

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,

v.

ID

Nos. 1310006496

1310018849

BRAAHEIM REED,  
HAKEEM NESBITT

Defendants.

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

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TRANSCRIPT OF OCME HEARING

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1 August 20, 2014  
2 Courtroom No. 8B  
3 1:30 p.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

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1 MS. WRIGHT: Good afternoon, I believe they  
2 are bringing in the defendant.

3 MS. WALKER: If I can handle a housekeeping  
4 matter, we talked yesterday about Mr. Daneshgar's  
5 testimony from the first hearing. So the Court is  
6 aware we have Court Exhibit 1, July 8th testimony of  
7 Mr. Daneshgar, pages one through two, then pages 131  
8 through 179. Court Exhibit 2 is going to be  
9 Mr. Daneshgar July 9th testimony.

10 THE COURT: Thank you.

11 MS. WRIGHT: State's first witness is  
12 Lieutenant John Laird. May the State call Lieutenant  
13 Laird?

14 THE COURT: You may.

15 JOHN LAIRD,  
16 having been first called by the State was sworn on  
17 oath, was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MS. WRIGHT:

20 Q. Good afternoon, Lieutenant. Start off with by  
21 whom are you employed?

22 A. Employed by the Delaware State Police.

23 Q. How long have you been with Delaware State

1 Police?

2 A. Approximately 15 years.

3 Q. Can you explain for the Court your current  
4 rank and position with Delaware State Police?

5 A. I am a Lieutenant and I am currently assigned  
6 to Troop 2 criminal Investigation Unit as Deputy Troop  
7 Commander.

8 Q. Explain for us what those typical day-to-day  
9 duties, roles and responsibilities you have?

10 A. Sure. I currently supervise the New Castle  
11 Conti drug unit, New Castle County Governor's Task  
12 Force, State wide drug diversion unit, New Castle  
13 County SROs, New Castle County day division.

14 Q. Lieutenant, for purposes of your testimony  
15 today, I will be asking you questions regarding your  
16 investigation of the controlled substance lab of the  
17 Office of the Chief Medical Examiner. Can you tell us  
18 when did you first get involved in this investigation?  
19 What is your role in the investigation?

20 A. Sure.

21 I am Chief Investigative Officer in the case,  
22 and I was assigned this investigation back on  
23 February 20, 2014.

1           Q. Can you explain your roles and duties as a  
2 Chief Investigative Officer for this investigation?

3           A. Sure.

4           Once it was determined that there were thefts  
5 occurring and the Office of the Chief Medical Examiner,  
6 specifically the controlled substance lab, I was  
7 assigned to investigate those crimes, and along with  
8 Lieutenant Wallace of Troop 3.

9           Q. When you took over the investigation on  
10 February 20th, walk us through what, if anything, you  
11 did at the Office of the Chief Medical Examiner's  
12 office, specifically the controlled substance lab?

13          A. Sure.

14          One of the things we did initially was to shut  
15 down the controlled substance lab, which included the  
16 drug vault where all of the drug evidence that was at  
17 OCME was being held.

18          Q. Can you tell us when you walked into the drug  
19 vault, what, if anything, was going on as your team  
20 walked in?

21          A. We got there on the afternoon of  
22 February 20th. They were in the process of completing  
23 their own internal audit, and at that time we stopped

1       them, and we took over control of the drug vault  
2       itself.

3           Q.   Referring to your team, can you tell us how  
4       many officers were part of your team?

5           A.   That day there were probably four or five  
6       troopers there. Throughout the investigation, we have  
7       had as many 10, 15 troopers assigned on this case.

8           Q.   With regards to your investigation, can you  
9       tell us with regards to evidence in the vault that you  
10      secured, that evidence that you secured, were you able  
11      to determine whether there are any criminal  
12      discrepancies in those cases that were not tested by  
13      the Medical Examiner's Office?

14          A.   There were some.

15          Q.   Lieutenant, I am going to hand you a copy of  
16      what's been marked previously as Defendant's Exhibit 4.  
17      What is that, do you recognize it?

18          A.   A preliminary findings report issued by the  
19      Department of Justice for the missing drugs from the  
20      controlled substance lab.

21          Q.   Will this report assist you in walking through  
22      cases that you discovered criminal discrepancy in that  
23      were not tested by the Medical Examiner's Office?

1 A. Yes.

2 Q. Walk through one by one how many cases total  
3 were there in terms of cases where there was criminal  
4 discrepancies discovered, and not tested by Medical  
5 Examiner's Office?

6 A. I believe there were 13.

7 Q. Direct you to page 31 of Defense Exhibit 4.  
8 Paragraph number three.

9 Are you able to see that clearly?

10 A. Yes.

11 Q. Can you tell us in number three, are you  
12 familiar with this case?

13 A. Yes.

14 Q. Give us a general description as to whether  
15 this was tested by the ME's Office, and the nature of  
16 the discrepancy that you recovered?

17 A. It was not tested by ME's Office and during  
18 our initial audit we discovered 58 Oxycodone pills were  
19 missing from the envelope and these 58 pills were  
20 replaced with various pills, and we also discovered  
21 there were two different types of Delaware State Police  
22 evidence tape on the envelope.

23 Q. What can you tell us about the different type

1 of tapes?

2 A. I should say two different colors, shades of  
3 blue on the envelope on that specific case.

4 Q. Explain that for us in terms of the colors  
5 what you were seeing, and why you determined it was  
6 compromised, that envelope?

7 A. Sure.

8 Obvious sign to us was that all 58 Oxycodone  
9 pills that were supposed to be there were not there,  
10 and the pills were replaced with other various  
11 medications.

12 Q. With regard to the tape, could you -- what  
13 were the colors of the tape?

14 A. Would have been blue, really darker, and  
15 lighter blue, which would have been a sign that all  
16 that tape was not put on by the initial investigating  
17 officer.

18 Q. You personally observed these?

19 A. Yes.

20 Q. Two different types of tapes?

21 A. Yes.

22 Q. This was a Delaware State Police case?

23 A. Correct.

1 THE COURT: Lieutenant when you say that, does  
2 it have Delaware State Police on it?

3 THE WITNESS: Yes, it does.

4 THE COURT: Just not evidence, it is blue, it  
5 has Delaware State Police?

6 THE WITNESS: Correct.

7 THE COURT: Thank you.

8 BY MS. WRIGHT:

9 Q. For clarification purposes, for each shade,  
10 there was two different shades of blue?

11 A. Correct.

12 Q. Both types of tape had DSP?

13 A. They were DSP.

14 Q. Move to the same page 31 of the Exhibit 4, can  
15 you tell us the agency and the nature of that case, and  
16 the criminal discrepancies that you found?

17 A. Once again, it was a DSP case. That was two  
18 separate envelopes, and one contained 44 pills, one  
19 contained 45 pills. So this total from that case, 99  
20 pills were missing and these both of these envelopes  
21 were -- pills from these envelopes were replaced with  
22 various pills.

23 Q. Can you tell us about the point of entry, were

1 you able to determine that?

2 A. Once again, I believe it was two different  
3 types of tape that we found on these envelopes. Once  
4 again, two different shades of Delaware State Police  
5 evidence tape.

6 Q. Were you able to determine based on those two  
7 different color which was original packing, versus  
8 which was used to reseal?

9 A. No.

10 Q. If I can direct your attention to the bottom  
11 of page 31 going into page 32, number five.

12 Milford Police Department case?

13 A. Yes.

14 Q. Tell us about that case in terms of --

15 THE COURT: Lieutenant, before you get there  
16 so I don't forget the question. If you know, this may  
17 be a detail that is beyond what you remember, is the  
18 tape in two different locations in both of these, do I  
19 have a situation where the blue tape is for obviously  
20 the officer opened up the envelope, put evidence in,  
21 taped with his Delaware State Police tape. Then the  
22 suspicion is someone opened the envelope then re-taped  
23 with Delaware State Police tape.

1 THE WITNESS: Correct.

2 THE COURT: Is it the same area that is being  
3 taped?

4 THE WITNESS: I can't remember specifically on  
5 those three envelope where that tape was placed.

6 THE COURT: Okay.

7 BY MS. WRIGHT:

8 Q. May I proceed?

9 THE COURT: You may, sorry.

10 BY MS. WRIGHT:

11 Q. For number five, Milford Police, walk us  
12 through what made you determine that this evidence was  
13 criminally compromised?

14 A. Sure. Milford PD it was discovered that 60  
15 Oxycodone pills were missing from this envelope and  
16 there was also discovered there was cut in the V fold  
17 of the envelope.

18 Q. Describe that for the Court?

19 A. Correct, was a larger envelope, and where it  
20 opens up in the middle there was a cut, so if the  
21 envelope is pushed down, you wouldn't be able to see  
22 it.

23 Q. Next we have, direct your attention to page

1 33, number 19. Can you tell us the agency and for this  
2 case the nature of the drugs and level -- what points  
3 of entry were you able to determine for this case?

4 A. It was approximately 280 grams of marijuana  
5 missing from this case. We are not able to determine  
6 definitively where entry was made into this package.

7 Q. With regards to the packaging, was this a box,  
8 or in an envelope?

9 A. Would have been in a box.

10 Q. Did you notice anything at all in terms of the  
11 type of tape used?

12 A. No, we believe that tape was removed, and new  
13 tape was put on, but we can't say that definitively in  
14 this case.

15 Q. Number 20, tell us about that case?

16 A. Once again, Delaware State Police case, and  
17 150 Oxycodone pills were removed from the envelope, and  
18 the 150 Oxycodone pills were replaced with 76  
19 promethazine pills.

20 Q. What, if anything, can you tell us in terms of  
21 the nature of the packaging for this case?

22 A. Once again, we couldn't say definitively how  
23 this package was entered.

1           Q. Turn to page 34. Paragraph enumerated 24.  
2 Can you tell us about that case?

3           A. Sure. This is a Delaware State Police case.  
4 There were 502 Oxycodone pills removed from the  
5 envelope, and 502 Oxycodone pills were replaced with  
6 various pills and we discovered that the left side of  
7 the envelope had been tampered with and resealed with  
8 scotch tape.

9           Q. When you say tampered with; what do you mean?

10          A. Cut and resealed with scotch tape.

11          Q. Paragraph 34. Page 35?

12          A. That was a DSP case, determined that 165  
13 Oxycodone pills were missing from the envelope. Once  
14 again, the pills were replaced with miscellaneous  
15 pills, and we were unable to determine definitively how  
16 this package was compromised because this was one that  
17 was initially discovered by staff at OCME during their  
18 internal audit. They had cut into that envelope.

19          Q. Who were the people that had access to that  
20 envelope?

21          A. That would have been Jack Lucy, Laura Nichols,  
22 Kelly Georgi.

23          Q. Turn to number 38. Bottom of the page.

1           A. That is a Wilmington Police Department case,  
2 it was discovered 118 Oxycodone pills were missing from  
3 the envelope. This was a large envelope, and when you  
4 open it, once again, we found a hole in the V fold of  
5 the envelope.

6           Q. Next paragraph, 41?

7           A. This was a Delaware State Police case. We  
8 discovered 99 Oxycodone pills were missing from this  
9 envelope. We also discovered a cut in the evidence  
10 tape and scotch tape was used to reseal the evidence  
11 envelope.

12          Q. Direct your attention to number 42, it is the  
13 State's understanding that number 42 is a part of the  
14 pending criminal investigation, correct?

15          A. That is correct.

16          Q. So you won't be able to bring out much details  
17 other than what is indicated in paragraph 42, correct?

18          A. Correct.

19          Q. For record purposes, explain to us what was  
20 missing from --

21          A. 28 grams of marijuana.

22          Q. That was a Delaware State Police case, 2013?

23          A. That is correct.

1           Q.   Number 44, can you tell us about what was  
2 discovered here in terms of the envelope, or packaging  
3 being compromised?

4           A.   Sure.   This is a New Castle County Police  
5 case, and there were approximately 3.2 pounds of  
6 marijuana missing from this case.   The box appeared, it  
7 was a large box, box appeared to have been entered from  
8 the bottom and there was blue and white evidence tape  
9 and packing tape used to reseal the bottom.

10          Q.   Lieutenant, did I miss number 43, that was  
11 part of the --

12          A.   No, that is -- um-hmm.

13          Q.   If I can turn your attention to number 44.   I  
14 think we just discussed that one.   Number 45?

15          A.   45.   Two separate packages discovered 170  
16 Oxycodone pills were missing from the one envelope, and  
17 this envelope had been cut, and resealed with scotch  
18 tape.   And various pills were used as fillers in  
19 replacing Oxycodone pills.   The other package was -- it  
20 was a brown paper bag, and it was cut from the top, and  
21 approximately 2.6 pounds of marijuana was missing from  
22 this package.

23          Q.   Finally, the 13th case that you discovered,

1 number 46.

2 A. This was a DSP case, it was discovered that  
3 1.8 pounds of marijuana was missing from this case.  
4 This was a block of marijuana. We opened the case, you  
5 could clearly tell that marijuana had been pulled from  
6 the block from the single block of marijuana.

7 Q. How was that packaged?

8 A. It was in wrap, a single block, one single  
9 block of marijuana. You could see where a portion of  
10 that block had been pulled off.

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. Lieutenant, with regard to the overall  
16 investigation, can you tell us how the DSP audit worked  
17 with regards to that investigation?

18 A. Sure.

19 February 20th, the drug lab was shut down. It  
20 was determined shortly thereafter that all the drug  
21 evidence that was stored at OCME would be back --  
22 returned to Troop 2 for an audit.

23 And that is when the Department of Justice and

1 DSP reached out to other agencies for their  
2 participation to assist in this audit. Within a few  
3 days, we had a meeting, brief meeting at Troop 2, with  
4 various agencies sending representatives to this  
5 meeting to participate in the audit. And all of the  
6 members were briefed about the case, and where it stood  
7 at that point, and what we are looking to accomplish  
8 with the audit.

9 Q. What were you looking to accomplish with the  
10 audit?

11 A. Looking to identify -- obviously at that point  
12 we didn't know the scope of this problem. We were  
13 looking to identify as quickly as possible any  
14 additional criminally compromised cases.

15 Q. Lieutenant, there's been a lot of discussion  
16 throughout this case about criminally compromised. Can  
17 you explain what you mean when say you are looking for  
18 evidence that is criminally compromised?

19 A. Sure. Obviously early on we didn't know who  
20 was responsible, how many people were responsible for  
21 these thefts, at what point it was occurring at OCME,  
22 and we wanted to be sure if we considered a case a  
23 criminally compromised case, we wanted to be

1 100 percent certain.

2 So what members of the audit team were  
3 instructed to do was, you know, inspect the envelope,  
4 inspect the package initially, look for any signs of  
5 tampering and inspect the contents of that envelope or  
6 package and, you know, whether it be pills, count the  
7 pills, identify them, count the heroin bags, or weigh  
8 drugs such as marijuana and cocaine.

9 We wanted to -- if a case -- there was a  
10 question about a case, where they were not sure, they  
11 would notify Lieutenant Wallace or myself. If there  
12 was some type of discrepancy where they thought it  
13 might be a criminal compromise, notify us, take a  
14 closer look at the case from there and investigate  
15 further.

16 Q. Who would make the ultimate decision as to  
17 whether evidence is criminally compromised versus human  
18 error or administrative discrepancies?

19 A. Lieutenant Wallace or I.

20 Q. Lieutenant, can you tell us in terms of the  
21 scope of the audit, approximately how many pieces of  
22 drug evidence were inspected?

23 A. It was over 9000 pieces of evidence alone that

1 were removed from the OCME that were inspected at Troop  
2 2.

3 Q. You were not part of the oversight of the  
4 audit team?

5 A. I was not involved in the daily operations of  
6 the audit, no.

7 Q. Who would that have been, who conducted the  
8 oversight?

9 A. Would have been -- was one of three sergeants  
10 in there at all times, Sergeant McCarthy, Taylor or  
11 Sergeant Lloyd.

12 Q. Would those three sergeants be the ones that  
13 reported to you?

14 A. Correct.

15 Q. Can you tell us generally, since I am sure you  
16 will be asked, how did you consider whether an item is  
17 criminally compromised considering human errors,  
18 numbers being transposed, administrative errors, walk  
19 us through the process you went through as you were  
20 confronted with the evidence?

21 A. We looked at everything. So it wasn't, you  
22 know, a case is brought to our attention, you know,  
23 whether it was ten grams short, or couple pills short,

1 we didn't want to just say automatic that was criminal  
2 compromise. We wanted to look at the case in its  
3 entirety. We wanted to inspect the package, because  
4 what we were finding was the cases that were criminally  
5 compromised there was, for the most part, signs of  
6 tampering. Whether it be a cut in the tape, or the  
7 envelope, then there were significant amount of drugs  
8 missing from these cases or replaced with another  
9 substance, or another type of pill.

10 So we wanted to be certain that if we were  
11 considering that case a criminal compromise, it was a  
12 criminal compromise. And we knew over 9000 pieces of  
13 evidence, that most evidence probably was not going to  
14 match up exactly to what was listed at the initial  
15 weight on the envelope. Very rarely, if ever, does an  
16 evidence package go to the Medical Examiner's Office,  
17 get tested, and return and the weights match up  
18 exactly.

19 Q. Was there a standard way that officers would  
20 document their evidence envelopes, in terms of across  
21 the board in the different types of agencies?

22 A. In terms of the audit?

23 Q. No, in terms of just officers who turn in

1 their evidence envelopes, did you notice was there a  
2 standard, did everybody list the number of bags used --

3 A. Obviously with over 9000 pieces of evidence  
4 from every police agency up and down the state, you  
5 kind of saw everything. You have all different sizes  
6 and shapes of evidence envelopes, and packages. There  
7 were all different ways that evidence was being  
8 described on the envelope; some by weight, depending on  
9 the drug, some by weight, some by count. You kind of  
10 saw everything.

11 Q. So in light of all those variations that you  
12 saw, you looked at the case in its entirety to make  
13 that initial decision?

14 A. Correct. If we were made aware, Lieutenant  
15 Wallace or I were made aware of a case they come  
16 across, we would then investigate that case further.  
17 That could mean pulling the initial investigating  
18 officer's report. Some cases we even contacted the  
19 investigating officer to see if he or she recalled that  
20 case, see if there were any photos from the original  
21 case file, just to assist us in determining whether or  
22 not that was, in fact, a criminal compromise.

23 And, you know, also incidents where we found

1 just numbers were transposed. For example, we came  
2 across some pill cases where it might be 64 pills, 64  
3 listed, but when they did the audit, they found 46  
4 pills. So then we would look further, look at the  
5 report, in fact, they have 46 pills listed in the  
6 report. So when they went to write on the envelope,  
7 that messed up their six and four. So there were cases  
8 like that that we could explain.

9 Q. Lieutenant, I'm assuming you are aware of the  
10 infamous Tyrone Walker case?

11 A. Yes.

12 Q. With that case, defense brought this up, the  
13 officer looked at it on the stand and said everything  
14 was okay, correct?

15 A. Yes.

16 Q. Can you tell us when -- did Delaware State  
17 Police do a separate examination of that envelope?

18 A. That would have been Delaware State Police  
19 Troop 3 back in mid January, correct.

20 Q. Can you tell us during that whether you know,  
21 whether during that additional inspection after the  
22 trial, was that envelope looked at in more -- with more  
23 scrutiny?

1           A.    Yes.

2           Q.    What was discovered about that envelope?

3           A.    That there was a cut in the envelope.

4           However, the cut was concealed by tape.  So the  
5           investigating officer inspecting that package on the  
6           stand would not have noticed that.

7           Q.    Can you tell us whether or not that second  
8           look, where the officer discovered the tape, was that  
9           the same level of scrutiny used in the DSP overall  
10          audit?

11          A.    Yes.  The audit, their instructions were to  
12          inspect the envelopes, contents, and the envelope  
13          itself.

14          Q.    Lieutenant, there was testimony earlier in  
15          this hearing about Caroline Honse and how she was a  
16          hoarder and there was drug evidence in her office.  Can  
17          you tell us whether Delaware State Police was able to  
18          look into those drug evidence envelopes that were  
19          discovered in her office?

20          A.    Yes.

21          Q.    Can you can you tell us out of those drug  
22          cases, evidence containers that were recovered, did any  
23          of these involve open, pending cases?

1 A. None of the cases are pending.

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

3 THE COURT: Yes.

4 (Discussion held off the record.)

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

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

7 THE COURT: You want a break?

8 MS. WALKER: That is not necessary.

9 THE COURT: Let me know.

10 (Discussion held off the record.)

11 (A brief pause.)

12 CROSS EXAMINATION

13 BY MS. SAVITZ:

14 Q. Thank you, Your Honor.

15 Hello.

16 A. Hello.

17 Q. I'm still trying to figure out which case I  
18 had with you before. You still have the report up  
19 there?

20 A. Yes.

21 Q. You go to paragraph number 44, on page 36.  
22 Are you there?

23 A. Yes.

1 Q. When Ms. Wright was questioning you she said  
2 you identified 13 cases that had not been tested by  
3 OCME, right?

4 A. Yes.

5 Q. That is what you were going over just now,  
6 right?

7 A. Correct.

8 Q. Second sentence of that paragraph says it was  
9 tested, right?

10 A. It does.

11 Q. Any idea whether this was tested or not?

12 A. I do not, without having the chain of custody  
13 report here in front of me.

14 Q. You gave a lot of detail that's not listed in  
15 this report?

16 A. Correct.

17 Q. Are you testifying from some other paper up  
18 there, did you memorize all this?

19 A. I have notes right here on my report.

20 Q. Do you have any independent recollection of  
21 reviewing each of these envelopes?

22 A. I cannot give you specific details without  
23 looking at this.

1 Q. When did you take those notes?

2 A. When did I take these notes?

3 Q. Those notes to which you are referring up  
4 there, I apologize for pointing. When did you take  
5 those notes?

6 A. That would have been this morning that I wrote  
7 notes on this report.

8 Q. What did you take them from?

9 A. From a list, a spread sheet that we have of  
10 details of each of these cases.

11 Q. When was the spread sheet made?

12 A. It's been an ongoing spread sheet.

13 Q. When was it started?

14 A. Back when we started the investigation.

15 Q. Was it made by people doing this review of the  
16 drug envelopes?

17 A. No.

18 Q. The only way that you, Lieutenant John Laird,  
19 Jr., know that there is a suspicion about a drug  
20 package, is if sergeant McCarthy, Sergeant Taylor or  
21 Sergeant Lloyd brings it to you, right?

22 A. Majority of our compromise cases brought into  
23 us we found in our initial DSP audit, before we even

1 closed the ME's Office controlled substance lab were  
2 brought to us by other agencies.

3 Q. So you knew this was happening before the  
4 Tyrone Walker case?

5 A. No. That is not what I said.

6 Q. Tell me when, when were these people bringing  
7 these envelopes to you?

8 A. Other agencies?

9 Q. Yes.

10 A. That would have been during our ongoing audit  
11 at Troop 2 of the ME cases. All the other agencies  
12 were requested to do internal audits of their lockers,  
13 too, so they were bringing cases in the same time. So  
14 it would be during the months February, March, April of  
15 2014.

16 Q. Let me try asking this. It's probably going  
17 to come out really bad first time. If you don't  
18 understand, let me know.

19 How many agencies were involved in the review  
20 that the Delaware State Police conducted at Troop 2?

21 A. I can't tell you offhand.

22 Q. Like six, or 12, or 20?

23 A. Six, ten.

1 Q. They are reviewing this boat ton of evidence,  
2 nine thousand plus pieces of evidence that your team  
3 brought from OCME to Troop 2, right?

4 A. Correct.

5 Q. And then is what you are telling me that when  
6 other agencies were doing their own internal audit of  
7 their own drug storage areas, that they are now finding  
8 more things that were not taken specifically from OCME?

9 A. They were finding cases that had been at OCME,  
10 and returned to their agency.

11 Q. Of the 13 cases that you just discussed, how  
12 many of these were brought to you by other agencies who  
13 had the drugs returned to them? Like if Scott McCarthy  
14 brings evidence on Tuesday, he is also going to pick up  
15 stuff that was tested last week. He has what we have  
16 kind of been referring to as returns. How many of the  
17 13 are returns?

18 A. I don't know. I would have to go through and  
19 look specifically. I can't give you an exact number  
20 now.

21 THE COURT: Lieutenant, if none of the 13 had  
22 been tested.

23 THE WITNESS: Correct.

1 THE COURT: Would they have been returned to  
2 the agency?

3 THE WITNESS: Yes, we saw that.

4 THE COURT: You saw that?

5 THE WITNESS: Cases that sat up there for two  
6 or three years, never tested, then returned to the  
7 agency.

8 MS. SAVITZ: May I have a minute?

9 THE COURT: Yes.

10 (Discussion held off the record.)

11 BY MS. SAVITZ:

12 Q. Do you know if any of the returns, or the  
13 items that were returns that were then discovered to  
14 have been compromised, and when the Court just asked  
15 you, you said some of them had been two or three years  
16 that they sat and were never tested, then were  
17 returned. You said that, right?

18 A. Correct.

19 Q. Without being tested?

20 A. Correct.

21 Q. Why would that happen?

22 A. I am not the one to answer that question.

23 Q. Would you agree with me, because you have been

1 doing this awhile, that some of them, at least, could  
2 have been sitting there, and the defendant took a plea,  
3 and the deputy assigned to that case would have  
4 notified OCME not to test it because the guy took a  
5 plea?

6 A. That is possible.

7 Q. That could account for one or more of them?

8 A. That is possible.

9 Q. Of the 13 you just discussed, you can't tell  
10 us how they came to your attention?

11 A. I don't have that information in front of me,  
12 so I wouldn't feel comfortable there were -- an exact  
13 amount came to us from other agencies.

14 Q. You have that information back at the troop?

15 A. We would be able to determine that.

16 Q. Of the cases that were brought to you as a  
17 result of the review conducted at Troop 2, the only way  
18 Lieutenant John Laird, Jr. is going to know about them  
19 is for Sergeant McCarthy, Taylor or Lloyd to bring them  
20 to your attention?

21 A. Correct.

22 Q. And the only way that Sergeant Lloyd, Sergeant  
23 McCarthy, or Sergeant Taylor is likely to know, is that

1 person would have been the supervising sergeant of the  
2 day for the review teams, right?

3 A. Correct.

4 Q. And someone on a review team would have had to  
5 say, hey, look at this. Right?

6 A. Correct. They would have been right there in  
7 the room with them.

8 Q. So if I am reviewing an envelope, my scribe is  
9 next to me, two-person team, and I open an envelope. I  
10 go, I am not so worried about this. I go, no  
11 discrepancy, but it is missing 28 grams of marijuana.  
12 You, as the guy in charge, are never going to know  
13 about that, right?

14 A. That would have been going against the  
15 instructions they were given. So...

16 Q. Okay.

17 Were these instructions in writing?

18 A. No.

19 Q. Was every person who participated in the  
20 review, as part of a review team, present at your  
21 meeting?

22 A. They were not present during the initial  
23 meeting. If they came in later, they would have been

1 brought up to speed on how the audit was being  
2 conducted, and would have witnessed how the audit was  
3 being conducted. They wouldn't have walked in and  
4 handed an envelope and told to open it and look at it.

5 Q. Did you take attendance at the meeting?

6 A. At the meeting, yes.

7 Q. Very first meeting?

8 A. Yes.

9 Q. You had a list of people there?

10 A. Yes.

11 Q. Did you give that list to the three sergeants?

12 A. Yes, they would have gotten a copy of who was  
13 at the meeting, yes.

14 Q. And whose responsibility was it to tell the  
15 new guys, for lack of a better phrase, how to do it?

16 A. Would have been a sergeant and the other team  
17 members.

18 Q. Everybody had scales, right, in the room?

19 A. That is correct.

20 Q. We heard yesterday, tell me if this is  
21 incorrect, each team was at a table that was  
22 approximately the length of a table in this courtroom  
23 but half the width?

1 A. That's --

2 Q. Give or take?

3 A. Fair.

4 Q. How big was the room?

5 A. I don't know what the exact square footage is.

6 Q. Relative to from where you are, to the magical  
7 gate, is it about the same size?

8 A. Probably from wall, length wise, probably from  
9 me to you.

10 Q. Maybe from the jury box to that wall in  
11 width --

12 A. Much more narrow than that.

13 Q. Everyone is a little closer than we are here?

14 A. Absolutely.

15 Q. So what were the instructions given to  
16 everybody for packages involving marijuana. If you get  
17 a package -- sorry, I didn't mean to cut you off. If  
18 you get -- what was the instruction for, you have an  
19 envelope that on the outside says plant material, green  
20 leafy substance, marijuana. What are the instructions  
21 for that team?

22 A. We were -- they were given general  
23 instructions. Okay, that meant inspecting the package,

1 looking for any signs of tampering, and then to examine  
2 the contents and in the case of marijuana, or cocaine,  
3 those types of drugs, to go back and weigh them. If it  
4 would have been pills, or heroin, would have been  
5 counting pills or bags of heroin.

6 Q. They were not supposed to weigh bags of  
7 heroin?

8 A. No.

9 Q. You are familiar with the packaging of heroin,  
10 right?

11 A. We don't weigh heroin, so...

12 Q. You are familiar with the packaging of heroin,  
13 right?

14 A. I am.

15 Q. So it is generally a blue, wax-like or  
16 glassine paper, inside, a small Ziplock type bag,  
17 correct?

18 A. That is correct.

19 Q. Were instructions given for whether or not the  
20 bags of heroin should be opened to determine if there  
21 is even anything in that blue wax paper?

22 A. They were not opening bags of heroin.

23 Q. Were they given instructions to examine --

1 you're familiar with branding of heroin bags?

2 A. Yes.

3 Q. Different dealers, different stamps, different  
4 brands, right?

5 A. Correct.

6 Q. Were they given instructions to review the  
7 individual heroin bags, which you just said they were  
8 not to open, to determine whether they matched a  
9 description put on an envelope?

10 A. Well, now you are getting into -- because a  
11 lot of officers, lot of agencies don't write  
12 descriptions of bags on the envelope. There would have  
13 been nothing to compare it to.

14 Q. But were they told hey, if an envelope says,  
15 13 bags and a black rubber band, each bag contains 13  
16 bags of heroin stamped 2 Paq. If the envelope says  
17 that, I realize it did not happen often, I guess, were  
18 they instructed to take the rubber band off and look  
19 at --

20 A. They would have counted individual bags of  
21 heroin.

22 Q. You mentioned earlier that you would -- you  
23 said we, I want to understand who specifically you

1 meant. We would sometimes pull the police report. Do  
2 you remember saying that?

3 A. Yes.

4 Q. Who is the "we" that would pull the police  
5 report?

6 A. Lieutenant Wallace or I.

7 Q. He is from Troop 3, correct?

8 A. That is correct.

9 Q. Were the officers involved in the review,  
10 given access to police reports or affidavits of  
11 probable cause when they were doing the review?

12 A. No.

13 Q. So if a bag said, bags of H. H, you would  
14 agree, stands for heroin when you are doing evidence  
15 envelopes, right?

16 A. Yes.

17 Q. Bags of H, and had a weight. How is the  
18 person supposed to know how many bags there are?

19 A. Sorry? Can you repeat that question.

20 Q. Let's say the envelope says, "bags of H."  
21 Then a number, and the letter G.

22 A. Right.

23 Q. How many bags were they supposed to count to

1 know if it is the same?

2 A. They wouldn't. Just verify the contents,  
3 there was heroin in the bag, then they should count it  
4 and put that count on the audit sheet.

5 Q. They are supposed to put that count on the  
6 audit sheet.

7 A. They should. Can't say it was being done  
8 every time. No, I didn't give those specific  
9 instructions. They should have counted, should have  
10 counted the heroin.

11 MS. SAVITZ: May I approach the clerk?

12 THE COURT: Yes.

13 BY MS. SAVITZ:

14 Q. I am going to show you what's been marked  
15 State's 32. Can you see that okay?

16 A. Yes.

17 Q. Who created this? What is this?

18 A. That is the audit sheet.

19 Q. This was used in the review at Troop 2 of OCME  
20 envelopes, right?

21 A. Yes.

22 Q. Who designed this form?

23 A. I believe it was combination of Captain

1 Sawyer, Lieutenant Hulings and myself.

2 Q. Tell me the name after Pete's name?

3 A. Lieutenant Hulings. He is no longer at Troop  
4 2, H-U-L-I-N-G-S.

5 Q. So the two of them created this form. Were  
6 you in on that?

7 A. Yes. I can't recall specifically who was all  
8 involved. I can't recall specifically who created that  
9 form.

10 Q. You had some input?

11 A. Yes.

12 Q. Did you, like, crib it from other agency that  
13 had done this before?

14 A. No.

15 Q. Just an original product of Delaware State  
16 Police?

17 A. Yes.

18 Q. For ME control number, short line, right?

19 A. Yes.

20 Q. For inspected by, it's not a super long line,  
21 right?

22 A. No.

23 Q. Date is however long, then the year preprinted

1 because you know you are doing it this year?

2 A. Correct.

3 Q. Open and closed, not really a long line. You  
4 don't need to write a lot?

5 A. Correct.

6 Q. Discrepancy only gives you yes or no, right?

7 A. Yes.

8 Q. For comments, you have six full, blank lines,  
9 right?

10 A. Correct.

11 Q. Your purpose of doing that was write  
12 everything you think you need to write?

13 A. If there was any comments, yes.

14 Q. So, like you just said, if there was no number  
15 of bags on the envelope, they were instructed to count  
16 them. And it was expected that they would write --

17 A. They were instructed to count all bags of  
18 heroin, regardless if there was a number on the  
19 envelope.

20 Q. I'm trying to focus, we just had a  
21 conversation, if there is no number, they are still  
22 supposed to count, and here in this comment section,  
23 you would expect to see at some later after they

1 reviewed that envelope, 72 bags of heroin or 72 bags H  
2 or 72 bags?

3 A. Not for every case.

4 Q. If there is no number written on the outside,  
5 and no one writes anything, how do you know if is a  
6 discrepancy?

7 A. If they would have brought it to our  
8 attention, we could have followed-up with a report or  
9 the investigating officer.

10 Q. What was the -- you know what, this is State's  
11 34. You would agree this is also a review form?

12 A. Yes.

13 Q. Looks almost exactly like the other one,  
14 except it has different names?

15 A. Yes.

16 Q. Different complaint, ME numbers, and date?

17 A. Correct.

18 Q. Still has six lines for comments?

19 A. Correct. You have to ask them specifically  
20 why they didn't write anything in the comment section.  
21 I don't think I am in a position to do that for them.

22 Q. What was the guideline given to the people  
23 doing the review, if it is short X, you talked a little

1 bit about you had transposed numbers?

2 A. Correct.

3 Q. I do that, so I understand. But what was the  
4 guideline given if an envelope of X, not ecstasy but X,  
5 fill in the blank, is short by Y, or off by Y, it is a  
6 criminal discrepancy. What was Y?

7 A. That is not what we were using for criminal  
8 discrepancies. We were looking at everything, that  
9 included the package itself. The envelope, whether it  
10 be an envelope, whether it be a bag, whether it be a  
11 box. The majority of cases we found where there was  
12 evidence missing, evidence replaced, there was clear  
13 signs of tampering. So we couldn't get caught up with  
14 over nine thousand pieces of evidence that there was  
15 supposed to be 17 grams, according to the investigating  
16 officer, 17 grams of weed in the package, but there  
17 was, when we weighed it, there was only 15 grams.  
18 There was no signs of tampering.

19 We wanted to focus, the purpose of this audit  
20 was to focus on the criminally compromised cases.

21 Q. That was so you could find a criminal, right?

22 A. Correct.

23 Q. That criminal was the person who was tampering

1 with, stealing and replacing drug evidence, right?

2 MS. WRIGHT: State would object. We are  
3 getting into details as to people who have been  
4 arrested and pending criminal investigation.

5 MS. SAVITZ: That is the only question I am  
6 asking.

7 THE COURT: You may ask.

8 MS. SAVITZ: May I ask the court reporter to  
9 read it back, please.

10 (The reporter read back as requested.)

11 THE WITNESS: Yes.

12 THE COURT: Let me try for me. I have had  
13 officers under your command who have told the Court  
14 that when they opened up the envelope, they would  
15 either count or weigh it, and if there was any  
16 discrepancy, any at all, inconsistent with what was on  
17 the envelope, they were to bring that to the attention  
18 of the sergeant. The sergeant then would bring that to  
19 your attention.

20 I have other officers who have testified under  
21 oath to the Court that they would weigh the evidence,  
22 counting is counting, they would weigh the evidence,  
23 and if the weight was different, they were given

1 discretion to decide whether or not that discrepancy  
2 was significant or not.

3 Or that they could reasonably understand why  
4 the discrepancy occurs, and they would mark no on the  
5 form. Can you give the Court a definitive answer as to  
6 what it was, what was the direction given.

7 THE WITNESS: Sure, Your Honor. I didn't want  
8 every single -- I used that example about, you know,  
9 suppose to be 17 grams of marijuana in a package, and  
10 or --

11 THE COURT: I'm not saying what you want. I  
12 am just saying I have officers under your command that  
13 have told me those two things.

14 THE WITNESS: Correct.

15 THE COURT: They are inconsistent, they are  
16 not the same.

17 THE WITNESS: Correct.

18 THE COURT: It would help the Court if I knew  
19 whether it was, it says 14 grams, you weigh it, it is  
20 13.5 grams --

21 THE WITNESS: They would not have to bring  
22 that to my attention.

23 THE COURT: Even though your sergeant just

1 testified yesterday that they would.

2 THE WITNESS: That would have been Sergeant  
3 Lloyd. Sergeant Lloyd, I can't tell you how many days  
4 specifically he was in charge. There were very few  
5 days he was in charge of the overall audit. He was  
6 involved a lot with transporting, helping transport  
7 drugs to and from the ME's Office and other aspects of  
8 the investigation. Sergeant Taylor was, for the most  
9 part, day-to-day supervisor. I had that talk with  
10 Sergeant Taylor, he was understanding he did not have  
11 to bring those types of cases to my attention.

12 THE COURT: Okay.

13 That is step one. So the other question is:  
14 There was a discrepancy, would they have to at least  
15 bring it to the sergeant's attention and then the  
16 sergeant would say well, I can understand that because  
17 it is dry?

18 THE WITNESS: Yes, he should have.

19 THE COURT: It wasn't left to the audit team  
20 to make that decision, it should have been --

21 THE WITNESS: Should have been with a sergeant  
22 and then if there was even any question that it could  
23 have been a criminal compromise, I wanted the sergeant

1 to bring that case to my attention, or Lieutenant  
2 Wallace. We, from there, would take a closer look at  
3 that case.

4 THE COURT: Thank you. Sorry.

5 BY MS. SAVITZ:

6 Q. Thank you.

7 Sir, would you turn back to page 33. Number  
8 19?

9 You testified earlier 280 grams of marijuana  
10 was missing?

11 A. Correct.

12 Q. That's ten ounces, right?

13 A. Yes.

14 Q. That is more than half of a pound, right?

15 A. Yes.

16 Q. What you said was, the point of entry was  
17 never identified?

18 A. Can't say definitively.

19 Q. You also, I believe said, that when the red  
20 flag for this case was that there was a great ten-ounce  
21 weight discrepancy?

22 A. Correct.

23 Q. They say we have a ten-ounce weight

1 discrepancy, we can't really see anything, right?

2 A. There was a ten-ounce discrepancy. We believe  
3 it was compromised. There was tape replaced on  
4 container. We can't say definitively that is how the  
5 container was entered. There was a ten-ounce  
6 discrepancy.

7 Q. Did you peel the tape back?

8 A. We inspected the package, yes.

9 Q. Did you peel the tape back?

10 A. I don't recall specifically what I did for  
11 this individuals package, no.

12 Q. So let me take you back to Tyrone Walker. In  
13 Tyrone Walker, Trooper Lloyd --

14 A. Talking about a completely different type of  
15 package.

16 Q. Sorry, what?

17 A. Talking about a completely different type of  
18 package.

19 Q. Okay.

20 In Tyrone Walker, a trooper from Dover looks  
21 at the package, can't see that there is a slit, or a  
22 cut made under the tape, right?

23 A. That is correct.

1 Q. So in that case, after that happened in court,  
2 they found the 64 blue pills had been replaced by 16  
3 pink pills, someone had to look under the tape, right?

4 A. Correct.

5 Q. Is that how that was discovered?

6 A. Yes, at Troop 3.

7 Q. That is where it had come from in the first  
8 instance, right?

9 A. Correct.

10 Q. So were people doing this review, these review  
11 teams told you should look under the tape to see if  
12 there is a cut?

13 A. They were not told -- to inspect the outside  
14 of the envelope, if there was any obvious sign of  
15 tampering, and to inspect the contents. And the  
16 contents were all there. The Walker case specifically  
17 looking at that envelope, you could see that cut, if  
18 you open that envelope up from the inside you could  
19 then see where it was cut. So not everything is  
20 necessarily visible from the outside.

21 Q. Right.

22 A. We don't want our team members pulling up  
23 Medical Examiner tape and everything else and

1       destroying the integrity of that envelope if there was  
2       nothing wrong with it.

3             Q.    Okay.

4             A.    When an envelope is cut, you can see that from  
5       the inside.

6             Q.    So what was the point of entry for number 19?

7             A.    I cannot say definitively what the point of  
8       entry was.

9             Q.    On number 42, there was only 28 grams of  
10       marijuana missing, right?

11            A.    Correct.

12            Q.    You are not going give us anymore information  
13       on that, right.  I am not going to ask you.

14            A.    Correct.

15            Q.    28 grams, right, one ounce?

16            A.    Correct.

17            Q.    You talked about some tape earlier.  You  
18       mentioned so far two shades of blue, right?

19            A.    Correct.

20            Q.    This is Defendant's Exhibit 5 without  
21       objection, Your Honor.  Can you see that okay.  This is  
22       not anything we talked about before.  This is the tape  
23       you are talking about, right?

1 A. Correct.

2 Q. It's printed, it is not together, Delaware

3 State Police, Delaware State Police, right?

4 A. Yes.

5 Q. So there is two shades of that?

6 A. Correct, two different shades of tape.

7 Q. Of blue?

8 A. Correct.

9 Q. Then you said you had cases where scotch tape  
10 was used?

11 A. Yes.

12 Q. To reseal.

13 Packing tape on the pound of marijuana?

14 A. Correct.

15 Q. That is the clear --

16 A. Packing tape.

17 Q. -- two-inch wide tape?

18 A. Correct.

19 Q. Was red evidence tape involved?

20 A. No.

21 Q. Were photos taken by anyone, any police

22 officer of the evidence that was taken from the OCME

23 vault, nine thousand plus and brought back to Troop --

1 over to Troop 2, were any pictures of those pieces of  
2 evidence taken before the review began?

3 A. Each single piece of evidence?

4 Q. Yes, sir.

5 A. No.

6 Q. Were pictures taken of groups of evidence?

7 A. No. I mean, it would have been photos of the  
8 drug vault itself which would contain some pieces, no  
9 specific groups of drugs.

10 Q. Were pictures of taken of the envelopes during  
11 the review?

12 A. No.

13 Q. Were they taken after the review?

14 A. No.

15 Q. How were the three sergeants supposed to  
16 assign the pieces of evidence to the review teams?

17 A. They did that, they would pull a box at a time  
18 from the evidence vault, and they would assign it as  
19 they saw fit.

20 Q. Okay.

21 A. I wasn't in there for the daily operations of  
22 that.

23 Q. The State Police got involved, the Department

1 of Justice got involved in this review process, because  
2 you wanted someone who was not the people at the OCME  
3 to be reviewing the OCME, right?

4 A. Correct.

5 Q. You want someone a little more independent,  
6 correct?

7 A. Correct.

8 Q. So you are familiar with an envelope like  
9 defendant's -- what is shown in the picture of  
10 Defendant's 5 because right across the top it says  
11 Delaware State Police, under the bar code is the rest  
12 of the word "evidence", right?

13 A. Correct.

14 Q. So if you pull that out of a box, you have a  
15 banker's box, has let's say 20 pieces of evidence in  
16 this, in those envelopes. You pull that one out, there  
17 is not doubt but that it came from a Delaware State  
18 Police case, right?

19 A. Correct.

20 Q. You would be able to tell that from the  
21 complain number, as well, because the first two digits  
22 are going to be the number of the troop, right?

23 A. Correct.

1           Q. So was it intended, or had you instructed the  
2 three sergeants who were then running the day-to-day,  
3 that State Police cases should not be reviewed by State  
4 Police Troopers, and Newark Police should not be  
5 reviewed by Newark Police, and Middletown should not be  
6 reviewed by Middletown, if Middletown sent  
7 representatives for the review, was that --

8           A. No, we were not worried about that because no  
9 one should have been -- we specifically kept members of  
10 our drug unit, Governor's Task Force, who make the  
11 majority of our arrests out of the audit team. So  
12 someone is not auditing their own drug evidence. We  
13 didn't have a problem with someone from a Delaware  
14 State Police involved in the audit of Delaware State  
15 Police evidence because it was two persons to each  
16 team. So it wasn't just one person opening that  
17 envelope.

18           Q. But were the teams specifically made up of two  
19 people from different departments; was that part of the  
20 protocol? Like if Ms. Walker and I were the two of  
21 your officers, she is Newark, I am Wilmington, we are  
22 both Newark; are we supposed to be on the same team?

23           A. There was to no protocol. You have to

1 remember, we used multiple people for that audit.  
2 There were some days where people were off on vacation.  
3 It wasn't always the same teams. We couldn't always  
4 account for who was going to be there each and  
5 everyday.

6 Q. Okay. Did you have a schedule made up ahead  
7 of time?

8 A. There was not a schedule made up.

9 Q. How did you know it was going to go forward,  
10 if you don't know people were going to show?

11 A. Because we had commitments from those agencies  
12 they were going to send people.

13 Q. You didn't know who the people were?

14 A. Generally the same people. So we pretty much  
15 knew on a daily basis who was going to be there. Now  
16 if someone had, like I said, they had a commitment,  
17 whether a court commitment, or scheduled vacation day,  
18 they would normally let Sergeant Taylor, who was there  
19 for most of the day-to-day operations, he or she  
20 wouldn't be there the next day. They were on vacation  
21 the following week, they wouldn't be there.

22 Q. Taylor was the sergeant that was there most  
23 often?

1 A. Correct.

2 Q. All the people, the people who run, for lack  
3 of a better word, and control the evidence locker, does  
4 each Delaware State Police troop have its own evidence  
5 locker?

6 A. Correct.

7 Q. People who are in charge of as gatekeepers,  
8 people who handle the evidence that goes in and out of  
9 those evidence lockers at each troop, they are all  
10 sworn police officers, right?

11 A. Correct.

12 Q. They are, as part of your academy training,  
13 they are specifically trained in how to handle evidence  
14 to preserve chain of custody, right?

15 A. Yes.

16 Q. That is really important, right?

17 A. Yes.

18 Q. You don't have any civilians doing this, just  
19 police officers, right?

20 A. Logging this evidence?

21 Q. Um-hmm.

22 A. We do have members in our drug diversion unit  
23 who are not sworn troopers.

1 Q. How are they trained?

2 A. They are considered civilian employees.

3 Q. How are they trained?

4 A. They still receive police training, they are  
5 certificated. They are not sworn troopers.

6 Q. They go through similar training?

7 A. Yes.

8 Q. As part of your duties as the CIO, you  
9 interviewed a bunch of people who are or were employees  
10 of OCME, right?

11 A. Correct.

12 Q. And during the time -- I want to show you, I  
13 am going to put up State's Exhibit 14.

14 Do you recognize that?

15 A. Yes, that would have been OCME.

16 Q. Inside the vault?

17 A. Correct.

18 Q. You see these things, there is five of them?

19 A. Um-hmm.

20 Q. What are they, if you know?

21 A. I don't know what -- they may be the courier  
22 boxes, without being zoomed in I can't --

23 MS. SAVITZ: May I approach the witness?

1 BY MS. SAVITZ:

2 Q. If it helps, let me know. If it does not, let  
3 me know.

4 A. I can't read specifically what they say, each  
5 box.

6 Q. You know there were courier boxes, right?

7 A. Yes.

8 Q. They were locked, right?

9 A. Yes.

10 Q. And they had combination locks; is that  
11 correct?

12 A. Yes.

13 Q. Did you become aware through your interviews  
14 of current or former OCME employees that the  
15 combination of all of these courier boxes; A, was the  
16 same; and B, lot of people at OCME knew what the  
17 combination was?

18 A. I don't recall any specific statements how  
19 many people would have known what the combination was.

20 Q. If I showed you a transcript of an interview  
21 that does not have 4000 sticky notes. If I showed you  
22 a transcript of an interview which you took part, would  
23 that, perhaps, refresh your recollection?

1 A. Yes.

2 MS. SAVITZ: May I approach?

3 THE COURT: You may.

4 BY MS. SAVITZ:

5 Q. Hand you, it is not clipped, but at least  
6 pages are numbered. Do you recognize -- have you seen  
7 that before?

8 A. Yes.

9 Q. That is the transcript of your interview with  
10 Aretha Bailey, right?

11 A. Correct.

12 Q. Would you please turn to pages 25 and 26.

13 A. Okay.

14 Q. Can you read those two pages to yourself, tell  
15 me when you are done.

16 A. (Witness reading.) Yes.

17 Q. Did reviewing those two pages refresh your  
18 recollection as to that conversation?

19 A. Yes.

20 Q. So did you, in fact, come to know during your  
21 investigation that all of the courier lock boxes had  
22 the same combination?

23 A. Yes.

1 Q. That everybody knew the combination because  
2 the combination was on a piece of paper in an unsecured  
3 folder?

4 A. In a folder.

5 Q. Combination was 200, maybe?

6 A. Whatever it says it was, yes.

7 Q. Whatever it was, all of them had the same one,  
8 correct?

9 A. Right.

10 Q. And during your interview of Mrs. Bailey,  
11 which is the transcript you have up there, you learned  
12 that she was hired as an administrative assistant,  
13 right?

14 A. Correct.

15 Q. That is a secretary, basically?

16 A. Yes.

17 Q. Did she have any training on how to handle  
18 evidence?

19 A. She did not.

20 Q. We heard some talk about Caroline Honse when  
21 you were on direct. Did you learn during your  
22 investigation, that she and Mrs. Bailey were very  
23 close?

1 A. Yes.

2 Q. In fact, some of the things down in the, I  
3 believe Mrs. Wright used a phrase, also, hoarder office  
4 of Ms. Honse, supposedly belonged to Mrs. Bailey. You  
5 come to know that, that was a horribly phrased  
6 question?

7 A. Some of the stuff in Ms. Honse's office  
8 belonged to Mrs. Bailey?

9 Q. Yes?

10 A. I can't say that for sure.

11 Q. Mrs. Bailey was given, by Mrs. Honse,  
12 permission to come into the lab on weekends, right?

13 A. That is correct.

14 Q. Unsupervised, correct?

15 A. Correct.

16 Q. She had access to the alarm code?

17 A. Yes.

18 Q. She could get in the building without anybody  
19 knowing?

20 A. She could, yes.

21 Q. And Mrs. Bailey was also the person who -- she  
22 was also a liaison for DOJ, do you recall learning that  
23 during your investigation?

1 A. She was one of them, correct.

2 Q. You would agree that that meant if a case was  
3 going to trial, someone from DOJ would send an e-mail  
4 hey, this guy is definitely going to trial in three  
5 weeks, we need this stuff tested, or if a person took a  
6 plea, they would send an e-mail; if not already tested  
7 don't. John Smith pled?

8 A. Yes.

9 Q. She would get those e-mails, she being Aretha  
10 Bailey, and maybe Caroline Honse, those are the people  
11 only two people to whom those e-mails would go?

12 A. For the most part, sometimes there would be  
13 other people included. Yes, they were the two main  
14 ones that would receive those e-mails.

15 Q. Caroline retired in November '13?

16 A. Correct.

17 Q. And then Mrs. Bailey left in December, right?

18 A. Yes.

19 Q. I believe she told you she left after  
20 everything changed with the new management; do you  
21 recall that?

22 A. Yes.

23 Q. You interviewed a lot of people, right?

1 A. Yes.

2 Q. How many of them thought Caroline Honse was a  
3 good supervisor other than Aretha Bailey and maybe  
4 Caroline Honse herself?

5 A. Not very many.

6 Q. Mrs. Bailey thought Ms. Honse was fair and  
7 had her back?

8 A. Yes.

9 Q. We heard a little bit before that Ms. Honse  
10 had had drugs in her office?

11 A. Well, she retired in November, so we  
12 physically didn't see them in her office, but someone  
13 from OCME told us that they had pulled this specific  
14 box of drugs out of her office after she left.

15 Q. You have no reason to agree or disagree with  
16 the fact that it came there because that is what you  
17 were told?

18 A. Correct.

19 Q. We heard a little bit before when Ms. Wright  
20 was asking you questions, it wasn't the -- drugs were  
21 not from active cases?

22 A. Correct.

23 Q. Meaning open at the time you got them?

1           A.   Correct.  They were, many of them, were very  
2   old.

3           Q.   But they were evidence, right?

4           A.   Correct.

5           Q.   Still drug evidence?

6           A.   Yes.

7           Q.   Still belonged to a case somewhere?

8           A.   Yes.

9           Q.   And were they labeled like did it say 02-99-12  
10   3456?

11          A.   Some were still in the original police  
12   envelopes, so we were able to identify what case they  
13   went with.

14          Q.   You were then able to identify they were  
15   supposed to be disposed of not in Caroline Honse's  
16   office?

17          A.   Should have been returned to that police  
18   agency.

19          Q.   Or destroyed by someone?

20          A.   Would have been -- should have been returned  
21   to a police agency to be destroyed.

22          Q.   That agency does the destruction thing itself?

23          A.   Yes.

1 Q. During your interview with Mrs. Bailey, you  
2 also learned that she had a discussion, I want to say  
3 with Mr. Woodson, that talked about how easy it would  
4 have been to remove drugs without anybody knowing from  
5 the vault, right?

6 A. Correct.

7 Q. Conditions were such that evidence could go  
8 unaccounted for and no one would have a clue?

9 A. Yes.

10 Q. Did you also learn that Mrs. Bailey had been  
11 accused by other OCME employees of stealing their food  
12 out of the refrigerator?

13 A. Yes.

14 Q. She told you that she or her son had received  
15 this \$6,000 check. She had no idea why. She tried to  
16 deposit it?

17 A. Yes.

18 Q. After the DOJ report, which we have talked  
19 about as Defense Exhibit 4, after that issued, did you  
20 also then identify another case that had been tampered  
21 with?

22 A. Yes.

23 Q. How did that get discovered?

1           A. That would have been a most recent case, would  
2 have been a Newark PD case they discovered during an  
3 internal audit of their locker.

4           Q. When did you, State Police you, ask all the  
5 other agencies to did their internal audit?

6           A. That would have been a memo that would have  
7 been sent out by the Department of Justice back in  
8 February, probably.

9           Q. Like early, right?

10          A. Back in February. So I don't recall the exact  
11 date but...

12          Q. I meant early in the whole --

13          A. Correct.

14          Q. -- situation?

15          A. Correct.

16          Q. This report came out when?

17          A. I believe June.

18          Q. So after that comes out, Newark notices  
19 another case?

20          A. Correct.

21          Q. What was the -- was it a tape thing again?

22          A. You are going to --

23          Q. Do you know?

1           A. The details of the case, I don't have them in  
2 front of me specifically.

3           Q. When you went into the vault back on  
4 February 20th?

5           A. Correct.

6           Q. Did you find tape in the vault?

7           A. Tape? I don't believe we found any tape in  
8 the vault.

9           Q. You had been told -- you learned afterwards  
10 there was tape in the vault, blue evidence tape, red  
11 tape, white tape in the vault, prior to you guys  
12 getting there, right?

13           A. Well, ME's tape would have been the red tape.  
14 We were not advised by anybody there was blue evidence  
15 tape before we got there. I believe someone made a  
16 statement that a long time ago they had seen a roll of  
17 blue evidence tape laying around the office there.

18           MS. SAVITZ: Your Honor, may I have a minute?

19           THE COURT: You may.

20           (Discussion held off the record.)

21 BY MS. SAVITZ:

22           Q. Do you remember testifying in early July in  
23 Nyala and Irwin?

1 A. Yes.

2 Q. Do you remember telling the Court in regards  
3 to the Tyrone Walker case, that no officer on the stand  
4 viewing that envelope would have observed any type of  
5 tampering by the way it was concealed with Medical  
6 Examiner's tape?

7 A. Yes, correct.

8 Q. You still believe that, right?

9 A. Not without peeling back the tape.

10 Q. So peeling back the tape was how we would  
11 determine that something was wrong?

12 A. Correct.

13 MS. SAVITZ: Your Honor, I have nothing  
14 further. Lieutenant, thank you.

15 MS. WRIGHT: Brief redirect, Your Honor.

16 REDIRECT EXAMINATION

17 BY MS. WRIGHT:

18 Q. Lieutenant, you were asked about blue tape and  
19 the OCME controlled substance vault lab. Was any  
20 recovered when DSP went into the OCME vault office  
21 area?

22 A. No.

23 Q. You said the overall scope of the audit was

1 over 9000 pieces of evidence, correct?

2 A. Correct, evidence removed from the Medical  
3 Examiner's Office.

4 Q. The total number of discrepancies, you have  
5 that number?

6 A. Total is just over 50 total, that includes  
7 cases that came from other agencies, from their  
8 internal audit of cases that have been returned from  
9 the Medical Examiner's Office.

10 Q. To be clear, when I say discrepancy cases, we  
11 are talking about ones you determined, or Lieutenant  
12 Wallace determined were criminally compromised?

13 A. Correct.

14 Q. Out of those nine thousand plus pieces, how  
15 many, in terms of 13 cases -- only 13 of those cases  
16 were stored at the ME's Office?

17 A. Never tested.

18 MS. WRIGHT: No further questions.

19 MS. SAVITZ: I have three questions.

20 RE CROSS EXAMINATION

21 BY MS. SAVITZ:

22 Q. We looked at Exhibit 4 and one of them said  
23 specifically it had been tested, right?

1 A. Sorry, which?

2 Q. 42, 44?

3 A. I can't say for sure. I don't know if that is  
4 a typo. I have to go back and look at our records. I  
5 am not in a position to say one way or another  
6 without...

7 Q. Criminal discrepancy, if the officer is  
8 supposed to unbundle and count. You testified that  
9 pills were replaced with other pills?

10 A. Right.

11 Q. Evidence was replaced with different stuff,  
12 right?

13 A. Correct.

14 Q. So if a count of heroin bags is off by 52  
15 bags, not weight, counting 52, that is a lot, right?

16 A. That would be four bundles.

17 Q. That is not just one bag that maybe got stuck  
18 to another bag, though, right, that is 52 bags of  
19 heroin, right?

20 A. About four bundles.

21 Q. Okay.

22 A. If there is a miscount in bundles, that comes  
23 out to 52.

1 Q. Okay. That is something that should have at  
2 least been noted, right?

3 A. If it was four bundles short, that is correct.

4 Q. If it was four bundles over, still a  
5 difference of four bundles, or 52 bags, right?

6 A. Correct.

7 Q. That is a discrepancy, right?

8 A. Of course a discrepancy, because it's  
9 different than what it says on the envelope.

10 Q. It's not like one bag, right?

11 A. Once again, four bundles. It is easy to  
12 explain, could have been a miscount of four bundles.

13 MS. SAVITZ: Thank you.

14 THE COURT: Lieutenant, when it became, when  
15 the Delaware State Police became involved in the  
16 investigation based upon the incident that occurred  
17 during a trial in Dover, and the decision was made to  
18 take custody of the evidence at the Medical Examiner's  
19 Office to do an audit, was there a Deputy Attorney  
20 General assigned to the unit to assist and give  
21 guidance to your decision?

22 THE WITNESS: Would have been Joe Grubb and  
23 Sean Lugg.

1           THE COURT:  And were they the ones who were  
2 giving you advice regarding the audit and the criminal  
3 investigation, or just the criminal investigation?

4           THE WITNESS:  I can't recall specifically how  
5 much advice they gave us for the audit, but we  
6 certainly worked with them on a daily basis during the  
7 criminal investigation.  Once again, I wasn't involved  
8 in the daily operations of the audit after the evidence  
9 was -- controlled substance lab was shut down.

10           We retrieved that evidence.  I left that up to  
11 the audit team.  I was primarily focussed on the  
12 investigation itself.  I was in daily contact with Sean  
13 and Joe about that.

14           THE COURT:  Were the Attorney General's Office  
15 involved in the initial planning of how the audit would  
16 take place?

17           THE WITNESS:  I can't recall specifically what  
18 guidance they gave us.  They would have been there  
19 during that, I believe they were there for the initial  
20 meeting.  I don't recall specifically what guidance  
21 they gave at that time.

22           THE COURT:  Thank you.  You can step down.  
23 Thank you.  Take our afternoon break.

1 (A short recess was taken.)

2 THE COURT: You may call your next witness.

3 MS. WRIGHT: Your Honor the state calls  
4 sergeant Scott McCarthy.

5 SCOTT MCCARTHY,

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

8 DIRECT EXAMINATION

9 BY MS. WRIGHT:

10 Q. Good afternoon, Sergeant.

11 A. Good afternoon.

12 Q. When I say sergeant, by whom are you employed  
13 at this time?

14 A. Wilmington University.

15 Q. Prior to working for Wilmington University,  
16 where did you work?

17 A. Delaware State Police.

18 Q. In what capacity?

19 A. I was the sergeant in charge of our evidence  
20 in New Castle County.

21 Q. How long were you at Delaware State Police  
22 before you went over to Wilmington University?

23 A. 25-and-a-half years.

1           Q. Can you tell us how long were you the sergeant  
2 responsible for evidence for Delaware State Police in  
3 New Castle County?

4           A. Probably about three, little over three years.

5           Q. Can you tell the Court your general duties and  
6 responsibilities?

7           A. I maintained the evidence lockers at Troop 1,  
8 6 and 9, oversaw the evidence locker at Troop 2. At  
9 Troop 1, 6 and 9, usually on two or three days a week,  
10 I would make my rounds to those troops, transfer the  
11 evidence in the temporary evidence locker over to the  
12 permanent evidence locker, bar code it, inventory it,  
13 log it into our system.

14          Q. You mentioned temporary locker, permanent  
15 locker. Can you tell us where the permanent locker is  
16 located?

17          A. There is one in each troop. Troop 1 has their  
18 own, Troop 6 and Troop 9, each of those troops have  
19 what is called a temporary evidence locker, also, which  
20 is where the road troopers, investigators would place  
21 evidence prior to me logging it into the main locker.

22          Q. How would you go about logging it in when you  
23 would retrieve those pieces of evidence?

1           A. I would receive the evidence from the  
2 temporary evidence locker, it was a combination lock or  
3 a key lock, transport it over to my main locker, input  
4 the case information for each individual case into our  
5 permanent evidence computer management system, assign  
6 each piece of evidence a bar code, which would be a way  
7 we would track that piece, then log it in the  
8 appropriate place in the locker, whether it was the  
9 locker, drug control center, or gun locker.

10           Q. With regards to the main locker that you end  
11 up putting that evidence, who would have access to  
12 these lockers?

13           A. Myself, the troop commander and the criminal  
14 Lieutenant at Troops 1, 6 and 9. Troop 2, myself, the  
15 troop commander, criminal Lieutenant, and then we had  
16 three other evidence technicians that managed the  
17 locker at that location. That would have been  
18 Detective Lanno, Detective Kleckner, and Detective  
19 William Chapman.

20           Q. Can you tell us how access is gained into  
21 those main lockers?

22           A. Swipe card, key card. Let me back up. I'll  
23 describe Troop 2. I use a key card get access into the

1 main locker. That gets you into almost, like, a suite  
2 area. I have to key card another double door to get  
3 into the main locker. Then I have to utilize a key to  
4 get into our gun locker, and our drug locker. There  
5 was a couple different steps. At the other troops I  
6 use keys to get into my different lockers.

7 Q. When you have to swipe into those lockers,  
8 that is individualized access?

9 A. Yes, it is.

10 Q. Can you tell us about your transportation of  
11 any drug evidence to the Office of the Chief Medical  
12 Examiner, can you tell us that process, what do you do  
13 prior to transporting the evidence?

14 A. As I receive the evidence from the temporary  
15 evidence lockers at 1, 6 and 9, if they are active  
16 cases, if they are cases that are going to be  
17 prosecuted, I knew it needed to be tested by the  
18 Medical Examiner. So I placed them in a certain  
19 position in the drug control center on the top shelf,  
20 knowing that I had two standing appointments every  
21 week; on Tuesday at 1 o'clock, I would go up to the  
22 ME's office. On Thursday at 11 o'clock, I would make  
23 another trip. I divide my troops to make it a little

1 more manageable.

2 I would create an inventory sheet, which had  
3 all the drugs, or pieces of evidence going to be  
4 transported to the Medical Examiner's Office for that  
5 specific troop. I would then enter it into the FLIMS  
6 data base, that would assign it a number. I would  
7 place that number on my receipt. It was a crime report  
8 number, defendant's name, then my bar code number. So  
9 I had multiple different ways to confirm this was a  
10 piece of evidence being transported. I would then  
11 transport it up.

12 Q. I am placing on the projector what's been  
13 entered as State's Exhibit 10. Tell me if you  
14 recognize what it is?

15 A. This is my evidence submission sheet to the  
16 Medical Examiner's Office from evidence transported  
17 from Troop 2 by myself.

18 Q. Date and time?

19 A. I would have transported this evidence on  
20 November 12, 2013, at 1305, or just after 1 o'clock in  
21 the afternoon. I would have turned it over to James  
22 Daneshgar.

23 Q. You explained that you would make this

1 inventory sheet, you described the bar number, assign  
2 number, walk through the different fields in terms of  
3 columns?

4 A. As I enter the individual case number into the  
5 FLIMS data base, that was through the Medical  
6 Examiner's Office would assign this number on the left,  
7 like the first entry 2188. That was the FLIMS number.  
8 Then on the receipt I put the defendant's name,  
9 followed by investigating officer, followed by  
10 complaint number. Then the number all the way to the  
11 right was a bar code number that I had placed on it at  
12 my individual troop for tracking that individual piece  
13 of evidence.

14 Q. Last two entries are for whom?

15 A. Hakeem Nesbitt.

16 Q. Investigating officer?

17 A. Trooper Antolucci would have been the  
18 investigating officer.

19 Q. You note that these are your signature, this  
20 is your signature at the bottom of the page, as well as  
21 James Daneshgar, correct?

22 A. Correct.

23 Q. At what point do you and Mr. Daneshgar sign

1 this evidence submission return worksheet?

2 A. Once both of us have verified that --  
3 confirmed that these pieces of evidence are being  
4 turned over to his custody. I usually take it up in a  
5 box or a bag. He walks through, compares it to  
6 everything on the list to make sure he has every piece  
7 accounted for that is on the list.

8 Q. Can you tell us what, if anything, is done to  
9 examine the envelopes, outside, or whether the  
10 envelopes are opened, can you tell us what  
11 Mr. Daneshgar does while you are there, you are going  
12 through the evidence?

13 A. Yes. He would not accept a piece of evidence  
14 that was damaged or appeared to have been altered or  
15 compromised, did not look normal, had the normal  
16 evidence tape on it, initials, things of that nature.

17 Q. When you take typical drug evidence from a  
18 temporary locker, put it in the main lockers, do you  
19 inspect these drug evidence envelopes, packages for  
20 tampering in anyway?

21 A. Yes, same thing, just make sure it's been  
22 taped properly, initialed by the investigating officer.

23 Q. They would never be opened?

1 A. No, we never opened any of the evidence.

2 Q. I am going place on the projector what's been  
3 placed into evidence as State's Exhibit 11. Can you  
4 tell us, do you recognize what it is?

5 A. I believe that is a report generated by the  
6 Medical Examiner's Office for their chain of custody  
7 purposes.

8 Q. Scroll over to the right, does that complaint  
9 number match for Hakeem Nesbitt?

10 A. Yes.

11 Q. I see on the top entry, field evidence you  
12 have container A and B. Who put that information in?

13 A. That would have been the Medical Examiner's  
14 Office.

15 Q. When you said that you pre-log the evidence  
16 into FLIMS, describe what you do?

17 A. It is just a series of drop down screens where  
18 I put case -- input case information as far as  
19 submitting officer, investigating officer, lot of  
20 different screens. Type of investigation, controlled  
21 substance, type of evidence. If it is multiple pieces,  
22 then I would continue back through and add the same  
23 thing under so that would have their same number. That

1 is not the FE number, that is something separate, then  
2 the FLIMS number.

3 Q. What does PM stand for?

4 A. Plant Material.

5 Q. That was under one of the drop down options?

6 A. I think it is where you describe the contents  
7 of the envelope. When I was trained, I was told by  
8 them if it is marijuana, just put PM for Plant  
9 Material.

10 Q. Would you have put in PM?

11 A. Yes.

12 Q. Go down to the transfer section. You notice  
13 the date and time for when you submitted evidence to  
14 James Daneshgar, it is noted as November 14th, 2013; is  
15 that correct?

16 A. No.

17 Q. Refer you back to State's Exhibit 10, that  
18 date and time was what?

19 A. 11/12.

20 Q. Everything else is correct with in terms of  
21 you dropped it off hand-to-hand Mr. Daneshgar?

22 A. Yes, ma'am.

23 THE COURT: Mr. McCarthy, I am confused from

1 your point of view. Do you put in where it says  
2 container A and B, is that from data that you have  
3 inputted at the troop before you get to the Medical  
4 Examiner's Office?

5 THE WITNESS: No, I don't know how this is  
6 generated, how the contents of this is generated. I  
7 don't -- I think what you are saying is what I was  
8 trying to think too is that FLIMS number that it gives  
9 me, does that information transfer over into this form  
10 I don't think it does. Because that does not look  
11 right, or how I would have entered it.

12 THE COURT: When you were inputting  
13 information into the FLIMS system, were they asking you  
14 for 250 pills, 14.5 grams of heroin?

15 THE WITNESS: It was sort of like a free text  
16 I would type in. Sometimes I would put in plant  
17 material, sometime I would put a specific amount, like  
18 pills, types of pills.

19 THE COURT: I guess maybe you don't know the  
20 answer to this, it seems illogical to ask you to put in  
21 that information if it is not then being generated up  
22 onto a form of this nature.

23 THE WITNESS: Yes.

1           THE COURT:  You don't know whether or not that  
2 is something that is independently done by the Medical  
3 Examiner's Office.

4           THE WITNESS:  I don't know.

5           THE COURT:  When they input it into their  
6 system?

7           THE WITNESS:  No.

8           THE COURT:  That's fine.  Thank you.

9 BY MS. WRIGHT:

10           Q.  I am going to place on the projector State's  
11 Exhibit 12.  It's already entered into evidence.  Can  
12 you tell us, do you recognize that?

13           A.  Yes, I do.

14           Q.  What is it?

15           A.  It's an evidence transfer sheet receipt.

16           Q.  When you deliver drug evidence in, transfer it  
17 to James Daneshgar, do you receive these submission  
18 receipts in return?

19           A.  No, I don't.

20           Q.  Can you tell us on these fields, what, if any,  
21 of the information is correct.  Is submitting agency  
22 correct?

23           A.  Yes, it is.

1 Q. What about submission date?

2 A. No, that is not correct.

3 Q. Submitted by Michael Myers. He is not the one  
4 who submitted this evidence, correct?

5 A. No, he did not.

6 Q. That would have been you. Investigated by?

7 A. Nicholson, that is incorrect also. The  
8 control number, 9883, that is something separate. That  
9 is their number.

10 Q. We have, again, container A and B. You did  
11 not enter that information, correct?

12 A. Correct.

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

14 CROSS EXAMINATION

15 BY MS. WALKER:

16 Q. Good afternoon.

17 A. Good afternoon.

18 Q. For Mr. Nesbitt's case, that was one that you  
19 did the delivery to?

20 A. Correct.

21 Q. I am going to hand you a copy of the affidavit  
22 of probable cause for that case?

23 MS. WALKER: May I approach? It's part of the

1 court record. I will hand it to you so we can review  
2 it together.

3 THE COURT: Let's mark it at least for  
4 identification, if you are not going to enter it, fine.  
5 Mark it for identification.

6 THE CLERK: Defendant's Identification A so  
7 marked, Your Honor.

8 THE COURT: Thank you.

9 BY MS. WALKER:

10 Q. Have this up on the screen, but just thought I  
11 would give you a copy, too. Ask you to, if you can  
12 review it to yourself, and what I am going to be asking  
13 you about in particular before you kind of go over it  
14 by yourself is on page Exhibit B, where it talks about  
15 what occurred, then going to be the second page where  
16 it talks about the different items that were seized.  
17 Let me know when you are ready.

18 A. I am ready.

19 Q. So the affidavit of probable cause sets forth  
20 different items seized in this case, right?

21 A. Correct.

22 Q. And how many envelopes did you take over to  
23 the Office of the Chief Medical Examiner?

1           A. I believe one envelope and one bag.

2           Q. So just so that we all know what weights are  
3 and everything of these guys.

4           MS. WRIGHT: Your Honor, with regards to  
5 affidavit -- never mind. The State would suggest  
6 envelopes are actually in evidence. Never mind,  
7 withdrawn.

8 BY MS. WALKER:

9           Q. Second paragraph talks about first set of  
10 items they seized, I believe second item says -- that  
11 paragraph mentions green leafy substance field tested  
12 positive. That it was 16 bags and it weighed  
13 119.6 grams, correct?

14          A. Yes.

15          Q. It is your understanding, I will have photos,  
16 your understanding that is what one of the envelopes  
17 was labeled?

18          A. Correct.

19          Q. Then at the bottom, it talks about a duffel  
20 bag, last big paragraph, in a hotel room, I think it  
21 was they found seven large Ziplock bags, one contained  
22 a larger amount of loose green leafy substance, six of  
23 the Ziplock bags contained 16 smaller ones. All of

1 that combined, if I am reading this correctly, that  
2 officer is saying on the very last line, weighed  
3 1271 grams?

4 A. Correct.

5 Q. So they would have found 119.6 grams in one  
6 container, and 1271.4 in the other; is that right?

7 A. Yes.

8 Q. If I may, Your Honor, I think without  
9 objection we have had two Exhibits premarked  
10 Defendant's Exhibit 5 which is a photo of an envelope  
11 with substance weighing 119.6 grams?

12 MS. WRIGHT: No objection to either Exhibit.

13 BY MS. WALKER:

14 Q. 1271.4 grams labeled is the other one. I  
15 apologize, I didn't ask permission. Are you familiar  
16 with what this photo indicates?

17 A. Yes.

18 Q. What is that?

19 A. That is the evidence envelope, top right  
20 corner 128533 is the bar code assigned to this specific  
21 piece of evidence.

22 Q. So this was one of the envelopes for  
23 Mr. Nesbitt's case we are talking about today?

1 A. Yes.

2 Q. According to what is labeled on here, what is  
3 contained in the envelope?

4 A. 119.6 grams of marijuana.

5 Q. How many bags?

6 A. 16 bags.

7 Q. This represents one of the envelopes that you  
8 gave to the Medical Examiner's Office in this case?

9 A. Yes, it does.

10 Q. We are going to look at the other one, that is  
11 a -- you tell me what that is. This was, I think,  
12 number six?

13 A. Correct, it's the second piece of evidence  
14 that would have been transported on that day by myself.  
15 You can see it has the bar code 128534, which would  
16 have been affixed by one of our evidence technicians on  
17 the date it was submitted.

18 Q. What does it say that it contains?

19 A. 1271.4 grams of marijuana.

20 Q. Does it indicate how many bags are in there?

21 A. No, it does not.

22 Q. So you wouldn't -- you are just going by what  
23 is in there when the envelope -- you take the envelope,

1 to go take them to the lab, you don't open those up,  
2 right?

3 A. No.

4 Q. So you are going based on what has been put on  
5 there?

6 A. Correct. I have no understanding of the  
7 investigation. I have no knowledge of --

8 Q. Fine.

9 You were the supervisor, for the most part, of  
10 the entire audit that was done in this case after  
11 discovery in Tyrone Walker?

12 A. Yes, several of us oversaw it.

13 Q. Basically all the cases that were reviewed  
14 through the audit, either was a result of direction by  
15 you, or I think two other officers?

16 A. Yes, Sergeant Taylor and Sergeant Lloyd.

17 Q. Are you aware, you may not remember directly,  
18 there was a case, Braaheim Reed, that was reviewed, and  
19 involving allegedly heroin that was seized?

20 A. Is that one that is being discussed today?

21 Q. Yes.

22 A. I believe there was a Newark case and State  
23 case.

1           Q. Newark. It was reviewed as part of Delaware  
2 State Police?

3           A. Audit.

4           MS. WALKER: I would like to approach the  
5 witness with the affidavit of probable cause for the  
6 Reed case.

7           MS. WRIGHT: If they can lay more of a  
8 foundation. This sergeant testified he oversaw the  
9 audit. The auditing officer for the Reed case is  
10 coming up next to testify. If this officer has  
11 individualized knowledge as to audit of the case, then  
12 okay, but the State would objection if he does not have  
13 individualized knowledge.

14           MS. WALKER: He was overseeing the whole  
15 thing. This affidavit of probable cause is part of the  
16 court file. I don't know why I would not be able to  
17 hand it to him to review it.

18           THE COURT: You can mark it as a Defense  
19 Exhibit.

20           MS. WALKER: Identification.

21           THE CLERK: Defense Identification B is so  
22 marked, Your Honor.

23           MS. WALKER: May I approach?

1 THE COURT: Yes.

2 BY MS. WALKER:

3 Q. Ask you to review that, like I asked you to  
4 review the other one, as well.

5 A. (Witness reading.)

6 Okay.

7 Q. It you look at paragraph 11, let me know when  
8 you are there. Make sure that I am reading this  
9 correctly. It looks to me as though he searched a car,  
10 actually seized some bundles. Based on what you see  
11 here, what does it look like the police are saying they  
12 seized. What are they representing?

13 A. 50 bundles of heroin.

14 Q. It goes over, that paragraph goes over to the  
15 next page. Do they represent that it weighs anything  
16 in particular?

17 A. It says bundles consist of 13 bags of heroin,  
18 there is heroin estimated weight was calculated at  
19 13 grams.

20 Q. If we go down to the paragraph 14, this one  
21 has a couple different things. If you look at one,  
22 two, three, fourth line down, police represented what  
23 in this report?

1           A. You are talking about where it says heroin  
2 weight 4.5 gross grams.

3           Q. Yes. Am I correct they are representing that  
4 that's based on your training and experience from the  
5 affidavit of probable cause, that is what they are  
6 representing there?

7           A. Correct.

8           Q. Then, finally, I believe they represent  
9 there's another set of evidence, is that your  
10 understanding?

11           MS. WRIGHT: Your Honor, the State objects.  
12 Is there a question as to what he knows other than  
13 reading an affidavit of probable cause that he has no  
14 personal knowledge about?

15           THE COURT: The document is not in evidence.  
16 She is asking him specific questions, I assume,  
17 information that may be relevant to the weight, and  
18 volume of the drugs. So I will allow it to proceed.  
19 Obviously he does not know anything about the  
20 investigation. He wasn't the officer. You can ask him  
21 to it read weights, which is what I think you are  
22 asking him to do.

23           MS. WALKER: Correct. Then we will be done.

1 BY MS. WALKER:

2 Q. If I am understanding correctly, they are  
3 representing a third set of evidence with a certain  
4 weight; is that correct?

5 A. Yes. It states inside a shoe box there was  
6 seven bundles of suspected heroin.

7 Q. Do they go on to represent an amount?

8 A. 1.82 grams.

9 Q. That's all I have on that.

10 I want to talk about the review of evidence  
11 has was done by the State police and other agencies  
12 after the Medical Examiner's Office was closed. Start  
13 with that day. Were you present when the police went  
14 in and shut down the Medical Examiner's Office?

15 A. Yes, that was on February 20th when a lock was  
16 placed on the main locker.

17 Q. Were you one of the officers that went into  
18 the vault there, or did you go in vault?

19 A. To remove evidence?

20 Q. Yes.

21 A. Yes, I was.

22 Q. It is my understanding, if I am correct that  
23 Janes Daneshgar had been an employee at the Medical

1 Examiner's at the time?

2 A. Yes.

3 Q. You requested him to assist you this logging  
4 items that were being taken out?

5 A. Correct. He pretty much sat at his computer  
6 and the boxes were brought out, I would then verbalize  
7 with him the case numbers that we were removing. He  
8 would check them off to generate a receipt, show it was  
9 being removed from the locker.

10 Q. He was doing data entry. So if I represented  
11 to you that chain of custody the one that you looked at  
12 earlier says that Mr. Daneshgar put the evidence into  
13 storage at State police, would that be correct?

14 A. I don't know that it would -- trying to follow  
15 you here.

16 Q. Did Mr. Daneshgar go to the State police and  
17 put evidence in the vault there?

18 A. No, absolutely not. He never left the ME's  
19 Office.

20 Q. With was doing data entry to account for that?

21 A. He was to TOTing the property to us. Paper  
22 receipt to show that transaction.

23 Q. Beyond what he was documenting, was there any

1 chain of custody form that you, generally speaking,  
2 developed for tracking the evidence from the time that  
3 it was taken out of the Medical Examiner's Office when  
4 you or whoever put it physically in storage, whoever  
5 did put it versus what is represented in storage, and  
6 then tracking who takes it out, we know we can document  
7 who did the review, who takes it out to take it to the  
8 independent lab. Are you aware of any documentation of  
9 the chain there?

10 A. Yes, there are logs that were maintained at  
11 Troop 2 for specific evidence when it was removed from,  
12 I think if you are asking when it was removed from  
13 Troop 2's locker and transported to NMS lab?

14 Q. Yes.

15 A. There's a separate log for that.

16 Q. So documents when and who took it out?

17 A. Absolutely. Then who picked it up and  
18 returned it, also.

19 Q. Thank you.

20 Were there other officers beyond yourself that  
21 were assisting in actually removing the evidence from  
22 OCME?

23 A. That was Sergeant Lloyd and Detective Lanno

1 primarily the ones removing evidence from shelves,  
2 placing in boxes, marking boxes, hand them out to me,  
3 and I was sitting next to J or standing next to J.

4 Q. Do you recall if you had some process in place  
5 to document when and who else was in there with you  
6 handling evidence?

7 A. No, they were just the same guys that came  
8 with me every time, same detective and sergeant.

9 Q. When you went into the lab, did you get an  
10 immediate impression of it?

11 A. Talking about the evidence locker?

12 Q. Evidence locker, and the entire controlled  
13 substance unit at the ME's Office when you went to shut  
14 it down?

15 A. Okay.

16 Q. Did you get an impression by what you saw of  
17 anything in particular about how it was being run at  
18 that moment?

19 A. No, everyone was sort of, I think, at a stand  
20 still because they were not really sure what was going  
21 on with the investigation.

22 Q. Did you come to develop, based on your  
23 investigation, a belief about what may have been

1 causing some problems there?

2 A. That is hard. I didn't work there. I saw  
3 them on a weekly basis. I transferred -- everything  
4 seemed to be work fine with our transfer of evidence.  
5 What happened behind the scenes I can't state exactly.

6 Q. Do you recall ever describing the lab as a  
7 free for all?

8 A. It's, as the investigation went own, it seems  
9 as though there weren't many regulations, wasn't a  
10 whole lot of oversight.

11 Q. So that would explain why you might use that  
12 word free for all?

13 A. Yes.

14 Q. Is that your opinion today?

15 A. It has its troubles.

16 Q. Part of being in charge of the audit, you were  
17 working under Lieutenant Laird; is that correct?

18 A. Correct.

19 Q. As part of the criminal investigations?

20 A. I wasn't part of the criminal investigation.  
21 I was helping to manage the evidence, overseeing the  
22 audit, presenting them with cases that would be in  
23 question, or may be criminal in nature.

1           Q. I just want to ask a couple more questions.  
2           Were you aware of any written procedures, policies  
3           about how the review was to be conducted?

4           A. No, we didn't have a written review procedure.

5           Q. Did you have a meeting beforehand?

6           A. There was a meeting by the administration with  
7           some of the different department heads of different  
8           agencies addressing the current investigation. There  
9           was made known to them all the evidence was going to be  
10          brought back to Troop 2, audit was going to be  
11          conducted, and we need help. If they could provide  
12          investigators to assist us in the audit process.

13          Q. Were members of the Department of Justice  
14          present in that meeting?

15          A. I can't recall.

16          Q. Do you recall working with any member of the  
17          Department of Justice?

18          A. In the audit?

19          Q. Yes.

20          A. From the AG's Office, trying to make sure I  
21          get this right, Gary Taylor, I think he worked is that  
22          what you are referring to?

23          Q. Any of the deputies at the Department of

1 Justice were there to provide you guidance as to how  
2 this should work?

3 A. I don't know if I personally spoke with them.  
4 I wouldn't doubt on my administrators had  
5 correspondence with them or not. It was a joint task  
6 they were trying to accomplish.

7 MS. WALKER: One moment, please, Your Honor.

8 (Discussion held off the record.)

9 MS. WALKER: May I approach for an item of  
10 evidence?

11 BY MS. WALKER:

12 Q. I am going to show you State's Exhibit 32,  
13 which is -- you tell me. It's for the Nesbitt case.  
14 What is that form?

15 A. That is an audit sheet provided by each team  
16 of inspectors to be completed as they were doing their  
17 inspection. It had to be completed for each individual  
18 piece of evidence that was audited.

19 Q. Who came up with that form; do you know?

20 A. I believe that was Lieutenant Laird or  
21 Hulings, one of the administrators.

22 Q. When they assigned you to do this review, did  
23 they sit down, I don't know talk to you on the phone,

1 say, all right, we need to come up with a procedure to  
2 review all these cases. We want you to run it.

3 Did they tell you whether or not they had  
4 consulted with anybody, any other agencies that may  
5 have had situations like this to come up with a  
6 process?

7 A. We talked amongst each other, I think myself  
8 Lieutenant Laird, and Captain Sawyer. It is something  
9 that developed pretty quickly because of the scope of  
10 what we are dealing with. I can't remember a specific  
11 meeting, but I know we were together, assessing the  
12 area where the audit was going to take place, how we  
13 are going to set it up, break into teams, utilize an  
14 audit sheet, probably document each case so that it  
15 could go with that piece of evidence. Provide evidence  
16 tape for State Police evidence, pens, cutting  
17 instruments, scales for each team that would be  
18 utilizing, conducting the audit. One would be a scribe  
19 and the other cutting open the envelope in an area that  
20 had not been previously taped.

21 Then once they were satisfied that the  
22 evidence inside matched what was on the envelope, they  
23 would seal it up initial it. Finish completing this

1 form, handed it to me.

2 Q. You basically had a brainstorming session and  
3 said, we have to deal with the situation quickly,  
4 right, wanted to remedy this problem or identify  
5 possibly who a criminal might be that might be  
6 involved?

7 A. We just wanted to assess, basically, the  
8 amount of damage that had been done, trying to  
9 establish a scope of the cases involved in this  
10 investigation.

11 Q. So basically you don't recall anyone saying to  
12 you, or you personally calling or talking to someone  
13 from some other agency somewhere else that may have had  
14 to deal with the same situation?

15 A. Personally, I didn't.

16 Q. You don't recall anybody telling you they had  
17 done that?

18 A. I don't believe so.

19 Q. Go back to this form, top has an ME control  
20 number, FE 139883. A and B. I believe this was the --  
21 you mentioned already this was form that was developed  
22 for the review. Tell me, based on what you see here,  
23 if the reviewers Polk and Parker gave this to you,

1 after they had done a review, and said here you go,  
2 Sergeant. What does this say to you about what they  
3 found, what they determined about the evidence that was  
4 in the envelopes in this case?

5 A. Matched what was on the actual evidence  
6 envelope itself.

7 Q. When you say "matched", are you talking about  
8 weight?

9 A. It was in close proximity to. It wasn't --  
10 you could have a pill count, you could have a heroin  
11 bag count, you could have weight, if there was weight,  
12 evidence was weighed. If it was pill count, pills were  
13 counted. If the specific drug in question was  
14 identified as OxyContin, those numbers would be  
15 confirmed through drugs.com website, input that make  
16 sure we have OxyContin in the envelope.

17 Q. My understanding from the prior testimony is  
18 we know at the very least they were instructed to count  
19 bags, if there were bags to be counted, if it's  
20 fungible stuff like marijuana, just weigh it, see  
21 generally, number of bags; is that right?

22 A. Correct.

23 Q. Were they given a specific standard variant

1 standard as to okay, if we have marijuana in the amount  
2 of, I don't know, 1300 grams. If there is a problem --  
3 if there is a discrepancy you notice, there's a  
4 difference there is only 1200 that you come up with,  
5 were they told you need to let me know there is a  
6 discrepancy, did you say -- well, start with that?

7 A. If they came up with a -- you have minor  
8 discrepancies, there is to criminal intent, just items  
9 being weighed on different scales, different locations.  
10 So it is not necessarily going to come up perfect. If  
11 it is to the degree as an investigator, or all these  
12 people were police officers that handled evidence,  
13 packaged evidence, handled investigations they were  
14 uncomfortable with, this does not look right, further  
15 investigation they may have saw something on the  
16 evidence envelope that was suspicious, then they would  
17 bring it to my attention. I would notify Lieutenant  
18 Laird or Wallace to review it, see if it was something  
19 they felt needed further investigation.

20 Q. In a case where I think we talked about  
21 earlier, case that you delivered evidence, Mr.  
22 Nesbitt's case, marijuana?

23 A. Yes.

1           Q. I think we determined that 1391 grams was what  
2 was represented what you were delivering between the  
3 two envelopes?

4           A. Correct.

5           Q. If this document, as its marked, what does  
6 that tell you about the weight and/or bags in that  
7 envelope?

8           A. It was either exactly as marked on the  
9 envelope, or within close proximity, nothing suspicious  
10 about the envelope. If it wasn't exactly the same to  
11 lead them to believe there was any type of criminal  
12 intent.

13          Q. I know what you are saying, no one is going to  
14 dispute the fact there is going to be variants in the  
15 weights. Did you say, for example, to these gentlemen  
16 or ladies, I don't know who else did it, okay, you have  
17 something, take this number again 1391 grams of  
18 marijuana. We will consider a reasonable variant to be  
19 XYZ grams?

20          A. No, we had no protocol for that.

21          Q. Why would that be?

22          A. There is so many different variables to take  
23 into consideration, it is not really that simple. You

1 have evidence packaged inside things, was that taken  
2 into consideration when the evidence was weighed? Now  
3 you are getting a different weight, or it is weighing  
4 heavier or lighter. There is, you know, it was -- if  
5 it's in close proximity, or the evidence envelope looks  
6 like it is intact, does not appear to be suspicious, we  
7 don't feel it was something to move forward on as a  
8 criminal investigation.

9 Q. Did you, or to your knowledge, did any of the  
10 other supervisors involved think about talking to  
11 possibly a chemist about reasonable variants that might  
12 be reasonable under certain circumstances?

13 A. I didn't. I don't know that anyone else did  
14 either.

15 Q. Go back to the 1391 grams in this case, would  
16 you say 50 gram variance would be of concern?

17 A. Yes, I probably would want to take a second  
18 look at the envelope and inspect it a little closer,  
19 make sure everything is okay.

20 Q. If that were the case, would you expect yes to  
21 be circled?

22 A. Yes.

23 Q. I would imagine you would feel the same if it

1 was 100 grams?

2 A. Yes.

3 Q. What about if it was 196.05 grams?

4 A. Yes.

5 Q. That would be a problem?

6 A. Would be something we need to follow-up on it.

7 If it is relevant to the investigation, or if it was an  
8 administrative error.

9 Q. In your mind, at least the word -- question  
10 discrepancy should have been answered yes, if what I  
11 described to you is correct?

12 A. Yes.

13 Q. Would you expect there to be something in the  
14 comments to explain what the discrepancy is?

15 A. Yes. You would say, weight on envelope  
16 denotes so many grams, weight measured during audit was  
17 50 grams lighter or 100 grams light, whatever that  
18 would be.

19 Q. If the officer then -- back to the sheet the  
20 way it is, brings this to you, says here you go,  
21 Sergeant, what would you do -- what was your policy and  
22 procedure of getting evidence back with a sheet like  
23 this that says no discrepancy; what would you do with

1 that?

2 A. I marry this audit sheet with the receipt that  
3 I received from Medical Examiner's Office, place it  
4 back in the envelope, take that evidence, place it back  
5 in the box it was assigned to, then hand him his next  
6 piece of evidence to audit.

7 Q. There certainly would be no reason for you to  
8 go up the chain to Sergeant Lloyd or Lieutenant Laird  
9 and say we need to take a second look at this?

10 A. No.

11 Q. Would you also have expected them to have put  
12 anything down like if they saw any rips or tears on the  
13 outside of the envelope, I would imagine?

14 A. Yes.

15 Q. What about bags that are inside bags of  
16 marijuana, if there had been a tear or rip, should that  
17 have been documented, you think?

18 A. That is a question -- you don't know the  
19 condition it was when it was packaged. We are  
20 basically dealing with the outside of the envelope  
21 which our focus was on.

22 Q. I will put another form up, same type of form;  
23 is that correct?

1 A. Yes, it is.

2 Q. At the top it says Medical Examiner control  
3 number, FE 13-10905 ABC. Inspected by; who is that,  
4 can you tell?

5 A. SP would be Seth Polk, New Castle County  
6 Police.

7 MS. WRIGHT: Your Honor, we have an Exhibit  
8 number, please.

9 MS. WALKER: I apologize. State's Exhibit 34.

10 BY MS. WALKER:

11 Q. So Seth Polk, sorry?

12 A. Other one would be Tom Maiura.

13 Q. Hoping if he comes in we can -- based on this  
14 form, this was returned to you after the review team  
15 had looked at the envelope that goes along with this,  
16 would this be something that would raise a red flag for  
17 you?

18 A. No, it wouldn't.

19 Q. What would it communicate to you?

20 A. That the evidence inside the envelopes matched  
21 or was close to what was notated on the front of the  
22 envelope by the investigating officer. There were no  
23 signs of tampering or with the evidence.

1           Q.   When they were asked -- these reviewers were  
2 asked to look at heroin, in particular.  Were they  
3 asked to weigh the heroin, reviewers that already  
4 talked about they were given scales, told to weigh  
5 certain things.  Were they asked to weigh heroin?

6           A.   If anything had a weight assigned to it, it  
7 would be weighed.  If there was a number of bags marked  
8 on it, they would count it.

9           Q.   So heroin, in particular, lot of times comes  
10 in little bags.  You would expect there to be a count  
11 -- for them to have counted it?

12          A.   Yes.

13          Q.   And if you got a form back like this that says  
14 discrepancy no, would your understanding be that the  
15 number of bags represented on the envelope would have  
16 matched the number of bags that they recounted?

17          A.   Correct.

18          Q.   And it would be your understanding if they had  
19 weighed items, or used an approximate weight to  
20 calculate heroin, it would have been similar to what we  
21 talked about with the marijuana, within reason, the  
22 same?

23          A.   Correct.  That is --

1 Q. Little more difficult?

2 A. Some agencies were using a preset measurement  
3 for the amount of drugs in the envelope when it is  
4 scraped out by the Medical Examiner's Office, or the  
5 testing agency, it is not quite the same. So I think  
6 that is a hard question to answer. I don't know it's  
7 going to mirror the same because of different  
8 measurements utilized by each agency.

9 Q. I think we have been told that they have  
10 assigned values to each of the little bags, they use  
11 that to calculate a lot of time with heroin, estimate  
12 instead of calculating. Do you know what number --  
13 when you were there, do you know what numbers they were  
14 using?

15 A. I believe at the time State Police were using  
16 .025, now it's been modified to a different number?

17 Q. That changed?

18 A. Yes.

19 Q. Similar to the other one, if you received this  
20 with the evidence that had been reviewed, they gave it  
21 to you, what would you do with this?

22 A. As I stated before, I would place this with my  
23 receipt that was received from the ME's Office, place

1       it back in the envelope, place that piece of evidence  
2       back in the corresponding box, then distribute another  
3       piece of evidence. Once that evidence box was empty,  
4       make sure all the evidence is in there, all the  
5       receipts, take it back to my locker, retrieve another  
6       box.

7             Q. Again, this wouldn't raise a red flag for you  
8       to approach your supervisors about a possible  
9       discrepancy?

10            A. No.

11            Q. Need to be further investigated?

12            A. Correct.

13            Q. Sir, were you aware of a big discrepancy in  
14       the vault when you went to the OCME of about 700 pieces  
15       of evidence that couldn't be accounted for?

16            A. I was made aware of that.

17            Q. Did you participate in trying to figure out  
18       what they were attached to?

19            A. No. The way I understand it is we removed  
20       more physical evidence than they had accounted for.

21            Q. Right. I guess, there was more evidence in  
22       the Medical Examiner's -- you took out more evidence  
23       than the Medical Examiner had --

1 A. Records for.

2 Q. Had listed?

3 A. Correct.

4 Q. So they were not linked to any specific case  
5 they had documented?

6 A. Not familiar with that, no.

7 Q. I skipped over when the officers were doing  
8 their review of individual pieces of evidence, what was  
9 it they were supposed to do before they cut open and  
10 went inside the envelope, they were suppose to look for  
11 on the outside?

12 A. The integrity of the evidence envelope. Take  
13 a look at is it affixed normally, nothing has been  
14 altered, additional tape may have looked out of place,  
15 that didn't match what was already on the evidence  
16 envelope, things of that nature.

17 Q. Were they instructed to pull any tape back and  
18 look under it?

19 A. No.

20 Q. If they looked at it and something looked out  
21 of whack, you would expect that have been on this form,  
22 as well, right?

23 A. Yes.

1 MS. WALKER: Your Honor, if I may just have a  
2 moment.

3 THE COURT: You may.

4 (A brief pause.)

5 (Discussion held off the record.)

6 BY MS. WALKER:

7 Q. Ask you some questions about evidence tape.  
8 Are you familiar with different types of tape that is  
9 used in an evidence envelope's life, what can be used,  
10 who uses tape, what colors?

11 A. You mean with different agencies?

12 Q. Well, for example, State Police like yourself  
13 submitting some evidence to the Medical Examiner's  
14 Office, envelope would have been taped, right?

15 A. Correct.

16 Q. And what color is that tape?

17 A. Bluish green color.

18 Q. Why is that bluish green, State Police always  
19 use that?

20 A. That is just how they special order.

21 Q. Are you aware that white tape is sometimes  
22 seen on envelopes?

23 A. Yes.

1 Q. Do you know who puts that on there?

2 A. That could be done by the State Police, also.

3 Q. White tape?

4 A. We have different types of evidence tape.

5 That is predominantly the tape we use. I know the  
6 Medical Examiner's Office utilized a different type of  
7 white evidence tape after they have gone into an  
8 envelope.

9 Q. Are you aware there is also red evidence tape?

10 A. Yes.

11 Q. And yellow evidence tape?

12 A. Yes.

13 Q. When you went into the vault at some --  
14 whatever -- either the first day you were there or some  
15 other time, did you ever find a box filled with tape?

16 A. I remember in the back of the vault there was  
17 a box that had different types of evidence tape in it  
18 which I thought was unusual.

19 MS. WALKER: May I have a moment, Your Honor.

20 (Discussion held off the record.)

21 BY MS. WALKER:

22 Q. Did that box look like it had been hidden?

23 A. No, I think it was sitting right up on a

1 shelf. There is a cabinet in the back where they  
2 receive evidence when the chemists bring it back to  
3 them, it was sort of right next to that. On a shelf  
4 that didn't appear to be hidden.

5 Q. Were there various colors of tape?

6 A. Yes.

7 Q. Do you recall participating in obtaining a  
8 statement from an Aretha Bailey?

9 A. Participating in what?

10 Q. Obtaining a statement from Aretha Bailey?

11 A. Obtaining a statement from her, yes.

12 Q. I am going to hand you -- if I showed you a  
13 transcript from that statement, you think it might  
14 refresh your recollection as to the condition you found  
15 the box?

16 A. Sure.

17 MS. WALKER: May I approach, Your Honor?

18 BY MS. WALKER:

19 Q. I apologize for this big stack. This is the  
20 entire statement. I will point you to a page.

21 Could you turn to page 247.

22 A. Okay.

23 Q. Do you recall asking Mrs. Bailey why you found

1 evidence tape in the locker?

2 A. Yes, I thought it was unusual.

3 Q. You did. Do you recall telling her what color  
4 tape you found?

5 A. Try to track this.

6 Q. Got to the time of 3:28:19.7?

7 A. Red tape.

8 Q. Next line?

9 A. White tape, every type of tape. There was a  
10 variety of tapes in the box.

11 Q. What you said was "red tape, white tape, every  
12 type of tape."

13 A. Yes.

14 Q. So you thought that was unusual enough in your  
15 part of the investigation you are trying to find out  
16 what happened. You wanted to ask her why would there  
17 be a box of all this different color tape?

18 A. Absolutely.

19 Q. Going to go become to the Tyrone Walker case.  
20 What is your understanding of how they found  
21 the point of entry in that envelope after they  
22 discovered there had been a problem?

23 A. I am not familiar with the Tyrone Walker case.

1 Q. A case in January, I guess, was where this all  
2 came to light, blood pressure pills, are you familiar  
3 with that?

4 A. One in Kent County.

5 Q. Are you familiar with what they did after the  
6 fact to find out how it was tampered with?

7 A. No, I never looked at that evidence or was  
8 involved in that.

9 MS. WALKER: That's it. If I can collect the  
10 stack of paper.

11 THE COURT: Mr. McCarthy, while Mrs. Walker is  
12 collecting her paper, I am trying to visualize this in  
13 my mind the audit process that was occurring because I,  
14 in candor to you, I have had some varying testimony as  
15 to what was happening. It appears that of all the  
16 sergeants, detectives overseeing it, you were there  
17 quite a bit of time.

18 THE WITNESS: About half of the time I was.

19 THE COURT: Do you recall at the max how many  
20 teams would be in the room?

21 THE WITNESS: We would have anywhere from,  
22 depending on how many people were able to show up,  
23 usually between two to four different teams. Each

1 would have their own separate table.

2 THE COURT: You would be there kind of, you  
3 would not be part of the teams, you would be  
4 supervising what was happening, handing them out  
5 evidence?

6 THE WITNESS: Correct I would remove one box  
7 at a time from the locker. Once that envelope was  
8 handed out, completed, I would take that evidence, put  
9 it back in the evidence box it belonged, marry that up  
10 with the receipt, place that back in the envelope.  
11 Once that box was completely audited, make sure I had  
12 all of my information, take that box, put it back in  
13 the locker, grab the next one in sequential order,  
14 repeat the process.

15 THE COURT: The Court is visualizing that it's  
16 not informal, there is a lot of hey, Scott, come over  
17 here. What you do think about that? You think it is a  
18 discrepancy we should note? Is there kind of  
19 conversations that occurring on, or is it simply,  
20 Scott, I got something that is not consistent with what  
21 is on the envelope. Here, you make the call, or is it  
22 something, Scott, come over here. We've got some  
23 discrepancy. There is a discussion between you and

1 officers and a decision is made?

2 THE WITNESS: That is basically it.

3 THE COURT: Would it ever -- was there  
4 situations where it was clear that we -- the recording  
5 officer, the ones doing it is simply making that  
6 judgement decision on their own?

7 THE WITNESS: No, it was done by the two of  
8 them, myself, or the sergeant would have been in the  
9 room at the time. We would have all analyze the  
10 evidence. We had an instance where drugs are replaced,  
11 there is no doubt that is criminal behavior.

12 THE COURT: I am not so -- I know that part  
13 of -- the primary reason that you are doing the audit  
14 is to see if you can determine whether or not there is  
15 any additional criminal activity that is occurring.  
16 That is part of what the audit purpose was. But what I  
17 am trying to visualize is that I had one officer say if  
18 it didn't match the envelope, I had to call McCarthy or  
19 whoever it was and said, here is a discrepancy. What  
20 do you think?

21 There would probably be a discussion, well  
22 probably dry marijuana. It is not that big, we are not  
23 going to note it as a discrepancy, because you are

1 looking at it as a criminal process, not necessarily  
2 inventorying all the evidence.

3 Is that what is going on, or were those  
4 officers given some discretion themselves without  
5 having to put you in the middle.

6 THE WITNESS: No, because we are all in close  
7 proximity. If something did come up, they would  
8 consult with myself or whoever the sergeant would have  
9 been in the room, would have been brought to our  
10 attention. If it was very minor, like two grams or  
11 whatever, they probably just would have maybe not have  
12 said anything to us. Most -- if it was anything  
13 significant, or they just weren't very comfortable with  
14 it as an investigators, they would definitely bring it  
15 to my attention.

16 THE COURT: Thank you. Redirect.

17 REDIRECT EXAMINATION

18 BY MS. WRIGHT:

19 Q. You talked about heroin and how the auditors  
20 with would count the heroin. You said there was  
21 sometime weighed. Can you clarify that for the Court  
22 if an auditor has hundreds of bags, little bags of  
23 heroin, are they taking the substance out and weighing

1 it?

2 A. No, absolutely not.

3 Q. Just counting it?

4 A. Counting it.

5 Q. With regards to tape that you referred to in  
6 the transcript, different colors of tape, can you tell  
7 us whether or not you would note or tell Lieutenant  
8 Laird, your supervisor, whether you saw Delaware State  
9 Police blue tape in that box?

10 A. I did not.

11 Q. You did not see that?

12 A. No.

13 MS. WRIGHT: No further questions.

14 RE CROSS EXAMINATION

15 BY MS. Walker:

16 Q. When you were talking to Mrs. Bailey, during  
17 that discussion that you had, were was Lieutenant  
18 Laird -- I don't know that he was in the room, was he  
19 monitoring the conversation?

20 A. Yes, they were in another room.

21 Q. He was monitoring the conversation where you  
22 said you found blue tape, different color tape?

23 A. I believe so. They were not in the room with

1 he me. Trying to remember.

2 Q. If you don't know, that's fine.

3 A. You know what, I don't know for sure. I  
4 believe he had conducted an interview prior to me.

5 MS. WALKER: Thank you.

6 REDIRECT EXAMINATION

7 BY MS. WRIGHT:

8 Q. Briefly clarify. Mrs. Walker just asked you,  
9 you just told, testified that you saw blue tape. Did  
10 you see blue tape, DSP tape in that locker or office  
11 area?

12 A. No, I did not.

13 MS. WRIGHT: Thank you.

14 RECROSS EXAMINATION

15 BY MS. WALKER:

16 Q. Did you see blue tape?

17 A. No, not blue tape. Not tape that was DSP  
18 tape. I think we are the only ones that have blue  
19 tape.

20 MS. WALKER: Thank you.

21 THE COURT: Step down, sir. Thank you.

22 MS. WRIGHT: Your Honor, State calls Corporal  
23 Thomas Maiura.

1 THOMAS MAIURA,

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

4 DIRECT EXAMINATION

5 BY MS. WRIGHT:

6 Q. Good afternoon, Corporal.

7 A. Good afternoon.

8 Q. Can you tell us by whom you are employed?

9 A. Employed by Newark, Delaware Police.

10 Q. In what capacity?

11 A. I am a master corporal with the department in  
12 the street crimes unit.

13 Q. How long have you been with Newark Police?

14 A. Since 1990.

15 Q. Street crimes unit, can you tell us about  
16 that. What kind of work are you doing for the street  
17 crimes unit?

18 A. That is a basically low-profile unit. We  
19 operate in more or less like rented cars, civilian car,  
20 no special police equipment in them. We do a lot of  
21 surveillance work, some operations where we watch  
22 activity going on at bars, in the parking lots, so on.  
23 Make arrests as appropriate. We won't stay uncover

1 where no one ever discovers our identity as police. We  
2 will make arrests. We will when we do so we normally  
3 put on an outward vest carrier that has police  
4 markings, so on. Until those moments, we are basically  
5 plain clothes unit.

6 Q. You have training and experience with dealing  
7 with drug investigations?

8 A. Yes.

9 Q. Were you ever part of a drug unit?

10 A. Never part of the drug unit exactly.

11 Q. Can you tell us, did there come a time where  
12 you assisted Delaware State Police in an audit of  
13 evidence seized from the Office of the Chief Medical  
14 Examiner, specifically the controlled substance lab?

15 A. Yes.

16 Q. What was your role?

17 A. Basically audit contents of envelope, boxes,  
18 whatever happened to be in, actually.

19 Q. How long did you do that?

20 A. Approximately five weeks.

21 Q. You have a time range in terms of month, day?

22 A. Month, day, probably from March to April, some  
23 point in April, maybe May, first week maybe.

1 Q. Can you tell us what instructions, if any, did  
2 you receive prior to conducting the audit of drug  
3 evidence envelopes and packages?

4 A. Examine the container that had been submitted,  
5 see if there was any markings of tampering, any outward  
6 signs. We would then cut into whatever the package  
7 was, on an area that was not previously taped by some  
8 kind of security tape, take out the contents, examine  
9 it to see if it was consistent with what was on the  
10 envelope or package.

11 Q. That would vary in terms of type of drug you  
12 were dealing with, in terms of the -- how you would  
13 examine the substances inside the envelope?

14 A. There might be some variance, but not much.

15 Q. For heroin, for example, how would you go  
16 about verifying the contents on the envelope were in  
17 fact contents inside the envelope?

18 A. Normally with that, you are counting bags. A  
19 bag is not much bigger than a postage stamp, usually a  
20 small Ziplock bag with an inside a blue wax bag, that  
21 is very typical for packaging methods.

22 Q. Corporal, I am placing on the projector  
23 State's Exhibit 2. Do you recognize this? What is the

1 name on that complaint number for that evidence  
2 envelope?

3 A. Complaint number is 31-13-31996. Name,  
4 suspect name is Braaheim Reed.

5 Q. When you conduct an audit, Corporal, do have  
6 you a form or documentation that you use to document  
7 your findings, if any?

8 A. Yes.

9 Q. I'm placing on the screen State's Exhibit 34.  
10 Again, already in evidence. Can you tell us do you  
11 recognize this?

12 A. I recognize the form, yes.

13 Q. Can you tell us is that your name "inspected  
14 by"?

15 A. Yes.

16 Q. Complaint number?

17 A. 31-13-31996.

18 Q. Did that match up with the envelope that is on  
19 State's Exhibit 22?

20 A. Does.

21 Q. Can you tell us when you receive an envelope  
22 like this, 4.5 gross grams of loose heroin. Tell us,  
23 explain to the Court what you do to examine the

1 envelope; two, what do you do once you get inside the  
2 envelope?

3 A. The envelope, you take it, look both sides of  
4 it, determine is there a cut, anything out of place,  
5 for instance, our department uses yellow tape I that  
6 just marked, and most generally, what you will see is a  
7 kind of a forms up being almost a U shape in the tape  
8 where the down reeds of the flap are sealed shut so  
9 nothing comes out the sides.

10 You look to see there is no other tape that's  
11 out of place, for instance at the end of the envelope,  
12 blue tape. We don't have blue tape. I don't know, I  
13 don't recall in the 24 years ever having blue tape.  
14 You check to see is there anything that is out of  
15 place. If there is, can you explain why. If you  
16 can't, there is an issue, if you can, you can  
17 understand it. In this case there were no cuts in  
18 envelope that were unsealed, no apparent manipulation  
19 of the tape, no tape over top of the tape where it  
20 could have been a cut covered or anything of that  
21 nature.

22 Q. Let me ask you, Corporal, when you open up an  
23 envelope and end up resealing it, what kind of tape did

1 you use as an auditor?

2 A. Tape we used was what was in stock at the  
3 Delaware State Police troop, typically that blue, very  
4 fragile, any tampering it breaks very easily. We use  
5 that on the envelopes in resealing them.

6 Q. So if can I turn your attention to State's  
7 Exhibit 29 again, also in evidence. Look at the  
8 complaint number on that. Does that again match up  
9 with audit form I just showed you in State's  
10 Exhibit 34?

11 A. It does.

12 Q. Braaheim Reed?

13 A. Yes.

14 Q. Corporal, let me ask you, you have an envelope  
15 that says bags of heroin, calculated weight 1.82. If  
16 you don't have a number of bags, how do you determine  
17 if there is a discrepancy or not? What do you do?

18 A. Look at it, open it, is it bags of heroin? We  
19 don't open it and find marijuana, cocaine, pills  
20 something like that, all we can say yes, that is bags  
21 of heroin. We put it back.

22 Q. Let me ask you, Corporal, would you put the  
23 number of bags that you have actually encountered

1       inside the envelope on a form?

2           A.  No.  We have -- we would count that and we  
3       have nothing to base it against.

4           Q.  State's Exhibit 26.  Is that the same  
5       complaint number for Braaheim Reed?

6           A.  Yes.

7           Q.  31996?

8           A.  Yes.

9           Q.  What do you do when you have an envelope that  
10       says 598 bags specifically of heroin.  What would be  
11       the procedure that you would do?

12          A.  You would have to --

13          Q.  What is the procedure that you would utilize?

14          A.  We would have to open up this envelope, and  
15       being that number, our table is cleared, what we would  
16       do is typically just make it nice and easy to count,  
17       break up bags in piles of ten, just to count them.  So  
18       you count them into those piles, you get to 50  
19       normally, put that into a Styrofoam cup, you know there  
20       is 50 in the cup, dump into a bag, then it all goes  
21       into the envelope back in the envelope.

22          Q.  Do you recall whether you did that in this  
23       particular case?

1           A. I don't recall this case specifically. That's  
2 what our procedure was.

3           Q. Let me ask you, Corporal, during the count,  
4 did you notice if any of the count was off, would you  
5 note that discrepancy in State's Exhibit 34?

6           A. Form was filled out by Seth Polk who I was  
7 working directly with. He would normally do that. If  
8 there was any kind of discrepancy noted, it would say  
9 discrepancy, would say what it was.

10          Q. You say was working with, I apologize to cut  
11 you off, he is sitting right next to you as you are  
12 counting?

13          A. Yes, directly next to me. Elbow to elbow.

14          Q. If you noticed something was off as the actual  
15 examiner, reviewer, you would tell Corporal Polk?

16          A. Yes.

17          Q. You would tell a supervisor, correct?

18          A. Yes.

19          Q. So based on this form for case 31996 for  
20 Braaheim Reed, we have no discrepancy. What does that  
21 represent to you?

22          A. That represents we did not notice a difference  
23 in what was a reported and what we found.

1 Q. I see time opened, time closed. We have  
2 10:28, that would be a.m., and 11:02.

3 A. Yes.

4 Q. Approximately half an hour it took to count  
5 all those bags?

6 A. Yes.

7 Q. Let me ask you, I will mark this.

8 MS. WRIGHT: Have this marked as the next  
9 Exhibit, Your Honor.

10 THE CLERK: State's Exhibit 36 is so marked,  
11 Your Honor.

12 BY MS. WRIGHT:

13 Q. I am handing you an NMS litigation package  
14 report for Braaheim Reed. Do you recognize this?

15 A. Yes.

16 Q. Did have you an opportunity to look at it?

17 A. I did have the opportunity to look at it.

18 Q. Corporal, if I can ask you for the container  
19 that is listed in the that NMS litigation packet. I  
20 will display it for everyone to see. Page 406 of this  
21 packet for Braaheim Reed.

22 If you can do me a favor, read this line right  
23 here?

1           A. Tape and package three held together several  
2 of the bags in evidence prior to segregating into  
3 groups. Tape rubber bands not listed on the envelope  
4 that describe the contents inside of it. Envelope  
5 indicates it contains 598 bags. There were 648 total.

6           Q. Do you note that 50 count difference between  
7 598 and 648?

8           A. Yes.

9           Q. You have any explanation as to why there would  
10 be 50 additional bags when you said no discrepancy?

11          A. Only thing I can come to understand or  
12 conceive of in the process is that for a bag, this big,  
13 Officer Polk and I would both have been counting,  
14 separating. Only thing I can think of at this point  
15 with it being exactly 50, is that we poured cups, put a  
16 little hash mark on the bag we put it in. One hash  
17 mark got missed.

18          Q. You said these were proved by what count, by  
19 50?

20          A. 50.

21          Q. That difference in 50, that is more than what  
22 you originally counted, in terms of the 598, correct  
23 648, 50 more?

1           A. Yes, if we missed one hash mark, we would have  
2 not calculated that in.

3           THE COURT: Officer, you have 648 the Medical  
4 Examiner is saying. You counted 598, obviously, even  
5 if you miscounted, 598 less match what was on the  
6 envelope, or you would have said there is a  
7 discrepancy.

8           THE WITNESS: Right.

9           THE COURT: So you have any idea how 50 more  
10 bags would have gotten in, would you have made a  
11 mistake and put 50 bags from another envelope into this  
12 one?

13          THE WITNESS: No.

14          THE COURT: You are saying no discrepancy  
15 because it is 598, that is what the envelope says.  
16 They open it, 50 more bags. That is not a small  
17 amount. No explanation as to how that would have  
18 happened. If you counted 648, you would have said that  
19 is a discrepancy 50 bag of heroin. Right?

20          THE WITNESS: If we counted 648, yes.

21          THE COURT: You would have said that is 50  
22 more bags, that is different than 598 the officer wrote  
23 on the package.

1 THE WITNESS: Right.

2 THE COURT: So any idea?

3 THE WITNESS: Yes, what I am saying there are  
4 cups with 50 --

5 THE COURT: I understand that.

6 THE WITNESS: To calculate what we have got,  
7 putting hash marks for each cup, one hash mark equal 50  
8 bags.

9 THE COURT: Put up the envelope that is what  
10 the officer who made the arrest, maybe that would help  
11 me.

12 MS. WRIGHT: That is State Exhibit 26. That  
13 is the envelope where the officer placed 598 bags of  
14 heroin to describe the contents on the envelope.

15 THE WITNESS: Described as 598 bags.

16 THE COURT: Right. I get that part. You  
17 counted 598. Medical Examiner counted 50 more.

18 THE WITNESS: I am aware. I notice that  
19 difference. What I am saying is as we are putting cups  
20 back, myself and Officer Polk, one of us may have  
21 dumped a cup of full of bags which would have been  
22 exactly 50 into this envelope, not be tabulated in,  
23 that one cup not being tabulated in the count. While

1       it is 50 bags, it is one cup, one missed hash mark  
2       between he and I. So that is the only conceivable  
3       thought that I have on that.

4       BY MS. WRIGHT:

5             Q. To be clear Corporal, NMS tested the heroin in  
6       this case, correct?

7             A. Yes.

8             Q. That 648 was their count?

9             A. 648 was their count.

10            Q. Can you tell us whether the last 24 hours  
11       whether an officer checked the contents of that actual  
12       envelope that is depicted in State's Exhibit 26?

13            A. I do know it was recounted.

14            Q. Do you know who did that in terms of the lead  
15       corporal involved in that sergeant?

16            A. Sergeant Lloyd.

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

18            MS. SAVITZ: May we have a minute.

19            (A brief pause.)

20                            CROSS EXAMINATION

21            MS. SAVITZ: Thank you, your Honor. We have  
22       no questions.

23            THE COURT: Okay. I will be held in suspense

1 as to what the recount is. You can step down.

2 MS. WRIGHT: State's last witness we are  
3 recalling Sergeant Andrew Lloyd.

4 MS. SAVITZ: I ask Corporal Maiura remain  
5 until we are done with Sergeant Lloyd, please.

6 THE COURT: Okay.

7 (Sergeant Andrew Lloyd retakes the witness  
8 stand.)

9 THE COURT: You are still under oath.

10 THE WITNESS: Okay.

11 DIRECT EXAMINATION

12 BY MS. WRIGHT:

13 Q. Sergeant Lloyd, today did you have an  
14 opportunity to examine the contents of the drug  
15 evidence envelope for State versus Braaheim Reed?

16 A. Yes.

17 Q. Going to place on the projector an envelope,  
18 just for clarity sake, Exhibit 29. Envelope Braaheim  
19 Reed, complaint number ending 311331996. You see bags  
20 of heroin weighed 1.82. Did you examine that envelope  
21 today?

22 A. Correct.

23 Q. Drug contents?

1 A. Um-hmm.

2 Q. Did you receive assistance counting?

3 A. Yes, by Detective Lawrence, and Agent  
4 Saldamini from ICE, HSI.

5 Q. Detective Lawrence is the Chief Investigative  
6 Officer?

7 A. Yes, he watched as Agent Saldamini and I  
8 counted.

9 Q. For this particular bag, even though there is  
10 no envelope, there is no number of bags, did you have a  
11 final count for the number of bags in this envelope?

12 A. Yes, it was 91.

13 Q. State's Exhibit 22. Second envelope in the  
14 Braaheim Reed matter. We have 4.5 gross grams of loose  
15 heroin. What, if anything, did you do with that  
16 envelope?

17 A. The way NMS packaged the actual whole case  
18 together it was heat sealed in different sections.  
19 This specific envelope was packaged with itself, next  
20 piece in the row was the what appeared to be the loose  
21 heroin, then came the package that you just showed me.  
22 Then came the breakdown of how they tested it, then  
23 came the final package, then the breakdown of how they

1 tested it.

2 Q. Did you do --

3 A. We didn't remove this, it is a transparent,  
4 clear bag. You can see that the evidence envelope was  
5 there, you can also see the bag that was labeled  
6 4.5 grams.

7 Q. When we say loose heroin, is this what we see  
8 in these individual bags, or is it just loose heroin  
9 literally in a bag?

10 A. That is loose how you would see traditionally  
11 like cocaine packaged just loosely pretty in a form  
12 that is prior to packaging for resale.

13 Q. Based on your training and experience, you  
14 testified before that you have been in the drug  
15 investigation unit, is it GTF?

16 A. I work at -- no, the Governor's Task Force, we  
17 work under the same commands staff. I supervise the  
18 drug unit, then there is the Governor's Task Force  
19 supervised by another sergeant.

20 Q. Can you tell us based on your training and  
21 experience, if you ever encounter loose heroin, are you  
22 weighing that on your own?

23 A. Loose heroin we would way that on our own like

1 marijuana or cocaine. We wouldn't way packaged heroin,  
2 meaning packaged in bundles because bags that they are  
3 in are so much heavier than the actual amount of heroin  
4 in there, it would create an extremely inflated weight  
5 of what actually you are dealing with in product.

6 Q. State's Exhibit 26. Envelope labeled 598 bags  
7 of heroin. Did you or assisting officers do the actual  
8 count today for this evidence associated with this  
9 case?

10 A. Yes, I counted those bags.

11 Q. What is the total number of bags?

12 A. 648 bags.

13 Q. We have 648 bags. State's Exhibit 26, loose  
14 heroin in State's Exhibit 22, then 91 bags, State's  
15 Exhibit 29?

16 A. Correct.

17 Q. Did you have an opportunity to look at the NMS  
18 litigation packet in this case?

19 A. Yes.

20 Q. Did your final count from today consistent  
21 with the NMS litigation packet?

22 A. Yes.

23 Q. For the Braaheim Reed case?

1           A.    Yes.

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

3           MS. WALKER:  No questions, Your Honor.

4           THE COURT:  Let me see counsel at sidebar.

5           (Discussion held off the record.)

6           (The following sidebar conference was held.)

7           THE COURT:  I know this may have just come up,  
8    I would only encourage that the State look at cases,  
9    with a discrepancy like that you need to make some  
10   independent judgement as to how this looks, how this  
11   appears, how this falls out.  And does it appear to be  
12   happening, maybe it is, but it does not appear to be  
13   happening.  You should decide what cases are extremely  
14   critical to you, in which there are no problems, appear  
15   to be no problems.

16           Here is a case, I know a lot of heroin, case  
17   that has a problem.  I now have this case in front of  
18   me, it makes no sense at all to me.  How, your call, I  
19   don't control but someone needs to be managing this  
20   better.  And if not, you are just handing them things  
21   to argue to me about.  So that is my only comment.  You  
22   don't have to bring those case, these cases which you  
23   have discretion, someone needs to be making these calls

1       whether it is clear this is a major problem. Now I  
2       have, on top of everything else, not only cases which  
3       there are hundreds of bags missing, thousands, I have a  
4       case in which there are 50 more bags in a count which  
5       the audit said was okay. You have just made my life  
6       ten times more miserable. I think -- all I am going to  
7       say, there needs to be some thought process here in  
8       regards to what cases are going to be pursued and not  
9       pursued, what cases are problematic or not. Still  
10      moving on, but now we have another whole issue that  
11      wasn't even this my thought process a half our ago. So  
12      that is my only comment.

13                You all do what you want to do. I will make  
14      my ruling. It seems to be making it more difficult  
15      than it should be. So that's my only -- don't have to  
16      respond. I just thought it was important to say that  
17      things need to be thought through, reviewed carefully,  
18      looked at, make rational decisions regardless of the  
19      consequences, as to what cases you really, really need  
20      to go forward on.

21                So I have a pretrial at nine should be done at  
22      ten.

23                MS. WRIGHT: We have Detective Pfaff, Your

1 Honor.

2 MS. WALKER: Just so the Court is aware, we  
3 will call as a witness, one fact witness, Laura Nichols  
4 five or ten minutes, then Mr. Bono.

5 THE COURT: All right, see you tomorrow.

6 (Whereupon the proceedings were adjourned.)

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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