and time for
9 this entry by Laura Nichols is December 17 at 4 p.m.,
10 can you explain that?

11 A. The evidence would have been secured in the
12 locker for three hours until Laura Nichols was able to
13 log it into our FLIMS data base.

14 Q. On December 17, 2013, can you tell us who was
15 responsible for receiving hand-to-hand evidence from
16 police agencies?

17 A. I believe Robyn Quinn designated myself to be
18 the only employee who received evidence.

19 Q. If we can turn back to Hakeem Nesbitt. We
20 left off with the login sheet where you signed in for
21 evidence from Sergeant McCarthy for Hakeem Nesbitt on
22 November 12, 2013, at 1:05 p.m.

23 Is that correct?

1 A. Yes, it is.

2 Q. I'm going to direct your attention to State's
3 Exhibit 11. Can you tell us what is depicted in
4 State's 11?

5 A. Chain of custody report generated by FLIMS.

6 Q. What case is this for?

7 A. Nesbitt case you just showed me, I believe.

8 Q. On this chain of custody report, can you walk
9 us through entry by entry starting with container A, it
10 says that the evidence was submitted by Officer
11 McCarthy to you on November 14, 2013.

12 Explain to us the days difference between when
13 you received it from when it was logged in? I am
14 placing on the projector State's Exhibit 10, at the
15 bottom where says November 12, 2013, chain of custody
16 report says that this was logged in on November 14, two
17 days later. Explain what that means?

18 A. Yes. He would have given the evidence to me
19 on Tuesday, would have sat in the locker until Thursday
20 morning when I had a chance to log it in.

21 Q. Placing State's Exhibit 14 on the projector.
22 Where on State's 14 would that evidence be stored
23 during that two-day period?

1 A. In one of the four boxes that I am checking.

2 Q. In the secured vault?

3 A. Yes.

4 Q. For the record, you pointed out the box
5 evidence to be logged in?

6 A. Yes, that is correct.

7 Q. Walk us through the remaining entries. What
8 is the significance of the next entry, same date and
9 time, 7:40 a.m. on November 14, 2013, placed in storage
10 at second floor evidence office locker. What does that
11 mean?

12 A. After you enter all the cases in the data
13 base, you place them in the storage locker out of your
14 personal custody. This is usually done the same time
15 as the submission so it reflects the same time as the
16 entry above.

17 Q. March 4th entry?

18 A. That would have been when DSP was doing their
19 audit, the case was being removed from our office.

20 Q. Who was responsible for documenting when it
21 was removed by Delaware State Police evidence?

22 A. That was, I was assisting them with the FLIMS
23 data base, basically as a button pusher.

1 Q. Can you clarify for us as each item is being
2 removed from the vault, you are documenting this?

3 A. Sergeant Scott McCarthy and myself were
4 working together. He would basically pull cases out of
5 the locker in a batch style, read off the FES number to
6 me. I would click and drag the mouse on the computer,
7 several batches, then remove them from our locker to
8 their custody.

9 Q. What is the significance of having container A
10 and B, does that mean there are two pieces of evidence
11 for this case?

12 A. Yes, there were two envelopes present.

13 Q. Walk us through, generally, the entries for
14 container B?

15 A. Time should reflect the same as the container
16 A, since evidence is usually moved around the same
17 time.

18 Q. Then for the March 4th date?

19 A. Same. It was taken out of our office for
20 Delaware State Police.

21 Q. State's Exhibit 12. What are we seeing here?

22 A. This is the submission receipt that we have
23 the option of printing out whenever cases are submitted

1 to our office or returned back to agencies.

2 Q. Mr. Daneshgar, in the submission receipt, if
3 we scroll down we see for internal use only submitting
4 officer Scott McCarthy. On the top under the evidence
5 transfer section it says submitted by Detective Michael
6 Mayer; is that correct?

7 A. No, it is not.

8 Q. Explain why both entries are different?

9 A. There seem to be a glitch with the submission
10 receipts that when -- since they are done in batches,
11 it links the first case in the batch by the first
12 officer that first case that is -- first officer linked
13 to the first case. So every receipt following that
14 first case submitted by and investigated by usually end
15 up being the same name. If you go by in FLIMS the
16 individual case, you will find that the submitting
17 officer and investigating officer is correct.

18 Q. In addition to checking individual screens to
19 make sure you have the accurate information you are
20 testifying today, did you also rely on the evidence
21 sign-in sheets, as well?

22 A. Yes, you can also go back to that and find out
23 who it was submitted by, as well as the investigating

1 officer.

2 THE COURT: Mr. Daneshgar, make sure the
3 record is complete as possible, when did you first
4 become aware of batching error problem?

5 THE WITNESS: During the Delaware State Police
6 audit.

7 THE COURT: Did you not see in previous
8 evidence receipts that there was a mistake?

9 THE WITNESS: Generally we only -- a couple
10 agencies get these receipts. We don't keep them for
11 our record purposes. We give them to the officers that
12 are submitting or returning evidence. So this is not
13 really a sheet that I am familiar with until we started
14 doing the audit.

15 THE COURT: So the answer, I guess the answer
16 to my question is; you did not notice prior to the
17 Delaware State Police investigation there were any
18 submitted by investigated by errors?

19 THE WITNESS: That is correct.

20 THE COURT: Okay. I believe your testimony at
21 the last hearing, Wilmington Police Department was
22 really the only, primarily the only one that wanted
23 these documents?

1 THE WITNESS: New Castle County also requested
2 them.

3 MS. WRIGHT: Thank you, Your Honor.

4 BY MS. WRIGHT:

5 Q. The last questions were with regard to
6 Wilmington and New Castle County they requested these
7 submission receipts as reflected in State's Exhibit 12.
8 What did Delaware State Police, did they take
9 submission receipts with them, Sergeant McCarthy?

10 A. Prior to the audit they did not.

11 MS. WRIGHT: May I have a moment, Your Honor.

12 THE COURT: Yes.

13 (Discussion held off the record.)

14 BY MS. WRIGHT:

15 Q. Turn to the next case you are here for,
16 Braaheim Reed. I am placing State's Exhibit 17 on the
17 projector without objection.

18 Explain for us what we see here?

19 A. Excel spread sheet that Newark Police gives to
20 our office that they were submitting to our office that
21 day.

22 Q. What is the last entry on State's Exhibit 17,
23 first entry?

1 A. Braaheim Reed.

2 Q. Now, on the left it says, OCME case number A
3 through C. Can you tell us from this document, how
4 many items were received?

5 A. Three.

6 Q. For Braaheim Reed?

7 A. Yes.

8 Q. Can you tell us the date and time evidence was
9 received for Braaheim Reed?

10 A. December 5th, 2013, 9:31.

11 Q. Who submitted that evidence?

12 A. Jeffrey Schwagel.

13 Q. You signed as the forensic evidence
14 specialist?

15 A. Correct.

16 Q. With that date, December 5, 2013, that you
17 received evidence for Braaheim Reed, I am going to
18 direct your attention to State's Exhibit 18 chain of
19 custody report, or FLIMS report for Braaheim Reed.
20 What is the difference between dates in terms of
21 evidence being delivered and being logged in?

22 A. It was the next day.

23 Q. Who logged in that evidence?

1 A. Myself.

2 Q. If you can, explain the remaining entries for
3 container A?

4 A. It was placed in the second floor evidence
5 locker. Again, it is done in the same time as the
6 evidence is submitted to the office, entered into the
7 data base. So it should reflect the same time. Next
8 entry would have been when it was removed from our
9 office for the Delaware State Police audit.

10 Q. That is February 28, 2014?

11 A. Correct.

12 Q. Can you tell us with regard to the date that
13 it was removed by Delaware State Police, that is
14 different from March 4th. How many days did this go on
15 approximately that you were helping Delaware State
16 Police document FLIMS removal of each piece of
17 evidence?

18 A. I don't know the exact time period. A couple
19 months, I would approximate a couple months.

20 Q. For purposes of the record for the remaining
21 container B, scroll down to C, describe generally those
22 entries for those two container?

23 A. Reflects the same time and day as container A

1 since all the evidence is moved together.

2 Q. Mr. Daneshgar, for the Reed and Nesbitt cases,
3 can you tell us, based on this chain of custody
4 documentation, whether or not this evidence was removed
5 from the storage locker, secured vault between the days
6 they were received through February 20th when Delaware
7 State Police secured the locker?

8 A. No, they were not removed from the locker.

9 Q. How can you account for that?

10 A. There would be an entry letting you know that
11 it was removed from the locker, and the next storage
12 locker it would have been placed into.

13 Q. From your previous testimony in those case you
14 testified how evidence in the previous hearing was
15 brought up to the chemist lockers or sometimes personal
16 locker. Was that the case here?

17 A. No, it is not.

18 Q. Again, I will ask you how can you make sure?

19 A. It would have said third entry where it says
20 removed from storage by James Daneshgar, the next entry
21 would have been that it was placed in storage in a
22 general lab locker for whoever the chemist was assigned
23 to the case. Since it is not present, we can say it

1 was not tested, never put in a locker, a chemist's
2 locker.

3 Q. You testified earlier, your testimony today
4 about double checking the screen shots. Did you check
5 the individual case files on your computers for these
6 two cases, as a double check to make sure these did not
7 go to a chemist's locker or to the lab area?

8 A. Yes, I have.

9 Q. This is still your position today that it was
10 not brought to the chemist lab area?

11 A. That is correct.

12 Q. That is for the Braaheim Reed and Hakeem
13 Nesbitt matters?

14 A. Correct.

15 Q. Mr. Daneshgar, if you can tell us, when Robyn
16 Quinn designated you as the sole person to receive
17 hand-to-hand evidence, can you tell us what is the
18 difference that you have noticed since Robyn Quinn has
19 taken over as manager?

20 A. I think the biggest change I have noticed is
21 line of communication. She is very willing to work
22 together to make sure that new policies are put forward
23 to make sure that everything is being done the correct

1 way. Previous manager, due to frequent absences, there
2 was very little communication, no lab meetings,
3 policies seem to have slipped through the cracks from
4 what I heard from different chemists.

5 MS. WRIGHT: The State has no further
6 questions for Mr. Daneshgar at this time.

7 CROSS EXAMINATION

8 BY MS. WALKER:

9 Q. Good afternoon, Mr. Daneshgar.

10 A. Good afternoon.

11 Q. I feel like I know you, have to tell you I
12 have read the transcripts. I have seen your name
13 everywhere. Nice to see you in person. Sorry you had
14 to wait all day.

15 A. No problem.

16 Q. We are going to go through a couple things, my
17 head is spinning from all this FLIMS stuff. I think we
18 all established that this thing wasn't too helpful.
19 Last thing that she, Ms. Wright had up on the screen,
20 this was for Mr. Reed. Do you recall if this is the
21 Reed case?

22 A. I believe it is.

23 Q. If we could go through each one of these steps

1 I would like you to tell me, which one of these entries
2 each of with respect to each of those containers is
3 100 percent correct. Start with the first one. I know
4 it is going to be the same for A, B and C, we can agree
5 for that?

6 A. Yes.

7 Q. First entry says December 6, 9:15 a.m., this
8 evidence which was marked 598 H was submitted by
9 Officer Schwagel to you, correct?

10 A. Correct.

11 Q. Is that correct?

12 A. No, it is not.

13 Q. Then the second entry is December 6,
14 9:15 a.m., that you placed this into evidence. You
15 placed it into the evidence, locker storage. Is that
16 correct?

17 A. Yes, that is correct.

18 Q. At 9:15:28 exactly, the same time you received
19 it from Officer Schwagel?

20 A. The first entry would not be correct, that is
21 when it was logged in the data base. The second entry
22 when it was put in the locker is correct.

23 Q. Would you agree that the time is not correct?

1 A. Couldn't confirm that is 100 percent or not.

2 Q. Do you believe the time is correct with
3 respect to when you received -- would you agree that
4 FLIMS had the correct times on there for entries or no,
5 yes?

6 A. Yes.

7 Q. So if this was submitted to you at 9:15:28,
8 could you physically be putting it in the storage at
9 the same exact time?

10 A. No.

11 Q. Looking at all that information on that line,
12 is that 100 percent correct?

13 A. No, it is not.

14 Q. Looking at the February 28, 6:53:01. It says
15 removed from storage by James Daneshgar; is that
16 correct?

17 A. No, it is not.

18 Q. Finally, it says February 28, 6:53, placed in
19 storage at State Police at the same time. Is that
20 correct?

21 A. Not necessarily.

22 Q. Explain to me how it would be?

23 A. We had to create a storage unit for Delaware

1 State Police. If you would have -- we worked on it
2 through basically return to agency, which is another
3 option we do, we would have had to reenter all the
4 cases back into our data base.

5 Q. Okay.

6 A. To avoid doing that, in case all the cases
7 came back to our lab in the future, we created a
8 Delaware State Police storage that was basically
9 putting it in their custody.

10 Q. So it says that, if I am looking at this
11 correctly, it says that the way you had to finagle
12 this, you put this in Delaware State Police storage.
13 Did you do that?

14 A. I did not.

15 Q. Go over container A. Is line one 100 percent
16 correct?

17 A. No.

18 Q. Line two?

19 A. No.

20 Q. Line three?

21 A. No.

22 Q. Line four?

23 A. No.

1 Q. You would agree that is the same for all three
2 of these?

3 A. Yes.

4 Q. So none of these entries in this chain of
5 custody is correct?

6 A. Correct.

7 Q. We will look at Mr. Nesbitt while we are here,
8 I guess.

9 Mr. Nesbitt, he is the one with the plant
10 material right. Can you see that okay?

11 A. Yes, I can.

12 Q. Do this again for Mr. Nesbitt. Line one says
13 that on November 14th, at 7:40 a.m., Officer McCarthy
14 gave you containers A and B. Is that correct?

15 A. No, it is not.

16 Q. How about line two, November 14th at 7:40:52
17 seconds it says that you placed it into storage at
18 OCME. Is that correct?

19 A. No, it is not.

20 Q. We have March 4, 1:53:59, it says that you
21 removed plant material from OCME storage. Is that
22 correct?

23 A. No, it is not.

1 Q. Finally, we have the same date and time, that
2 there is another error, looks like to me, I might be
3 wrong. It says placed back in storage in the second
4 floor OCME locker. Is that correct?

5 A. No, it is not.

6 Q. Would you agree those are the same entries for
7 container B?

8 A. Yes.

9 Q. None of the entries on this chain of custody
10 is correct. Is that correct?

11 A. That is also correct.

12 Q. What is your understanding why?

13 THE COURT: Mr. Daneshgar, try to be -- let's
14 try to make it correct. There are some information
15 that is on the chain of custody that is accurate. Is
16 it not?

17 THE WITNESS: FE number would be accurate,
18 evidence that was submitted would be accurate.

19 THE COURT: If you put the first entry it says
20 you received it from Officer McCarthy. That is
21 correct. Date and time is wrong?

22 THE WITNESS: Yes.

23 THE COURT: You did actually receive it, you

1 believe, from Officer McCarthy, correct?

2 THE WITNESS: Correct.

3 THE COURT: You, after you logged it in, you
4 did place it in the second floor evidence locker room,
5 but the date or at least the time may be wrong?

6 THE WITNESS: That is also correct.

7 THE COURT: When you say it is incorrect, some
8 of the information is incorrect, but not every piece of
9 the information.

10 THE WITNESS: That is correct. I believe her
11 question was asking for 100 percent accuracy, which it
12 is not.

13 THE COURT: Okay.

14 MS. WALKER: That is exactly right.

15 BY MS. WALKER:

16 Q. What is your understanding of the purpose
17 generating the chain of custody reports?

18 A. What do you mean by that?

19 Q. Did anybody tell you, James, this is why we do
20 this, this report, this is why we have to do it?

21 A. Yes.

22 Q. What is it they told you the purpose was?

23 A. To ensure the integrity of the evidence.

1 Q. You said that -- my understanding that when
2 you generally receive the evidence, part of your job is
3 to basically give it a visual inspection, the envelope,
4 before comes to you and you accept it is a better way
5 to say that?

6 A. Right.

7 Q. And you are looking for noticeable rips,
8 tears, looks like anything on the outside that it's
9 been tampered with, right?

10 A. Yes.

11 Q. Who trained you how to do that?

12 A. Other employees that were in the unit.

13 Q. Can you name them specifically?

14 A. Kelly Georgi, Laura Nichols, Aretha Bailey,
15 James Woodson, Jack Lucy.

16 Q. There was no actual training class?

17 A. Not necessarily, no.

18 Q. Did police officers sit you down and show you
19 how to do it?

20 A. No.

21 Q. And prior to working at this job, what is it
22 that you did?

23 A. I was a laboratory technician in the same

1 building.

2 Q. For how long?

3 A. Excuse me?

4 Q. How long?

5 A. Was there for a year.

6 Q. Before that, what did you do?

7 A. I was a chef.

8 Q. So it's not like had you had a history of
9 being able to know how to do this, right?

10 A. That is correct.

11 Q. You were dependant on your coworkers to show
12 you how to do this?

13 A. Correct.

14 Q. What was your understanding or what were you
15 told was the purpose of doing that?

16 A. Checking the seal?

17 Q. Yes.

18 A. Make sure it wasn't tampered with.

19 Q. And say it was tampered with. What would you
20 do at that point? I know you have gone over this
21 before, I want too make sure I understand.

22 A. The officer would have had to reseal the
23 envelope. If they were not comfortable doing that,

1 they would have brought it back with them, brought did
2 back at a later date.

3 Q. How would they reseal the envelope?

4 A. We have evidence tape in our office that they
5 would have to reseal it with their initials and date.

6 Q. Can you see that all right?

7 A. It's kind of blurry.

8 Q. If you want, I will bring the actual picture
9 up to you. Are you okay?

10 A. I'll be okay.

11 Q. Can you point out -- is this -- I think you
12 said was the office where you did the receive?

13 A. Correct.

14 Q. You tell me if I am right or wrong, is there
15 tape in there anywhere?

16 A. I think I see some tape.

17 Q. Can you mark where that might be?

18 A. Dispenser down there above the green dot.

19 Above the arrow is a white roll it looks like. Next to
20 it above the arrow, as well may be some evidence tape
21 as well, I can't confirm that 100 percent.

22 Q. Were you ever told that should be kept in a
23 specific spot?

1 A. No.

2 Q. Did anybody ever say to you this is important
3 stuff, we need to make sure we monitor where it is at
4 all times?

5 A. No.

6 Q. Did you ever see any blue tape around?

7 A. I have not.

8 Q. I think this was where you said you kept stuff
9 that hadn't been logged in yet, but had been physically
10 brought in; is that right?

11 A. That's right.

12 Q. Looks like there are four boxes for that,
13 right?

14 A. Yes.

15 Q. Can't see the two bottom ones on the right
16 side, but it looks like to me it is a different format.
17 I think four is accurate. How many pieces of evidence
18 can you get into each one of those boxes, roughly?

19 A. I couldn't tell you.

20 Q. More than one?

21 A. Yes.

22 Q. Two?

23 A. Depending on size of them.

1 Q. Say we are bringing in regular manilla size
2 envelope type pieces of evidence. How many you think
3 you could fit in those four boxes, roughly?

4 A. 20, 30 maybe.

5 Q. You have the capacity there to put that many
6 pieces of envelopes in there to hold for before they
7 are logged, correct?

8 A. Yes.

9 Q. Just a couple more questions.

10 Evidence submission return worksheets. This
11 evidence submission and return worksheet, is that the
12 sheet that was generated by the police?

13 A. Yes.

14 Q. They bring that in with them with all the
15 evidence they are giving you. Is that right?

16 A. Yes.

17 Q. So that is why at the bottom you both are
18 signing off, yeah, I gave it to him?

19 A. Correct.

20 Q. That is the same for Mr. Reed's case, just
21 different officers.

22 This submission receipt for Mr. Reed, I
23 believe it is Exhibit 19.

1 Container A, tell me how this description gets
2 put in like how is it that you come with described as
3 598 H as the description?

4 A. We use three letter shortcuts to basically
5 insert envelope, which is sealed, initialed, and dated
6 described as, 598 would have been what was written on
7 the envelope.

8 Q. Do you know what the 598 represents?

9 A. Would be 598 bags of heroin.

10 Q. So if I am understanding correctly, for
11 container B and C, just says H, either you didn't write
12 or they didn't put on the envelope a quantity; is that
13 correct?

14 A. Correct.

15 Q. If they had it on there, you probably would
16 have written it down?

17 A. Yes.

18 Q. You did say earlier, I think, that your
19 understanding was at least by the December time when
20 the Cooper case came around, you were only the one that
21 was taking evidence, is that what you said?

22 A. Yes, I was doing the appointments, but I was
23 not the only employee logging them in.

1 Q. Talking about Laura Nichols, her name is on
2 there chain of custody receipt. 31.

3 So it says that on December 17, at 4 o'clock,
4 Mrs. Nichols received it. That is what it says, right?

5 A. That is what it says.

6 Q. I think we talked, you talked with Ms. Wright
7 earlier that it looks like based on the other form that
8 you physically signed, that you actually received it,
9 then she logged it later?

10 A. Correct.

11 Q. Now, prior to this time, at some point before
12 Ms. Quinn started working here, trying to take steps to
13 remedy everything, were you aware that Mrs. Nichols had
14 responsibilities which would allow her to physically
15 receive evidence?

16 A. Yes.

17 Q. Then you became aware that at some point they
18 stopped letting her do that?

19 A. Yes.

20 Q. Did you feel comfortable allowing her to say
21 that she received the evidence when, in fact, it was
22 you receiving evidence?

23 A. It was generated by FLIMS.

1 Q. Did you understand what the consequence -- you
2 said earlier that you had been told these forms were
3 designed to protect the integrity of the evidence?

4 A. Yes.

5 Q. I understand you are following marching
6 orders, you got caught up in this big mess. You've got
7 a document that is saying that someone who does not
8 have authorization is taking stuff in. You signed off
9 on it on another form. That did not bother you?

10 A. It was just what I was told to do.

11 Q. By the way, my understanding is there is a
12 place where you can put comments in for each of these
13 entries?

14 A. Yes.

15 Q. And did you, or did anyone that you knew of
16 put in the comments, actually it was James that did
17 this and I just logged it in?

18 A. We were never told -- I was never told to do
19 that.

20 Q. Why would you not have been the one logging
21 this in, you seem to do it for all the other ones?

22 A. I could have been out of the building that
23 day. I also performed the courier run on Wednesday.

1 There is several days I am not around to log it in,
2 because of the volume of cases coming in she was giving
3 a helping hand in the data base.

4 Q. So physically the way it would work, if I am
5 correct, you would get evidence, in this particular
6 case, similar to this, if you don't remember this one
7 in particular. You receive the evidence. Now you are
8 putting it in the vault in one of those boxes to be
9 logged?

10 A. Yes.

11 Q. And then now, she is coming along to do the
12 entry into the log. So once you put it in that box,
13 evidence to be logged, you personally don't know what
14 happens to it after that, do you?

15 A. No, I do not.

16 Q. I will talk to you a little bit about your
17 assisting State Police in removing stuff.

18 THE COURT: Let me ask the question before you
19 go to the other subject.

20 It appears to be pretty clear that at least
21 when Mrs. Quinn began becoming lab manager, that it
22 became clear to her that this process of allowing one
23 person to take it and not document that they took it at

1 a particular time, was unacceptable, should be changed.

2 Has the practice changed?

3 THE WITNESS: We are no longer receiving
4 evidence.

5 THE COURT: From the time that Ms. Quinn came
6 in, which would have been in November, and the State
7 Police didn't come in until March of 2014. Did the
8 practice ever change?

9 THE WITNESS: Other than other employees not
10 taking evidence physically, no, they were still logging
11 it in. It still reflects as they were taking the
12 evidence.

13 THE COURT: Thank you.

14 BY MS. WALKER:

15 Q. Thank you, Your Honor.

16 I am just using this for date purposes here.

17 Go back to Reed. This is Exhibit 18, chain of
18 custody report. Using it just make sure we have the
19 right date. It looks like --

20 When the State police came in, were you there
21 when they came in that day?

22 A. Yes, I was.

23 Q. And what were the instructions about the vault

1 that were given, if any?

2 A. We are immediately to stop working in the
3 vault. They put a pad lock on there the day they came
4 in.

5 Q. At some point shortly thereafter, they came to
6 you and asked you to help them?

7 A. I am not sure who approached me to help them
8 out. They told me that I was not a suspect in the
9 case, wouldn't be prosecuted. Because I was familiar
10 with FLIMS, I was recruited by someone to assist them
11 in their audit basically as a button pusher.

12 Q. Do you recall the date of your statement that
13 you gave to the police?

14 A. Exact date? No, I do not.

15 Q. Would it surprise you if it was March 4th, you
16 have any reason to disagree with me on that?

17 A. No.

18 Q. Go back, looks like on Mr. Reed's case,
19 February 28th, you were assisting State Police with
20 removing evidence; is that right?

21 A. I can't see the date. I can see the time.

22 Q. Sorry. I have been told it was March 2nd.

23 A. Sure.

1 Q. So this is February 28th, so I think from what
2 I have been told, this was a leap year, not a leap
3 year. Looks like it was two days later you gave your
4 statement. You did that after this, would that be
5 correct?

6 A. Sure.

7 Q. You are already helping the State Police.

8 The physical setup when you are helping the
9 police, my understanding, again, trying to move things
10 along, please stop me if I have something wrong, is
11 that if you were in the office area?

12 A. Yes.

13 Q. With Sergeant McCarthy?

14 A. He was going back and forth between the vault
15 and the office area.

16 Q. Were there other officers helping him with
17 that?

18 A. Yes.

19 Q. Do you remember their names?

20 A. Sergeant Nick Lanno, and Sergeant Andrew Lloyd
21 were two of the officers that were mainly present with
22 him. There were several other officers that were here
23 and there every now and then. I don't remember their

1 names.

2 Q. They were going in and out of the vault
3 bringing stuff out?

4 A. Yes.

5 Q. In the course of one day there were a couple
6 of them at a time?

7 A. Yes.

8 Q. Couple of those guys go in there and they are
9 bringing stuff out, setting them on the floor, Sergeant
10 McCarthy is going through them pulling them out, right?

11 A. More going through the boxes as they were
12 files of each case.

13 Q. He reads stuff off of the envelope for you to
14 key in?

15 A. Just the FE number since our system is tracked
16 by FE numbers.

17 MS. WALKER: One moment, please, Your Honor.

18 THE COURT: Yes.

19 (Discussion held off the record.)

20 BY MS. WALKER:

21 Q. I believe looking at the FE number, I am sure
22 Mrs. Wright will correct me if I am wrong, this is for
23 the Nesbitt case. This is evidence transfer, FE number

1 is 2013, 09883.

2 This, I think is the transfer -- submission
3 receipt that was generated when you and Sergeant
4 McCarthy were taking stuff out, right?

5 A. Yes, he wanted us to print out the receipt for
6 the record to help keep track of what cases they were
7 taking from our office.

8 Q. So again, beating a dead horse, you look down
9 at the bottom it says for internal use only.
10 Submitting officer is McCarthy, received by Daneshgar.
11 That is not really 100 percent accurate?

12 A. Not 100 percent.

13 THE COURT: Is that marked as an Exhibit?

14 MS. WALKER: Exhibit 12. Sorry. Thank you.

15 REDIRECT EXAMINATION

16 BY MS. WRIGHT:

17 Q. Mr. Daneshgar, you talked about your role as a
18 Forensic Evidence Specialist. You are certified to do
19 that, correct?

20 A. What do you mean by certified?

21 Q. You are authorized by your supervisors to be a
22 Forensic Evidence Specialist?

23 A. Yes.

1 Q. You testified that part of that role is making
2 sure the integrity of the evidence is intact, correct?

3 A. Yes.

4 Q. When you have an officer come in and you are
5 reviewing the evidence envelope the with the
6 transporting officer, the officer is doing that with
7 you, correct?

8 A. Yes.

9 Q. Mr. Daneshgar, you testified that if you
10 notice that there was something wrong with that
11 envelope, the officer would be sent away or they would
12 have to use the tape at the OCME office and initial it
13 to make sure it was sealed properly?

14 A. Yes.

15 Q. Can you tell us has that ever happened in your
16 experience?

17 A. No, it has not with drug cases.

18 Q. Just to clarify, when you testified about how
19 you assisted Sergeant McCarthy with removing evidence
20 as a button pusher, did you ever touch any physical
21 evidence during that process with Sergeant McCarthy?

22 A. No, I did not.

23 MS. WRIGHT: No further questions, Your Honor.

1 MS. WALKER: May I have one moment, Your
2 Honor.

3 (Discussion held off the record.)

4 RE CROSS EXAMINATION

5 BY MS. WALKER:

6 Q. One or two more questions.

7 So you say that you never really had to ask an
8 officer to reseal anything with tape?

9 A. For drug evidence no, I don't recall ever
10 having to ask anyone.

11 Q. Did you ever see people using that tape that
12 was there?

13 A. For the internal audit, yes.

14 Q. Before that you never saw it?

15 A. Not that I recall.

16 Q. Did you ever pay attention to the supply
17 whether it was getting low or not?

18 A. No.

19 Q. Never paid any attention to the tape?

20 A. Never thought it was a concern.

21 MS. WALKER: Thank you.

22 THE COURT: This is more curiosity than
23 relevant, I probably should have asked Mrs. Quinn. You

1 are now employed by Homeland Security?

2 THE WITNESS: Yes.

3 THE COURT: Your office is being run, the new
4 lab that is being created and evidence retention and
5 locker are being run by that agency?

6 THE WITNESS: Yes.

7 THE COURT: Same location, same people?

8 THE WITNESS: Yes.

9 THE COURT: You are not moving it out of the
10 Medical Examiner's Office?

11 THE WITNESS: Not to my knowledge.

12 THE COURT: Thank you. You can step down.
13 Call your next witness.

14 MS. WRIGHT: State calls Corporal Jeffery
15 Schwagel.

16 JEFFREY SCHWAGEL,

17 having been first called by the State was sworn on
18 oath, was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MS. WRIGHT:

21 Q. Good afternoon, Corporal Schwagel.

22 A. Good afternoon.

23 Q. Can you tell us by whom you are employed?

1 A. City of Newark, Delaware Police.

2 Q. How long have you been with Newark?

3 A. Since 2001.

4 Q. Can you tell us what is your current job with
5 Newark Police?

6 A. I am the property management officer.

7 Q. Explain to us what is the role day-to-day as
8 the property manager?

9 A. I oversee all property evidence that is turned
10 into the evidence room at the Newark Police Department.

11 Q. Does that include controlled substances?

12 A. Yes.

13 Q. How long have you been property manager for
14 all property that comes into Newark?

15 A. Since January 6, 2012.

16 Q. Explain for the Court how it works when
17 evidence is submitted by an arresting officer to the
18 evidence locker, explain the process by which that is
19 delivered, what steps you take to secure that evidence?

20 A. The officers -- our evidence lockers are kind
21 of like what you will find, I don't know, a skating
22 rink, bowling alley for lack of a better description.
23 The lockers have key that he is activated by a token.

1 The arresting investigating officer would submit their
2 evidence along with chain of custody sheet into the
3 locker, insert a token, remove the key, place it into a
4 locked locker that has a key hole cut out just big
5 enough for a key to go in that I can retrieve from my
6 side of the evidence room.

7 Q. How often do you go into that evidence locker
8 to retrieve the evidence and log it in?

9 A. Probably three times a week I will retrieve
10 evidence out of the lockers.

11 Q. I kind of jumped the gun and said log it in.
12 Tell us what you do when you retrieve evidence from
13 those lockers three times a week?

14 A. I have a table on the other -- my side of the
15 lockers in the evidence room where items that I pull
16 out of the evidence lockers I will put there until I
17 can get to logging them in.

18 Q. Who has access to your side of the locker,
19 that is the secure side of locker?

20 A. Myself, Master Corporal Gary Brida, and
21 Corporal Blake Potoki.

22 Q. How do you access your side of the locker, key
23 and combination, how does that work?

1 A. I have a key pad panel that activated by ID
2 card to get into my office, my part of the evidence
3 room.

4 Q. Explain the system that you have in place when
5 you log in the evidence?

6 A. Just a software. I type in information
7 provided on the chain of custody sheets and the actual
8 evidence envelope, bar code system.

9 Q. Corporal, I am approaching with what's been
10 marked without objection State's Exhibits 21 through
11 30. Take a moment and look at each set of documents,
12 tell us what they are?

13 A. This is an evidence envelope with 4.5 grams of
14 loose heroin reported on the envelope.

15 Q. What is the top document for?

16 A. The top document is a report that details what
17 I logged in regarding that evidence.

18 Q. Remaining items?

19 A. Second one would be the sheet for 598 bags of
20 heroin, 13 grams, and this one says bags of heroin
21 1.8 grams.

22 Q. Can you tell us whether the documentation,
23 looking at the photos, whether those property detail

1 records fairly and accurately depict evidence that you
2 retrieved from those lockers submitted by arresting
3 officers?

4 A. Bear with me a second.

5 This one, the bags of heroin for 1.8 grams
6 appears to be consistent.

7 Q. Referring to States's Exhibits 28 through 30.

8 A. Okay. One for 598 bags of heroin appears
9 consistent.

10 Q. That is for State's Exhibits 25 through 27.

11 A. This one for 4.5 gross grams of loose heroin
12 is consistent.

13 Q. Corporal, with regards to those Exhibits, that
14 last one was State's Exhibits 21 through 24.

15 For these items that you reviewed, the
16 property detail reports and photos, how many envelopes
17 of the drug evidence did you receive for this case?

18 A. Three.

19 Q. Referring to this case, I will direct your
20 attention to State's Exhibit 21, I will zoom in. Can
21 you tell us the defendant's name for this case?

22 A. Braaheim Reed.

23 Q. For purposes of the record can you give a

1 general description of this property detail record that
2 is displayed on State's Exhibit 21 just in terms of
3 field, complaint number?

4 A. Case number would be 2013 complaint 31996.
5 Evidence tag number would be 19937. Description of
6 evidence would be 4.5 gross grams of loose heroin.

7 Q. At the bottom of State's Exhibit 21 there is a
8 chain of custody section. Can you explain for us what
9 is depicted in that entry?

10 A. I logged it in on December 2, 2013.
11 12:12 p.m. and I released it to take to the Medical
12 Examiner's Office on December 5, 2013, at 9:03 a.m.

13 Q. Corporal, can you tell us between the time of
14 December 2nd, when you logged this evidence in and
15 December 5th, when you released evidence to Office of
16 the Chief Medical Examiner, can you tell us what, if
17 anything, did you do to pre-log the evidence to
18 transport it to the Medical Examiner's Office?

19 A. At that time the Medical Examiner's Office had
20 a system in place, I don't recall the name of it, but
21 it was basically kind of duplicating this for them
22 pre-logging it in so they had information in their
23 system.

1 Q. Direct your attention to State's 17.

2 Can you tell us, do you recognize State's
3 Exhibit 17?

4 A. Yes.

5 Q. What is it?

6 A. That is the evidence submission sheet that I
7 signed at the Medical Examiner's Office when I turned
8 our evidence over to them.

9 Q. Can you tell us with record to entries on top,
10 who entered those items onto this form?

11 A. I did.

12 Q. For the entry for Braaheim Reed, can you tell
13 us about the OCME case number versus the number of
14 items?

15 A. OCME case number is the number that is
16 assigned from their system, their pre-logging system
17 gives me that at the end when I finalize it. When I am
18 entering items in their system, each envelope is
19 labeled A, B, C, all the way down for however many
20 pieces you have. So that would say that under that
21 complaint number, there was three items A, B and C.
22 Submitted to the Medical Examiner's Office for this
23 case.

1 Q. Go through each envelope, stay with the
2 property receipt you first described in State's
3 Exhibit 21. You described it as 4.5 GG loose heroin.
4 When you entered that in, where did you get that
5 information from?

6 A. The envelope.

7 Q. State's Exhibit 22. Can you tell us what this
8 is?

9 A. At the moment this is a little blurry.

10 Q. Is that better? Can you tell us from looking
11 at the description of the contents from the evidence
12 envelope, what is the description?

13 A. 4.5 gross grams of loose heroin.

14 Q. On the left side of this Exhibit, there are
15 various labels on here. What does the C refer to?

16 A. C on the FE label?

17 Q. Yes.

18 A. I am not familiar with that label. That is
19 the Medical Examiner's label.

20 Q. You testified that the OCME numbers that you
21 receive for number then A through C. So would it be
22 fair to say that is the C from in terms of container C?
23 If you can say you can't say?

1 A. I can't say. It is a different number then
2 the one that I have. So I would assume, but I can't
3 say for certain.

4 Q. Complaint number for this envelope --

5 THE COURT: Why don't you hand him the
6 photograph, not quite sure, maybe can you help me, this
7 is true in the other case. Why we are not bringing
8 envelope into the courtroom? Do we not have them
9 anymore?

10 MS. WRIGHT: Your Honor, these were tested by
11 NMS. They were sealed, heat sealed in evidence
12 envelopes so there is pictures of the envelope.

13 THE COURT: Do the envelopes exist?

14 MS. WRIGHT: They do, Your Honor.

15 THE COURT: The reason that we are not
16 bringing them in is because why?

17 MS. WRIGHT: Well, hopefully, Your Honor,
18 depending on Your Honor's ruling if it does go to
19 trial, we would have envelopes as stored in terms of
20 chain of custody for trial that is why Mr. Grubb and
21 myself have been doing photos of the envelopes.

22 THE COURT: Okay.

23 BY MS. WRIGHT:

1 Q. I will hand you State's Exhibit 22 along with
2 17, State's Exhibit 17, the login sheets that you
3 signed with Mr. Daneshgar, correct?

4 A. Correct.

5 Q. Do the complaint numbers match up for those
6 two?

7 A. Yes.

8 Q. State's Exhibit 28, you referred to there a
9 second property detail report for the second envelope
10 that you logged in in your internal system delivered to
11 the Office of the Chief Medical Examiner, correct?

12 A. Correct.

13 Q. What is the description on that property
14 detail report for that second envelope?

15 A. Bags of heroin, 1.82 grams.

16 Q. Handing you what's been marked State's
17 Exhibit 29. Can you tell us what this is, contents and
18 complaint number?

19 A. Complaint number is 2013, 31996, says bags of
20 heroin. Appears to say calculated weight 1.82 grams.

21 Q. Is that complaint number consistent with the
22 number for Braaheim Reed?

23 A. Yes.

1 THE COURT: What is your understanding of the
2 term calculated weight?

3 THE WITNESS: That my understanding would be
4 what the officer came up with through weighing and
5 testing. That would be his language that he used for
6 that weight.

7 THE COURT: In your experience, have you
8 worked narcotics?

9 THE WITNESS: Just on patrol level. I never
10 worked as a drug officer.

11 THE COURT: You may not know the answer to
12 this question, that's okay if you don't. I have had
13 testimony from other agencies that they do not weigh
14 the drugs that they have seized. They generally say
15 bag a heroin weighs point whatever grams, they just do
16 the math they have.

17 THE WITNESS: I have heard that before.

18 THE COURT: Do you know if Newark Police has
19 that as a policy, is that its practice?

20 THE WITNESS: We don't have that as a policy.
21 I his some individual officers maybe drug officers
22 specifically do that because they may have a little bit
23 more knowledge of drugs specifically, and those

1 weights.

2 THE COURT: You are not, you can't say that
3 that is what is done as a matter of course?

4 THE WITNESS: I don't think every individual
5 officer does that as a matter of course.

6 THE COURT: Thank you.

7 BY MS. WRIGHT:

8 Q. I am handing you State's Exhibit 26. Can you
9 tell us the third envelope description of the contents
10 and complaint number?

11 A. You will zoom up a little more, I can't tell
12 from the specific picture.

13 Q. I can put State's Exhibit 25 that you have
14 already examined, what is the description of the
15 contents for property detail record for that third
16 envelope?

17 A. 598 bags of heroin, 13 grams.

18 Q. There is for Braaheim Reed, same complaint
19 number?

20 A. Correct.

21 Q. With the Court's permission, I can try to zoom
22 in on State's Exhibit 26. Are you able tell us the
23 description of the contents?

1 A. Yes, 598 bags of heroin calculated weight
2 13 grams.

3 Q. Explain to us the process when you go to the
4 Office of the Medical Examiner and you deliver it to
5 the forensic evidence specialist. Can you walk us
6 through what happens when you meet with that forensic
7 evidence specialist?

8 A. I missed the last part, you said when I leave
9 a bag?

10 Q. When you deliver the drug evidence,
11 specifically this case, three envelopes that you just
12 testified to, to James Daneshgar, the Forensic Evidence
13 Specialist would receive the evidence in this case, can
14 you walk us through the process of what you do when you
15 get there, you meet with Mr. Daneshgar?

16 A. Yes. Once I am brought in, or buzzed in the
17 building, Mr. Daneshgar comes down, we would take the
18 elevator up to their office where he would use his
19 access fob or key pad, whatever he had there, brought
20 us in to their office, where we would visually inspect
21 to make sure what I said I was turning over he was
22 receiving. We would sign off on this receipt.

23 Q. You sign off after you examine the envelopes,

1 correct?

2 A. Correct.

3 Q. Can you tell us what color tape Newark PD
4 uses?

5 A. For these would be yellow.

6 MS. WRIGHT: No further questions, Your Honor.

7 THE COURT: We will take our afternoon break.

8 (A short recess was taken.)

9 CROSS EXAMINATION

10 BY MS. WALKER:

11 Q. How are you doing, Officer?

12 A. Good, yourself?

13 Q. I'm going to try to not to repeat everything
14 too much.

15 I want to back up a second, going to go back
16 to your property receipt. Let me ask you this, my
17 understanding is that you didn't ever see the police
18 reports of this case, or do you?

19 A. Not typically.

20 Q. Did you hear about talk around the place about
21 the hey we busted so and so today this much?

22 A. Not too often. Occasionally. I have enough
23 on my own.

1 Q. Do you know by training and experience, what
2 bundles, logs are like, bundles of heroin, logs of
3 marijuana?

4 A. I can't say 100 percent probably like 90
5 percent. Drugs were not my big game on the road.

6 Q. I think what we have here on the property
7 receipt, property detail report your in-house one you
8 received it from Detective Lawrence. He was the
9 investigating officer; is that correct, or officer?

10 A. Correct, he was both for this one he was
11 investigating and submitting.

12 Q. And the date you have up here, received date
13 11/11/13. If I jump and I tend to do that, say stop.
14 Property detail, it says 11/11/13 received date. What
15 gets documented as the received date?

16 A. When he put it in the locker, when he submits
17 his submission form with the date and time on there.

18 Q. And would it be unusual for them to not put it
19 in like a day, or day after the stuff is seized, do
20 they try do it right away?

21 A. That is individual. I mean, I can only tell
22 you I get it when I get it. I don't know necessarily
23 when they received it. All I can tell you, what is on

1 the sheet that is submitted to me, date I actually
2 received it.

3 Q. Can't really see very well on this photo. I
4 want to make sure I am looking at the right thing.

5 Best that you can, if not we will find some
6 other way to get a better picture view of the evidence
7 envelope. How much of this is filled out already when
8 you get it?

9 A. That is the way I receive it.

10 Q. Except for the blue tape, I guess?

11 A. Well, correct, the envelope with writing that
12 the officer did.

13 MS. WRIGHT: Exhibit, I apologize.

14 MS. WALKER: That is 26.

15 BY MS. WALKER:

16 Q. It looks like, you probably -- you would
17 generally know categories are better than I do. If you
18 look at the lines right, I guess right here, there is
19 like couple different dates and times on the right-hand
20 side I guess?

21 A. Collected by collected times.

22 Q. Would you be able to see, if you can't, then
23 maybe I can use the police report to refresh your

1 recollection, what date is on there when it was
2 collected?

3 A. Appears to show October 10, 2013.

4 Q. Unless Ms. Wright disputes it, that is when
5 the police report says it was seized from the
6 defendant. Property received date on here says
7 11/11/13. Go back here. So would that be correct?
8 That is what we are talking about a minute ago,
9 11/11/13 does that seem to match with the 10/10 date?

10 A. That no.

11 Q. So it may have been a typo. If it was
12 received 10/10, or even if it was received 11/11, do
13 you know where has evidence was between then and 12/2,
14 when it was submitted by Detective Lawrence into the
15 evidence locker?

16 A. I do not.

17 MS. WRIGHT: Your Honor, in term its of just
18 defense has been challenging evidence as it was stored
19 at the Office of the Chief Medical Examiner, to the
20 extent that we are getting into ways, how received,
21 when received with Newark PD, the State would ask the
22 relevance for that.

23 THE COURT: You put in the document. Simple

1 as that. You can ask questions about it.

2 BY MS. WALKER:

3 Q. We don't know where it was between the time it
4 was seized and the time it is least recorded 12/5 put
5 in the locker. Is that right, that is 12/2, the time
6 it went into the locker, date it went into the locker
7 right here is that when -- tell me what that is?

8 A. That is the day I physically entered it into
9 our evidence tracking system.

10 Q. So that is close to two months after it was
11 seized?

12 A. Correct.

13 Q. 12/5, is when you are taking it out?

14 A. Yes.

15 Q. As far as this form that gets generated, are
16 these dates, at least down here, are they generated
17 automatically, you have to type them in?

18 A. They are automatic.

19 Q. You did that at 9:03, it is a 20 minute drive
20 to OCME?

21 A. Give or take, depending on Wilmington traffic.

22 Q. You took this evidence then to the Office of
23 the Medical Examiner. I have the evidence transfer

1 sheet. I think we all know what that is now. At the
2 bottom it says, submitted by yourself to James
3 Daneshgar on 12/6/ 2013, 9:15 a.m. best of your
4 recollection would that be correct?

5 A. No.

6 Q. So when you go and drop this stuff off you see
7 the person actually put stuff into their locker move
8 it, put it in their locker, Mr. Daneshgar, for example,
9 do you see him take what you are giving him and go put
10 it someplace?

11 A. No, usually we come in, sign it out, I am
12 escorted back out.

13 Q. My next we question is; you don't actually
14 see, count, you don't know open up the envelope
15 detectives put in there look at it before you sign it
16 out?

17 A. Correct.

18 Q. So, for example, container A 598 H was based
19 on what was written on there?

20 A. Correct.

21 Q. You wouldn't know, for example, if it they
22 seized 650 bags?

23 A. Correct.

1 Q. Incorrectly stated on there.

2 Just to make sure everything is in here, same
3 thing as far as the date on the chain of custody
4 document from OCME 12/6, 9:15, that is incorrect?

5 A. Correct.

6 Q. Another question about this envelope, this is
7 not a great picture. We are hoping we get to see this.

8 There is a better picture. I am going to
9 point it out in orientation on the envelope. Up at the
10 top, I guess where you list what the contents are that
11 is in the envelope, is that --

12 A. Correct.

13 Q. Now, this picture, again tell me if I am
14 wrong?

15 MS. WRIGHT: May we have Exhibit numbers.

16 MS. WALKER: 27 and 26.

17 BY MS. WALKER:

18 Q. Go to 27. It you look up here where it says
19 contents, it's supposedly zoomed in more than it is. I
20 will show you the actual picture, looks like the word
21 approximately was on there and scratched out?

22 A. Yes.

23 Q. Is that --

1 A. That is what it looks like.

2 Q. Then after that, can you see what it says, is
3 that 598 bags?

4 A. I believe so.

5 Q. You want to see this?

6 A. Please.

7 MS. WALKER: May I approach, Your Honor?

8 THE COURT: Yes.

9 BY MS. WALKER:

10 Q. Sorry.

11 A. I can't, sorry.

12 Q. We do know that the word approximately or
13 abbreviation for approximately was written on the front
14 of whatever number that was and crossed out?

15 A. Correct.

16 Q. Do you know who crossed that out?

17 A. Appears to be the officer's handwriting, to me
18 I inferred this was his writing. He made a typo,
19 crossed it off.

20 Q. Detective Lawrence, or at least one of the
21 officers involved?

22 A. Yes.

23 Q. You may have gone over this with Ms. Wright,

1 you have a standing appointment with OCME or no?

2 A. Yes.

3 Q. What day of the week was that?

4 A. Thursday at 9:30.

5 MS. WALKER: If I can have one moment, please,
6 Your Honor.

7 (Discussion held off the record.)

8 BY MS. WALKER:

9 Q. I want to confirm one other thing. You
10 indicated, if I am correct that Mrs. Wright, I think,
11 that you go and check the locker three times a week?

12 A. Approximately, give or take.

13 Q. I am confused again. The date on the property
14 receipt we talked about 11/11/13 that was incorrect.
15 We can go by that date or the 10/10 date. You told me
16 I think that that is the date that was what, put into
17 the --

18 A. That day it was formally submitted to me.
19 Maybe what I am not making clear, we haven't discussed.
20 We have some temporary lockers that officers can put
21 evidence into, where they hold onto the key until they
22 submit the evidence in. So looking at that, I can --
23 your question to me was; do I know? No, I don't know.

1 Looking at that, that is what I would guess occurred.

2 Q. Fair. I apologize for getting -- it looks
3 like, based on what you can tell, what you know about,
4 that they seized it either on 10/10, or 11/11, kept it
5 in a personal locker somewhere, looks like it was
6 December when he --

7 A. No.

8 Q. November, the November date?

9 A. Yes.

10 Q. Arrested, seize it in 10, then put it into the
11 locker?

12 A. Yes, I would retrieve it, then I got to it at
13 12/2.

14 MS. WALKER: Thank you, Officer.

15 MS. WRIGHT: Redirect, Your Honor.

16 REDIRECT EXAMINATION

17 BY MS. WRIGHT:

18 Q. Corporal, you were shown several documents by
19 the defense, start with State's Exhibit 18.

20 A. Okay.

21 Q. In terms of the date and time that you
22 delivered drug evidence for Braaheim Reed to James
23 Daneshgar. You testified that the 12/6/2013 date is

1 wrong, correct?

2 A. Correct.

3 Q. Then you were shown another, again, this is a
4 Chief Medical Examiner document, showing date and time
5 received as December 6, 2013. You also testified that
6 is wrong, correct?

7 A. Correct.

8 Q. Refer to Exhibit 17 that you testified that
9 you pre-filled out, you signed and a date and time.
10 December 5, 2013, as shown on State's Exhibit 17, a
11 correct and accurate time and date for when you
12 delivered evidence for Braaheim Reed to James
13 Daneshgar?

14 A. Correct.

15 Q. That is 9:31 a.m.?

16 A. Yes.

17 Q. Consistent with your usual appointment with
18 the Office of the Chief Medical Examiner?

19 A. Correct.

20 MS. WRIGHT: No further questions, Your Honor.

21 MS. WALKER: Nothing, Your Honor. Thank you.

22 THE COURT: You can step down, sir. Call your
23 next witness.

1 MS. WRIGHT: State calls Sergeant Andrew
2 Lloyd.

3 ANDREW LLOYD,

4 having been first called by the State was sworn on
5 oath, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. WRIGHT:

8 Q. Good afternoon, Sergeant.

9 A. Good afternoon.

10 Q. Can you tell us by whom you are employed?

11 A. I am employed by Delaware State Police. I
12 have been employed there since September of 2004,
13 currently assigned to Delaware State Police Troop 2
14 investigations section, supervisor in the drug unit.

15 Q. Can you tell us your role with regard to the
16 overall audit aspect that the Delaware State Police
17 engaged in at the Office of the Chief Medical Examiner
18 evidence?

19 A. When the groups of investigators were put
20 together, there was an audit team put together, and I
21 was placed kind of in a dual role between the audit
22 team and investigative team. Pertaining to the audit
23 team, I was almost operated as a conduit between the

1 audit and the criminal investigation. During the
2 period I did sometimes supervise the audit itself, and
3 throughout that I offered instruction to the officers
4 that were conducting the audit.

5 Q. For purposes of the hearing that we are here
6 for today, you didn't testified in the previous
7 hearing, can we talk briefly in terms of when we talk
8 about audit of evidence from the Office of the Chief
9 Medical Examiner, what evidence are we referring to?

10 A. Drug evidence from the Medical Examiner's
11 Office.

12 Q. Specifically the vault locker?

13 A. Vault locker. I also participated in the
14 transport of the evidence from the actual vault to
15 Troop 2 where it was secured.

16 Q. So you were one of the supervisors for the
17 audit team?

18 A. Correct.

19 Q. Sergeant McCarthy was also part of the
20 supervisory role of the audit team?

21 A. Sergeant McCarthy, Taylor and myself were the
22 sergeants that were assigned to the audit.

23 Q. Can you tell us with respect to the audit, how

1 did the teams, how did the process work in terms of
2 officers, reviewing and examining the evidence?

3 A. Obviously, since it was a State-wide problem,
4 we solicited audit member from various agencies
5 throughout the State. After we compiled a list of
6 police officers to conduct an audit, we daily formed
7 the audit team that two police officer teams.
8 Routinely a three team, sometimes four teams depending
9 on the amount of people that were at the Troop for the
10 audit.

11 During that period, the on-duty supervisor of
12 the audit would either everyday was either McCarthy,
13 Sergeant Taylor or myself. Each piece of evidence that
14 was transported from the ME's Office to the Troop was
15 labeled based on the day we took it from the ME's
16 office and assigned a number. That box -- so when the
17 audit teams were set in place, the supervisor would
18 audit one box at a time. So the supervisor would go to
19 the secured portion of the Delaware State Police Troop
20 2 evidence area, retain a box of evidence from the
21 Medical Examiner's locker originally, take it back to
22 the audit room, and the supervisor on duty would
23 disperse that evidence as the audit teams became free

1 of the previous piece of evidence they audited.

2 Never was the evidence not within a sergeant's
3 custody, and/or no one when the box was completed that
4 box would be returned to the secure vault at Troop 2,
5 then get another box.

6 Q. You explained how as each supervisor took
7 evidence from the secured locker into the audit room
8 that, you would disperse it to the team. Were there
9 any instructions provided to the team prior to any
10 examination?

11 A. Obviously, some cases have more than one piece
12 of evidence. So the evidence would be distributed to
13 each audit team based on a case-by-case basis. So if
14 five pieces of evidence were with one case, that would
15 go to the two-man team so the cases would stay
16 together. Each audit team consisting of two police
17 officers would open a piece of evidence one piece at a
18 time.

19 They would examine the evidence that is on the
20 inside, weigh the evidence, and compare it to what was
21 listed on the envelope by the original arresting
22 officer whoever conducted the original evidence entry.
23 If they are instructed if the evidence matched, weights

1 match, it was listed as no discrepancy.

2 If there was a discrepancy, i.e. a difference
3 in weight, that was mostly the discrepancies, they
4 would list it as a discrepancy. There was two forms of
5 discrepancies, they didn't determine the forms. They
6 were told if there is any discrepancy, list it, that
7 supervisor that is in room would be notified, lots of
8 times they would notify me and I was kind of like the
9 conduit between the audit and Lieutenant Laird and
10 Wallace which were the chief investigating troopers.

11 Q. And Laird and Wallace would make that final
12 determination as whether it goes to criminal
13 discrepancy or not?

14 A. Whether it was part of the criminal
15 investigation or whether it was administrative, what I
16 would characterize as administrative, you know. If
17 someone opened the package of marijuana and it weighed
18 five grams, weighed it at 4.5, from their inspection of
19 the audit, that the envelope did not appear to be
20 comprised in any manner, that would be styled as an
21 administrative discrepancy.

22 Q. Regardless --

23 A. Laird and Wallace were the final determination

1 of if it was a criminal compromise or administrative
2 discrepancy case.

3 Q. You wouldn't make that determination?

4 A. I did not make the determination.

5 Q. With regards to instructions that you gave to
6 the audit team, can you tell us what instructions were
7 given with regards to examining the outside of the
8 envelope?

9 A. Well, they were -- when they were issued
10 envelopes, when there was a new person, we would
11 articulate verbally what we wanted done. When a new
12 person arrived, except for the immediate onset of the
13 initial day everybody was new that day. When there was
14 a new person, usually weren't with someone that hadn't
15 been there. Regardless, we would talk about when they
16 got the envelope issued to them, have to inspect the
17 envelope before they even opened it themselves to see
18 if there was any suspicious, you know, taping, or
19 initials on the evidence envelope.

20 If that wasn't -- that passed their visual
21 inspection, they would open the envelope, preferably
22 have a spot where there was no tape. If it ended up
23 being a compromised case, there wouldn't be any

1 compromising of original tape or tape that was put on
2 by an unknown party.

3 After that they would open it, inspect it, it
4 says marijuana, training and experience looked like
5 marijuana, we didn't field test every drug, that wasn't
6 the purpose of it. They would, as long as it looked
7 like marijuana, then they would weigh it. Scales, each
8 team had their own table with latex gloves, Delaware
9 State Police evidence pens and scales.

10 And after they weighed it, if that's when they
11 would determine if there was any type of discrepancy.
12 There was forms you need to document who was on that --
13 auditing that piece of evidence, at that point what
14 time, the date that you opened that piece of evidence,
15 time that you open that piece of evidence, time that
16 you started that case. Like I said, there were cases
17 with five pieces, time you start that specific case.
18 Time that you closed that case.

19 There was discrepancy, circled yes or no.
20 There is a note section. Their notes would dictate
21 what occurred on each audit.

22 Q. You described the tape, what kind of tape was
23 used to reseal the packages after the audit team would

1 go through it?

2 A. Blue Delaware State Police evidence tape.

3 Q. You mentioned scales. There's questions about
4 the type of scales used. What kind of scales were used
5 by the audit team?

6 A. We were using scale that were already at
7 troop. There was some digital scales available. There
8 was triple beam scales available. There was,
9 obviously, sprung on us the last minute, we used scales
10 that were available at the troop.

11 MS. WRIGHT: No further questions.

12 MS. WALKER: One moment, please, Your Honor.

13 THE COURT: Take your time.

14 (Discussion held off the record.)

15 CROSS EXAMINATION

16 BY MS. WALKER:

17 Q. Thank you, Your Honor. How are you?

18 A. Good, how are you?

19 Q. I have to back up a little bit. My
20 understanding if I heard you correctly is was
21 Lieutenant Laird was in charge of the criminal
22 investigation overall?

23 A. Lieutenants Laird and Wallace shared the role.

1 Q. Part of that, one of the steps, one of
2 investigative tools they were using was this review of
3 the evidence that came out of OCME, right?

4 A. We were keeping it separate, that way there
5 was the audit, then the criminal investigation. They
6 wouldn't get involved with the audit until there was
7 discrepancy that they needed to determine if it was
8 part of the criminal investigation. They wanted to
9 keep it two separate entities.

10 Q. But when they were doing the review of these
11 pieces of evidence, the purpose of that was what? Why
12 were they doing that? What were they told reviewing
13 all this stuff coming out of Medical Examiner off for
14 what?

15 A. Talking about the audit team?

16 Q. Yes.

17 A. To determine if there was any discrepancies or
18 any incident to support, not support, add to the
19 criminal investigations.

20 Q. They were looking for evidence to support the
21 criminal investigation?

22 A. No, they were looking to make sure that the
23 evidence wasn't compromised, and if it was that yes,

1 that would support the criminal investigations. That
2 is why they tried to keep it separate.

3 Q. You weren't concerned about any scientific
4 reliability of that stuff, were you?

5 A. What do you mean by that?

6 Q. Were you looking at it for purposes of
7 introduction into court?

8 A. All evidence is eventually, the probability of
9 being introduced into court would be accurate. So yes,
10 they would -- the purpose of the audit was to ensure
11 the evidence that was already at the ME's office had
12 not been compromised and if it had, to enlighten the
13 investigators already conducting a criminal
14 investigation so it could be addressed.

15 Q. You were not -- do you know the legal term
16 reliability for purposes of entering evidence?

17 MS. WRIGHT: Objection at this point.

18 MS. WALKER: I'm asking for his definition.

19 THE COURT: I will overrule at this point.

20 BY MS. WALKER:

21 Q. Reliability?

22 A. I would say that definition reliability would
23 be that there was no compromising of evidence to make

1 it reliable.

2 Q. But you don't have an exact definition?

3 A. I don't know.

4 Q. Did you instruct these officers to look at
5 whether or not this evidence was reliable?

6 A. I instructed officers to look at evidence to
7 see if this there was any evidence that was obviously
8 compromised and/or manipulated with in any manner.

9 Q. How did you come up with this review process?

10 A. Well, I mean, obviously, it was put on the
11 State Police pretty suddenly. We, as a department,
12 under the command of Captain Sawyer and under direction
13 from executive staff decided that the best way to
14 entertain and to resolve the perceived delinquencies, I
15 don't know if that is the best word for it, of the ME's
16 office and to salvage pending cases that we had worked
17 on as a law enforcement community would be to audit the
18 pending evidence so that we, as police officers, that
19 is why we used two so it wasn't just one independent
20 person's opinion, two independent police officers, in
21 my opinion the likelihood of them creating a conspiracy
22 would be a very low probability.

23 The purpose would be to create an audit so

1 that reliability of the evidence that could eventually
2 be introduced in a criminal courtroom in the State of
3 Delaware would, again, create reliability of the
4 evidence.

5 Q. So did you use the word reliability when you
6 were coming up with that?

7 A. When I talked to the audit team members?

8 Q. Yes.

9 A. I don't know the words I used.

10 Q. I just informed you about that word, you are
11 now saying that is -- okay, fine. I just wanted to
12 make sure.

13 You all kind of sat down get together and said
14 this is the best way to do this?

15 A. There was a meeting at conference room at
16 Troop 2 that I participated in and we decided as the
17 State Police and an agency that was overseeing the
18 investigation, that would be prudent for us to ensure
19 the evidence wasn't compromised that we would conduct
20 an audit.

21 Q. It sounds like you didn't consult with any
22 other agencies that might have had this happen?

23 A. I would have to defer that to the commanding

1 officer.

2 Q. You were not told they told us in Boston this
3 is what they did that worked well?

4 A. I was not part of that process.

5 Q. Who came up with the audit form; do you know?

6 A. No, I could speculate, but I don't know.

7 Q. Let me ask you this; you were talking about
8 being independent. That is why you wanted two people
9 on each review team, right, that is what --

10 A. I wouldn't say independent. I would say it
11 creates transparency and a little bit more
12 believability when there is two credible people
13 examining something versus one credible person. There
14 is less likelihood of a shadow of a doubt to be cast
15 over two people versus one person.

16 Q. You have all these agencies involved that
17 might or might not be a good idea to have the same
18 agency reviewing its own cases?

19 A. Well, that is exactly why -- obviously the
20 majority of Delaware State Police drug evidence is
21 created by the drug units. We didn't allow any of our
22 Governor's Task Force or drug unit to participate in
23 the audit for has purpose. Unfortunately there is not

1 enough law enforcement in the State of Delaware to pick
2 people that have no connection to evidence.

3 Q. Well, would it be ideal, let's say you wanted
4 to have someone review evidence in case X. And the
5 supervising officer, officer who is at the scene where
6 the drugs were seized, he is asked to review that case.
7 Would that be a good idea, you think; is that something
8 you were trying to avoid?

9 A. We weren't trying to avoid anything. What we
10 were trying to do is to resolve an issue, obviously, of
11 evidence that was compromised, to figure out what
12 evidence was compromised. Obviously, as cases proceed
13 forward, the prosecutors office and defense counsel has
14 met with investigating officers after the audit to look
15 at their specific pieces of evidence to determine on
16 their own.

17 Q. Back up. My question was this: You said that
18 you tried, if I understand correctly, you tried to keep
19 people or officers who were involved in drug task force
20 from being involved reviewing their own cases, right?

21 A. We wanted them to be remain not involved
22 because obviously going into this, you don't know who
23 your suspect is at the early onset of an investigation.

1 So we didn't want to go into it with a path towards a
2 specific person or entity. So the best way to resolve
3 it, would be to try to form a group of people that is
4 independent as possible from the majority.

5 Q. My next question was; along that same
6 rationale, if you have a specific officer involved in a
7 specific case, reviewing during this audit the same
8 case, my understanding is that is kind of what you are
9 trying to avoid from what you were talking about?

10 A. Most of the people --

11 Q. Was that the situation in general you were
12 trying to avoid?

13 A. We were trying to bring on the most
14 independent police officers that we could. And -- I
15 can't recall any time where someone opened a case that
16 they were involved in but it could have happened, but I
17 can't recall it.

18 Q. No one told you, right?

19 A. No one told me. People that were doing the
20 audit, most of them weren't many positions that were
21 investigators. Most of them were supervisors and in
22 the field that don't collect drug evidence or already
23 evidence technicians that their only involvement would

1 be transport.

2 Q. You were talking about the form with
3 Ms. Wright. You know what it looks like?

4 A. I am familiar with it.

5 Q. You mind if I show him even though he didn't
6 do this one?

7 MS. WALKER: If I could put into evidence.
8 There is two forms, one is a review sheet says OCME
9 investigation, ME control number FE 13-9883. A.B.
10 then second document also OCME investigation sheet,
11 that says ME control number, FE --

12 THE CLERK: They are pre marked.

13 MS. WRIGHT: For record clarification,
14 Ms. Walker is trying to introduce an audit form for
15 each case we are here for today. The State was going
16 to admit them with specific auditors. They are
17 premarked.

18 BY MS. WALKER:

19 Q. State's Exhibit 32 and State's Exhibit 34.
20 Look at 32. I believe it deals with Mr. Nesbitt's
21 case. Is this the form you were talking about?

22 A. Yes.

23 Q. That we don't know who made it, but it was

1 developed for purposes of this review, correct?

2 A. Yes.

3 Q. At the top it has ME control number,
4 identification number, right?

5 A. Identification number developed by the ME's
6 office.

7 Q. Then the next line says inspected by?

8 A. Polk and Parker.

9 Q. Do you know the full names?

10 A. Seth Polk and Richard Parker, goes by Rusty,
11 though.

12 Q. And then this was apparently done on March 6,
13 2014?

14 A. Right.

15 Q. And we you talked about the time, open time,
16 closed. It was opened, on 9:58 a.m. closed at 10:03.
17 The envelope itself was opened for five minutes?

18 A. Correct.

19 Q. You were talking about what it was your
20 understanding officers were supposed to do to determine
21 whether there was discrepancies was starting to look at
22 envelope, correct?

23 A. Yes.

1 Q. They would look at the outside of the
2 envelope, kind of scan it. I mean, I'm not saying they
3 didn't pay attention, they were looking on the outside?

4 A. For anything obvious.

5 Q. Did they rip open any tape at all?

6 A. They were instructed to cut in areas where
7 there was not tape already placed by the investigating
8 officer or the ME's office if it had been tested.

9 Q. They never pulled back any tape. They were
10 not supposed to?

11 A. They were instructed not to.

12 Q. They would open up the envelope itself,
13 assuming everything was cool on the outside. It is
14 your understanding they were supposed to be weighing
15 this stuff.

16 A. Depending on the drug, you wouldn't weigh
17 heroin, but depending on the drug, yes.

18 Q. Marijuana, for example?

19 A. Marijuana you would weigh.

20 Q. In your opinion, if you were reviewing a
21 marijuana case, would a ten-grams difference, if you
22 weighed it from what the report says, be a problem for
23 you?

1 A. No, I mean, it would be a discrepancy listed
2 on here if it was, in fact, I wouldn't consider it a
3 problem.

4 Q. You would make note of the discrepancy?

5 A. I would call it a discrepancy. It is not what
6 is listed on the envelope. I wouldn't call it a
7 problem. I mean, there is so many factors that go into
8 weight, i.e., scales used. Marijuana is a vegetable,
9 plant material, it could lose water and reduce its
10 weight.

11 There is so many variables. The scales that
12 we used aren't scientifically calibrated. So, I mean,
13 there is so many variables. It would be considered
14 discrepancy.

15 Q. Those could account for reasonable degrees of
16 differences, right?

17 A. Yes.

18 Q. What about 50 grams?

19 A. That would be a case-by-case judgement because
20 I seized marijuana that has lost pounds of weight
21 before. Especially when you pull the plant. Plants
22 dry up.

23 Q. Did you know why it lost those pounds?

1 MS. WRIGHT: Your Honor --

2 THE WITNESS: Because --

3 THE COURT: I think the important thing is, it
4 is not important particularly what he believes is a
5 discrepancy. Your question should be directed was
6 there any guideline given to those officers as to what
7 was a discrepancy. Or was it simply whatever they
8 believed and the fact whether he would call it a
9 discrepancy, ten pounds or one hundred pounds, maybe he
10 would. But the issue here is, at least from the expert
11 who testified, there was no guidance given. There was
12 no standard created. There was no one telling them
13 that if you hit a particular deviation in the poundage,
14 that should be marked a discrepancy. If you can focus
15 your questions on that.

16 What he thinks --

17 MS. WALKER: Respectfully, Your Honor, I
18 disagree. I will make the record. He is one of the
19 people in charge, and if he is asking the people to
20 make notations of discrepancies, part of -- even if he
21 is not going to have written guidelines, he is going
22 have them use their judgement, kind of give us an idea
23 what a reasonable judgement would be that he would be

1 expecting of the reviewing officers.

2 THE COURT: If there has been no standard
3 created, I think he will tell you there wasn't any,
4 then what the decision making may have if someone gives
5 him marijuana that had lost five grams of weight that
6 was put on would he have -- what would he have done
7 with that because he is the manager of the audit team
8 may have some relevance. But asking him whether or not
9 ten grams would be significant for him or 50 grams, it
10 personalizes, and that is not -- it has only
11 significance as to what he would have done as a
12 supervisor if it had been brought to his attention. If
13 you want to ask it in that form, I will let you.
14 Simply what he thinks is not important.

15 MS. WALKER:

16 Q. How about what he would expect to be marked a
17 discrepancy?

18 A. If it did not match the envelope, I would
19 expect it to be marked a discrepancy.

20 Q. And part of that, I guess, would be they would
21 be obviously be able to come up with a discrepancy,
22 need to weigh it, right?

23 A. Right.

1 Q. You provided scales for everybody?

2 A. Every station had a scale.

3 Q. They were told to weigh this stuff?

4 A. Told to weigh it.

5 Q. If you look at this one document, you see
6 anywhere where there is a weight on it?

7 A. No, but the discrepancy says no, so I would
8 imagine that weight matched what the envelope said
9 that.

10 Q. Based on --

11 MS. WRIGHT: If I may, the auditing officer
12 can testify to this. Right now, Sergeant Lloyd is
13 speculating, imagining what the auditor was supposed to
14 do. The auditor is coming in next to testify.

15 THE COURT: The auditor is just going to say I
16 opened it up and I weighed it, it is X. If there is a
17 discrepancy, which I think -- I don't know I think
18 based on representation there may be some difference in
19 weight, from what I gather this is the guy who will
20 make the call as to whether or not it is considered
21 just an administrative discrepancy, goes on, or it goes
22 to criminal investigation. That is what he said. He
23 is one of three.

1 MS. WRIGHT: Sergeant Lloyd testified that
2 Lieutenant Laird and Wallace. Lieutenant Laird is
3 going to testify to that tomorrow.

4 THE COURT: That is not what he said. He said
5 he would make that initial call. One of the three
6 sergeants, then if then would eventually go up to the
7 commanding officer of the team, but the initial call
8 was his. If I am wrong, he needs to tell me. That is
9 what I understand.

10 THE WITNESS: They would come to me, I would
11 go to Laird and Wallace, and they would be the deciding
12 factor between administrative and criminal discrepancy.
13 The audit team members would alert the on-duty
14 supervisor, if it was McCarthy and Taylor, they usually
15 call me. I was in the building anyway. I was kind of
16 like the middle man for both prongs of the
17 investigation. Laird and Wallace would make the final
18 determination of that.

19 THE COURT: It's your understanding, if I
20 heard you correctly, that if it said 15 grams on the
21 envelope and they weigh it, it did not weigh 15 grams,
22 that was a discrepancy?

23 THE WITNESS: That is a discrepancy.

1 THE COURT: Should be brought to your
2 attention?

3 THE WITNESS: That would go to Laird and
4 Wallace. They would decide if it was an administrative
5 discrepancy or criminal -- part of the criminal
6 investigation.

7 BY MS. WALKER:

8 Q. Thank you, Your Honor.

9 Also look real quick at the same format.
10 State's Exhibit 34, which is the review sheet for the
11 Nesbitt -- Reed case.

12 Looks like in this case, who is SP. Do you
13 know?

14 A. I believe Seth Polk.

15 Q. Then?

16 A. Tom -- I can't pronounce his last name,
17 Maiura.

18 Q. No discrepancy noted?

19 A. The way it was relayed to them, the way I
20 would read that after seeing that form, that evidence
21 matched the envelope.

22 Q. Weight was basic -- is the same?

23 A. There is no discrepancy.

1 Q. This would not be brought to anybody's
2 attention?

3 A. Nope.

4 Q. You mentioned that they had tables set up in
5 this room where they were doing the review, different
6 teams. How many teams were in there at one time. Do
7 you recall?

8 A. Routinely three, sometimes four.

9 Q. How were the tables set up, like, space-wise,
10 how much space did they have in there?

11 A. Each had a table about the size of -- length
12 of the prosecutor's table, half the width.

13 Q. So teams would be working on stuff at the same
14 time, right?

15 A. Yes.

16 Q. So there were different envelopes opened in
17 that room at the same time?

18 A. At the specific work stations they would only
19 have one opened at a time. In the room there would be
20 more than one envelope at a time, on occasion there
21 were large cases where they would only have one open at
22 a time.

23 Q. One follow-up question, if there was no weight

1 placed on an envelope, were the reviewers to, for
2 example heroin, no weight on there but a listing of a
3 number?

4 A. 1200 bags.

5 Q. How --

6 A. We would count every bag that was in the
7 heroin seizures.

8 Q. And would that be the same if they were off by
9 a bag or two, would you expect a discrepancy to be
10 noted?

11 A. There would be a discrepancy. They would say
12 counsel, if it was 1100 bags on the evidence envelope,
13 they counted 1098 bags, I would expect a discrepancy
14 written in the notes. 1098 bags counted by, for the
15 sake of names, Seth Polk and Tom Maiura.

16 Q. Based on your training and experience, do you
17 know a bundle of, what would that amount to?

18 A. Bundle, you said marijuana, heroin.

19 Q. Heroin?

20 A. Heroin bundle is 13 bags. At that time, the
21 estimated value of a heroin bag was .025 grams. It has
22 since been modified to .015.

23 MS. WALKER: That's all. Thank you.

REDIRECT EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

BY MS. WRIGHT:

Q. For your purposes of your testimony today, just to clarify: As a supervisor, you instructed auditors to note whether there are any discrepancies with regard to anything that is on the envelope, different from the inside, correct?

A. Correct.

Q. That's it?

A. This's it. That's all the supervisors in the room at the time were supposed to do. If there was a discrepancy, they would notify Lieutenant Laird and Wallace who made the final decision on.

Q. It's not clear whether the auditors were making that determination or not. They are not?

A. No.

Q. Lieutenant Laird?

A. Wallace and Laird were the sellers of the whole investigation.

MS. WRIGHT: Thank you. No further questions.

MS. WALKER: Nothing, Your Honor.

THE COURT: You can step down, sir. Anyone else want to try get this.

1 MS. WRIGHT: Call one of the auditors who came
2 up from down state.

3 RICHARD R. PARKER, JR.,

4 having been first called by the State was sworn on
5 oath, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. WRIGHT:

8 Q. Good afternoon.

9 A. Good afternoon.

10 Q. Your rank is Corporal Parker?

11 A. Yes, ma'am.

12 Q. Corporal, if I can start off, by whom are you
13 employed?

14 A. I am a member of the Delaware State Police.

15 Q. What troop?

16 A. Troop 4.

17 Q. Corporal Parker, can you tell us did there
18 come a time where you assisted your agency, Delaware
19 State Police, with an audit of the Office of the Chief
20 Medical Examiner drug evidence?

21 A. Yes, ma'am.

22 Q. Can you tell us approximately for how long you
23 participated in that audit process?

1 A. Two weeks during the course of the audit.

2 THE COURT: Tell me what you do at Troop 4.

3 THE WITNESS: I'm a crime scene investigator
4 slash evidence technician.

5 THE COURT: Thank you.

6 BY MS. WRIGHT:

7 Q. During the two weeks that you participated in
8 the audit of the Medical Examiner's drug evidence, can
9 you tell us what instructions did you receive with
10 regards to what your role was as an auditor?

11 A. We were instructed, various auditors and I, to
12 review evidence from the Medical Examiner's Office, to
13 determine, first off, if the evidence had been tampered
14 with, then to ensure that the weights or numbers that
15 were of the quantities of the submitted evidence was
16 correct on the envelopes through the course of
17 weighing, these weights were verified by a second
18 auditor that was with me in teams of two that we
19 utilized.

20 Q. Tell us, generally, how this works, teams of
21 two, what were there, in terms of the actual
22 examination, was only one person doing a review
23 examination of the drug evidence envelope, or both of

1 you?

2 A. Usually, procedural would be handed a piece of
3 evidence being an envelope or bag, what have you. We
4 would be handed that, one of us would open the bag,
5 first examine the evidence, determine if there were any
6 signs of tampering, that was done by both of us to make
7 sure, double check on each other. Once we both
8 determined there was no signs of tampering, we would
9 then open the envelope, bag, what have you, in a
10 different location than where it had been sealed during
11 the initial placement of evidence into the container.

12 Remove the evidence at that time, if it was
13 something that needed to be counted, bags, we would
14 count those, something that needed to be weighed, we
15 would use the scale provided to us.

16 We would both confer that weight or those
17 numbers were correct.

18 Then once we had done that, we would reseal,
19 place the evidence back inside of the appropriate
20 container, reseal it, reseal the container, then fill
21 out paperwork that we had been presented with, form
22 that we had been given.

23 Q. Generally, if you notice a difference in

1 weight from what it says on the envelope and the
2 evidence that you weighed, who do you bring that to, if
3 you bring it to anybody's attention?

4 A. If we did notice that a reasonable difference,
5 we would contact the supervisor in charge for that
6 particular day.

7 Q. I will place on the projector State's
8 Exhibit 32. Do you recognize that form?

9 A. Yes, ma'am, I do.

10 Q. What is it?

11 A. It was a form that was issued to us, as far as
12 filling out once we conducted an inspection of evidence
13 to us.

14 Q. Whose writing is that?

15 A. That is mine, ma'am.

16 Q. So if you are the writer for part of the
17 two-person audit team, did you have any other role with
18 regards to this particular case?

19 A. Other than observing the evidence as from the
20 other officers who showed it to me, and completing
21 information, that would have been it, just confirming
22 what his observations were.

23 Q. So Corporal Polk would open up and you would

1 be present at he did that, review the envelope, you
2 would review it, as well, the envelope?

3 A. Yes, ma'am.

4 Q. So you were there with him every step of the
5 way?

6 A. We sat no more than a foot away from each
7 other at a small tables.

8 Q. Did you verify everything that he did?

9 A. Yes, ma'am.

10 Q. Bring your attention State's 33. Lighting may
11 be off. That is the -- understanding that you examined
12 hundreds if not thousand of pieces of evidence in this
13 investigation, that is one of the envelopes associated
14 with this complaint number. Can you tell us,
15 generally, when there is inspection of the envelope,
16 where would, as an auditor, where would you look in
17 term of looking for tampering, evidence of compromise,
18 envelope being compromised?

19 A. Around the evidence tape, see if it had been
20 tampered with, any of the factory seams of the bag
21 itself, any of the creases within the bag, anywhere
22 that it would be evidence or look like someone was
23 trying to hide any kind of intrusion into the bag

1 itself.

2 Q. With regards to this complaint number, did you
3 notice anything with regards to the evidence envelopes
4 for this complaint number for Hakeem Nesbitt?

5 A. No, ma'am, I did not.

6 Q. Direct your attention to State's Exhibit 35
7 without objection. Those are photos of the actual drug
8 evidence. Can you tell us was that packaging the same
9 way generally when you inspected the envelope?

10 A. Excluding the large plastic bag around the
11 smaller bag inside that contained the evidence, yes.
12 Most of the time it was something similar to that.

13 Q. Can you tell us, especially with marijuana,
14 how did you go about weighing, did you take the actual
15 marijuana out of the bag, did you just take that
16 internal bag and put it on a scale, explain that?

17 A. We would just take the internal bag, place it
18 on a scale, confirm with our partner that the weight
19 was what we saw on the scale.

20 Q. Can you tell us if you noticed a difference in
21 the weight, would you have documented that on the OCME
22 investigation form?

23 A. Yes, ma'am.

1 MS. WRIGHT: No further questions, Your Honor.

2 CROSS EXAMINATION

3 BY MS. SAVITZ:

4 Q. This is 35. How much did this marijuana
5 weigh, sir?

6 A. Unless I see the bag, I couldn't tell you how
7 much it weighs right now.

8 Q. This is 32. This has no weight on it, right?

9 A. Right, ma'am.

10 THE COURT: Can counsel come to sidebar.

11 (Discussion held off the record.)

12 (The following sidebar conference was held.)

13 THE COURT: Take a breath. I have seen you
14 this way before. Take a breath. You were mad when you
15 walked up to the podium. You are not going to be
16 effective, and you are just going to make the Court and
17 this officer mad. So here is my advice to a young
18 lawyer, take a breath, then calmly go about your
19 business because you are about ready to do things that
20 will not be pleasant, and will not get you anywhere.
21 You can take advice or not, but that is my advice to
22 young lawyer who I would suggest taking a breath.

23 (Sidebar conference concluded.)

1 BY MS. SAVITZ:

2 Q. No weight, right?

3 A. No weight.

4 Q. Did you take notes? I don't mean did you
5 complete this form. Did you, during the review at
6 Troop 2 take notes?

7 A. No, ma'am.

8 Q. Did Trooper Polk, is Polk part of the State
9 Police, too?

10 A. No, ma'am.

11 Q. Did Officer Polk take notes?

12 A. You would have to ask Officer Polk. I know he
13 was taking notes for cases involving New Castle County
14 Police. I am unaware of him taking notes anybody
15 involving Delaware State Police.

16 Q. You were sitting next to him?

17 A. Yes, ma'am.

18 Q. Today, you don't recall that he took notes?

19 A. No, ma'am.

20 Q. Today it is your recollection he did not take
21 any notes?

22 A. Correct, ma'am.

23 Q. This is 33, can you see that okay?

1 A. I can see the bag.

2 Q. You guys opened, first of all, who took that
3 picture; do you know?

4 A. I don't know, ma'am.

5 Q. Did you take this picture?

6 A. No, ma'am, I did not.

7 Q. Did you guys take pictures during the review
8 at Troop 2?

9 A. No, ma'am, I did not. I know I did not. If
10 there were pictures taken by other investigators, I
11 cannot say. I know I did not take any pictures of any
12 evidence while at Troop 2.

13 Q. What --

14 This is blue evidence tape, I know this is
15 sort of obvious. You deal with it all the time, right?

16 A. Yes, ma'am.

17 Q. Did you or Officer Polk put that blue evidence
18 tape on that bag at Troop 2?

19 A. No, ma'am.

20 Q. Where did you open that bag at Troop 2?

21 A. Most likely opening of a bag would have been
22 done at the bottom of the bag. If you could slide
23 picture up.

1 More of a shadow. We would have opened -- we
2 were instructed not to open go through where the normal
3 seams were or evidence tape was applied. We were
4 instructed to open along a seam, the factory seam, at
5 the bottom preferably.

6 Q. If you had an envelope like this here, can you
7 see this?

8 A. Yes, ma'am.

9 Q. This is a more traditional evidence envelope,
10 right?

11 A. Yes, ma'am.

12 Q. You are the evidence tech guy so you know what
13 they look like?

14 A. Oh, yes, ma'am.

15 Q. You are going to take, sort of see tape here
16 is that what I am looking at on the edges?

17 A. Yes.

18 Q. That looks like blue evidence tape?

19 A. Yes, ma'am.

20 Q. Looks like it has been cut, right?

21 A. Correct.

22 Q. So when you were doing the audit -- I don't
23 mean to point -- when you and Polk were doing the audit

1 if that come to you sealed here by the arresting
2 officer, or seizing officer, you would have cut here
3 maybe, you can see my finger. You would have cut along
4 maybe the bottom edge, or opposite edge of the
5 envelope, right?

6 A. Away from any sealed areas.

7 Q. Are you familiar with the Tyrone Walker case?

8 A. Honestly, I am not.

9 Q. Are you familiar with a case in Kent County
10 Superior Court in which a trooper took the stand and
11 said this evidence envelope does not appear to have
12 been tampered with, then he opened and 64 little blue
13 pill were no there and were replaced with pink blood
14 pressure pills?

15 A. I am aware of the case in general details.

16 Q. If I told you that was Tyrone Walker, you
17 wouldn't have a problem with that, right?

18 A. It you say that was Tyrone Walker, I accept
19 that.

20 Q. Are you aware of how in the Tyrone Walker
21 case, it is alleged there the evidence was removed and
22 replaced with not real evidence?

23 A. I am aware there was evidence substituted, as

1 far as further details I don't know.

2 Q. Were you guys and people, girls, ladies,
3 officers, told specifically to review the evidence tape
4 that was already on the envelopes when -- you sit down
5 with Officer Polk at a table that is this long, half as
6 wise, you say we are ready to go. Sergeant Lloyd or
7 McCarthy gets case number 12345, here is your envelope,
8 right?

9 A. Correct.

10 Q. Were you specifically told to check the tape
11 that was already there?

12 A. Yes.

13 Q. What were you told to look for?

14 A. Signs of tampering, if it had been cut,
15 officer's initials or IBM identifier was across the
16 tape indicating it has been sealed and initialed by
17 that officer.

18 Q. Was anybody lifting that tape to see if there
19 were any holes under the tape on those envelopes?

20 A. Other than a visual inspection of the envelope
21 of the tape itself, that is all what we were looking
22 at, maybe a manual feel over it. As far as any lifting
23 of any tape was not done, at least on this particular

1 case.

2 MS. SAVITZ: May I have a minute.

3 THE COURT: Yes.

4 (Discussion held off the record.)

5 BY MS. SAVITZ:

6 Q. I will put 33 back up. You don't actually see
7 any other tape on this, right, other than this blue
8 tape here?

9 A. From that picture, no, ma'am.

10 Q. You have no independent recollection of this
11 bag?

12 A. No, ma'am, I do not.

13 Q. You have no independent recollection of what
14 this bag weighed when Polk weighed it?

15 A. No, ma'am.

16 Q. Right, that was Polk with you, you were the
17 scribe, he was the other guy?

18 A. That is correct.

19 Q. Did you know him before that day?

20 A. No, ma'am, I did not.

21 MS. SAVITZ: Nothing further, Your Honor. I
22 am going to return, 32, 33, 34 and 35.

23 THE COURT: Thank you. Officer, when you

1 testified questioning from Ms. Wright, you used the
2 term reasonable discrepancy. Were you given any
3 discretion to decide whether or not the weight, say, of
4 marijuana that was weighed five grams, it weighed in at
5 4.9 grams that that was something you didn't have to
6 bring to a supervisor, or it did not match the
7 envelope, you had to bring it to someone's attention?

8 THE WITNESS: Any time there was a discrepancy
9 we did bring it to a supervisor, it was what we kind of
10 classified administrative discrepancy versus criminal
11 discrepancy. We left the supervisor to make the actual
12 decision on it. There was no actual set standards if
13 it was more than this, less than that, but there was we
14 basically we're going off our training, knowledge and
15 experience that if we could determine is this
16 legitimately a criminal act or was just an
17 administrative error.

18 THE COURT: I want to try to be clear as I can
19 so I know what I have. There appears to be officers
20 who have testified that they were instructions that
21 were given to the audit team was if it did not match
22 what was on the bag, regardless of your personal belief
23 as to why, it does not match, you were to bring that to

1 the attention of one of the sergeants on call. Those
2 sergeants would take it to Lloyd and to whoever oversaw
3 the investigation, and they would then make whether it
4 was an administrative discrepancy or part of a criminal
5 investigation; is that correct?

6 THE WITNESS: That is correct, sir.

7 THE COURT: So you weren't given any
8 discretion to decide your own self, you and Mr. Polk,
9 that weight is close enough. If the weight did not
10 match, you had to tell someone else?

11 THE WITNESS: Correct.

12 THE COURT: Thank you.

13 RE CROSS EXAMINATION

14 BY MS. SAVITZ:

15 Q. May I ask a follow-up to that?

16 THE COURT: Sure.

17 MS. SAVITZ: Never mind.

18 MS. WRIGHT: No redirect.

19 THE COURT: You may step down. Thank you
20 officer. Ladies and gentlemen, that concludes our day.
21 As I e-mailed counsel, because of a funeral of Justice
22 Walsh tomorrow morning, the court will not be in
23 session. It will reconvene at 1 o'clock to continue

1 the hearing. Thank you all very much. It would,
2 perhaps, be helpful nothing has to be done immediately,
3 but if copies of the Exhibits were provide it would be
4 helpful. There is some documents that the Court does
5 not have, would help as I am listening to have them.
6 If you have a group of agreed upon Exhibits if you
7 could make copies for the Court that would be helpful.
8 Thank you all very much.

9 (Whereupon the proceedings were adjourned.)

10
11
12
13
14
15
16
17
18
19
20
21
22
23

CERTIFICATE OF COURT REPORTER

I, John P. Donnelly, RPR, Chief Court Reporter of the Superior Court, State of Delaware, do hereby certify that the foregoing is an accurate transcript of the proceedings had, as reported by me, in the Superior Court of the State of Delaware, in and for New Castle County, in the case herein stated, as the same remains of record in the Office of the Prothonotary at Wilmington, Delaware. This certification shall be considered null and void if this transcript is disassembled in any manner by any party without authorization of the signatory below.

WITNESS my hand this 1st day of SEPTEMBER, 2014.

Cert. # 161-PS

/s/ John P. Donnelly, RPR
Chief Court Reporter