

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT, IN AND
FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NO. 18-1958CF10A

vs

NIKOLAS CRUZ,
Defendant.

JUDGE: SCHERER

**DEFENDANT'S WRITTEN PROFFER IN OPPOSITION TO SF-91
STATE'S MOTION FOR VIEW BY JURY (D-155)**

The Defendant, Nikolas Cruz, by and through the undersigned attorneys, and pursuant to § 918.05, Fla. Stat., the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Article 1, Sections 2, 9, 16, 17, 21, and 22 of the Florida Constitution, files this written proffer in opposition to the State's Motion for Jury View and this Court's granting of said motion without an evidentiary hearing. In support of this proffer the defense pleads the following:

1. Mr. Cruz is charged with 17 counts of first-degree murder and 17 counts of attempted first-degree murder. The State has filed Notice of its intent to seek the death penalty.
2. On September 3, 2020, the State filed a Motion for View by the Jury (SF-91). On October 20, 2020, the Defendant filed a response to the State's motion (D-134) and requested an evidentiary hearing. The State filed its reply opposing the Defendant's request for an evidentiary hearing on November 3, 2020. (SF-105). On November 16, 2020, the Defendant filed a Response to State's Request to Have the Court Summarily Grant Its Motion for View by Jury. (D-136).
3. This court granted the State's Motion for View by the Jury without evidentiary hearing on December 17, 2020. In its order summarily granting the State's motion, this Court states

that “[a]fter the presentation of evidence prior to the jury view, if Defendant maintains that a jury view would not be useful, it may renew its objection at which time this Court will reconsider the matter.” This Court further granted the Defendant 45 days to “prepare and file” a proffer of evidence supporting his position. On January 24, 2021, the Defense filed a Request for an Evidentiary Proffer and Extension of Time to present the proffer. (D-141). The request for an evidentiary proffer was denied by this Court on April 27, 2021, and on May 13, 2021, the Court allowed the defense 60 days to file its written proffer. On June 9, 2021, the Court vacated the deadline for filing the defense proffer. On July 7, 2021, the Court order the defense to submit its proffer by July 30, 2021. This proffer is timely filed.

4. Mr. Cruz maintains that in order to properly preserve the record for the appellate court, an in-court, evidentiary proffer is required. *See, e.g., Frances v. State*, 970 So. 2d 806, 814 (Fla. 2007) (issue not preserved for appellate review where defense counsel failed to proffer testimony of excluded witnesses); *Blackwood v. State*, 777 So. 2d 399, 410-411 (Fla. 2000) (to preserve a claim based on the court's refusal to admit evidence, the party seeking to admit the evidence must proffer the contents of the excluded evidence to the trial court.). *See also ABA Guidelines for the Guideline 10.8 – The Duty to Assert Legal Claims* (“Counsel who decide to assert a particular legal claim should: Ensure that a full record is made of all legal proceedings in connection with the claim.”).

I. OPENING STATEMENT

The defense has been denied an opportunity to properly present and preserve this proffer in the form of a live courtroom evidentiary hearing. Because of the restrictions placed upon the defense, this proffer is limited to the four corners of this document and the exhibits filed with it. Had Mr. Cruz been permitted to present this proffer in an actual hearing, it would have been more

comprehensive in breadth and scope. As the Court is aware, when testimony is elicited by witnesses in a court of law, more evidence can be moved into the record and more testimony in support of counsel's position can be presented. By submitting this written proffer, Mr. Cruz does not waive any issues relating to his requests to have a full, in-court evidentiary hearing. A written proffer is not a substitute for what has been previously requested. A live proffer is important in any case to properly preserve the record for appeal, but especially with respect to the issue of the crime scene view in this case, and with the heightened standards of due process required in a death penalty case.

Florida's statute regarding views by the jury is found at § 918.05, Fla. Stat. That section provides:

View by jury.—When a court determines that it is proper for the jury to view a place where the offense may have been committed or other material events may have occurred, it may order the jury to be conducted in a body to the place, in custody of a proper officer. The court shall admonish the officer that no person, including the officer, shall be allowed to communicate with the jury about any subject connected with the trial. The jury shall be returned to the courtroom in accordance with the directions of the court. The judge and defendant, unless the defendant absents himself or herself without permission of court, shall be present, and the prosecuting attorney and defense counsel may be present at the view.

In its order granting the State's Motion for View by Jury, this Court states: "the statute permits a jury view simply 'when a court determines that it is proper,' which seems to mean when it would be relevant, beneficial, and helpful to explain the evidence more clearly." (Order Granting State's Motion for View by Jury dated 12/17/20). In fact, "proper" is defined as "right or suitable for a particular situation or purpose."¹

¹ Dictionary.cambridge.org/us/dictionary/english/proper. "Proper" has also been defined as "adapted or appropriate to the purpose or circumstances; fit; suitable," see dictionary.com/browse/proper, and "marked by suitability, rightness or appropriate," see merriam-webster.com/dictionary/proper.

With all due respect to this Court, its definition of proper only considers whether such a jury view would benefit the State and is thus too narrow. The Court's reading of the statute fails to take into account all of the considerations of a jury view of the crime scene that would bear on whether it is "suitable" or "appropriate." In other words, the determination of whether a jury view of a crime scene is "proper," requires more than a mere representation by one of the parties that it would be "relevant, beneficial, and helpful." It requires that the Court weigh the necessity and appropriateness of a jury view against the potential difficulties and unfairness. Thus, all of the factors the trial court must consider require a good working knowledge of the facts of the case and the evidence itself in assessing whether the jury view of the scene is "proper."

There has been no delineation of a specific test to be used by trial courts to determine whether a jury view of the scene is proper. However, Florida case law, as well as other jurisdictions, indicate that there are a variety of relevant factors that judges should consider when ruling on a motion for a jury view. Those factors include: (1) whether there has been a substantial change in the condition of the site since the relevant time; (2) the adequacy of the evidence without a jury view; (3) the possibility of unfairness to one of the parties.² If there has been a substantial change in the condition of the site since the relevant time, a jury view is not proper. Likewise, if the evidence is adequate without a jury view, such view is not proper. Finally, if a party will be prejudiced by the jury view, such view is not proper.

Section II of this proffer contains a recitation of the evidence the defense would have presented at a hearing to demonstrate that a jury view in this case is not proper on the three grounds

² In his motion in opposition to the jury view of the crime scene, Mr. Cruz listed six factors the trial court should consider in ruling on such a motion. (*See* D-134). For purposes of this proffer, some of these factors have been combined.

mentioned above. Section III contains the summary and argument in opposition to the crime scene view by the jury in this case.

II. PROFFER OF EVIDENCE

The defense would have presented the following evidence with respect to each of the three factors mentioned above:

A. THERE HAS BEEN A SUBSTANTIAL CHANGE IN THE CONDITION OF THE CRIME SCENE SINCE THE RELEVANT TIME.

The State claims that the 1200 building is “nearly identical to as it appeared on February 14, 2018.”³ This portion of the proffer will demonstrate that the crime scene is not “nearly identical,” as Mr. Marcus claims, but is not even in substantially the same condition as it was at the time of the shooting. Immediately after the incident, numerous law enforcement officers and medical personnel entered the building in order to secure the scene and assist victims. Understandably, these law enforcement officers and medical personnel were not concerned with preserving a crime scene; they rushed into the building in an effort to apprehend the suspect and save the lives of those inside. Nonetheless, their work has altered the crime scene.⁴

Prior to any processing of the scene, an initial walkthrough took place.⁵ The purpose of this initial walkthrough was for law enforcement to assess the scene in its original state. Prior to any crime scene processing of the 1200 building, the hallways, and each of the individual classrooms, were photographed both with a regular camera, and the 360° LizardQ camera,⁶ to document the

³ See State’s Reply to Defendant’s Response in Opposition to the State’s Motion for View by Jury (SF-105). Ironically, on February 15 and 16, 2018, one of the authors of that reply, Jeff Marcus, authorized BSO to release numerous items such as book bags, cell phones and laptop computers that he deemed “non-evidentiary,” from the crime scene to their owners. Not only did the State fail to disclose this fact in its pleading, the State failed to consult the defense to obtain its position on the release of such items at the time it occurred.

⁴ Exhibit 1, June 23, 2021 deposition of Joseph Torok at pp. 97-98. See also Exhibit 75, deposition of Marshall Wolcott at p. 60.

⁵ Exhibit 2, BSO Crime Scene Report of Detective Joseph Torok, at p. 2. See also Exhibit 1 at p. 17.

⁶ See Exhibit 1 at p. 37.

scene in its original state.⁷ This is done by crime scene detectives because they recognize that the work they do will alter the crime scene from its original condition. In deposition, Detective Marshall Wolcott stated: “Generally speaking, we all always take photographs first, before we do any work, so that you can see the most accurate version of what we saw initially going on.”⁸ Then, the following exchange took place:

Q. So, if we, meaning, if anybody wanted to know what the 1200 building, the interior of the 1200 building looked like, the most accurate record of that would be the photographs that were taken before any processing had started?

A. Yes. The photographs, and video, and all of that documentation, prior to, it would be the most accurate version of that area.

Q. And the scene in general?

A. And the scene in general, yes.⁹

Detective Paul Porter testified in deposition that the pre-processing photographs are taken so that:

If anybody wants to see what it looked like before something was changed or altered, there is a record of it. Once we start doing crime scene stuff, we’re changing the nature of the scene, and that’s not something that we want to not be able to go back and see before that happened.¹⁰

Detective Porter was then asked whether the initial documentation would be the best evidence of how a scene appeared on the day of the incident as viewed by crime scene, to which he answered “Yes, exactly.”¹¹ Detective Porter then stated that the most accurate representation of how the crime scene appeared, once the Crime Scene personnel got on scene and observed it.¹²

Likewise, lead crime scene detective Joe Torok testified in deposition that the most

⁷ Exhibit 2 at p. 17, Exhibit 75 a p. 61.

⁸ Exhibit 75 at p. 60. See also, Exhibit 76, Deposition of Paul Porter at p. 127, Exhibit 1 at p. 41.

⁹ Exhibit 75 at pp. 60-61.

¹⁰ Exhibit 76 at p. 75.

¹¹ *Id.*

¹² *Id.* at p. 96.

accurate depiction of the crime scene at the time of the crime would be the initial photographs and LizardQ photos taken prior to processing.¹³

In the hours, days, and weeks after the incident, multiple law enforcement agencies (local, state and federal) entered the crime scene in order to document the scene using state of the art technology to ensure that all evidence relevant to the prosecution of this case was documented and analyzed. As a result of this extensive analysis, and the response of law enforcement and medical professionals, items have been added, removed and moved inside the 1200 building.¹⁴ These changes and alterations will be discussed classroom by classroom and hallway by hallway.

First Floor

The classrooms on the first floor of the 1200 building were photographed by BSO Detective Kypps Poliard prior to processing. These photos show the condition of the first floor just after the crime occurred. Once the scene was processed and the bodies were removed, Detectives Paul Porter and Danny Krystyan photographed the first floor. Additionally, on February 15, 2018, the FBI also photographed the first floor.

Interior west stairwell [1200A]: There were no items changed, removed or added to this area.

Room 1202:¹⁵

1. Items removed:

- a. Authorized by SAO: Items requested by students/teachers include Spanish instructional materials, a flash drive, fundraiser box, Valentine's teddy bear and chocolates. (See Exhibit 64 at p. 1).¹⁶ Some or all items were. (See Exhibit 3A, Property Receipt).

¹³ Exhibit 1 at p. 37.

¹⁴ Exhibit 74, BSO Crime scene logs show over 60 occasions where untrained persons (non-law enforcement) have entered Building 1200, from the conclusion of the processing of the crime scene to the present. (This amounts to approximately 219 persons, not including civil attorneys who are planning a walk through in the near future).

¹⁵ Exhibit 3, Composite of 82 photos of Room 1202.

¹⁶ A list of items requested by students and teachers was sent to ASA Shari Tate by BSO Sgt. Maria Renner for approval or denial of release. The defense requested this list with the disposition of each item, but as of the date of

- b. With approval from the SAO, the FBI photographed and removed 24 bags from this room. (See Exhibit 3A).
2. Changes made during processing:
- a. BSO: The BSO SWAT team broke the window of this classroom door, not the defendant,¹⁷ and displaced a paper sign that was partially obstructing the view from the window into the classroom. They also wrote “Clear SWAT” outside the classroom door and BSO Crime Scene Unit wrote “CSU Clear 2-17-18.” (See Exhibit 3B, RJD061613).
- b. FBI: FBI wrote “FBI Clear no trajectory” outside the door of this classroom. (See Exhibit 3B, RJD061613).
- c. FHP: FHP wrote “FHP X” in black marker outside the door of this classroom. (See Exhibit 3B, RJD061613).
- d. THI: “THI” written with blue marker outside this room. (See Exhibit 3B, RJD061613).
3. Alterations made to the classroom post processing:
(See Exhibit 3D, BSO) (See Exhibit 3C, RJD)

Room	BSO	Defense	Alterations
1202 Pg. 1/4	KAP 3746	RJD3151	a. Dustpan added on desk. b. Cabinet doors repositioned. c. Desks in disarray and overlapping. d. Desks in disarray and moved from the center *24 bags removed by FBI
1202 Pg. 2/4	KAP 3749	RJD3160	a. Papers from top shelf inside cabinet missing. b. Purse removed c. Chair in front of teacher’s desk moved d. Student desks moved *24 bags removed by FBI

this filing, the Defense has not received any information regarding items approved for return or denied. See Motion to Compel List of Personal Items Requested by Students and Teachers and Disposition (D-153).

¹⁷ In order to obtain entry into classrooms, law enforcement broke the windows in the doors, reached in and unlocked the doors. Some of the windows were partially broken from the defendant’s projectiles. The rooms that indicate “no trajectory” on the outside, however, are rooms that the Defendant did not shoot into. These windows were broken solely by law enforcement. In any event, because of the SWAT team’s actions, “every window ... was shattered beyond any point where we would be able to tell if a projectile had done it or not. Exhibit 1, at p. 49-50. Numerous law enforcement officers would have been called to testify that they broke the windows on the doors in an effort to enter the classrooms to evacuate them.

1202 Pg. 3/4	KAP 3750	RJD3162	<ul style="list-style-type: none"> a. Gift bag added to desk and tape removed. b. Polka dot bag missing c. Laptop added d. Desk drawers closed *24 bags removed by FBI
1202 Pg. 4/4	KAP 3747	RJD3153	<ul style="list-style-type: none"> a. Rectangular table repositioned and cylindrical fan removed <i>Desks in disarray</i> *24 bags removed by FBI

Room 1210:¹⁸

1. Items removed:

- a. Authorized by SAO: Items requested by students/teachers include grade book and Mathematics books. (See Exhibit 64 at p. 1). Some or all were returned. (See Exhibit 4A, Property Receipt).
- b. FBI: With approval from the SAO, the FBI photographed and removed 30 bags and one cell phone from this room. (See Exhibit 4A).

2. Changes made during processing:

- a. BSO: The BSO SWAT team broke the window of this classroom door, not the defendant. (See Exhibit 4B, KAP3755-56). They also wrote "Clear SWAT" outside the classroom door and the BSO Crime Scene Unit wrote "CSU X Clear 2-17-18." (See Exhibit 4B, RJD061607).
- b. FBI: "FBI Clear no trajectory" outside the door of this classroom. (See Exhibit 4B, RJD061607).
- c. FHP: "FHP X" in black marker outside the door of this classroom. (See Exhibit 4B, RJD061607).
- d. THI: "THI" written with blue marker with outside the door of this classroom. (See Exhibit 4B, RJD061607).

3. Alterations made to the classroom post processing:

¹⁸ Exhibit 4, Composite 102 photos of Room 1210.

(See Exhibit 4D, BSO) (See Exhibit 4C, RJD)

Room	BSO	Defense	Alterations
1210 Pg. 1/3	KAP 3758	RJD 3136	<ul style="list-style-type: none"> a. Gift bag added to desk b. Books missing from teacher's desktop. c. Cabinet closed <i>Desk rearranged</i> *30 bags removed by FBI
1210 Pg. 2/3	KAP 3766	RJD 3139	<ul style="list-style-type: none"> a. Team poster on cabinet door fallen. b. Black trash can missing *30 bags removed by FBI
1210 Pg. 3/3	KAP 3761	RJD 3148	<ul style="list-style-type: none"> a. Cabinet doors closed. b. Water bottles moved. Desks in disarray *30 bags removed by FBI

Room: 1211:¹⁹

1. Items removed:

- a. Authorized by SAO: Items requested by students/teachers include binders, clothing, phones, grade book and pencil cases. (See Exhibit 64 at p. 1). Some or all were returned. (See Exhibit 5A, Property Receipt).
- b. FBI: With approval from the SAO, the FBI photographed and removed 24 bags, one lunchbox, one tennis racket and four cell phones from this room. (See Exhibit 5A).

2. Changes made during processing:

- a. The BSO SWAT team broke the window of this classroom door, not the defendant. (See Exhibit 5B, KAP3767). They also wrote "Clear SWAT" outside the classroom door and the BSO Crime Scene Unit wrote "CSU X Clear 2-17-18." (See Exhibit 5B, RJD06161W).
- c. FBI: "FBI Clear no trajectory" outside the door of this classroom. (See Exhibit 5B, RJD06161W).
- d. FHP: "FHP X" in black marker outside the door of this classroom. (See Exhibit 5B, RJD06161W).
- e. THI: "THI" written with blue marker outside this classroom. (See Exhibit 5B, RJD06161W).

3. Alterations made to the classroom post processing:

¹⁹ Exhibit 5, Composite of 203 photos of Room 1211.

(See Exhibit 5D, BSO/FBI) (See Exhibit 5C, RJD)

Room	BSO	Defense	Alterations
1211 Pg. 1/4	KAP 3769	RJD 3104	a. Desk added *21 bags removed by FBI
1211 Pg. 2/4	KAP 3774	RJD 3119	a. Cabinet door closed b. Utility Cart moved c. Blue chair moved *21 bags removed by FBI
1211 Pg. 3/4	KAP 3773	RJD 3122	a. Laptop missing from teacher's desk, books moved, gift bag and add'l papers added and desk drawer opened *21 bags removed by FBI
1211 Pg. 4/4	KAP 3771	RJD 3125	a. Utility cart moved b. pencil pouch moved c. Cabinet closed <i>Desks rearranged.</i> *21 bags removed by FBI

Room 1214:²⁰

1. Items removed:

- a. Authorized by SAO: Items requested by students/teachers include Holocaust material, lunchbox, furniture, binders, wallets, phones, headphones, textbooks, clothing, Valentine's Day gifts, and student sample work. (See Exhibit 64 at p. 3). Some or all were returned. (See Exhibit 6A, Property Receipt).
- b. With approval from the SAO, the FBI photographed and removed 29 bags. (See Exhibit 6A).
- c. BSO removed five laptop computers (See Exhibit 6A: compare DJK6885-86, 6890, 6907-6908, 6912 to DJK 7050-7051), three books (See Exhibit 6A: compare DJK6893 to DJK7052), one gift bag (See Exhibit 6A: compare DJK6909 to DJK7050) and projectiles (See Exhibit 6A, DJK 7049).

2. Changes made during processing:

- a. BSO: There are yellow stickers on the ceiling to mark computer fragments embedded in the ceiling (See Exhibit 6B, DJK6906) and notes and markings on the wall to denote projectile holes in the wall. (See Exhibit 6B, DJK6896-6900, 6903, 6917-6921, 6925-6931). Additionally, members of the SWAT team wrote "Clear SWAT 2 victims" outside the door to this classroom, and members of BSO Crime Scene wrote "CSU Clear 2-17-18" outside the door to this classroom. (See Exhibit

²⁰ Exhibit 6, Composite of 147 photos of Room 1214.

6B, DJK6883). Someone also wrote “C 2 VICTIMS” outside the door to this classroom.

- b. FBI: “FBI Clear with trajectory” written outside the door of this classroom. (See Exhibit 6B, DJK6883).
 - c. FHP: “FHP X” written outside the door of this classroom. (See Exhibit 6B, DJK6883).
 - d. THI: “THI” written in blue marker on the wall, and on a yellow sticky note on the wall the door of this classroom. (See Exhibit 6B, DJK6883).
3. Alterations made to the classroom post processing:
(See Exhibit 6D, BSO) (See Exhibit 6C, RJD)

Room	BSO	Defense	Alterations
1214 Pg. 1/4	KAP 3788	RJD 3102	a. Laptops removed <i>Desks shifted</i> *29 bags removed by FBI
1214 Pg. 2/4	KAP 3775	RJD 3076	a. Cabinet door closed b. Blue trash can missing c. Water bottle added *29 bags removed by FBI
1214 Pg. 3/4	KAP 3777	KAP 3095	a. Bag removed b. Cabinet door closed c. Laptop removed *29 bags removed by FBI
1214 Pg. 4/4	KAP 3776	RJD 3086	a. Desks repositioned and stool removed *29 bags removed by FBI

Room 1215:²¹

1. Items removed:

- a. Authorized by SAO: Items requested by students/teachers include student work samples, plastic cart, pictures and computer case. (See Exhibit 64 at p. 3). Some or all were returned. (See Exhibit 7A, Property Receipt).
- b. FBI: With approval from the SAO, the FBI photographed and removed 30 bags. (See Exhibit 7A).
- c. BSO: BSO removed eight projectile fragments from this classroom). (See Exhibit 7A, DJK7049).

²¹ Exhibit 7, Composite of 166 photos of Room 1215.

2. Changes made during processing:

- a. BSO: Stickers were placed on the door (See Exhibit 7B, DJK6820-6838), as well as inside the classroom (See Exhibit 7B, DJK6839-6849, 6851-6853) to denote holes made from projectiles. Additionally, members of the SWAT team wrote “Clear SWAT” outside the door to this classroom, and members of BSO Crime Scene wrote “CSU Clear 2-17-18” outside the door to this classroom. (See Exhibit 7B, DJK6944).
- b. FBI: “FBI Cleared with trajectory” written outside the door of this classroom. (See Exhibit 7B, DJK6944).
- c. FHP: “FHP X” written outside the door of this classroom. (See Exhibit 7B, DJK6944).
- d. THI: “THI” written with blue marker outside this classroom. (See Exhibit 7B, DJK6944).

3. Alterations made to the classroom post processing:
(See Exhibit 7D, BSO) (See Exhibit 7C, RJD)

Room	BSO	Defense	Alterations
1215 Pg. 1/4	KAP 3793	RJD 3059	<ul style="list-style-type: none"> a. Cabinet door closed b. Papers on right side wall falling c. Water bottle added to desktop *28 bags removed by the FBI
1215 Pg. 2/4	KAP 3798	RJD 3060	<ul style="list-style-type: none"> a. Earbuds added to desktop. b. Maroon tape dispenser added to desktop *28 bags removed by the FBI
1215 Pg. 3/4	KAP 3796	RJD 3061	<ul style="list-style-type: none"> a. Red chair in front of teacher’s desk moved. *28 bags removed by FBI
1215 Pg. 4/4	KAP 3799	RJD 3068	<ul style="list-style-type: none"> a. Desks in disarray. b. Window blinds closed c. Cabinet door closed *28 bags removed by FBI

Room 1218:²²

1. Items removed:

²² Exhibit 8, Composite of 85 photos of Room 1218.

- a. Authorized by SAO: Items requested by students/teachers include file folders, personal hygiene products, Valentine’s Day notes, fundraiser money, yearbooks, clothing, marathon money and gift cards, diploma, graduation cap and pencil pouch. (See Exhibit 64 at p. 4). Some or all were returned. (See Exhibit 8A).
 - b. FBI: With approval from the SAO, the FBI photographed and removed 22 bags and a phone from this room. (See Exhibit 8A).
2. Changes (added/removal) made by crime scene personnel during processing
- a. BSO: The BSO SWAT team broke the window of this classroom door, not the defendant. (See Exhibit 8B, KAP3807-3808, 3816).
 - b. FBI: “FBI Cleared with trajectory” written outside the door of this classroom and on a yellow sticky note placed outside the door to this classroom. (See Exhibit 8B, RJD6166E).
 - c. FHP: “FHP X” written outside the door of this classroom. (See Exhibit 8B, RJD6166E).
 - d. THI: “THI” written with blue marker outside this classroom. (See Exhibit 8B, RJD6166E).
3. Alterations made to the classroom post processing:
(See Exhibit 8D, BSO) (See Exhibit 8C, RJD)

Room	BSO	Defense	Alterations
1218 Pg. 1/4	KAP 3809	RJD 2993	a. Dry erase board fallen b. Cabinet doors closed *22 bags removed by FBI
1218 Pg. 2/4	KAP 3811	RJD 3003	a. Fabric under left window added b. Top row of artwork fallen *22 bags removed by FBI
1218 Pg. 3/4	KAP 3812	RJD 3019	a. Missing slats from window blinds. *22 bags removed by FBI
1218 Pg. 4/4	KAP 3814	RJD 3030	a. Water bottle added on chair b. Cabinet doors closed c. Computer cart left door open *22 bags removed by FBI

Interior east stairwell [1200B]:²³

1. Items removed:
 - a. Authorized by SAO: No items were requested from this area.
 - b. FBI: With approval from the SAO, the FBI photographed and removed 20 bags from the east stairwell on the first floor. (See Exhibit 9A)
 - c. BSO: BSO removed a rifle bag and a phone with attached headphones from the east stairwell, first floor. (See Exhibit 9A, POP0395)
2. Changes (added/removal) made by crime scene personnel during processing:
 - b. FBI: "FBI GUNCASE LEFT FOR BSO NO TRAJECTORY" written in black marker. (See Exhibit 9B, RJD8X0A6380).
 - c. THI: "THI" written on a yellow sticky note outside the door to the stairwell. (See Exhibit 9B, FBI/DSC0063). "THI" written in black marker above stair sign. (See Exhibit 9B, RJD8X0A6380).

Room 1201 (reception):²⁴

2. Items removed:
 - a. Authorized by SAO: Items requested by staff include a printer, pictures, clothing, case files, therapist framed license, furniture, KABC test kit and space heater. (See Exhibit 64 at p. 1). Some or all were returned. (See Exhibit 10A, Property Receipts).
2. Changes (added/removal) made by crime scene personnel during processing:
 - a. BSO: The BSO SWAT team broke the door windows in this cluster of offices, not the defendant. (See Exhibit 10B, KAP 3732, 3735, FBI/AMO0008, 0013, 0016, 0019-0020, 0034, 0037).

Room 012B (custodial):²⁵ The window of this door was broken by law enforcement. (See Exhibit 11B).

Room 012C (vestibule room):²⁶ BSO: The BSO SWAT team broke the window of this room. (See Exhibit 12B, KAP3864, FBI/DSC0002). Additionally, there is a marking on the wall to denote a swab of blood taken into evidence by Detective Krystyan (See Exhibit

²³ Exhibit 9, Composite of 60 photos of the first floor east stairwell.

²⁴ Exhibit 10, Composite of 8 photos of Room 1201 and 3 property receipts.

²⁵ Exhibit 11, Composite of 3 photos of Room 012B.

²⁶ Exhibit 12, Composite of 5 photos of Room 012C.

12B, KAP3865). Additionally, EMS left behind medical equipment in the area outside this room where one of the victims was shot. (See Exhibit 12B, KAP3864-3865, GAC4829-4830).

Room 1203 (elevator machine room): There were no items changed, removed or added to this room.

Room 1204 (mechanical): There were no items changed, removed or added to this room.

Room 1207 (custodial closet): There were no items changed, removed or added to this room.

Room 1206 (telecom): There were no items changed, removed or added to this room.

Room 1208 (men's restroom): There were no items changed, removed or added to this room.

Room 1209 (women's restroom): There were no items changed, removed or added to this room.

Room 1212:²⁷

1. Items removed:

- a. Authorized by SAO: Items requested by students/teachers include a hard drive, clothing, computer charger, instructional books, phones, binders and water bottle. (See Exhibit 64 at p. 2). Some or all were returned. (See Exhibit 13A, Property Receipt).
- b. FBI: With approval from the SAO, the FBI photographed and removed 22 bags and two or three phones from this room. (See Exhibit 13A).

2. Changes (added/removal) made by crime scene personnel during processing:

- a. BSO: The BSO SWAT team broke the window in the door of this room, not the defendant, and displaced a purple paper covering the door window. (See Exhibit 13B, KAP3696, 3706, FBI/AMO0078, 0180). The SWAT team also wrote "Clear SWAT" in black marker outside the classroom door. (See Exhibit 13B, KAP3696). The Crime Scene Unit wrote "CSU X" outside the classroom door. (See Exhibit 13B, FBI/AMO0180).
- b. FBI: "FBI CLEAR NO TRAJECTORY" written outside the door of this classroom. (See Exhibit 13B, FBI/AMO0180).

²⁷ Exhibit 13, Composite of 146 photos of Room 1212.

- c. FHP: “FHP X” written outside the door of this classroom. (See Exhibit 13B, RJD61653).
- d. THI: “THI” written with blue marker outside this classroom. (See Exhibit 13B, RJD61653).

3. Alterations made to the classroom post processing:
(See Exhibit 13D, BSO) (See Exhibit 13C, RJD)

Room	BSO	Defense	Alterations
1212 Pg. 1/3	KAP 3697	RJD 3166	a. Cabinet doors closed *29 bags removed by FBI
1212 Pg. 2/3	KAP 3702	RJD 3177	a. Green laptop from teacher’s desk missing b. “No Slacking Any Time” poster missing. c. Framed photo next to printer missing. d. Podium moved e. Stapler moved *29 bags removed by FBI
1212 Pg. 3/3	KAP 3703	RJD 3178	a. Red and white stuffed animal moved b. Green stuffed animal added *29 bags removed by FBI

Room 1213:²⁸

1. Items removed:

- a. Authorized by SAO: Items requested by students/teachers include books, binders, folders, shoes, MacBook, clothing, and eyeglasses. (See Exhibit 64 at p. 2-3). Some or all were returned. (See Exhibit 14A, Property Receipt).
- b. FBI: With approval from the SAO, the FBI photographed and removed 32 bags and four cell phones from this classroom. (See Exhibit 14A).
- c. BSO: BSO removed projectiles and projectile fragments from this room. (See Exhibit 14A, DJK7049).

2. Changes (added/removal) made by crime scene personnel during processing:

- a. BSO: Stickers were placed on the door (See Exhibit 14B, DJK6862, 6866), as well as inside the classroom (See Exhibit 14B, DJK6863-6865, 6867-6871, 6878, FBI/AMO0344-0347) to denote holes made from projectiles. Additionally, blue markings were made to denote projectile locations. (See Exhibit 14B, DJK 6881-

²⁸ Exhibit 14, Composite of 189 photos of Room 1213.

6882). The SWAT team also wrote “Clear SWAT” in black marker outside the classroom door (See Exhibit 14B, DJK6859). Someone wrote “1 VICTIM” outside the classroom door. (See Exhibit 14B, DJK6859).

- b. FBI: “FBI CLEAR TRAJECTORY” written outside the door of this classroom. (See Exhibit 14B, DJK6859-6860)
 - c. THI: “THI” written on a yellow sticky note outside this classroom (See Exhibit 14B, DJK6859-6860, FBI/AMO0182).
 - d. FHP: “FHP X” written outside the door of this classroom. (See Exhibit 14B, DJK6859-6860)
3. Alterations made to the classroom post processing:
(See Exhibit 14D, BSO) (See Exhibit 14C, RJD)

Room	BSO	Defense	Alterations
1213 Pg. 1/1	KAP 3690	RJD 3183	<i>a. Desks in disarray.</i> *32 bags removed by FBI

Room 1216:²⁹

1. Items removed:

- a. Authorized by SAO: Items requested by students/teachers include notebook, photos and duffle bag. (See Exhibit 64 at p. 3). Some or all were returned. (See Exhibit 15A, Property Receipt).
- b. FBI: With approval from the SAO, the FBI photographed and removed 23 bags from this classroom. (See Exhibit 15A).
- c. BSO: BSO removed three notebooks (DJK7037-7039), papers (DJK7052) and projectile/fragments (DJK7049) from this classroom. (See Exhibit 15A).

2. Changes (added/removal) made by crime scene personnel during processing:

- a. BSO: The BSO SWAT team wrote “Clear” “CSU X” “3 Vic” outside the door to this classroom. (See Exhibit 15B, FBI/DSC0121). Additionally, the BSO Crime Scene Unit wrote “CLEAR 2-17-18.” (See Exhibit 15B, RJD061682).
- b. FBI: “FBI CLEAR w/ Trajectory” written outside the door of this classroom. (See Exhibit 15B, RJD061682).

²⁹ Exhibit 15, Composite of 116 photos of Room 1216.

- c. FHP: "FHP X" written outside the door of this classroom. (See Exhibit 15B, RJD061682).
- d. THI: "THI" written on a yellow sticky note outside this classroom (FBI/DSC0121). (See Exhibit 15B)

3. Alterations made to the classroom post processing:
(See Exhibit 15D, BSO) (See Exhibit 15C, RJD)

Room	BSO	Defense	Alterations
1216 Pg. 1/4	KAP 3628	RJD 3195	a. Cabinets closed <i>Desks rearranged</i> *25 bags removed by FBI
1216 Pg. 2/4	KAP 3625	RJD 3186	a. Gift bag missing b. Box added <i>Desks rearranged</i> *25 bags removed by FBI
1216 Pg. 3/4	KAP 3633	RJD 3201	a. One of two chairs removed b. Cabinet door open *25 bags removed by FBI
1216 Pg. 4/4	KAP 3629	-----	a. Black notebook removed by crime scene Det. Krystan as evidence (DK25) b. Green notebook removed by crime scene Det. Krystan as evidence (DK 26) c. White folder removed by crime scene as evidence by Det. Krystan (DK 27) *25 bags removed by FBI

Room 1217:³⁰

1. Items removed:

- a. Authorized by SAO: Items requested by students/teachers include a purse, keys, wireless mouse and clothing. (See Exhibit 64 at p. 3). Some or all were returned. (See Exhibit 16A, Property Receipt).
- b. FBI: With approval from the SAO, the FBI photographed and removed one bag and three cell phones from this classroom. (See Exhibit 16A).

2. Changes (added/removal) made by crime scene personnel during processing:

³⁰ Exhibit 16, Composite of 40 photos of Room 1217.

- a. BSO: The BSO SWAT team wrote “Clear SWAT” outside the door to this classroom. (See Exhibit 16B, KAP0622, FBI/DSC106). Additionally, the BSO Crime Scene Unit wrote “CSU CLEAR 2-17-18.” (See Exhibit 16B, RJD1217_FINAL2).
 - b. FBI: “FBI CLEAR NO TRAJECTORY” written outside the door of this classroom. (See Exhibit 16B, RJD1217_FINAL2).
 - c. FHP: “FHP Clear X” written outside the door of this classroom. (See Exhibit 16B, RJD1217_FINAL2).
 - d. THI: “THI” written in blue marker outside this classroom (See Exhibit 16B, RJD1217_FINAL2).
3. Alterations made to the classroom post processing:
(See Exhibit 16D, BSO) (See Exhibit 16C, RJD)

Room	BSO	Defense	Alterations
1217 Pg. 1/2	KAP 3684	RJD 3212	<ul style="list-style-type: none"> a. Black scotch tape dispenser added b. Water bottle on student desktop. c. Two posters below whiteboard missing. d. One grey chair missing from table. *1 bag removed
1217 Pg. 2/2	KAP 3686	3215 RJD	<ul style="list-style-type: none"> a. Desks rearranged *1 bag removed

First floor Hallway:³¹

1. Items removed:

- a. Authorized by SAO: No items were requested from this area.
- b. BSO: BSO removed projectiles, projectile fragments and casings from the first floor hallway (See Exhibit 17A, DJK7044) there were items removed from the location of Luke Hoyer’s final resting place (See Exhibit 17A, KAP3844, 3858-3860) as well as those left behind by the Defendant (See Exhibit 17A: compare KAP3847-3849, 3854-3857, 3861-3862, DGP1142, 1149, POP0425-042, 0430-04387 to DJK7046-7048). Additionally, a set of keys and a wallet, were removed from the east side of the first floor hallway. (See Exhibit 17A, POP0393-0394)

2. Changes (added/removal) made by crime scene personnel during processing:

- a. BSO: there are numerous markings in this hallway made after the shooting by crime scene investigators. There are drag marks where deceased bodies were removed or

³¹ Exhibit 17, Composite of 559 photos of the first floor hallway.

moved. (See Exhibit 17B, KAP3821, GEC4829). There are fluorescent orange paint marks to divide the hallway into quadrants (See Exhibit 17B, KAP3817-3818, 3825-3830, 3832-3835, 3837-3838, 3842, 3846, 3850-3853) evidence markers and notations made in blue marker on both sides of the hallway in (See Exhibit 17B, DJK6963-7018, KAP3822, 3824, 3839, 3863, 3867-3869), and on the exterior east doorway. (See Exhibit 17B, DJK7019-7026), and X marks where evidence was found (See Exhibit 17B, KAP3822, 3831, 3835, 3839, 3854-3857, 3859-3863).

- b. THI: "THI" written on a yellow sticky note underneath the placard for the stairwell (See Exhibit 17B, DGP1158)
- c. EMS: There is medical equipment on the floor in the location of Chris Hixon's final resting place (See Exhibit 17B, GEC4829-4830, KAP3864-3865, POP0535-0545, 0548-0553, 0555-0560, 0575).

Second Floor

The classrooms on the second floor of the 1200 building were photographed by BSO Detective Miguel Suarez prior to processing. These photos show the condition of the second floor just after the crime occurred. Once the scene was processed, Detective Suarez again photographed the second floor. Additionally, on February 15, 2018, the FBI photographed the second floor.

Room 1200A:³² One backpack and a pair of blue latex gloves were removed from the stairwell on the second floor. (See Exhibit 59, GEC4556-4557, MAS0898-0899, MAS0904-0908).

Room 1221:³³ There were no items changed, removed or added to this classroom.

Room 1229:³⁴

1. Items removed:

- a. Authorized by SAO: Items requested by students/teachers include pencil sharpener, wall-hangings, shoes, binders, ceramic jars, student ID, pencil pouches, silver ring, folder and planner. (See Exhibit 64 at p. 4). Some or all were returned. (See Exhibit 20A, Property Receipt).

³² Exhibit 18, Composite of 66 photos of the west stairwell.

³³ Exhibit 19, Composite of 39 photos of Room 1221.

³⁴ Exhibit 20, Composite 123 photos of Room 1229.

b. FBI: With approval from the SAO, the FBI photographed and removed 24 bags from this classroom. (See Exhibit 20A). Additionally, at least two cell phones were removed from this classroom.³⁵

2. Changes (added/removal) made by crime scene personnel during processing:

- a. BSO: The BSO SWAT team broke the window of this classroom door, not the defendant, and displaced a blue paper sign that was partially obstructing the view from the window into the classroom. (See Exhibit 20B, MAS0682-0695). Additionally, the BSO crime scene unit wrote “CSU CLEAR”, “CSU Clear 02/17/18” (See Exhibit 20B, FBI/DSC0121) and “ROOM CLEAR” in green marker on the outside of the door. (See Exhibit 20B, MAS0687).
- b. FBI: “FBI clear NO trajectory” written outside the door of this classroom. (See Exhibit 20B, RJD1229_Final2).
- c. FHP: Marking outside door (See Exhibit 20B, FBI/DSC0121)
- d. THI: “THI” written in blue marker outside the door of this classroom. (FBI/DSC0121). Additionally, one agency wrote “NOT MEASURED and STOD outside the door to this classroom in red marker. (See Exhibit 20B, FBI/DSC0121).

3. Alterations made to the classroom post processing:
(See Exhibit 20D, BSO) (See Exhibit 20C, RJD)

Room	BSO	Defense	Alterations
1229 Pg. 1/6	MAS 0697	RJD 3485	<ul style="list-style-type: none"> a. Large tv moved b. Box added c. Bags added <i>Desks in disarray</i> *24 bags removed by FBI
1229 Pg. 2/6	MAS 0703	RJD 3492	<ul style="list-style-type: none"> a. Cabinet door opened b. Emoji definition print outs removed <i>Desks in disarray</i> *24 bags removed by FBI
1229 Pg. 3/6	MAS 0696	RJD 3496	<ul style="list-style-type: none"> a. Cabinet open and black bag falling out b. Computer cart turned 90 degrees covering cabinet <i>Desks in disarray</i> *24 bags removed by FBI
1229 Pg. 4/6	MAS 0699	RJD 3504	<ul style="list-style-type: none"> a. File cabinet moved, rotated, and items on top moved or fallen. b. Water bottle added <i>Desks and papers on desks in disarray</i>

³⁵ Exhibit 51, 8/19/18 report of Detective John Curcio, at p. 410.

			*24 bags removed by FBI
1229 Pg. 5/6	MAS 0705	RJD 3499	a. Desk drawer opened b. Teacher chair moved *24 bags removed by FBI
1229 Pg. 6/6	MAS 0700	RJD 3501	a. Cabinet closed Welcome” banner fallen <i>Desks and papers on desks in disarray</i> *24 bags removed by FBI

Room 1230: ³⁶

1. Items removed:

- a. Authorized by SAO: Items requested by students/teachers include binders, lunch bag, cash, and phone. (See Exhibit 64 at p. 4). Some or all were returned. (See Exhibit 21A, Property Receipt).
- b. FBI: With approval from the SAO, the FBI photographed and removed 33 bags from this classroom. (See Exhibit 21A).

2. Changes (added/removal) made by crime scene personnel during processing:

- a. BSO: The BSO SWAT team broke the window of this classroom door, not the defendant. (See Exhibit 21B, MAS0637-0644, 0650-0653). “CSU Clear” is written on a sticky note above the classroom number placard, and “NOT MEASURED CSU Clear 02/17/18” outside the door. Additionally, someone wrote “ROOM CLEAR←” in green marker outside the door to this classroom (See Exhibit 21B, MA0638). Finally, during processing, several desks were moved. (See Exhibit 21B, compare MAS0655-0669 to FBI/DSC0190-0197).
- b. FBI: “FBI clear No trajectory” written outside the door of this classroom. (See Exhibit 21, RJD1230_Final2).
- c. FHP: “FHP X” written outside the door. (See Exhibit 21B, FBI/DSC0189).
- d. THI: “THI” written on a yellow sticky note and in blue marker outside this classroom. (See Exhibit 21B, FBI/DSC0189).

3. Alterations made to the classroom post processing:
(See Exhibit 21D, BSO) (See Exhibit 21C, RJD)

Room	BSO	Defense	Alterations
1230	MAS 0654	RJD 3476	a. Black trashcan removed <i>Desks in disarray</i> *30 bags removed by FBI

³⁶ Exhibit 21, Composite of 154 photos of Room 1230.

Pg. 1/1			
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Room 1233:³⁷

1. Items removed:

- a. Authorized by SAO: Items requested by teacher include binders, flashcards, rulers, pictures, letters and personal supplies. (See Exhibit 64 at p. 5). Some or all were returned. (See Exhibit 22A, Property Receipt).

2. Changes (added/removal) made by crime scene personnel during processing:

- a. BSO: The BSO SWAT team broke the window of this classroom door, not the defendant. (See Exhibit 22B, MAS0454-0459, 0463-0468). The Crime Scene Unit wrote “CSU CLear 02/17/18 on the outside of the door, and “CSU Clear” on a blue sticky note attached to the room number placard. (See Exhibit 22B, RJD1233_Final2). Additionally, someone wrote “ROOM CLEAR →” in green marker outside the door to this classroom. (See Exhibit 22B, MAS459).
- b. FBI: “FBI CLEAR NO TRAJECTORY” written outside the door of this classroom. (See Exhibit 22B, RJD1233_Final2).
- c. FHP: “FHP X” written outside the door to this classroom. (See Exhibit 22B, RJD1233_Final2).
- d. THI: “THI” written on a yellow sticky note and in blue marker outside this classroom. (See Exhibit 22B, RJD1233_Final2).

3. Alterations made to the classroom post processing:
(See Exhibit 22D, BSO) (See Exhibit 22C, RJD)

Room	BSO	Defense	Alterations
1233 Pg. 1/5	MAS 0469	3458	a. TV moved. b. File cabinet added <i>Desks in disarray</i>
1233 Pg. 2/5	MAS 0474	3463	a. Cabinet doors closed. b. Boxes moved. c. File cabinet moved. d. Posters fallen <i>Desks in disarray.</i>
1233	MAS 0478	3471	a. Algebra cart moved. b. Teacher’s desk turned 90 degrees

³⁷ Exhibit 22, Composite of 49 photos of Room 1233 and 1 property receipt.

Pg. 3/5			<i>Desks in disarray</i>
1233 Pg. 4/5	MAS 0478	3471	a. Teacher's desk turned 90 degrees <i>Desks in disarray</i> **MAS0478 zoomed in on desk to show change in its position

Room 1234:³⁸

1. Items removed:

- a. Authorized by SAO: Items requested by teacher include clothing, laptop, pictures, flash drives, refrigerator, textbook and teacher manuals. (See Exhibit 64 at p. 5). Some or all were returned. (See Exhibit 23A, Property Receipt).
- b. FBI: With approval from the SAO, the FBI photographed and removed one bag from this classroom. (See Exhibit 23A, FBI/DSC0270).

2. Changes (added/removal) made by crime scene personnel during processing:

- a. BSO: This door window was broken by the Defendant, but BSO SWAT displaced a blue paper obstructing the view into this classroom. (See Exhibit 23B, MAS0375-0379, 0385-0389). There is writing on the floor in black marker to denote where projectiles were found, (See Exhibit 23B, MAS0919-0922, 0970, 0991-0992, 0995, 0997-1000) and stickers to denote strike marks. (See Exhibit 23B, MAS0927-0937, 0942-0966, 1047-1080). Additionally, the Crime Scene Unit wrote "CSU Clear" on a blue sticky note attached to the room number placard. (See Exhibit 23B, MAS1045). Someone wrote ROOM CLEAR←" in green marker outside the door. (See Exhibit 23B, MAS1045), and "CSU CILER (sic) 02/17/18" is written on the outside of the door of this classroom (Exhibit 23B, RJD1234_Final).
- b. FBI: "FBI CLEAR" is written outside the door of this classroom. (See Exhibit 23B, MAS1045).
- c. FHP: "FHP X" written outside the door. (See Exhibit 23B, MAS0910, 1045).
- d. THI: "THI" written on a yellow sticky note and in blue marker outside this classroom. (See Exhibit 23B, MAS0910, 1045).

3. Alterations made to the classroom post processing:
(See Exhibit 23D, BSO) (See Exhibit 23C, RJD)

Room	BSO	Defense	Alterations
1234	MAS 0380	RJD 3439	a. Desk added below whiteboard.

³⁸ Exhibit 23, Composite of 187 photos of Room 1234 and 1 property receipt.

Pg. 1/4			<ul style="list-style-type: none"> b. Black trash can moved c. Small cabinet door closed <i>Desks shifted</i> *1 bag removed by FBI
1234 Pg. 2/4	MAS 0382	3448	<ul style="list-style-type: none"> a. Cabinet doors closed b. Posters falling c. Zebra chair replaced by student desk <i>Desks in disarray</i> *1 bag removed by FBI
1234 Pg. 3/4	MAS 0451	3449	<ul style="list-style-type: none"> a. Recycle bin missing b. Zebra chair moved. c. Trash can missing from teacher's desk. d. Cabinet doors closed *1 bag removed by FBI
1234 Pg. 4/4	MAS 0450	3450	<ul style="list-style-type: none"> a. Books missing b. Black box moved c. Desk moved. *1 bag removed by FBI

Room 1237:³⁹

1. Items removed:

- a. Authorized by SAO: Items requested by students/teachers include personal items, trophies, scrapbooks, computer, instructional materials, computer bag, charger, folders, notebook, glasses and pencil case. (See Exhibit 64 at p. 6). Some or all were returned. (See Exhibit 24A, Property Receipt).
- b. FBI: With approval from the SAO, the FBI photographed and removed 33 bags from this classroom. (See Exhibit 24A).

2. Changes (added/removal) made by crime scene personnel during processing:

- a. BSO: The BSO SWAT team broke the window of this classroom door, not the defendant. (See Exhibit 24B, MAS0250-0258, 0272). It also appears as if BSO removed some type of cardboard or paper from the door window. (See Exhibit 24B, compare MAS0271-0272 with FBI/DSC0271). The BSO Crime Scene Unit placed a blue sticky note that says "CSU CLEAR" on the room number placard outside the classroom. Additionally, someone wrote "ROOM CLEAR→" outside the door to this classroom. (See Exhibit 24B, FBI/DSC0271).
- b. FBI: "FBI CLEAR NO TRAJECTORY" written outside the door of this classroom. (See Exhibit 24, RJD1237_Final).

³⁹ Exhibit 24, Composite 140 photos.

- c. FHP: “FHP X” written outside the door. (FBI/DSC0271). Additionally, FHP placed two green sticky notes on the room number placard; one that says “FBI THI” and the other says “Room Leica 98.” (FBI/DSC0271). (See Exhibit 24B)
 - d. THI: “THI” written on a yellow sticky note and in blue marker outside this classroom. (FBI/DSC0271). (See Exhibit 24B)
3. Alterations made to the classroom post processing:
(See Exhibit 24D, BSO) (See Exhibit 24C, RJD)

Room	BSO	Defense	Alterations
1237 Pg. 1/6	MAS 0270	RJD 3418	a. Posters fallen <i>Desks rearranged</i> *33 bags removed by FBI
1237 Pg. 2/6	MAS 0271	RJD 3420	a. Chair added b. Cabinet doors closed c. Desk moved d. Poster falling *33 bags removed by FBI
1237 Pg. 3/6	MAS 0261	RJD 3425	a. Chair added Poster fallen *33 bags removed by FBI
1237 Pg. 4/6	MAS 0264	RJD 3429	a. White cloth added b. Cabinets closed c. Podium moved <i>Desks in disarray</i> *33 bags removed by FBI
1237 Pg. 5/6	MAS 0265	RJD 3431	a. Desks moved. b. Stuffed animal moved. *33 bags removed by FBI
1237 Pg. 6/6	MAS 0266	RJD 3438	a. Poster falling. b. Desks in disarray. c. Gift bag added. *33 bags removed by FBI

Room 1220:⁴⁰

- 1. Items removed:
 - a. Authorized by SAO: No items were requested from this classroom.
- 2. Changes (added/removal) made by crime scene personnel during processing:

⁴⁰ Exhibit 25, Composite of 16 photos of Room 1220.

- a. BSO: This is a teacher planning room. It contains Rooms 1220a, 1220b, 1220c and 1220d. All of those door windows were broken by law enforcement. (See Exhibit 25B, MAS0831, 0834, 0865, 0869, 0871-0872, 0879, 0888). BSO also wrote “checked” or “clear” in blue marker next to the rooms within 1220 and wrote “All ROOMS CHECKED” outside the 1220 suite. (See Exhibit 25B, MAS0829, 0847, 0856, 0870, FBI/DSC0108). Additionally, BSO displaced some papers that were on the wall or door of Room 1220B (See Exhibit 25B, MAS0869, 0872-0874).
- b. THI: “THI” written in blue marker outside the door to Room 1220A. (See Exhibit 25B, FBI/DSC0516)

Room 1228 (women’s restroom): There were no items changed, removed or added to this area.

Room 1227 (men’s restroom): There were no items changed, removed or added to this area.

Room 1226 (custodial closet): There were no items changed, removed or added to this area.

Room 1225 (telecom):⁴¹ BSO wrote “ROOM CLEAR →” outside this room. (See Exhibit 26B, MAS0767).

Room 012E:⁴²

1. Items removed:
 - a. Authorized by SAO: No items were requested from this room.
2. Changes (added/removal) made by crime scene personnel during processing:
 - a. BSO: This is a vestibule containing rooms 1222, 1223 and 1224. The door windows were broken by law enforcement, not the defendant. (See Exhibit 26B, MAS0768-0770, 0778, 0785). BSO wrote “ROOMS CLEAR→” outside this room in green and red marker. (See Exhibit 26B, MAS0771).

Room 1231:⁴³

1. Items removed:
 - a. Authorized by SAO: No items were requested from this classroom.

⁴¹ Exhibit 60

⁴² Exhibit 26, Composite of 7 photos of Room 012E.

⁴³ Exhibit 27, Composite of 233 photos of Room 1231.

- b. FBI: With approval from the SAO, the FBI photographed and removed four bags from this classroom. (See Exhibit 27A)

2. Changes (added/removal) made by crime scene personnel during processing:

- a. BSO: The window in this door was broken by the Defendant, but BSO SWAT displaced a multi-colored paper obstructing the view into this classroom. (See Exhibit 27B, MAS0535, 0541, 0549-0557). The Crime Scene Unit placed a blue sticky note on the room number placard that says “CSU CLEAR.” (See Exhibit 27B, FBI/DSC0384) and wrote “CSU CLEAR 02/17/18 outside the classroom door. (See Exhibit 27B, RJD1231_Final).
- b. FBI: FBI: “FBI CLEAR TRAJECTORY” written outside the door of this classroom. (See Exhibit 27B, RJD1231_Final).
- c. FHP: “FHP X” written in black marker outside the door. (See Exhibit 27B, FBI/DSC0384).
- d. THI: “THI” written on a yellow sticky note and in blue marker outside the door to this classroom. (See Exhibit 27B, FBI/DSC0384).

3. Alterations made to the classroom post processing:
(See Exhibit 27D, BSO) (See Exhibit 27C, RJD)

Room	BSO/FBI	Defense	Alterations
1231 Pg. 1/5	MAS 0562	RJD 3519	<ul style="list-style-type: none"> a. Chair moved b. Cabinet doors closed. c. Items added d. Poster fallen <i>Desks in disarray</i> *2 bags removed by FBI
1231 Pg. 2/5	FBIDSC0386	RJD 3521	<ul style="list-style-type: none"> a. Laptop computer on teacher’s desk is opened. *2 bags removed by FBI
1231 Pg. 3/5	MAS 0620	RJD 3523	<ul style="list-style-type: none"> a. Wooden podium and stool moved. <i>Desks shifted.</i> *2 bags removed by FBI
1231 Pg. 4/5	MAS 0624	RJD 3530	<ul style="list-style-type: none"> a. Black metal lectern moved. b. Cart added c. Baskets moved from window <i>Desks shifted</i> <i>Cabinet doors closed</i> *2 bags removed by FBI
1231	MAS 0623	RJD 3525	<ul style="list-style-type: none"> a. Media cart added. b. Baskets added to desk. c. Life ring poster missing.

Pg. 5/5			<i>Desks shifted</i> <i>Cabinet doors closed</i> *2 bags removed by FBI
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Room 1232:⁴⁴

1. Items removed:

- a. Authorized by SAO: Items requested by students/teachers include laptop and wireless mouse, water bottle, lunch bag, teachers Algebra book, recordex, class roster, binder and notebook. (See Exhibit 64 at p. 5). Some or all were returned. (See Exhibit 28A, Property Receipt).
- b. FBI: With approval from the SAO, the FBI photographed and removed 12 bags from this classroom. (See Exhibit 28A)

2. Changes (added/removal) made by crime scene personnel during processing:

- a. BSO: BSO SWAT broke the door window to this classroom door, not the defendant, and displaced a blue paper obstructing the view into this classroom. (See Exhibit 28B, MAS0479, 0498-0502). Additionally, "ROOM Checked" was written outside the door in green marker. (See Exhibit 28B, MAS0493), and the Crime Scene Unit placed a blue sticky note above the room number placard that says "CSU CLEAR." (See Exhibit 28B, FBI/DSC0352).
- b. FBI: FBI: "FBI CLEAR NO TRAJECTORY" written outside the door of this classroom. (See Exhibit 28B, MAS1082).
- c. FHP: "FHP X" written in black marker outside the door. (See Exhibit 28B, MAS1082).
- d. THI: "THI" written on a yellow sticky note and in blue marker outside the door to this classroom. (See Exhibit 28B, FBI/DSC0352, MAS1082).

3. Alterations made to the classroom post processing:

(See Exhibit 28D, BSO) (See Exhibit 28C, RJD)

Room	BSO	Defense	Alterations
1232 Pg. 1/3	MAS 0506	RJD 3532	a. TV moved. b. Computer cart moved. <i>Desks shifted</i> <i>Cabinet door closed</i> *12 bags removed by FBI

⁴⁴ Exhibit 28, Composite of 85 photos of Room 1232.

1232 Pg. 2/3	MAS 0516	RJD 3537	<ul style="list-style-type: none"> a. Student desk with yellow folder moved and laptop opened b. Desk turn 90 degrees. <i>Desks shifted</i> *12 bags removed by FBI
1232 Pg. 3/3	MAS 0515	RJD 3540	<ul style="list-style-type: none"> a. Chocolate box added to desk. <i>Desks shifted</i> *12 bags removed by FBI

Room 1235:⁴⁵

1. Items removed:

- a. Authorized by SAO: Items requested by students/teachers include a tote bag, lunch bag, laptop, lesson plan book, teacher editions, snow globe, earbuds, pirate hat, Valentine's Day gift bags, water bottle, clip board, pencil case and phones. (See Exhibit 64 at p. 6). Some or all were returned. (See Exhibit 29A, Property Receipt).
- b. FBI: Additionally, 31 bags and one electronic device were removed from this classroom. (See Exhibit 29A)

2. Changes (added/removal) made by crime scene personnel during processing:

- a. BSO: The window of this door was broken by law enforcement, not the defendant, and blue paper obstructing the view from the window into the classroom was displaced by law enforcement. (See Exhibit 29B, MAS0317, 0342-0343). Additionally, BSO wrote "Room Clear" in green marker (See Exhibit 29B, MAS0320-0324), and "CSU CleAR 02/17/18" outside this classroom, and placed a blue sticky note that reads "CSU clear" on the room number placard. (See Exhibit 29B, FBI/DSC0259).
- b. FBI: "FBI Clear No Trajectory" written outside the door of this classroom. (See Exhibit 29, RJD1235_Final2).
- c. FHP: FHP wrote "FHP X" in black marker outside the door of this classroom and placed a green sticky note that reads "Leica FHP 98" on the room number placard. (See Exhibit 29B, FHP/DSC0259)
- d. THI++: "THI" written on a yellow sticky note and in blue marker outside the door to this classroom. (See Exhibit 29B, FBI/DSC0259).

3. Alterations made to the classroom post processing:
(See Exhibit 29D, BSO) (See Exhibit 29C, RJD)

⁴⁵ Exhibit 29 Composite of 134 photos of Room 1235.

Room	BSO	Defense	Alterations
1235 Pg. 1/3	MAS 0330	RJD 3542	<ul style="list-style-type: none"> a. Teddy bear added to desktop b. Gift bag moved c. Chocolate boxes added d. File cabinet rotated and moved <i>Desks shifted</i> *51 bags removed by FBI
1235 Pg. 2/3	MAS 0345	RJD 3547	<ul style="list-style-type: none"> a. Desk and file cabinet moved. b. Black shelf unit moved c. Laptop added and opened. <i>Desks shifted</i> *51 bags removed by FBI
1235 Pg. 3/3	MAS 0337	RJD 3546	<ul style="list-style-type: none"> a. Gift bag added to chair b. Black hat moved <i>Desks shifted</i> *51 bags removed by FBI

Room 1236:⁴⁶

1. Items removed:

- a. Authorized by SAO: Items requested by teacher include files and paper cutter. (See Exhibit 64 at p. 6). Some or all were returned. (See Exhibit 30A, Property Receipt).

2. Changes (added/removal) made by crime scene personnel during processing:

- a. BSO: The window in this door was broken by the Defendant, but BSO SWAT displaced a brown paper obstructing the view into this classroom. (See Exhibit 30B, MAS0285-289). Additionally, BSO wrote "Room Clear" in green marker (FBI/DSC0259) and CSU Clear 02/17/18" outside the door to this classroom (See Exhibit 30B, MAS0285-289, RJD1236_Final2). The Crime Scene Unit placed a blue sticky note on the room number placard that says "CSU CLEAR." (See Exhibit 30B, FBI/DSC259).
- b. FBI: "FBI Clear No Trajectory" written outside the door of this classroom. (See Exhibit 30B, RJD1236_Final2).
- c. FHP: FHP wrote "FHP X" in black marker outside the door of this classroom and placed a green sticky note that reads "Leica FHP 98) on the room number placard. (See Exhibit 30B, FBI/DSC259).
- d. THI: "THI" written on a yellow sticky note and in blue marker outside the door to this classroom. (See Exhibit 30B, FBI/DSC259).

⁴⁶ Exhibit 30, Composite of 52 photos of Room 1236 and 1 property receipt.

3. Alterations made to the classroom post processing:
(See Exhibit 30D, BSO) (See Exhibit 30C, RJD)

Room	BSO	Defense	Alterations
1236 Pg. 1/2	MAS 0300	RJD 3552	<ul style="list-style-type: none"> a. Two orange chairs moved beneath window. b. Desk added and single orange chair removed. <i>Cabinet doors adjusted.</i>
1236 Pg. 2/2	MAS 0301	RJD 3554	<ul style="list-style-type: none"> a. Two orange chairs added <i>Cabinet doors adjusted</i> <i>Desks shifted</i>

Second Floor Hallway:⁴⁷

1. Items removed:
 - a. Authorized by SAO: No items were requested from this area.
2. Changes (added/removal) made by crime scene personnel during processing:
 - a. BSO: There are markings on the floor to denote projectiles found. (See Exhibit 31B, MAS0912-0919, 0968-0969, 0970-0978, 0986-0989) as well as a key. (See Exhibit 31B, MAS1012). Desks near the 2nd floor elevator have been moved. (Compare MAS0764, 0767-0770, DGP1184 to RJD34) (See Exhibit 31B).

Third Floor

The classrooms on the third floor of the 1200 building were photographed by BSO Detective Gloria Crespo prior to processing. These photos show the condition of the third floor just after the crime occurred. Once the scene was processed and the bodies were removed, Detective Crespo also photographed the third floor again. Additionally, on February 15, 2018, the FBI photographed the third floor.

Third Floor West Stairwell (1200A):⁴⁸ BSO removed a backpack, a vest, a firearm, a cellphone and magazines from the third floor stairwell area. (See Exhibit 32A, GEC4562-4574, GEC5510-5558).

⁴⁷ Exhibit 31, Composite of 377 photos of the second floor hallway.

⁴⁸ Exhibit 32.

Room 1241:⁴⁹

3. Items removed:

- a. Authorized by SAO: Items requested by teacher include a jacket, resistance band, coffee cup, textbooks and teacher books. (See Exhibit 64 at p. 6). Some or all were returned. (See Exhibit 33A, Property Receipt).

2. Changes (added/removal) made by crime scene personnel during processing:

- a. BSO: The BSO SWAT team broke the door window of the door of this classroom, not the defendant. BSO Crime Scene wrote “CSU X” outside the door to this classroom. (See Exhibit 33B, FBI/DSC0399).
- b. ATF: “ATF” written outside this door. (See Exhibit 33B, FBI/DSC0399).
- c. FHP: FHP wrote “FHP X” in black marker outside the door of this classroom. (See Exhibit 33B, FBI/DSC0399).
- d. THI: Yellow sticky note and blue marker with “THI” written. (See Exhibit 33B, FBI/DSC0399).

3. Alterations made to the classroom post processing:
(See Exhibit 33D, BSO) (See Exhibit 33C, RJD)

Room	BSO/FBI	Defense	Alterations
1241 Pg. 1/7	GEC 4663	RJD 3353	a. Assortment of chairs added b. Trash bin moved c. Roll of paper moved
1241 Pg. 2/7	GEC 4661	RJD 3361	a. Rectangular table added b. Poster fallen <i>Desks shifted</i> <i>Textbooks moved</i>
1241 Pg. 3/7	GEC 4662	RJD 3362	a. Cabinet doors adjusted b. Rectangular table missing <i>Desks shifted</i>
1241 Pg. 4/7	GEC 5436 (Processed)	RJD 3359	a. Cabinet doors closed b. File cabinet drawers opened (see page 6 of 7 GEC 4663 for reference)
1241 Pg. 5/7	GEC 5441 (Processed)	RJD 3356	a. Assortment of chairs added
1241	GEC 4663	RJD 3353	a. Roll of paper missing

⁴⁹ Exhibit 33, Composite of 31 photos of Room 1241 and 1 property receipt.

Pg. 6/7			b. File cabinet moved
1241 Pg. 7/7	FBIDSC0402	RJD 3366	a. Roll of paper moved again

Room 1249:⁵⁰

1. Items removed:

- b. Authorized by SAO: Items requested by students/teachers include pictures, a Yeti cup, books, and binders. (See Exhibit 64 at p. 7). Some or all were returned. (See Exhibit 34A, Property Receipt).
- b. FBI: With approval from the SAO, the FBI photographed and removed four bags, a cell phone, keys on a lanyard and a “Chums” case from this classroom (See Exhibit 34A).

2. Changes (added/removal) made by crime scene personnel during processing:

- a. BSO: BSO wrote “CSU X,” “CSU CLEARED 02/17/18” and “B.S.O. II” outside the door to this classroom. (See Exhibit 34B, GEC5172, FBI/DSC0408, RJD0616E9).
- b. FBI: The FBI wrote “FBI CLEAR NO TRAJECTORY” outside the door to this classroom. (See Exhibit 34B, GEC5172, FBI/DSC0408).
- c. FHP: FHP wrote “FHP X” in black marker outside the door of this classroom. (See Exhibit 34B, GEC5172, FBI/DSC0408).
- d. THI: blue marker with “THI” written. (See Exhibit 34B, GEC5172, FBI/DSC0408).

3. Alterations made to the classroom post processing:

(See Exhibit 34D, BSO) (See Exhibit 34C, RJD)

Room	BSO	Defense	Alterations
1249 Pg. 1/3	GEC 4735	RJD 3338	a. Flag fallen *5 bags removed by FBI
1249 Pg. 2/3	GEC 4736	RJD 3345	a. Opened laptop added b. Cabinet doors closed c. Water bottle added d. Electrical cord unplugged *5 bags removed by FBI
1249	GEC 4737	RJD 3351	a. Rectangular table moved b. Cabinet doors closed.

⁵⁰ Exhibit 34, Composite of 41 photos of Room 1249 and 1 property receipt.

Pg. 3/3			*5 bags removed by FBI
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Room 1250:⁵¹

1. Items removed:

- a. Authorized by SAO: Items requested by students/teacher include football figurines, storybook written by Joaquin Oliver, New England Patriots flag, clothing, files, Blu-Ray player, recordex, DVD's, textbooks, fundraising candy bars and cash, and a notebook. (See Exhibit 64 at p. 7). Some or all were returned. (See Exhibit 35A, Property Receipt).
- b. FBI: With approval from the SAO, the FBI photographed and removed 12 bags and two instruments from this classroom. (See Exhibit 35A)

2. Changes (added/removal) made by crime scene personnel during processing:

- a. BSO: The BSO SWAT team broke the door window of this classroom, not the defendant. (See Exhibit 35B, GEC4738, 4740) and BSO Crime Scene wrote "CSU X," "CSU CLEARED 02/17/18," "NO Phones/Bags 2/17/18" and 2 CLEAR ✓" outside the door to this classroom. (See Exhibit 35B, RJD1250_FINAL2). Several desks were moved during processing. (See Exhibit 35B, compare FBI/DSC0426 to GEC4741).
- b. FBI: The FBI wrote "FBI CLEAR NO TRAJECTORY" outside the door to this classroom. (See Exhibit 35B, RJD1250_FINAL2).
- c. FHP: FHP: FHP wrote "FHP X" in black marker outside the door of this classroom. (See Exhibit 35B, RJD1250_FINAL2).
- d. THI: Yellow sticky note and blue marker with "THI" written. (See Exhibit 35B, FBI/DSC0424). (See Exhibit 35B, RJD1250_FINAL2).

3. Alterations to the classroom post processing:
(See Exhibit 35D, BSO) (See Exhibit 35C, RJD)

Room	BSO	Defense	Alterations
1250	GEC 4741	RJD 3301	<ul style="list-style-type: none"> a. Recycle bin added b. Pink basket missing c. Laptop closed. d. Black high-back chair removed <i>Cabinet doors adjusted and desks in disarray</i>
Pg. 1/5			

⁵¹ Exhibit 35, Composite of 72 photos of Room 1250.

			*12 bags removed by FBI
1250 Pg. 2/5	GEC 4743	RJD 3304	a. Chair moved b. Artwork fallen from whiteboard <i>Cabinet doors closed</i> *12 bags removed by FBI
1250 Pg. 3/5	GEC 4745	RJD 3312	a. Teacher's desk moved <i>Desks in disarray</i> <i>Cabinet doors adjusted</i> *12 bags removed by FBI
1250 Pg. 4/5	GEC 4746	RJD 3315	a. Map fallen b. Cabinet doors adjusted <i>Desks in disarray</i> <i>Cabinet doors adjusted</i> *12 bags removed by FBI
1250 Pg. 5/5	GEC 4747	RJD 3316	a. In complete disarray *12 bags removed by FBI

Room 1253:⁵²

1. Items removed:

- a. Authorized by SAO: Items requested by students/teachers include eyeglass case with flash drives, wireless presenter, red laser pointer, carts, printer, folder, clothing, sign on wall, filing cabinet, small bowl with crystals. (See Exhibit 64 at pg. 8). Some or all were returned. (See Exhibit 36A, Property Receipt).

2. Changes (added/removal) made by crime scene personnel during processing:

- a. BSO: The BSO SWAT team broke the door window of this classroom, not the defendant. (See Exhibit 36B, GEC4770-4771) and wrote "CSU X" outside the door to this classroom. (See Exhibit 36B, GEC5380).
- b. FBI: The FBI wrote "FBI CLEAR NO TRAJECTORY" outside the door to this classroom. (See Exhibit 36B, GEC5380).
- c. FHP: FHP wrote "FHP X" in black marker outside the door of this classroom. (See Exhibit 36B, GEC5380).
- d. THI: Yellow sticky note and blue marker with "THI" written. (See Exhibit 36B, GEC5380).
- e. Someone wrote "cleAR→" in red marker and "2/17/18 NO Bags cell" outside the door to this classroom. (See Exhibit 36B, GEC5380).

⁵² Exhibit 36, Composite of 34 photos of Room 1253 and 1 property receipt.

3. Alterations made to the classroom post processing:
(See Exhibit 36D, BSO) (See Exhibit 36C, RJD)

Room	BSO	Defense	Alterations
1253 Pg. 1/4	GEC 4770	RJD 3283	a. Two bins added
1253 Pg. 2/4	GEC 4775	RJD 3285	<i>Student desks in disarray.</i> *2 bags removed by FBI
1253 Pg. 3/4	GEC 4778	RJD 3289	a. "Help is free" banner missing b. Two orange chairs missing <i>Cabinet doors closed.</i> <i>Desks in disarray</i> *2 bags removed by FBI
1253 Pg. 4/4	GEC 4779	RJD 3292	a. Trashcan removed b. Wooden stool missing. <i>Cabinet doors adjusted</i> <i>Desks in disarray</i> *2 bags removed by FBI

Room 1254:⁵³

1. Items removed:

- a. Authorized by SAO: Items requested by students/teachers include zip drives, Polaroid camera, notebooks, salt lamp, diffuser, pens, chargers, a cross, printers, a mini fridge, sticker poster, roller cart, textbooks, glasses, and a binder. (See Exhibit 64 at p. 8). Some of all were returned. See Exhibit 37A, Property Receipt).
- b. FBI: With approval from the SAO, the FBI photographed and removed three bags from this classroom. (See Exhibit 37A)
- c. BSO: BSO crime scene removed a cell phone from this classroom. (See Exhibit 37A, GEC5561).

2. Changes (added/removal) made by crime scene personnel during processing:

- a. BSO: The BSO SWAT team broke the door window of this classroom, not the defendant (See Exhibit 37B, GEC4785, 5364, 5371) and wrote "CSU X" outside the door to this classroom. (See Exhibit 37B, FBI/AMO0456). Additionally, someone wrote "2 CLEAR ✓" outside the door to this classroom. (See Exhibit 37B, FBI/AMO0456).
- b. FHP: FHP wrote "FHP X" in black marker outside the door of this classroom. (See Exhibit 37B, FBI/AMO0456).

⁵³ Exhibit 37, Composite of 62 photos of Room 1254 and 1 property receipt.

- c. THI: Yellow sticky note and blue marker with “THI” written. (See Exhibit 37B, FBI/AMO0456).

3. Alterations made to the classroom post processing:
(See Exhibit 37D, BSO) (See Exhibit 37C, RJD)

Room	BSO	Defense	Alterations
1254 Pg. 1/3	GEC 4782	RJD 3259	<ul style="list-style-type: none"> a. File cabinet moved and turned b. Books missing c. Gift bag moved, tissue paper, and silver cup added <p><i>All rectangular tables moved</i> <i>Desks and chairs in disarray</i> *3 bags removed by FBI</p>
1254 Pg. 2/3	GEC 4786	RJD 3264	<ul style="list-style-type: none"> a. Gift bag removed b. Red chairs moved c. Frame moved d. Writing added on floor <p>*3 bags removed by FBI</p>
1254 Pg. 3/3	GEC 4788	RJD 3280	<ul style="list-style-type: none"> a. Red chair added b. Single chair removed c. File cabinet moved <p>*3 bags removed by FBI</p>

Room 1257:⁵⁴

1. Items removed:

- a. Authorized by SAO: Items requested by students/teachers include eyeglasses, printers, calculators, a lunch box, a necklace, books, a school ID and a box of fundraiser chocolates with cash. (See Exhibit 64 at p. 8). Some of all were returned. (See Exhibit 38A, Property Receipt).
- b. FBI: With approval from the SAO, the FBI photographed and removed 28 bags from this classroom. (See Exhibit 38A).
- c. BSO: BSO Crime Scene removed an iPad from this classroom. (See Exhibit 38A, GEC5563).

2. Changes (added/removal) made by crime scene personnel during processing:

- a. BSO: The BSO SWAT team broke the door window of this classroom, not the defendant. (See Exhibit 38B, GEC4812, 4814). Additionally, several desks were

⁵⁴ Exhibit 38, Composite of 127 photos of Room 1257 and 1 property receipt.

moved within the classroom. (See Exhibit 38B, compare GEC 4818, 5344 to FBI/AMO0359). Someone wrote “Clear” and “2/17/18 Ipad recovered nothing else” outside the door to this classroom. (See Exhibit 38B, GEC5341-5342).

- b. FBI: The FBI wrote “FBI CLEAR NO TRAJECTORY” outside the door to this classroom. (See Exhibit 38B, GEC5341-5342).
- c. FHP: FHP wrote “FHP X” in black marker outside the door of this classroom. (See Exhibit 38B, GEC5341-5342).
- d. THI: Yellow sticky note, blue marker with “THI” written outside this classroom. (See Exhibit 38B, GEC5341-5342).
- e. ATF: “ATF—” was written in black marker outside the door to this classroom. (See Exhibit 38B, FBI/AMO0357).

3. Alterations made to the classroom post processing:
(Exhibit 38D, BSO) (Exhibit 38C, RJD)

Room	BSO	Defense	Alterations
1257 Pg. 1/5	GEC 4816	RJD 3233	<i>a. Desks in disarray. *29 bags removed by FBI</i>
1257 Pg. 2/5	GEC 4819	RJD 3241	<i>a. Bag added to desk b. Michigan flag missing from board Desks in disarray *29 bags removed by FBI</i>
1257 Pg. 3/5	GEC 4821	RJD 3249	<i>Desks in disarray Both sets of cabinets adjusted *29 bags removed by FBI</i>
1257 Pg. 4/5	GEC 4822	RJD 3247	<i>Rectangular table moved Cabinets repositioned. Desks in disarray *29 bags removed by FBI</i>
1257 Pg. 5/5	GEC 5343	RJD 3256	<i>a. Gift bag moved. b. Power Strip unplugged c. Article of clothing added. Rectangular table moved Desks shifted *29 bags removed by FBI</i>

Room 1240:⁵⁵

1. Items removed:
 - a. Authorized by SAO: No items requested from this room.
 - b. FBI: Nothing removed from this room.
 - c. BSO: BSO Crime Scene removed a magazine, bullets and fragments from this room. (See Exhibit 39A, GEC5495).
2. Changes (added/removal) made by crime scene personnel during processing:
 - a. BSO: This is a teacher planning room. Although the Defendant broke the external window, BSO SWAT broke all the internal door windows in this room. (See Exhibit 39B, GEC4673-4674). Additionally, stickers were placed inside the room to denote holes made from projectiles. (See Exhibit 39B, GEC5142-5171).

Room 012G (vestibule room):⁵⁶ The only change to this room is that BSO wrote “CLEAR BSO” outside the door and outside an internal door to this room. (See Exhibit 40B, GEC4701-4702).

Room 1242 (Storage):⁵⁷ The door window to this room was broken by BSO and “CLEAR←” was written outside the door. (See Exhibit 41B, GEC4704-4706).

Room 1243 (Mechanical):⁵⁸ The doorknob (handle and plate) was broken off this door and left on the floor. (See Exhibit 42B, GEC4702, 4703, LizardQ rac42)

Room 1244 (Electrical):⁵⁹ “CLEAR←BSO” was written outside the door and “NOT” was written above that in black marker and crossed off in green marker. (See Exhibit 43B, GEC4709).

Room 1245 (Telecom): There were no items changed, removed or added to this room.

⁵⁵ Exhibit 39, Composite of 90 photos of Room 1240.

⁵⁶ Exhibit 40, Composite of 3 photos of Room 012G.

⁵⁷ Exhibit 41, Composite of 3 photos of Room 1242.

⁵⁸ Exhibit 42, Composite of 3 photos of Room 1243.

⁵⁹ Exhibit 43, Composite of 1 photos of Room 1244.

Room 1246 (Custodial): There were no items changed, removed or added to this room.

Room 1247 (Men's Restroom):⁶⁰

1. Items removed:

- a. Authorized by SAO: No items requested from this room.
- b. BSO: BSO Crime Scene removed a magazine, bullets and fragments from this room. (See Exhibit 44A, GEC5494).

2. Changes (added/removal) made by crime scene personnel during processing:

- a. BSO: There is a yellow sticker and two white stickers on the wall outside the restroom to mark holes from two projectiles, as well as lines drawn on the wall for measurement. (See Exhibit 44B, GEC5088-5098, POP4762, 4826-4880). There is also a yellow and a white sticker on the inside of the restroom to mark a projectile hole. (See Exhibit 44B, GEC5100-5107).
- b. FBI: The FBI wrote "FBI CLEAR NO TRAJECTORY" outside the door to this room. (See Exhibit 44B, GEC5087).
- c. THI: Yellow sticky note, blue marker with "THI" written outside this room. (See Exhibit 44B, GEC5087).

Room 1248 (Women's Restroom):⁶¹

1. Items removed: No items were requested or removed from this room.

2. Changes (added/removal) made by crime scene personnel during processing:

- a. BSO: "CSU X" written outside the door of this room. (See Exhibit 45B, GEC5428).
- b. FBI: The FBI wrote "FBI DOOR LOCKED AND CLEARED" outside the door to this room. (See Exhibit 45B, GEC5428).
- c. THI: Yellow sticky note, blue marker with "THI" written outside this room. (See Exhibit 45B, GEC5428).

Room 1251:⁶²

1. Items removed:

⁶⁰ Exhibit 44, Composite of 48 photos of Room 1247.

⁶¹ Exhibit 45, Composite of 2 photos of Room 1248.

⁶² Exhibit 46, Composite of 44 photos of Room 1251 and 1 property receipt.

- a. Authorized by SAO: Items requested by students/teachers include NFL player figurines, a children’s book written by a deceased victim, a blu-ray player and power supply, DVDs, textbooks, personal books, a card box with fundraising candy and cash and a notebook. (See Exhibit 64 at p. 7). Some or all were returned. (See Exhibit 46A, Property Receipt).
- b. FBI: With approval from the SAO, the FBI photographed and removed bags from this room. (See Exhibit 46A). (FBI/DSC466-0476).
- c. BSO: BSO removed one cell phone from this room. (See Exhibit 46A, GEC5555, 5560).

2. Changes (added/removal) made by crime scene personnel during processing:

- a. BSO: The BSO SWAT team broke the door window to this classroom, not the defendant. BSO also wrote “2 CLEAR BSO” above the room number placard and BSO Crime Scene wrote “CSU X.” Additionally, someone wrote “CLEAR” on the door. (See Exhibit 46B, GEC5396).
- b. FBI: The FBI wrote “FBI CLEAR NO TRAJECTORY” outside the door to this room. (See Exhibit 46B, GEC5396).
- c. FHP: FHP wrote “FHP X” in black marker outside the door of this classroom. (See Exhibit 46B, GEC5396).
- d. THI: Yellow sticky note, blue marker with “THI” written outside this room. (See Exhibit 46B, GEC5396).
- e. ATF: “ATF—” written outside this door. (See Exhibit 46B, GEC5396).

3. Alterations made to the classroom post processing:
(See Exhibit 46D, BSO) (See Exhibit 46C, RJD)

1251 Pg 1/3	GEC 4753	RJD 3368	<ul style="list-style-type: none"> a. File cabinet moved and bottom drawer opened b. Wooden lectern moved c. Items added to desktop <i>Desks in disarray</i> *5 bags removed by FBI
1251 Pg. 2/3	GEC 4755	RJD 3372	<ul style="list-style-type: none"> a. Cabinet doors closed <i>Desks in disarray</i> *5 bags removed by FBI
1251 Pg. 3/3	GEC 4756	RJD 3374	<ul style="list-style-type: none"> a. Lectern moved b. File cabinet moved c. Roll of paper moved d. Cabinets doors closed

			Desks in disarray *5 bags removed by FBI
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Room 1252:⁶³

1. Items removed:

- a. Authorized by SAO: Items requested by students/teachers include laptop computers, computer bag, leather portfolio folder, world map, a flash drive, eyeglasses, a laser pointer, carts, charging cubes. (See Exhibit 64 at p. 8). Some or all were returned. (See Exhibit 47A, Property Receipt).
- b. FBI: With approval from the SAO, the FBI photographed and removed seven bags from this room. (See Exhibit 47A).
- c. BSO: BSO removed one cell phone from this room. (See Exhibit 47A, GEC5559).

2. Changes (added/removal) made by crime scene personnel during processing:

- a. BSO: The BSO SWAT team broke the door window to this classroom, not the defendant. BSO also wrote "2 CLEAR BSO" and "2/17/18 NO Bags 1 locked cabinet" near the room number placard and BSO Crime Scene wrote "CSU X. Someone wrote "CLEAR" on the door. (See Exhibit 47B, GEC5387). Additionally, the desks contained in this classroom were rearranged during processing. (See Exhibit 47B, compare GEC5390 to GEC4763).
- b. FBI: The FBI wrote "FBI CLEAR NO TRAJECTORY" outside the door to this room. (See Exhibit 47B, GEC5387).
- c. FHP: FHP wrote "FHP X" in black marker outside the door of this classroom. (See Exhibit 47B, GEC5387).
- d. THI: Yellow sticky note, blue marker with "THI" written outside this room. (See Exhibit 47B, GEC5387).
- e. ATF: "ATF—" written outside this door. (See Exhibit 47B, GEC5387).

3. Alterations made to the classroom post processing:
(See Exhibit 47D, BSO/FBI) (See Exhibit 47C, RJD)

Room	BSO/FBI	Defense	Alterations
1252	GEC 4766	RJD 3385	a. Cabinet doors closed b. Chair missing
Pg. 1/4			<i>Desks in disarray</i>

⁶³ Exhibit 47, Composite of 61 photos of Room 1242 and 1 property receipt .

			*8 bags removed by FBI
1252 Pg. 2/4	GEC 4767	RJD 3387	a. Cabinet doors adjusted. <i>Desks shifted</i> *8 bags removed by FBI
1252 Pg. 3/4	GEC 5389	RJD 3389	a. Chairs moved b. Pencil case opened c. Plastic bag missing <i>Desks shifted</i> *8 bags removed by FBI
1252 Pg. 4/4	FBIDSC0051	RJD 3393	a. Globe moved b. Computer cart moved <i>Desks in disarray</i> *8 bags removed by FBI

Room 1255:⁶⁴

1. Items removed

- a. Authorized by SAO: Items requested by students/teachers include a printer and cable cord, plastic box of folders, Logitech clicker/laser pointer, a love letter written by a deceased victim, books and the content of file cabinet drawers. (See Exhibit 64 at p. 8). Some or all were returned. (See Exhibit 48A, Property Receipt).
- b. FBI: With approval from the SAO, the FBI photographed and removed two bags from this room. (See Exhibit 48A).
- c. BSO: BSO removed a poster from the inside of the door to this classroom. (See Exhibit 48A, compare GEC4992 to GEC5356). BSO also removed projectiles from this classroom. (See Exhibit 48A, GEC5494).

2. Changes (added/removal) made by crime scene personnel during processing:

- a. BSO: There is a white sticker on the door and white stickers and blue marker inside the classroom to denote holes made by projectiles. (See Exhibit 48B, GEC4976-5078). Crime Scene also wrote "NO Bags 2/17/18" outside the door. (See Exhibit 48B, GEC5355). Someone also wrote "2 D CLEAR" outside the door of this classroom. (See Exhibit 48B, GEC5355). Additionally, the desks contained in this classroom were rearranged during processing. (See Exhibit 48B, compare GEC4804 to GEC5358).
- b. FBI: FBI wrote "FBI Clear with trajectory" outside the door of this classroom. (See Exhibit 48B, GEC5355).

⁶⁴ Exhibit 48, Composite of 172 photos of Room 1255 and 1 property receipt.

- c. FHP: FHP wrote “FHP X” in black marker outside the door of this classroom. (See Exhibit 48B, GEC5355).
- d. THI: Yellow sticky note, blue marker with “THI” written outside this room. (See Exhibit 48B, GEC5355).
- e. ATF: “←ATF+” written outside this door. (See Exhibit 48B, GEC5355).

3. Alterations made to the classroom post processing:
(See Exhibit 48D, BSO) (See Exhibit 48C, RJD)

Room	BSO	Defense	Alterations
1255 Pg. 1/3	GEC 4804	RJD 3410	<ul style="list-style-type: none"> a. Gift bag added to desktop b. Computer cart moved c. Stuff animal and gift bag missing <i>Desks and books in disarray</i> *2 bags removed by FBI
1255 Pg. 2/3	GEC 4800	RJD 3402	<ul style="list-style-type: none"> a. Computer cart moved b. Gift bags moved c. Poster fallen d. Rug folded with desks on top <i>Desks and books in disarray</i> *2 bags removed by FBI
1255 Pg. 3/3	GEC 4805	RJD 3411	<ul style="list-style-type: none"> a. Cabinet doors closed b. Stool missing c. Items on teacher’s desk moved <i>Desks and chairs in disarray</i> *2 bags removed by FBI

Room 1256:⁶⁵

1. Items removed:

- a. Authorized by SAO: The only items from this classroom were requested by a deceased teacher’s family.
- b. BSO: A phone was removed from the teacher’s desk. (See Exhibit 49A, GEC5562).

2. Changes (added/removal) made by crime scene personnel during processing:

- a. BSO: The BSO Crime Scene Unit wrote “CSU X” and “1 cell Recovered NO Bags” outside the door to this classroom. (See Exhibit 49B, GEC5349). Someone

⁶⁵ Exhibit 49, Composite of 22 photos of Room 1256 and 1 property receipt.

wrote “2 CLEAR→” outside the door to this classroom. (See Exhibit 49B, GEC5349). Additionally, the desks contained in this classroom were rearranged during processing. (See Exhibit 49B, compare GEC4808 to FBI/AMO0452).

- b. FBI: FBI wrote “FBI Clear with trajectory” outside the door of this classroom. (See Exhibit 49B, GEC5349).
 - c. FHP: FHP wrote “FHP X” in black marker outside the door of this classroom. (See Exhibit 49B, GEC5349).
 - d. THI: Yellow sticky note, blue marker with “THI” written outside this room. (See Exhibit 49B, GEC5349).
 - e. ATF: “ATF—” written outside this door. (See Exhibit 49B, GEC5349).
3. Alterations made to the classroom post processing:
(See Exhibit 49D, BSO) (See Exhibit 49C, RJD)

Room	BSO	Defense	Alterations
1256 Pg. 1/1	GEC 4809	RJD 3414	a. File cabinet moved b. Desk drawer closed and laptop partially closed <i>Desks shifted</i>

Third Floor Hallway:⁶⁶

1. Items removed:

- a. Authorized by SAO: No items requested from the hallway.
- b. BSO: BSO removed three cell phones (GEC5556, 5559), 4 backpacks (DGP1213-1214), a star pin (CRW8153-8154), a teddy bear (DGP1214) and several projectile and projectile fragments (RAC7511-7513, GEC5486-5554) from this hallway. GEC5556). (See Exhibit 50A).

2. Changes (added/removal) made by crime scene personnel during processing:

- a. BSO: There are numerous markings and stickers on the walls and floors made by the crime scene unit. (See Exhibit 50B, RAC7511-7631, GEC5028-5048, GEC5087-5098, GEC5172-5182, GEC5256-5260, GEC5267-5299, GEC5301-5339, GEC5375-5480, GEC5387, GEC5393-5396, GEC5404-5406, GEC5413-5414, POP4746-4880). There are also drag marks outside of Room 1249. (See Exhibit 50B, GEC4732).

⁶⁶ Exhibit 50, Composite of 935 photos of the third floor hallway.

Third Floor East Stairwell: There were no items changed, removed or added to this area.

As the preceding pages indicate, there have been numerous changes to the condition of the crime scene since the relevant time. As the above pages illustrate, the crime scene is in a substantially different condition than it was at the time of the crime and will silently and incorrectly direct the jurors' attention during the view.

B. THE STATE'S EVIDENCE IN THIS CASE IS MORE THAN ADEQUATE WITHOUT A JURY VIEW.

As part of its decision-making process, this Court is required to consider both the relative importance of the site to be viewed in relation to the proceedings and the adequacy of the evidence without a jury view. *See Crawford v. State*, 70 So. 374, 376 (Fla. 1915) ("There is nothing in the record to show that a refusal to grant the motion was in anywise injurious to [the defendant], nor that a view of the premises was essential to a better understanding by the jury of the evidence submitted."); *Thomas v. State*, 748 So. 2d at 970, 973 (motion to view crime scene denied where defense was allowed to introduce witnesses and photos), *Bundy v. State*, 471 So. 2d 9, 20 (counsel was able to cross-examine witness whose testimony he wanted to challenge with jury viewing), *Luttrell v. State*, 9 So. 2d 93, 93-94 (Fla. 1942) (no abuse of discretion despite agreeing with appellant's argument that "the jury would be aided in its deliberation by obtaining an eye picture of the scene of the crime and from a retained mental picture, when reviewing the testimony of the witnesses appearing in the case, the jury could place the witnesses at identified points around the scene of the crime, and with this additional information the jury would have and possess a thorough, accurate and comprehensive knowledge of the several matters submitted").⁶⁷

⁶⁷ In its order summarily granting the State's Motion for View by Jury, the Court notes that "[w]hile Defendant argues that the State does not explain in its motion why such an undertaking is *necessary* for the jury to understand the evidence, this is not the standard." (Court's Dec. 17, 2020 Order Granting State's Motion for View by Jury at p. 3). This Court determined that a jury view is proper, so long as it is "relevant, beneficial, and helpful." *Id.* Interestingly, it appears that the burden on a defendant seeking a view of the crime scene is much higher. Based on the cases cited

The State's Motion for View by Jury (SF-91) sets forth the reason it believes a jury view is necessary in this case for the jury to understand and apply the evidence in this case. This list of reasons is actually a recitation of gaps in its evidence, rather than an explanation of how viewing the crime scene will assist the jury in analyzing and applying the evidence it has. Nonetheless, the following discussion will demonstrate that there is nothing overly complicated about the evidence, or the elements of the crimes charged, that justify such an enormous undertaking.⁶⁸

i. No video shows the path from the Uber drop off to the east entrance of the 1200 building (SF-91 at p. 2, 4)

The State of Florida has the following evidence to establish what it claims only a jury view could satisfy: Uber driver Laura Zecchini will testify that she dropped off an individual at 2:19 p.m. on February 14, 2018, at 5901 Pine Island Road, in Parkland, Florida, just northeast of the main entrance to MSD High School.⁶⁹ Records from the Uber account on the phone belonging to Mr. Cruz will corroborate this.⁷⁰ School Campus Monitor Andrew Medina will testify that at approximately 2:20 p.m., he observed a person he recognized exit a parked Uber and walk west on the school campus, through the bike rack gate. Medina claims this person was walking fast, almost a jog, "like he looked on a mission."⁷¹ Medina watched this person as he walked west toward the 1200 building and enter at its east side.⁷² Medina radioed to campus monitor David Taylor to warn him about "a suspicious person coming through the door."⁷³

above and in Mr. Cruz's initial motion in opposition to the jury view, defendants must show that the crime scene view is "essential" or "necessary" to the jury's understanding of the evidence. According to this Court, the State need only show that it would be useful or helpful.

⁶⁸ To prove the crime of First Degree Premeditated Murder, the State must prove the following three elements beyond a reasonable doubt: 1. (Victim) is dead; 2. The death was caused by the criminal act of (defendant); and 3. There was a premeditated killing of (victim). Fla. Crim. J. Inst. 7.2.

⁶⁹ Exhibit 52 (October 3, 2019, deposition of Laura Zecchini at p. 31, line 15- p. 41, line 23, referencing deposition exhibit G).

⁷⁰ Exhibit 53, Uber Rider Information, Pg. 3

⁷¹ Exhibit 54, Medina FDLE statement taken on September 6, 2018. Pg. 25, Line 25

⁷² Exhibit 55, February 14, 2018, interview of Andrew Medina by BSO Detectives Galindez and Demosthenes at p. 11, line 5 – p. 15, line 17.

⁷³ Exhibit 56, David Taylor civil deposition taken September 26, 2019. Pgs. 24-25, Lines 25-1.

The State claims the jury view is needed because “there is no video of the Defendant approaching the 1200 building.” The State, however, has numerous photographs, including aerial photographic footage and video footage of the east entrance to the 1200 Building. Detective Plaska photographed the east entrance of the 1200 building from several different angles.⁷⁴ Additionally, Detective Williams captured drone photographs and videos. The drone photographs depict views of the Uber drop off location and path of travel – walking west onto the school campus, through the bike rack, and the east entrance of the 1200 building.⁷⁵

Additionally, on May 2, 2021, Mark Furdon, Chief Investigator for the Public Defender’s Office, took various measurements at the Marjory Stoneman High School Campus. The distance between the Uber drop-off point and the east side door of the 1200 building was measured and found to be approximately 286 feet. The walking path from Pine Island Road to the gate/fence on the east side of campus was measured and was found to take approximately 1 minute and 12 seconds at a walking pace.⁷⁶ These measurements, along with the photographs, drone footage and testimony of Andrew Medina and Laura Zecchini, provide a sufficient understanding of the pathway taken from the Uber drop-off point to the east entrance of the 1200 building.

- ii. The suspect entered the 1200 building on the first floor east hallway and immediately moved into the east stairwell. He then removed his AR-15 rifle from a bag that he was carrying and proceeded to load his weapon with a firearm magazine. The suspect then re-entered the central hallway of the first floor and began firing his rifle at students in the hallway and then fired into multiple classrooms, stopping to reload his weapon by taking extra firearm magazines out of a vest that he was wearing (SF91 at pg. 2).**

The State of Florida has in its possession interior cameras of the 1200 building. The footage from camera 12 very clearly captures the defendant enter the east stairwell on the first floor at

⁷⁴ Exhibit 57, Composite of 6 photographs providing views of the east entrance of the 1200 building.

⁷⁵ Exhibit 58, Composite of 2 photographs providing aerial view of Uber drop-off to east entrance of 1200 building, DJI 007 and DJI 0025.

⁷⁶ Exhibit 73, Affidavit of Investigator Mark Furdon and exhibits.

2:21:18pm.⁷⁷ The video then shows the defendant make contact with student Christopher McKenna, and then exit the stairwell into the first floor hallway at 2:21:33pm.⁷⁸ On camera 15, which captures the east hallway of the first floor, the Defendant is seen at 2:21:34 p.m. lifting the firearm and taking the first shot.⁷⁹

**iii. The view of the first floor is obscured by dust dropping from the ceiling.
(SF91 at p. 4).**

Dust dropping from the ceiling does occur when the shooting begins. The State claims that a jury view is needed because the dust “sometimes obscured the Defendant from being detected by the cameras.” (SF-94, pg. 4). This argument is highly exaggerated. Even when the video is clouded with dust, the body of the shooter is still clearly visible.⁸⁰ Additionally, the State has numerous photographs depicting the first floor hallway as it would appear without dust obscuring it.⁸¹ The State also has BSO LizardQ photos of the first floor hallway.⁸²

The surveillance video on the second floor is not obscured by any dust. The State has in its possession several photographs of the second floor hallway with a view from west to east.⁸³ The State also has BSO LizardQ photos of the second floor hallway.⁸⁴

Finally, the State has in its possession clear photographs of the third floor hallway with a view from east to west.⁸⁵ The State also has BSO LizardQ photos of the third floor hallway.⁸⁶

⁷⁷ Exhibit 59, Camera 12 still shot 2:21:18pm

⁷⁸ Exhibit 60, Camera 12 still shot 2:21:33pm

⁷⁹ Exhibit 61, Camera 15 still shot at 2:21:34pm

⁸⁰ Exhibit 62, Camera 15 still shot at 2:22:34pm

⁸¹ Exhibit 17D (DGP1142, DGP1149-1154).

⁸² These photos have been excluded due to images of deceased victims. (State’s Supplemental Discovery S-50)

⁸³ Exhibit 31D (DGP1184-1185, DGP1188-1191).

⁸⁴ Exhibit 31D (DK417-419)

⁸⁵ Exhibit 50D (GEC5444, GEC5452-5453, GEC5455-5456, GEC5460-5462, GEC5465-5466, GEC5468, GEC5470, GEC5472, GEC5474, GEC5476-5477, GEC5480, GEC5483).

⁸⁶ These photos have been excluded due to images of deceased victims. State’s Supplemental Discovery S-50

iv. There is no school surveillance video which depicts the interiors of any of the classrooms. (SF-91 at p. 4).

The State has hundreds of photographs of the inside of each classroom. There are also numerous witnesses (students and teachers) who were in the classrooms to provide testimony about what was happening inside as the defendant was shooting. It should be noted that the defendant did not enter a single classroom at any time during the shooting. Nonetheless, with the photographic evidence the State has, the jury will be able to see “inside” each classroom both prior to, and after the room was processed.

Any number of BSO Crime Scene Detectives, students, faculty, or staff will be able to testify that the photos are fair and accurate depictions of any particular classroom on the date of the incident. The photographic evidence of classrooms on the first floor of the 1200 building available in lieu of a jury view consists of the following composites:

Classroom 1202 – 24 photos, See Exhibit 3D

Classroom 1210 – 28 photos, See Exhibit 4D

Classroom 1211 – 29 photos, See Exhibit 5D

Classroom 1214 – 37 photos, See Exhibit 6D

Classroom 1215 – 52 photos, See Exhibit 7D

Classroom 1218 – 25 photos, See Exhibit 8D

Classroom 1212 – 44 photos, See Exhibit 13D

Classroom 1213 – 83 photos, See Exhibit 14D

Classroom 1216 – 25 photos, See Exhibit 15D

Classroom 1217 – 23 photos, See Exhibit 16D

The photographic evidence of classrooms on the second floor of the 1200 building in lieu of a jury view consist of the following composites:

- Classroom 1221 – 36 photos, See Exhibit 19D
- Classroom 1229 – 44 photos, See Exhibit 20D
- Classroom 1230 – 45 photos, See Exhibit 21D
- Classroom 1233 – 25 photos, See Exhibit 22D
- Classroom 1234 – 82 photos, See Exhibit 23D
- Classroom 1237 – 36 photos, See Exhibit 24D
- Classroom 1231 – 199 photos, See Exhibit 27D
- Classroom 1232 – 40 photos, See Exhibit 28D
- Classroom 1235 – 47 photos, See Exhibit 29D
- Classroom 1236 – 37 photos, See Exhibit 30D

The photographic evidence of classrooms on the third floor of the 1200 building in lieu of a jury view consist of the following composites:

- Classroom 1241 – 18 photos, See Exhibit 33D
- Classroom 1249 – 21 photos, See Exhibit 34D
- Classroom 1250 – 22 photos, See Exhibit 35D
- Classroom 1253 – 24 photos, See Exhibit 36D
- Classroom 1254 – 35 photos, See Exhibit 37D
- Classroom 1257 – 49 photos, See Exhibit 38D
- Classroom 1251 – 26 photos, See Exhibit 46D
- Classroom 1252 – 30 photos, See Exhibit 47D
- Classroom 1255 – 43 photos, See Exhibit 48D
- Classroom 1256 – 14 photos, See Exhibit 49D

In addition to the classroom photos, BSO crime scene detectives took over 1,800 photographs of the scene. These include 394 photographs of the first floor hallway,⁸⁷ 328 photographs of the second floor hallway,⁸⁸ and 567 photos of the third floor hallway.⁸⁹ BSO used the LizardQ to take and combine overall and panoramic views. The LizardQ can take 500-4,550 megapixels photos (compared to a Nikon camera which usually takes around 18 megapixels).⁹⁰ LizardQ photos were taken of each floor of the 1200 building. Specifically, on the first floor the following LizardQ photos exist as evidence for the jury:

Classroom 1210 – 1 photo, See Exhibit 4D

Classroom 1211 – 1 photo, See Exhibit 5D

Classroom 1214 – 1 photo, See Exhibit 6D

Classroom 1215 – 1 photo, See Exhibit 7D

Classroom 1218 – 1 photo, See Exhibit 8D

Classroom 1212 – 1 photo, See Exhibit 13D

Classroom 1217 – 1 photo, See Exhibit 17D

Stairwell 1200A – 4 photos, See Exhibit 18D⁹¹

Stairwell 1200B – 5 Photos, See Exhibit 9D

Lizard Q composite photos for the second floor include:

Classroom 1229 – 1 photo, See Exhibit 20D

Classroom 1230 – 1 photo, See Exhibit 21D

Classroom 1233 – 1 photo, See Exhibit 22D

⁸⁷ Exhibit 17D, 1st Floor Hallway, 361 are provided, excludes images of deceased victims (See State's supplemental Discovery S-50)

⁸⁸ Exhibit 31D, 2nd Floor Hallway

⁸⁹ Exhibit 50D, 3rd Floor Hallway, 482 are provided, excludes images of deceased victims (See State's supplemental Discovery S-50)

⁹⁰ Exhibit 65, Det. Clint Williams Depo, Pgs. 78-79, Line 1 on Pg. 78 – Line 5 on Pg. 79

⁹¹ Exhibit 18D, Composite of

Classroom 1234 – 1 photo, See Exhibit 23D
Classroom 1237 – 1 photo, See Exhibit 24D
Classroom 1231 – 1 photo, See Exhibit 27D
Classroom 1232 – 1 photo, See Exhibit 28D
Classroom 1235 – 1 photo, See Exhibit 29D
Classroom 1236 – 1 photo, See Exhibit 30D
Hallway – 3 photos, See Exhibit 31D
Stairwell 1200A – 4 photos, See Exhibit 18D
Stairwell 1200B – 5 Photos, See Exhibit 9D
Teacher Planning 1220 – 1 photo, See Exhibit 25D

Lizard Q composite photos for the third floor include:

Room 1247, Men's bathroom – 1 photo, See Exhibit 44D
Room 1248, Women's bathroom – 1 photo, See Exhibit 45D
Classroom 1241 – 1 photo, See Exhibit 33D
Classroom 1249 – 1 photo, See Exhibit 34D
Classroom 1250 – 1 photo, See Exhibit 35D
Classroom 1253 – 1 photo, See Exhibit 36D
Classroom 1254 – 1 photo, See Exhibit 37D
Classroom 1257 – 1 photo, See Exhibit 38D
Classroom 1251 – 1 photo, See Exhibit 46D
Classroom 1252 – 1 photo, See Exhibit 47D
Classroom 1255 – 1 photo, See Exhibit 48D
Classroom 1256 – 1 photo, See Exhibit 49D

Stairwell 1200A – 4 photos, See Exhibit 18D

Stairwell 1200B – 5 Photos, See Exhibit 9D

Teacher Planning 1240 – 1 photo, See Exhibit 39D

v. There is no video that “effectively show[s] the view the Defendant had while firing into the classrooms.” (SF-91 at p. 4).

The State has hundreds of photos of the classroom doors. From the photos of the closed doors, the jury will be able to see the view the suspect had into the classrooms.⁹² The photographic evidence of classroom doors on the first floor of the 1200 building available in lieu of a jury view consists of the following:

Classroom 1202 – 1 photo, See Exhibit 3D (DSC007)

Classroom 1210 – 5 photos, See Exhibit 4D (DSC0071, DSC0072, KAP3755-KAP3757)

Classroom 1211 – 3 photos, See Exhibit 5D (DSC0148, KAP3767, KAP3768)

Classroom 1214 – 2 photos, See Exhibit 6D (DSC0002, DSC0005)

Classroom 1215 – 15 photos, See Exhibit 7D (DSC0193, DJK6819, DJK6830, DJK6831, DJK6832, DSJ6944, DJK6945, DJK6946, DJK6947, DJK6948, DJK6949, DJK6957, KAP3791, POP0325, POP0326)

Classroom 1218 – 3 photos, See Exhibit 8D (DSC0002, KAP3807, KAP3808)

Classroom 1212 – 11 photos, See Exhibit 13D (AMO0078, AMO0079, AMO0180, DJK6859, DJK6860, KAP3696, POP0359, POP0360, POP0361, POP0659, POP0660)

Classroom 1213 – 9 photos, Exhibit 14D (AMO0181, AMO0182, AMO0353, AMO0354, DJK6859, DJK6860, POP0359, POP0360, POP0361)

Classroom 1216 – 4 photos, See Exhibit 15D (DSC0121, DJK6950, DJK6951, KAP3624)

Classroom 1217 – 4 photos, See Exhibit 16D (DSC0106, KAP3621, KAP3622, KAP3678)

The photographic evidence of classroom doors on the second floor of the 1200 building available in lieu of a jury view consists of the following:

⁹² Any testimony of what the actual view was or what the suspect did or did not see in the classroom calls for speculation. The defense does not waive this objection by the filing of this proffer.

Classroom 1221 – 12 photos, See Exhibit 19D (MAS0793-MAS0804)

Classroom 1229 – 12 photos, See Exhibit 20D (DSC0121, MAS0682-MAS0692)

Classroom 1230 – 13 photos, See Exhibit 21D (DSC0189, MAS0637-MAS0648)

Classroom 1233 – 10 photos, See Exhibit 22D (MAS0454-MAS0463)

Classroom 1234 – 19 photos, See Exhibit 23D (DSC0264, MAS0352-MAS0362, MAS0373-MAS0377, MASMAS0967, MAS0968)

Classroom 1237 – 11 photos, See Exhibit 24D (DSC0271, MAS0250-MAS0259)

Classroom 1231 – 48 photos, See Exhibit 27D (DSC0384, MAS0518-MAS0521, MAS0534, MAS0535, MAS0541-MAS0546, MAS0549-MAS0552, MAS1013-MAS1018, MAS1083, MAS1084, MAS1088-MAS1095, MAS1122-MAS1136)

Classroom 1232 – 19 photos, See Exhibit 28D (DSC0352, MAS0479, MAS0480, MAS0484-MAS0486, MAS0489-MAS0499, MAS1081, MAS1082)

Classroom 1235 – 14 photos, See Exhibit 29D (DSC0259, MAS0316-MAS0328)

Classroom 1236 – 16 photos, See Exhibit 30D (DSC0259, MAS0284-MAS0298)

The photographic evidence of classroom doors on the third floor of the 1200 building available in lieu of a jury view consists of the following:

Classroom 1241 – 2 photos, See Exhibit 33D (DSC0399, GEC4658)

Classroom 1249 – 5 photos, See Exhibit 34D (DSC0408, GEC4628, GEC4629, GEC4732, GEC4733)

Classroom 1250 – 3 photos, See Exhibit 35D (DSC0424, GEC4740, GEC5406)

Classroom 1253 – 5 photos, See Exhibit 36D (DSC0477, GEC4770-GEC4772, GEC5380)

Classroom 1254 – 5 photos, See Exhibit 37D (AMO0456, AMO0475, GEC4780, GEC5364, GEC5365)

Classroom 1257 – 11 photos, See Exhibit 38D (AMO0355-AMO0357, AMO0448, AMO0455, GEC4812-GEC4815, GEC5341, GEC5342)

Classroom 1251 – 5 photos, See Exhibit 46D (DSC0461, GEC4615, GEC4750, GEC4751, GEC5396)

Classroom 1252 – 3 photos, See Exhibit 47D (DSC0045, GEC4761, GEC5387)

Classroom 1255 – 7 photos, See Exhibit 48D (DSC0079, GEC4794-GEC4797, GEC5355, GEC5356)

Classroom 1256 – 4 photos, See Exhibit 49D (AMO0450, AMO0454, GEC4807, GEC5349)

vi. “The images of the Defendant jump to different locations because of the limits of the video system.” (SF-91 at p. 5).

The State also argues the jury needs to view the scene because “the images of the Defendant jump to different locations because of the limits of the video system.” This argument regarding the limits of the school video system are over exaggerated. The cameras are constantly recording and are based on motion. The only ‘limits’ are that there is no recording when there is no movement.⁹³ Each floor contains three cameras: West, Central, and East, plus inside the stairwells. Upon any camera detecting movement, the system automatically backs up five seconds and starts to record.⁹⁴ If there are ‘jumps’ in the recording, it is because there is no movement.

vii. A jury viewing the scene will also be able to view the placement of the cameras and the blind spots.” (SF-91 at 4).

Viewing the cameras will not, by itself, demonstrate blind spots. Only by watching the video of the event, and seeing the defendant disappear from their view, will the jury be able to ascertain these blind spots. Furthermore, Detective Plaska took a series of 617 photographs of the school grounds, the 1200 building, Walmart, Subway, and McDonalds. Of those 617 photographs, approximately 123 photographs show the location of surveillance cameras at the school, the Walmart, the Subway, and the McDonalds.⁹⁵ The State has additional floor plans for the 1200

⁹³ Exhibit 70, Deposition of Edward Kessler at p. 17.

⁹⁴ *Id.* at p. 13.

⁹⁵ Exhibit 66, Composite of 123 photographs of surveillance camera placements

building which indicate the exact placement of the cameras within the 1200 building.⁹⁶ It should also be noted that no one is permitted to speak to the jurors during the view of the scene, so the State will not be able to point out camera locations or blind spots to the jurors while they are in the 1200 building.

viii. The jury will be able to appreciate and understand the relative distances between the classrooms” (SF-91, pg. 5).

The State has highly technical, to-scale diagrams of the scene. Florida Highway Patrol documented the 1200 building using the Leica TS12 Robotic Total Station. This was the first time that FHP used the Leica Robotic Station to conduct the forensic mapping of a non-traffic related homicide or crime scene. The Leica robotic total station is used to measure, calculate, and capture data. It creates a two or three dimensional diagram (3D imaging is viewed through their software “CrashZone”) of the entire scene. Utilizing the Leica technology, the Florida Highway Patrol was able to map out to scale a diagram of the 1200 building, in addition to creating video segments of the 1200 building.⁹⁷ The defense obtained from the Broward County School Board, copies of original architectural building plans of the 30 classrooms and 6 laboratories which ultimately used in the construction of the 1200 building.⁹⁸ These blueprints are drawn to scale with detailed legends and measurements. These measurements include the relative distances between the classrooms, which can be shown to the jury so that they can appreciate and understand these distances.

Those plans have detailed measurements of the entire area that the defendant covered inside the 1200 building. Additionally, the affidavit of Mr. Furdon contains measurements of the distances of the hallways and stairwells on each of the three floors. This affidavit and exhibit can

⁹⁶ Exhibit 32, Architectural maps of the 1200 building with surveillance camera locations

⁹⁷ Exhibit 67, Leica 2D diagram and Leica 3D video of the 1200 Building

⁹⁸ Exhibit 63, 4 pages of architectural plans for the 1200 Building

also be shown to the jury so they can appreciate and understand the distance covered by the defendant in the 1200 building.

ix. There is no surveillance video which is able to detect the Defendant's actions while he enters or remains in the teacher's lounge. (SF-91 at p. 4).

The State next claims that a jury view is needed because there is no video surveillance in the third floor teacher's lounge. Detective Crespo is able to provide photographic evidence of the appearance of the third floor teacher's lounge after the shooting⁹⁹.

The State further argues the third floor teacher's lounge "exterior windows overlook areas where students and staff were evacuating the school as the fire alarm was activated. Ballistic damage was found on windows in the teacher's lounge area establishing that the Defendant was firing at possible targets both to the south and west of the 1200 building." (SF-91, pg. 3). Detective Crespo took ample photographs of these exterior windows and its views.¹⁰⁰ The State also has the highly advanced LizardQ photos of the third floor teacher's lounge.¹⁰¹

xi. The campus of Marjory Stoneman Douglas High School (SF-91 at pp. 1, 5).

There are at least 710 exterior photos of the 1200 building and surrounding areas taken by BSO Crime Scene Detectives.¹⁰² BSO Detectives also utilized the LizardQ camera to document a series of five photos of the exterior as well.¹⁰³

The State has sufficient photographic evidence of the campus and surrounding areas, including school surveillance cameras, maps and aerial photos.¹⁰⁴ Demonstrative aids such as Google Maps are often used to in trials to assist the jury. Broward Sheriff's Office used drone

⁹⁹ Exhibit 39D, composite exhibit of 57 photographs of 1240

¹⁰⁰ Exhibit 39D, (GEC4920 – GEC4954)

¹⁰¹ Exhibit 39D, (1240 BSO LizardQ)

¹⁰² Exhibit 68, composite exhibit of 710 photos of the exterior of the 1200 building.

¹⁰³ Excluded: All 5 LizardQ exterior photos show deceased victims, and are therefore omitted.

¹⁰⁴ Exhibit 71, composite of 8 aerial photos.

technology to capture aerial images. The State is in possession of drone footage of the campus and surrounding areas.¹⁰⁵

xii. The jury will be able to see the Defendant's escape and the relatively limited distance to his place of arrest.” (SF-91, pg. 5).

There is more than adequate evidence in the State's possession to allow the jury to see Defendant's path of travel from the school to the arrest location.¹⁰⁶ The State has drone footage of the campus and surrounding areas, including the assumed path the defendant took from the school to the location of his arrest. The State's drone footage includes 146 photographs and 47 videos.¹⁰⁷ The jury does not need to be driven from the high school campus to the arrest location to understand that Mr. Cruz was arrested 2.1 miles from the MSD campus.

As demonstrated in the preceding section, the drone footage and stills, surveillance footage and stills, forensic mapping, architectural plans, building maps, and photographic evidence is voluminous and comprehensive. This crime was investigated, processed and documented in an unprecedented manner. This documentation, done at or near the time of the crime, will provide the jury with a crystal clear understanding the evidence in this case.

C. THE DEFENDANT WILL BE PREJUDICED BY A JURY VIEW OF THE SCENE.

The preceding two sections of this proffer addressed the State's evidence supporting the denial of the State's Motion for View by Jury based on a substantial change in the condition of the scene since the incident, and the adequacy of the State's evidence without a jury view. This section will discuss the prejudice to Mr. Cruz if the jury were to view the scene in its current condition. Viewing the scene in its current condition will cause additional, *unnecessary* vicarious trauma to

¹⁰⁵ Exhibit 58, drone footage.

¹⁰⁶ Defendant maintains the jury does not need to view the locations visited by the Defendant after the offense, or his place of arrest. This evidence is not probative of any material fact at issue in the case. The moment that the Defendant exited the 1200 building, the crimes for which he is charged were completed.

¹⁰⁷ See State's Amended Discovery S-50

the jurors. Based on the emotions likely to be experienced by the jurors, research demonstrates that they will lose their ability to fully process the evidence they subsequently receive, process the State's evidence more than Mr. Cruz's mitigation evidence, and lower their burden of proof for ruling against Mr. Cruz. Accordingly, the jury view is improper insofar as it will violate Mr. Cruz's due process rights.

i. A view of the crime scene in its current condition is likely to cause additional *unnecessary* trauma to the jurors in this case.

In its order granting the State's Motion for View by Jury, this Court previously indicated that it need not consider trauma to the jurors in requiring them to visit a highly emotional, distressing and disgusting crime scene. The Court's order states that "the statute [does not] require the weighing of the potential trauma to jurors or a mechanism requiring protecting juror anonymity,"¹⁰⁸ and that it only need consider whether a jury view is "proper." Respectfully, if the jurors are so traumatized by their view of the scene that their emotions affect how they review the evidence and deliberate in ways that are prejudicial to the defendant, the jury view is not proper. Thus, the first section of this portion of the proffer will contain a discussion of juror trauma in cases containing graphic and emotionally charged evidence, and the second section will discuss how this trauma and emotion is likely to affect the jury's decision-making processes.

Dr. Yenys Castillo, a licensed psychologist, was retained by the defense to provide testimony regarding the trauma jurors will most likely experience if required to view the crime

¹⁰⁸ Court's Dec. 17, 2020 Order Granting State's Motion for View by Jury at p. 3. This complete disregard for the trauma a view of the scene in its current condition will cause the jurors puts this Court in a clear minority of judicial officers. National Center for the State Courts, *Through the Eyes of the Juror: A Manual for Addressing Juror Stress*. Available at [http://www.ncsconline.org/WC/Publications/ResJuriesJurorStressIndex Pub.pdf](http://www.ncsconline.org/WC/Publications/ResJuriesJurorStressIndexPub.pdf) (2002). At App. B (noting that 97% of judges answered "yes" to the question "Do you believe courts have a responsibility to prevent, address, or minimize juror stress?"). See also Monica K. Miller and Brian H. Bornstein, *Juror Stress: Causes and Interventions*, 30 T. MARSHALL L. REV. 237, 242 (2004) (citation omitted) (A survey of trial court judges demonstrated that almost all judges feel they have a duty to reduce the amount of stress a juror experiences).

scene in its current condition. Dr. Castillo is an expert on trauma and forensic psychology.¹⁰⁹ On November 27, 2019, Dr. Castillo, along with other members of the defense team, visited the 1200 building. Dr. Castillo also reviewed a significant number of photographs and videos documenting the scene prior to and after its processing by law enforcement.¹¹⁰ In her attached affidavit, Dr. Castillo notes that the situation of jurors in emotionally-disturbing trials resembles that of police officers, hostage negotiators, and some emergency and disaster workers in that they “are not themselves the victims of crime or disaster, yet they are placed in a position where they are forced to observe and confront another person’s pain, suffering, or death.”¹¹¹ This encounter and the imagining of how others lived and died can lead to a painful empathy, negatively impacting jurors’ mental and physical health. Based on her expertise, research and view of the crime scene, Dr. Castillo would have testified that, “It is my opinion that visiting the Marjory Stoneman Douglas Senior High crime scene as it stands today could bring about additional stress to jurors and result in symptoms of depression, anxiety, and posttraumatic stress.”¹¹²

Dr. Castillo would also testify that requiring the jurors in this case to view the crime scene in person is akin to inviting them to place themselves in the position of the victims during the crime and imagine the victim’s suffering. This is a not so subtle form of a golden rule violation, prohibited in Florida. In her affidavit, Dr. Castillo writes:

The Marjorie (sic) Stoneman Douglas Senior High crime scene, with its smells, noises, and visions, is too vivid. Hence, walking on these grounds could bring jurors emotionally closer to the experience of vicariously witnessing a highly traumatic event. Jurors would have to walk carefully not to step on blood and other body fluids. They would encounter unfinished drinks and food, see thrown, pierced, and tainted belongings of victims, and view displays of pictures of children, teachers, and their families. They would also hear the rustling of broken glass under their

¹⁰⁹ Exhibit 69, at pp.7-8.

¹¹⁰ *Id.* at p. 1.

¹¹¹ *Id.* citing Bienen, L., *Helping Jurors Out: Post-Verdict Debriefing for Jurors in Emotionally Disturbing Trials*, INDIANA LAW JOURNAL, Vol. 68, Iss. 4, Article 13.

¹¹² *Id.*

feet and the school bell ringing at specific intervals. Furthermore, jurors would experience a sense of movement created by the bloody trail of dragged bodies and traces of EMT equipment. Being immersed in this multisensorial experience could make them emotionally closer to the aftermath of a violent crime and increase their risk for psychological distress.

Almost every classroom and hallway within the 1200 building contains prejudicial, inflammatory and emotional objects, but these objects are wholly irrelevant to prove any material fact at issue in this case. This includes, but is not limited to, the following:

1210: a Holocaust poster, bear balloon, blood on the floor, law enforcement writing on the wall.¹¹³

1211: a stuffed animal, Lord of the Flies cover, rose on floor and law enforcement writing on the wall.¹¹⁴

1212: The Catcher and the Rye books, MSD Emergency Plan on floor, stuffed animals, Lord of the Flies book, eyeglasses adjacent to open book, Down a Dark Hall book with skeletal hands/wrists on cover, MSD 2017 football poster, college preparation flyer, lacrosse stick and law enforcement writing on the wall.¹¹⁵

1213: Blood and ear bud case, single shoe and ear bud, first aid hemostatic dressing package, blood stain on floor, combat gauze package, stained water bottle, cloth pouch, photos of students, photos of students-teachers, photos of children, deflated I Love You balloon on floor, Nike sandals and rose on floor, gift bag and contents on floor, photos of students, small children and teachers.¹¹⁶

1214: a Concentration Camp poster, blood stained floor, war photos, projectile holes in wall, Concentration Camp photo, war related news articles, Kristallnacht poster, Jude

¹¹³ See Exhibit 4E.

¹¹⁴ See Exhibit 5E

¹¹⁵ See Exhibit 13E

¹¹⁶ See Exhibit 14E

banner, pair of shoes, class assignment on the whiteboard, German letters/words on the wall, poster referencing Jude, student authored paper, Holocaust poster, ceiling tile with evidence markers, “You are not alone” poster, Oliver Wendall Holmes poster, encouragement poster and student photo on filing cabinet.¹¹⁷

1215: dead long stem rose and ear buds, stuffed animal and broken glass, dead flowers and Valentine cards, dead flowers, dead flower petals and Valentine cards, evidence marker and floor imperfection, evidence marker and projectile hole, broken glass, projectile holes in wall and evidence markers, law enforcement writing on the wall, stuffed animals, trajectory line, dead flowers, ear buds and Valentine cards, writing assignment on whiteboard, plastic cup containing liquid, photos on family tree and Calendar in Spanish.¹¹⁸

1216: RIP projects on cabinet door, student letter indicating how lucky they are to go to school, student paper indicating Malala shot in head, broken glass and law enforcement writing on the walls, RIP student assignments, single shoe, blood stains on floor and wall, heart shaped box, and “Night” by Elie Wiesel.¹¹⁹

1217: Poster with victim Scott Beigel’s name, Twin Towers poster and Holocaust picture.¹²⁰

1218: Broken glass, RIP projects on cabinet door, Valentine Day note, law enforcement writing on the wall, piece of paper with “dear” on it/start of a Valentine’s Day letter, paper with split/broken hearts on it, document with Romeo and Juliet, stuffed animal on the floor,

¹¹⁷ See Exhibit 6E

¹¹⁸ See Exhibit 7E

¹¹⁹ See Exhibit 15E

¹²⁰ See Exhibit 16E

heart shaped balloons attached to the whiteboard, paper with heart, skull, broken heart picture, pencils and Valentine's Day papers on desks.¹²¹

1229: Football poster showing Coach Feis, broken glass college memorabilia on the wall and law enforcement writings on the wall.¹²²

1230: Law enforcement writing on the wall, photos of students, stuffed animal, candy box and collegiate flags.¹²³

1231: Photos of students, law enforcement writing on the wall and "stranger danger" poster.¹²⁴

1232: Candy box and law enforcement writings on the wall.¹²⁵

1233: "Don't make excuses" poster, broken glass, dead plants and law enforcement writing on the wall.¹²⁶

1234: Broken glass, damaged school book via projectile, evidence markers and law enforcement notes on same book and law enforcement writing on the wall.¹²⁷

1235: Stuffed animals, law enforcement writing on the wall, gift bags, candy, broken glass and football poster with students and Coach Feis.¹²⁸

1236: "Dream as if you will live forever" on top of bookshelf, MSD Football poster, law enforcement writing on the wall, broken glass and snow skier poster.¹²⁹

¹²¹ See Exhibit 8E

¹²² See Exhibit 20E

¹²³ See Exhibit 21E

¹²⁴ See Exhibit 27E

¹²⁵ See Exhibit 28E

¹²⁶ See Exhibit 22E

¹²⁷ See Exhibit 23E

¹²⁸ See Exhibit 29E

¹²⁹ See Exhibit 30E

1237: Valentine Day gift bag on desk, “Shoot for the Moon” poster on the wall, stuffed animals, photos of students, photo of MSD Senior class, student album, law enforcement writing on the wall and trophies.¹³⁰

1241: Broken glass, fallen papers/posters, law enforcement writing on the wall and MSD football poster with Coach Feis.¹³¹

1249: Candy box, football, student letter and toy bus, blood stain on the floor and law enforcement writing on the wall.¹³²

1250: “Hope and Love” drawing on spiral notebook, MSD football poster with players and Coach Feis pictured, law enforcement writing on the walls and law enforcement measurements indicated, broken glass in door, deflated Valentine Day balloon on the floor, and stuffed animal on the floor.¹³³

1252: “Stop Violence” poster, anti-bullying poster, MSD football poster with players and Coach Feis pictured, and broken glass in door, law enforcement writing on the wall and collegiate poster.¹³⁴

1253: Law enforcement writing on the wall, broken glass and bloody book cover.¹³⁵

1254: Valentine’s day gift bags, law enforcement writing on the floor, stuffed animals, law enforcement writing on the wall, MSD football poster with players and Coach Feis, heart candy dish and Valentines and hearts on the floor .¹³⁶

¹³⁰ See Exhibit 24E

¹³¹ See Exhibit 33E

¹³² See Exhibit 34E

¹³³ See Exhibit 35E

¹³⁴ See Exhibit 47E

¹³⁵ See Exhibit 36E

¹³⁶ See Exhibit 37E

1255: Projectile hole and evidence marker, Valentine's Day gift bags, deflated Valentine's Day balloon law enforcement writing on the wall, broken glass, hearts on paper, stuffed animal, candy and MSD football poster with players and Coach Feis.¹³⁷

1256: MSD football poster with players and Victim Coach Feis, blood stain on floor, deflated Valentine's Day balloon on floor, and law enforcement writing on the wall.¹³⁸

1257: MSD football poster with players and Victim Coach Feis pictured, roses on desk, gift bag, broken glass, law enforcement writing on the wall.¹³⁹

First Floor Hallway: Defects, evidence markers, broken glass, blood on the floor, quadrant marker in orange spray done by law enforcement, stuffed animal, gift bag, blanket, Valentine's Day card, murals on the hallway, class ring poster, candy boxes, teacher identification card, SAT/ACT prep flyer, evidence measurement stickers, victim A.M.B. body flesh, medical equipment, bloody drag marks and strike marks.¹⁴⁰

Second Floor Hallway: Evidence markings, desk in disarray, broken glass, murals on the wall, quadrant marker in orange spray done by law enforcement, student photos and student shoe.¹⁴¹

Third Floor Hallway: Quadrant marker in orange spray paint done by law enforcement, blood on the floor, dead rose petals, homemade Valentine's Day Card and blood on floor, victim A.B. blood on floor and bloody drag marks, evidence markers, bloody hand print, dried pools of blood, earbuds in broken glass, law enforcement writing on the wall, strike marks, hair in blood, victim J.O. blood on the floor and bloody drag marks, South wall grid

¹³⁷ See Exhibit 48E

¹³⁸ See Exhibit 49E

¹³⁹ See Exhibit 38E

¹⁴⁰ See Exhibit 17E (Note: orange quadrant markings are placed throughout the hallway in 20 ft. intervals)

¹⁴¹ See Exhibit 31E (Note: orange quadrant markings are placed throughout the hallway in 20 ft. intervals)

lines done by law enforcement, defects, evidence measurement stickers, victim P.W. blood on the floor, blood spatter grid work done by law enforcement, West wall grid lines done by law enforcement and strike marks on glass.¹⁴²

West Stairwell: Bloody drag marks on landing, gauze left by medical personnel, medical gloves, chest seal, blood on the floor and medical paraphernalia.¹⁴³

It is indisputable that gruesome and disturbing images negatively impact the physical and mental health of jurors. There is an abundance of research on the topic of vicarious trauma experienced by jurors, judges and lawyers dealing with particularly gruesome evidence. What is important for this Court to consider, however, is whether the effects of this trauma endured by the jurors in this case will translate into prejudice to Mr. Cruz. Exposing the jury to unnecessary trauma, as the State is seeking to do in this case, is yet another reason why the jury view is not “proper” in this case.

ii. The trauma experienced by the jurors in viewing the crime scene is likely to affect the jurors’ deliberation process in ways prejudicial to Mr. Cruz.

In order to understand how a view of the crime scene in its current condition might affect the jurors in their decision-making processes, the defense hired Dr. Jessica Salerno, a social psychologist who conducts scientific experiments studying the impact of emotion on juror decision making.¹⁴⁴ Dr. Salerno has extensively researched and published in the area of juror psychology and decision-making. According to Dr. Salerno, even the most diligent jurors putting great effort into evaluating the evidence carefully can have their decision-making process unconsciously tainted or biased by the “moral emotions” they feel in reaction to trial evidence.”¹⁴⁵ Dr. Salerno

¹⁴² See Exhibit 50E (*Note: orange quadrant markings are placed throughout the hallway in 20 ft. intervals*)

¹⁴³ See Exhibit 18E

¹⁴⁴ Exhibit 72, CV and Affidavit of Dr. Jessica Salerno.

¹⁴⁵ *Id.* at p. 1.

goes on to explain that “feeling more (versus less) intense moral emotional reactions to reviewing evidence of harm can unconsciously motivate people to look for ways to validate and justify the harsher judgments and sentencing they desire to satisfy their emotional response.”¹⁴⁶ This occurs in the following five ways:

- (1) Heightening juror’s moral emotions can make them process case evidence less deeply. Some moral emotions are associated with greater confidence in one’s own opinion, thus leading to a more shallow processing of the evidence and more reliance on cognitive shortcuts.
- (2) Heightening juror’s moral emotions can skew how they process evidence to pay attention to and rely on prosecution evidence more and defense evidence less. People who are experiencing heightened anger or moral outrage are more likely to ignore exculpatory circumstance and mitigating factors for punishment and to place greater importance on aggravating evidence, which makes them more likely to vote for a death sentence.
- (3) Heightening juror’s moral emotions can make them perceive more intentionality in the same action, thus motivating them to perceive actions as more intentional they otherwise would have, if experience less intense emotions.
- (4) Heightening juror’s moral emotions can lower their burden of proof for ruling against the defendant and impose a harsher punishment than they otherwise would have.
- (5) Heightening juror’s moral emotions can lead jurors to perceive the same action as more morally wrong, which leads to greater moral condemnation.¹⁴⁷

Looking at the particular circumstances of this case, Dr. Salerno opines that viewing the crime scene in its current condition could heighten the jurors’ anger and disgust beyond merely seeing gruesome photographs and videos where they are physically distanced from the blood and gore. Moreover, this more “immersive” experience is likely to increase the jurors empathy for the victims, a fact the State is obviously counting on. Dr. Salerno defines empathy as “the degree to which we take the other person’s perspective, think what they think and feel what they feel—in

¹⁴⁶ *Id.*

¹⁴⁷ Salerno affidavit at pp. 2-3.

other words, how much we ‘put ourselves in their shoes.’” Dr. Salerno’s experience, research and review of this case led her to conclude that

Overall, a visit to the crime scene is likely to lead to much more intense emotions for the jurors—including anger, disgust, and emotional empathy—that could (a) prejudice the way they review the evidence and deliberate against the defendant, and (b) influence their sentencing decisions on improper bases (i.e., emotional empathy for the victims). This is likely to be the case even relative to just seeing the photographs and videos of the victims and crime scene.

Id. at p. 10.

Through the State’s evidence, as well as photographs provided by the defense taken by RDJ, the defense has illustrated all of the prejudicial items contained within the 1200 building. Additionally, the defense has prepared and is attaching as an exhibit, a “Jury Walkthrough Video,” which shows travel through the entire 1200 building, as well as 360° videos of the interiors of each classroom, so the Court can be fully advised of the prejudicial impact that the crime scene view will have in its totality.¹⁴⁸

As the above indicates, the statute does in fact require the weighing of the potential trauma to jurors, because that trauma translates into unfair prejudice to Mr. Cruz. The prejudice stems from the jurors’ inability to sufficiently receive and process all the evidence presented by both sides because they are overcome by feelings of anger, disgust and empathy which is a natural consequence of viewing the crime scene in its current condition. The State is well aware of these factors: they are counting on them to ultimately ensure votes for death.

D. ARGUMENT IN OPPOSITION TO MOTION FOR VIEW BY JURY

Florida case law, as well as other jurisdictions, indicate that there are a variety of relevant factors that judges should consider when ruling on a motion for a jury view. Those factors include: (1) whether there has been a substantial change in the condition of the site since the relevant time;

¹⁴⁸ Exhibit 78, Jury Walkthrough Video.

(2) the adequacy of the evidence without a jury view; (3) the possibility of unfairness to one of the parties.¹⁴⁹ In this Court's initial Order, it narrowly defined "proper" as "relevant, beneficial, and helpful to explain the evidence more clearly." The Court did not consider whether there has been a change in the condition of the scene, whether the State has adequate evidence without a jury view and the possibility of unfairness to Mr. Cruz if the jury is taken to the crime scene in its current condition. These are all considerations for the Court, required by the statute and cases interpreting it. All of these factors are relevant to the determination of whether a jury view of the scene is "proper." In other words, if there has been a substantial change in the condition of the site since the relevant time, a jury view is not proper. Likewise, if the evidence is adequate without a jury view, then the view is not proper. Finally, if a party will be prejudiced by the jury view, the view is not proper.

i. WHERE THERE HAS BEEN A SUBSTANTIAL CHANGE IN THE CONDITION OF THE SITE SINCE THE RELEVANT TIME, A JURY VIEW OF THE SCENE IS NOT PROPER.

A trial court abuses its discretion in allowing a jury view in cases where the scene is not in the same condition as it was during the time of the crime. *See Dixon v. State*, 196 So. 604, 605-06 (Fla. 1940). As Section IIA above demonstrates, there have been numerous changes in the appearance of the 1200 building from the date of the incident to the present time. In fact, *Dixon* seems to indicate that the burden is on the moving party to establish that the scene is in substantially the same condition as it was during the time of the incident. 196 So. 2d at 605-06 (trial court did not abuse its discretion in denying motion for jury view where "it was not shown that the premises where the crime was alleged to have been committed were in the same condition when the trial

¹⁴⁹ In his motion in opposition to the jury view of the crime scene, Mr. Cruz listed six factors the trial court should consider in ruling on such a motion. (*See* D-134). For purposes of this proffer, some of these factors have been combined.

was had as they had been when the difficulty took place.”). In utilizing its discretion in ruling on the State’s motion, this Court did not address the condition of the premises. This will be error.

In order to properly exercise its discretion in ruling on the State’s Motion for View by Jury, this Court should have required the State to demonstrate that the 1200 building is in substantially the same condition as it was during or immediately after the shooting. Not only did this Court fail to require the State to make such a showing, the Court has not viewed the premises in person or through photographs or videos. The State’s assertion alone is not evidence of the condition of the scene, nor is it sufficient to satisfy this requirement for seeking a jury view of the crime scene. Ironically, in SF-105, State’s Reply to Defendant’s Response in Opposition to the Jury View, the State claims that any allegation that the 1200 building is not in the same condition as it was at the time of the crime is “baseless,” and “without factual or legal merit.” (SF-105 at p. 5). As the defense has illustrated in the pages above, it is the State’s contention that the crime scene is in the same condition that is baseless and without factual or legal merit.¹⁵⁰

In fact, it would actually be impossible for the State to duplicate the crime scene such that a jury view would serve a useful purpose. When the defendant entered the crime scene, there were no broken windows and there was no writing on the walls or floors. There were students and teachers in the classrooms. There was no blood or bodily fluids on the floors, walls and furniture. There was no debris in the hallways. The windows were not covered with brown paper and there was no fence surrounding the building. Although jury views of crime scenes are rare and rarely

¹⁵⁰ The State additionally claims that “under this preposterous standard, no crime scene could ever possibly be preserved to allow a jury view.” SF-105 at p. 5. The defense has found no case in the history of United States jurisprudence in which the prosecution has attempted to bring a jury to a “preserved” or even partially preserved crime scene. Crime scene views are extremely rare and are usually requested to illustrate a specific issue in a case, such as whether a witness could have seen what he or she claims or whether the crime could have occurred in the manner in which the prosecution claims. For example in the O.J. Simpson murder trial, the prosecution wanted the jury to see the small area in which the murders took place to rebut a claim by the defense that the crimes could not have been committed by just one person. <https://www.latimes.com/archives/la-xpm-1995-02-13-mn-31571-story.html>

requested, the Florida cases addressing this issue seem to emphasize that courts properly deny motions for jury views of the crime scene where the scene cannot be duplicated. See *Thomas v. State*, 748 So. 2d 970, 973 (Fla. 1999) (no abuse of discretion denying motion for jury view where lighting conditions could not be duplicated, the parking lot where the murder occurred was full, and it was unknown what lights were on around the lot).

These changes to the crime scene are important because they bear on the validity of the State's purported reasons for seeking this view. These reasons fall into two categories: (1) attempts to substitute a jury view for evidence it does not have, and (2) a desire to have the jury view the scene from the defendant's perspective. The first category of reasons clearly do not justify a view of the scene, but will be discussed below. The substantial changes to the scene are relevant to the second category of reasons because they demonstrate that the jury will be unable to view the scene from the defendant's perspective because they will not see the same things he saw when he entered the building and shot into the classrooms and hallways. It serves no useful purpose, relevant to the evidence to be presented, to have the jury see the view the defendant had while firing into classrooms, because the defendant saw students and teachers and books and backpacks. For some of the rooms, he would not have been able to see anything at all, because the door windows were covered with paper. If taken to the scene, the jury will only see broken windows, no people and rearranged desks. Similarly, the State claims that the jury needs to see the hallways which are obscured in the video by dust dropping from the ceiling. It serves no useful purpose, with respect to understanding the evidence, for the jury to see a clear hallway when the hallway at the time of the crime, the hallway as it appeared to the defendant and anyone else present in the building, was filled with dust.

Additionally, the changes that have been made to the crime scene since February 14, 2018, are so dramatic that they will distract the jurors such that their view of the scene does not assist them in understanding the evidence. All parties are prohibited by law from speaking to any of the jurors during the crime scene view. Nor are the parties permitted to explain or point out what the jurors should look at. What they will actually be looking at is broken glass on the floor – some of which was broken by law enforcement, not the defendant – by the classroom doors, markings from various law enforcement officers all over the doors, markings all on walls and floors of the hallway from crime scene detectives, debris, blood and bodily fluids left on the floors and walls for nearly four years and the remnants of traditional Valentine’s Day gift giving. None of these things will assist the jury in understanding an analyzing the evidence.

ii. THE STATE HAS MORE THAN ADEQUATE EVIDENCE TO PRESENT IN THIS CASE; THEREFORE A JURY VIEW IS NOT PROPER.

The State has ample evidence and testimony it can provide to the jury in lieu of an actual crime scene visit. There are thousands of photographs and numerous videos of the 1200 building in the State’s possession that it can present to the jury during the trial. Ironically, when the State wishes to rebuke the defense team for the time it is taking to prepare Mr. Cruz’s defense, it asserts that this case is not complicated. The basis for the State’s assertion is the fact that the crime is on video, there are numerous photographs and there is a confession. Likewise, when the defense requested permission to enter and video record the scene, the State objected, arguing that it was not necessary for the defense to record the scene because it has “body worn camera [videos], BSO crime scene video, surveillance of the school, FHP LEICA station video, LizardQ video, which is a 360° view, and hundreds of crime scene photos all of which have been provided in discovery.” (SF120 at p. 1).

If the evidence is not complicated, as the State of Florida has repeatedly represented, and there is plenty of it, then the necessity of a jury view of the scene is dubious. This Court has yet to require the State to explain how or why a jury view of the scene will assist the jury in understanding its plethora of uncomplicated evidence. See, e.g., *Crawford v. State*, 70 So. 374, 376 (Fla. 1915) (“There is nothing in the record to show that a refusal to grant the motion was in anywise injurious to [the defendant], nor that a view of the premises was essential to a better understanding by the jury of the evidence submitted.”); *Kilgore v. State*, 55 So. 3d 487 (Fla. 2010) (Capital murder defendant’s appellate counsel did not provide ineffective assistance by failing to challenge denial of motion to allow jury to view crime scene on basis that photos were sufficient and admission over objection of floor-plan diagram without proper predicate; defendant failed to provide any explanation as to why jury walkthrough was essential or why photographs were insufficient); *Posey v. Middlebrooks*, 3:15cv452-MCR/CAS, 2017 WL 9478495, *20-21 (N.D. Fla. August 31, 2017) (defendant failed to show how any special circumstances of this case necessitated a trip by the jurors to the crime scene); *Luttrell*, 9 So. 2d at 93 (although jury view may have been useful, the jury was fully able to determine the location of witnesses through the information provided it in court); *Thomas*, 748 So. 2d at 973 (motion to view crime scene denied where defense was allowed to introduce witnesses and photos); *Bundy*, 471 So. 2d at 20 (counsel was able to cross-examine witness whose testimony he wanted to challenge with jury viewing), *Luttrell v. State*, 9 So. 2d 93, 93-94 (Fla. 1942) (no abuse of discretion despite agreeing with appellant’s argument that “the jury would be aided in its deliberation by obtaining an eye picture of the scene of the crime and from a retained mental picture, when reviewing the testimony of the witnesses appearing in the case, the jury could place the witnesses at identified points around the scene of the crime,

and with this additional information the jury would have and possess a thorough, accurate and comprehensive knowledge of the several matters submitted”).

Many of the reasons cited by the State for seeking this jury view are simply efforts to fill in gaps in the evidence. It cannot be emphasized enough that a jury view of the scene is not evidence. Thus, granting the State’s motion for a jury view of the scene simply to enable the State to fill in gaps in its evidence is clearly an abuse of discretion. Perhaps these reasons would be justified if the State had been required to explain how a jury view of the scene will explain the evidence it does have, but it has not been so required and has not done so. Each of the reasons cited by the State will be addressed separately.

a. No video shows the path from the Uber drop off to the east entrance of the 1200 building (SF-91 at p. 2, 4).

The State fails to explain how it would help the jury to understand the uncomplicated testimony that the defendant exited an Uber on Holmberg Road and walked 286 feet to the east entrance of the school building. As mentioned above in Section IIB of this proffer, the State has photos, drone footage and maps of this path. If the State’s desire is to have the jury see and appreciate how far the defendant walked to get into the 1200 building, it can show the jury its evidence and describe this path as being almost the length of a football field, excluding each end zone, which is 300 feet. The jurors do not need to see the crime scene to understand that part of the evidence.

b. The view of the first floor is obscured by dust dropping from the ceiling. (SF91 at p. 4).

The evidence is that as the defendant was firing his weapon, dust from the ceiling was dropping into the air. The State explains in its Motion for View by Jury that “[t]his dust was caused by the ceiling tiles being moved as a result of the concussive sounds of the repeated gunfire from

the defendant's rifle." SF-91 at p. 5. Seeing a clear hallway in person does not explain that evidence. Nor is it necessary to see the actual hallway to understand that the defendant walked up and down the hallways, east to west on the first floor, then west to east on the second floor, then east to west again on the third floor, firing his weapon as he did so. There is nothing complicated about that evidence and the dust seen on the video in no way detracts from the State's case.

c. There is no school surveillance video which depicts the interiors of any of the classrooms. (SF-91 at p. 4).

The State has provided no explanation of how physically being inside a classroom will help the jury understand the uncomplicated evidence that projectiles were being fired from the hallway into the classroom door windows, some of which unfortunately struck students and teachers. The State has photographs of each classroom that sustained gun fire, at every stage of processing. In fact, the best method of assisting the jurors in understanding the evidence is to show them the crime scene photos containing trajectory rods and directional laser lighting. Those photos will explain exactly how the projectiles entered the classrooms and where they landed. These rods have since been removed, so entering the specific classrooms will not assist the jury in understanding the evidence compared to viewing the trajectory photographs. It should also be noted, that the defendant did not enter a single classroom throughout the entire incident.

d. There is no video that "effectively show[s] the view the Defendant had while firing into the classrooms." (SF-91 at p. 4)

This is an example of an improper attempt to substitute a jury view for evidence the State does not have. The State has not provided any explanation regarding evidence it intends to present that will be better explained by a jury view of the scene. There is no way the jurors will be able to determine the view the defendant had while firing into the classrooms, not just because that view has substantially changed, but also because no one can know the view he had or whether he was

even looking into the classrooms at all. This is not a reason for a jury view to explain and understand the evidence, because that evidence simply does not exist. The only evidence the State can present to the jury is the evidence that the defendant was firing his weapon into the classrooms and that the projectiles landed where they landed inside. In other words, there is no evidence in this case that could be better explained by having the jury stand in the hallway and look into the classrooms.

Alternatively, if the Court believes that the jury view is necessary to demonstrate “the view the defendant had while firing into the classrooms,” the defense has prepared a professional point-of-view based on the MSD Public Safety Commission animated timeline, created by BSO Homicide Detective Zack Scott, which in turn was based on the school surveillance video contained in the State’s discovery.¹⁵¹ This video does provide the “perspective” and “perception” the defendant had as he travelled through the 1200 building. Using this point-of-view footage would alleviate the need to traumatize the jurors by bringing them to the crime scene and limit the prejudicial impact that a crime scene visit will have on the defendant’s due process rights.

e. “The images of the Defendant jump to different locations because of the limits of the video system.” (SF-91 at p. 5).

This is an example of an improper attempt to substitute a jury view for evidence the State does not have. Again, the fact that not every single second of this crime is captured on video does not justify a view of the crime scene. The evidence in the case is that the video only records when there is sufficient movement; if the video jumps, it means there was insufficient movement, and what was happening, is unknown. Taking the jurors to the scene will only be inviting them to speculate what was going on when the video jumped, which is essentially inviting them to engage in misconduct. *See, e.g., People v. Stanley*, 665 N.E. 2d 190 (N.Y. 1996) (Unauthorized, contrived

¹⁵¹ Exhibit 77, Point of View Video.

juror experiment at crime scene aimed at authenticating eyewitness' version of the crime as testified to at trial warranted setting aside murder conviction).

f. A jury viewing the scene will also be able to view the placement of the cameras and the blind spots.” (SF-91 at 4).

This provides no justification for a jury view. First, viewing the cameras will not, by itself, demonstrate blind spots. Only by watching the video of the event, and seeing the defendant disappear from their view, will the jury be able to ascertain these blind spots. Additionally, BSO took photographs of every camera in the 1200 building, as well as the Walmart and McDonalds.

g. The jury will be able to appreciate and understand the relative distances between the classrooms” (SF-91, pg. 5).

The State fails to explain how it would help the jury to understand the uncomplicated evidence that the defendant walked the hallways shooting into numerous classrooms, which are spaced either 9 feet or about 36 feet apart depending on the placement of the classroom door. As mentioned above in Section IIB of this proffer, the State has architectural blueprints that show the distance between every single classroom in the 1200 building, as well as the Leica forensic mapping. If the State's desire is to have the jury see and appreciate how far the defendant walked between each classroom, it can show the jury its evidence and even demonstrate the particular distance in the courtroom itself during the trial. The jurors do not need to see the crime scene to understand that part of the evidence.

h. There is no surveillance video which is able to detect the Defendant's actions while he enters or remains in the teacher's lounge. (SF-91 at p. 4).

Finally, being inside the teacher's lounge is not necessary for the jury to understand the uncomplicated evidence that shots were fired at the windows inside the third floor teacher's lounge. The defendant is not charged with any offense pertaining to conduct in the teacher's lounge. Thus, the jury does not need to “see for themselves the view the Defendant had while he

entered the third-floor teacher's lounge and attempted to set up a shooter's nest where he could kill people either fleeing from the school or those approaching the building." (SF-91 at p. 5). As there were no witnesses inside the teacher's lounge, any testimony from a State witness beyond projectile holes in the windows will be speculative and irrelevant. Even if the Court finds the defendant's entrance into the teachers' lounge is relevant, the State has numerous photos and videos of the teachers' lounge. There is nothing so complicated about this room that requires the jury to see it to understand the evidence.

i. The campus of Marjory Stoneman Douglas High School (SF-91 at pp. 1, 5).

The State does not provide any justification for the jurors to see the MSD Campus. The purpose of a jury view is to assist the jury in analyzing and applying the evidence taken at trial. In other words, the State has not explained what relevant evidence it intends to present that would require the jury to tour the MSD campus. Moreover, the State has at its disposal: testimony, videos, photographs and maps, both aerial and ground, of the campus.

j. The jury will be able to see the Defendant's escape and the relatively limited distance to his place of arrest." (SF-91, pg. 5)

The jury does not need to view the locations visited by the Defendant after the offense, or his place of arrest. This evidence is not probative of any material fact at issue in the case. The moment that the defendant exited the 1200 building, the crimes for which he is charged were completed. In a conclusory fashion, the State asserts that "[i]t is critical and essential for the jurors to view the area of the defendant's escape and capture, including the Walmart Supercenter, the McDonald's restaurant, and the actual place of the arrest." The State does not explain why, or what evidence it intends to present that the jurors cannot understand without a jury view. There are numerous photographs and videos of each location, bodycam videos at the arrest location and eyewitness testimony regarding the places the defendant visited after the offense. The distances

between these locations can be provided to the jury through testimony if necessary and the fact that the Defendant was arrested 2.1 miles from the school will not be difficult for the jury to understand. Moreover, there is no witness that can testify to the defendant's exact path of travel, any attempt by the State to duplicate this path will be speculative.

k. A jury view is also essential to the State in meeting and rebutting any expected defenses offered by the Defendant. (SF-91 at p.

The defense has not filed any notices indicting its intent to present an affirmative defense. The State may "expect" certain defenses, but until those are presented at trial, a request for a jury view of the scene to rebut them is premature. The purpose of rebuttal testimony or evidence is to explain, repel, counteract, or disprove the evidence of the adverse party. See *U.S. v. Hall*, 653 F.2d 1002, 1006 (5th Cir. 1981). The underlying rationale to admission of rebuttal testimony is that when defendant has opened door to line of testimony by presenting evidence thereon, he cannot object to prosecution's accepting challenge and attempting to rebut proposition asserted. *Id.* Where the defense presents no evidence, there is nothing for the State to rebut. Thus, unless and until the defendant in this case presents any evidence in his case-in-chief, a jury view to rebut such a defense is not ripe. See *Nowitzke v. State*, 572 So. 2d 1346, 1355 (Fla. 1990) (trial court improperly allowed prosecution expert to testify that defendant did not suffer from organic brain damage when defense experts made no such claim); *Donaldson v. State*, 369 So.2d 691 (Fla. 1st DCA 1979) (where facts were undisputed by defendant, rebuttal testimony was improper); *Garcia v. State*, 359 So.2d 17 (Fla. 2d DCA) (reversible error for prosecutor to present rebuttal testimony that did not rebut defendant's testimony).

iii. A JURY VIEW OF THE SCENE IN ITS CURRENT CONDITION WILL UNDULY PREJUDICE THE DEFENDANT IS THEREFORE NOT PROPER.

This Court is required to consider the effect a view of the scene will have on the jurors to the extent that view hinders their ability to make a “reasoned moral response” to evidence presented at the sentencing phase. *See Penry v. Lynaugh*, 492 U.S. 302 (1989). In other words, if a jury view of the scene is likely to cause the jurors to have an intense emotional reaction such they are unable to fully process the evidence and make a “reasoned” moral decision regarding the appropriate penalty, then a jury view of the scene is most certainly not “proper.” Dr. Castillo and Dr. Salerno share the opinion that an in-person view of the crime scene is a much more immersive experience than viewing photographs and videos, and much more likely to incite strong emotions in the jurors. Regardless of whether this Court feels compelled to protect the jurors’ well-being, it has an obligation to protect Mr. Cruz’s due process rights and a duty to limit the amount of prejudicial material viewed by the jury to the extent possible. *State ex rel. Miami Herald Publishing Co. v. McIntosh*, 340 So.2d 904, 909 (Fla.1976) (it is the trial court’s responsibility to protect a defendant in a criminal prosecution from inherently prejudicial influences which threaten fairness of his trial and the abrogation of his constitutional rights). It is the Due Process Clause that wards off the introduction of ‘unduly prejudicial’ evidence that would ‘rende[r] the trial fundamentally unfair. *Kansas v. Karr*, 577 U.S. 108, 123 (2016), quoting *Payne v. Tennessee*, 501 U.S. 808, 825 (1991).

Any indication that viewing the crime scene increases a juror’s likelihood to convict or sentence Mr. Cruz to death based on emotion instead of reason should be highly scrutinized under the due process clauses of the United States and Florida Constitutions. The defense acknowledges that in homicide cases, it is sometimes necessary to show the jury evidence of a gruesome nature. Recognizing the competing interests in this regard, the Florida Supreme Court has stated:

This Court has long followed the rule that photographs are admissible if they are relevant and not so shocking in nature as to defeat the value of their relevance. Where photographs are relevant, “then the trial judge in the first [instance] and this Court on appeal must determine whether the gruesomeness of the portrayal is so inflammatory as to create an undue prejudice in the minds of the jury and [distract] them from a fair and unimpassioned consideration of the evidence.”

Czubak v. State, 570 So. 2d 925, 928 (Fla. 1990). In making this determination, the trial court should “scrutinize such evidence carefully for prejudicial effect, *particularly when less graphic photos are available to illustrate the same point.*” *Marshall v. State*, 604 So. 2d 799, 804 (Fla. 1992) (emphasis added). Moreover, the Supreme Court has also stated that “the relevancy standard by no means constitutes a carte blanche for the admission of gruesome photos.” *Almeida v. State*, 748 So. 2d 922, 929 (Fla. 1999). Clearly, the Supreme Court has recognized that admission of relevant evidence of a gruesome nature can be problematic because after viewing such evidence jurors are often unable to conduct a “fair and unimpassioned consideration of the evidence.” It is even more egregious error to unnecessarily subject jurors to gruesome and emotional images – in-person at the scene – during a jury view, because a jury view is not evidence.

The affidavits of these experts, neither of which are attorneys, both suggest that requesting that the jury in this case view the crime scene is tantamount to inviting them to place themselves in the shoes of the victims or witnesses present in the 1200 building at the time of the crime. This is a not so subtle form of a golden rule argument, prohibited in Florida. The “Golden Rule” prohibition prevents the State from inviting jurors to: 1) imagine themselves “in the victim’s position”; 2) imagine the victim’s suffering, final pain, terror or defenselessness; 3) imagine how they would feel if the crime happened to them; 4) imagine the victim was a relative; or 5) imagine themselves present during the crime. *Mosley v. State*, 46 So. 3d 510, 520-21 (Fla. 2009); *Bailey v. State*, 998 So. 2d 545, 555 (Fla. 2008); *Hutchinson v. State*, 882 So. 2d 943, 954 (Fla. 2004);

DeFreitas v. State, 701 So. 2d 593, 601 (Fla. 4thDCA 1997); cf. *Rhodes v. State*, 547 So. 2d 1201, 1205 (Fla. 1989).

Some witnesses, as well as members of the prosecution team, have expressed the sentiment that viewing photos and videos “is not the same as actually being at the crime scene.” In SF120, the State’s Response to the Defendant’s Request for Access to the Crime Scene, the State concedes that it has extensive evidence documenting the scene, but in a footnote, argues “The State maintains its steadfast position this is no substitute for a jury view, and although the aforementioned evidence is of evidentiary value it does not provide a sufficient perspective of the scene to assist the jury in analyzing and applying the evidence presented at trial.” In other words, the State is seeking to bring the jurors to the 1200 building so that the jurors can place themselves, or imagine their children, in that building during the shooting, in order to arouse their fear, horror, disgust and anger. This is clearly improper.

Section IIB of this proffer outlines a significant amount of evidence the State has to prove its case. The evidence mentioned above is not even exhaustive; the State has much more. A jury view of the scene is wholly unnecessary and can potentially create irregularities in the trial warranting a mistrial or reversal.

Justice Fletcher of the Supreme Court of Georgia wisely cautioned trial courts regarding jury views and reminding them of their discretionary power to deny such requests:

[B]ecause jury views have proved to be fertile ground for irregularity and, at times, reversible error, the parties to criminal trials and trial courts should carefully weigh the real benefits of a jury view before planning one. Frequently, as in [the defendant’s] case, the jury has already viewed photographs of the crime scene, and nothing is to be added to the jury’s understanding of the issues to be tried by an in-person visit to the scene. In such cases, a trial court would be authorized to deny a request for a jury view.

Esposito v. State, 538 S.E. 2d 55, 59 (Ga. 2000).

Jurors in this case, where there are multiple children victims and there will be large amounts of news coverage, are going to be under immense stress. This Honorable Court should use its discretion to prohibit a jury view of the crime scene, in light of its highly prejudicial nature, as well as the availability of alternative methods for the State of Florida to use to present its case that will not needlessly put jurors' health at risk. The defense is confident that this Court will not allow any unnecessary suffering to the members of the Parkland community as well as the jurors who serve on this case.

The granting of the State's Motion for View by Jury (SF-91) violates Mr. Cruz's rights to due process guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 9 of the Florida Constitution, a fair trial in the appropriate venue, Broward County, Florida guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution and Article I, Sections 16 and 22 of the Florida Constitution, privacy guaranteed by the Fourth, Ninth, and Fourteenth Amendments of the United States Constitution and Article I, Section 23 of the Florida Constitution, equal protection or basic rights guaranteed by the Fourteenth Amendment of the United States Constitution and Article I, Section 2 of the Florida Constitution, and to be free from cruel and unusual punishment or excessive punishment as guaranteed by the Eighth and Fourteenth Amendment of the United States Constitution and Article I, Section 17 of the Florida Constitution.

WHEREFORE, the Defendant, Nikolas Cruz, respectfully requests this Honorable Court to deny the State's Motion for View by Jury, SF-91.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-service to the Office of the State Attorney, Michael Satz, at courtdocs@sao17.state.fl.us, Broward County Courthouse, Fort Lauderdale, Florida, this July 30, 2021.

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