Appellate Case No. 25A-CR-00591

STATE OF INDIANA	)	IN THE ALLEN SUPERIOR COURT
	)SS:	
COUNTY OF ALLEN	)	CAUSE NO.: 08C01-2210-MR-1

STATE OF INDIANA, Plaintiff,	)
VS.	)
RICHARD M. ALLEN, Defendant.	)

THE HONORABLE FRANCES C. GULL, PRESIDING

The Transcript

Volume 4 of 22

Pages 1 to 250

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THE COURT: Do you have the date that she was interviewed?

A I was –

THE COURT: No, I'm not – I'm asking –

MR. BALDWIN: Yeah.

THE COURT: -- counsel. Was she – when was she interviewed by –

MR. BALDWIN: I think it was 2018.

THE COURT: Okay. Then, again –

MS. DIENER: That would be after.

THE COURT: Would counsel approach, please.

(Sidebar conference conducted.)

THE COURT: I'm sorry, I don't know how to make myself any clearer to you that you've made specific allegations in your pleading that you are held to. Calling witnesses up here that have been interviewed well past that date is not well founded and it's improper.

MR. BALDWIN: I respectfully disagree with you, Judge. I think we plead and then we prove our pleadings through other evidence. The State, in its charging information, didn't include very single piece of information.

THE COURT: That's not what we're here to talk about, Mr. Baldwin. We're here to talk about your motion to dismiss for destroying exculpatory evidence where you claim that a document dated February 17th of 2017, of Mr. Holder, and February 19th of Mr. Westfall was destroyed. That's the very narrow focus of what it is that we're here for.

MR. BALDWIN: Yeah.

THE COURT: And if you don't have witnesses that are gonna testify

to these things, you're wasting everybody's time.

MR. BALDWIN: As Mr. McLeland argued in his response, Judge, that they had to – we have to prove that the State of Indiana or the law enforcement knew back in 2017 that there was material or exculpatory evidence –

THE COURT: Um-hmm. (Affirmative response)

MR. BALDWIN: -- or helpful evidence and also that there was bad faith.

THE COURT: Um-hmm. (Affirmative response)

MR. BALDWIN: And at the end of the road here, there is an argument to be made that back in 2017, based upon everything that you have heard, that the police – there was – and – that the police knew that there was exculpatory evidence on there and that –

THE COURT: And where is that evidence? That's what I keep asking you, where is that specific evidence? Because she wasn't interviewed until 2018, so how did the police know that in 2017, when you claim they destroyed it?

MR. BALDWIN: Police are not ever going to say, "I destroyed exculpatory evidence," it is not going to happen. What is going to happen is other evidence comes out, like what's contained in the *Franks* memo, that shows that there is a on-going hiding of evidence, not – refusing to investigate, things like that, and this is what we're trying to do. I can't – if you expect that there's gonna be a police officer that they're gonna call or that I'm gonna call that's gonna say, "I erased exculpatory evidence," that is never gonna happen anywhere in the world.

MS. DIENER: Judge, he has to show that it's exculpatory evidence based on what was known on that date or in that timeframe before we have to show that it was not the result of bad faith. And if he shows it's exculpatory, bad faith doesn't even matter. If only – if he – if he can't show exculpatory and/or in the potentially useful category that we get to show that it was not as a result of bad faith. So his first burden is to show that it is materially exculpatory, the video that's missing. That's his burden.

MR. BALDWIN: It's an impossible burden, Judge, because it is missing.

THE COURT: That is unfortunate, but –

MS. DIENER: Then concede and shift to potentially useful.

THE COURT: -- that's what the case law says, Mr. Baldwin.

MR. BALDWIN: Well –

THE COURT: I can't change the case law.

MR. BALDWIN: Well, this is how we prove it is by showing other evidences of police behavior, bad behavior, not – and then you can surmise, as a judge, "Well, if all this happened then, then it could have happened back then."

MS. DIENER: I'm sorry, that's not what the case law indicates.

THE COURT: No, that is not what the case law says, sir; and if that's all you have, then we're done.

MR. BALDWIN: Then, I will offer to prove.

THE COURT: No, then we're done, if that's all you have.

MR. BALDWIN: I'm going to offer to prove, Judge, an offer of proof and then we will be done.

THE COURT: We are done, sir.

MR. BALDWIN: For the record, they have a right to offer to prove so that the Court of Appeals can understand, you know, what we're doing, and we will have no record unless I offer to prove, Judge.

THE COURT: Well, you can sum up your offer to prove, Mr. Baldwin; but again, if all of the evidence that you have is after the dates that you allege, then your offer to prove is –

MR. BALDWIN: If Amber – thank you, Judge.

(Sidebar conference concluded.)

MR. BALDWIN: If Amber Holder were allowed to testify, she would tell you that police, including Jerry Holeman and the other people that were deposed by the defense counsel in August of 2023, have never talked to Amber Holder since August of 2023. She would testify that Brad Holder talked about the Delphi case; that Brad Holder told her that he and Patrick Westfall had a falling out over a ritual in the woods near a river because Patrick Westfall wanted to up the ante from animal sacrifices. If Amber Holder were allowed to testify, she would tell you that Patrick Westfall, according to Brad Holder, committed these crimes, he is protected by powerful people. He would al – she would also testify that she saw on Brad Holder's phone girls that he knew that he posed on the ground with sticks, and that she knows are runes from her own heathenism belief system, that were runes on these girls in the form of sticks, and that he had them on his phone and there were multiple photos on his phone; and finally, that she would also testify that Brad Holder knew Abby Williams much better than he told the police, he told her that he met her several times. That is the end of my offer of proof in this witness. Thank you.

THE COURT: Do you have any questions for her?

MS. DIENER: I have no questions for this witness.

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

MR. BALDWIN: We have no other evidence, Judge.

THE DEFENSE RESTS

THE COURT: All right. Ms. Diener.

MR. BALDWIN: Oh, I'm sorry, Judge, I did. I wanted to – I apologize. I wanted to ask for the Court to take judicial notice of the *Franks* memo as it relates to this request to dismiss charges, that included Jerry Holeman's deposition. I would also ask for the Court to take judicial notice – well, I was going to move to admit – well, I think the *Franks* memo, taking judicial notice of that will be sufficient for what I need to do and argue. Thank you.

THE COURT: When did you file the *Franks* motion?

MR. BALDWIN: September 18th, 2023.

THE COURT: All right. I will take judicial notice of that specific *Franks* motion filed September 18th, 2023.

MR. BALDWIN: And the exhibits contained in it, Judge, as also part of that. Oh, and the supplemental *Franks* – the second *Franks* motion, as well, we'd ask for and its exhibits, as well. That was filed, I believe, October the 3rd, 2023.

THE COURT: So you don't wish me to take judicial notice of the supplemental motion for *Franks* hearing that you filed October 2nd?

MR. BALDWIN: I do. I must have – I thought it was October the 3rd, it was October the 2nd.

THE COURT: Well, there was one filed October 2nd and then there was one filed October 3rd.

MR. BALDWIN: And then, there was one more recent, and I'll just throw that in, as well, for you to take judicial notice of the one filed a week or two or ago – I don't remember the date – for purposes of this argument.

THE COURT: And when did you file that one?

MR. BALDWIN: I don't have that at the tip of my tongue here, Judge. It was a week – probably two weeks ago.

THE COURT: I don't see one filed two or three weeks ago.

MR. BALDWIN: Give me a second. I just don't have it, but I know it was filed.

THE COURT: Well, I can't take judicial notice of something you can't tell me about. March 13th.

MR. BALDWIN: March 13th.

THE COURT: Well, I'll take judicial notice of the *Franks* motions filed September 18th, October 2nd, October 3rd of 2023, and March 13th of 2024.

MR. BALDWIN: Is – Judge, does that include all the exhibits? Which I'm asking for judicial notice of all the exhibits, as well.

THE COURT: I don't see exhibits attached to this last one.

MR. BALDWIN: Yeah, there – I don't think there were on that one.

THE COURT: And I don't see exhibits from the ones in October, either.

MR. BALDWIN: Then, just the first one.

THE COURT: Ms. Diener, you may proceed.

MS. DIENER: Thank you. The State would call Steve Mullin.

(Witness sworn.)

DIRECT EXAMINATION OF STEPHEN MULLIN

QUESTIONS BY MS. DIENER.

Q Officer Mullin, you've already been on the stand today, but I'm gonna have you repeat some of that information, since this is a separate hearing for a separate purpose; okay?

A Yes.

Q Please state your full name, spell your first and last name, and tell us where you're employed.

A Stephen L. Mullin, S-T-E-P-H-E-N M-U-L-L-I-N. I am a investigator with the Carroll County Prosecutor's Office.

Q And when did you begin as prosecutors investigator?

A In January of 2020.

Q The investigation for Abby and Libby was well underway by that time, was it not?

A Yes, it was.

Q What was your position in 2017, when the murders occurred?

A I was chief of police in Delphi.

Q And I believe we covered this, as well, but how many total years do you have in law enforcement?

A Forty-two.

Q I believe you indicated you had been with the Delphi PD, then with the Carroll County Sheriff's Department as a detective, then back with the City as chief, and now with the Prosecutor's Office; is that correct?

A That is correct.

Q And what is your role in the Prosecutor's Office with regard to the *State versus Richard Allen*?

A I handle and manage the evidence, most of the evidence, in the Richard Allen case and process it and make sure the Defense has it in discovery.

Q So you're cataloging it and keeping track of what's passed along to Defense; is that correct?

A I am, yes.

(Cell phone rings.)

THE COURT: I'm sorry, Ms. Diener. Whose phone is going off?

MS. DIENER: It almost sounds like it's in the next room.

MR. BALDWIN: I apologize, Your Honor. (Inaudible) Oh, it is ringing.

ATTORNEY NICHOLAS MCLELAND: Judge, there's a phone right here, too. I don't know what that is.

MR. BALDWIN: It was turned off, but now it's on.

MS. DIENER: Is this yours also, Mr. Baldwin?

MR. BALDWIN: Yeah. Oh, I can grab that later. I'm sorry, I don't want to interrupt your –

Q Are you familiar with the Brad Holder interview in 2017?

A I am.

Q Is there only one?

A That's correct.

MS. DIENER: May I approach, Judge?

THE COURT: You may.

Q Mr. Mullin, I'd like to show you what is marked as State's Exhibit 1. Do you recognize that document?

A Yes, I do.

Q Okay. And how would you describe it?

A This is what's called an ORION document; in other words, it's a narrative of a report which Special Agent Adam Pohl created after his interview with Brad Holder, and that narrative was placed into the ORION – FBI ORION RMS report system.

Q That is part of discovery; is that correct?

A Yes, it is.

Q And that interview was on what date?

A It was done, according to the report, on 2/17 of 2017.

Q And is Agent Pohl with what agency?

A Agent Pohl is a special agent with the FBI.

Q And he was assisting at that time –

A Yes.

Q -- with this investigation?

A Yes, that's correct.

MS. DIENER: State would move to admit Exhibit 1.

STATE'S EXHIBIT 1 OFFERED

MR. BALDWIN: No objection.

THE COURT: All right. Without objection, 1 is admitted.

STATE'S EXHIBIT 1 ADMITTED

Q You indicated that report is part of ORION and would be contained in discovery. With regard to preparation for today's hearing, are there other places that you know that particular narrative to be located within discovery?

A Yes. That narrative would also be in the FBI general reports that were furnished to us in discovery.

Q And did you prepare records –

MS. DIENER: Oh, Judge, may I go back to Exhibit 1? We would ask that that be admitted under seal, because it is discovery that has a protective order and it contains discovery information. I think that would be appropriate. It's the report –

MR. BALDWIN: No objection.

MS. DIENER: -- of Brad Holder.

THE COURT: All right. I'll show it's sealed, then.

Q So, I'm sorry, you compared documents with regard to discovery on each disclosure or each disbursement to Defense; is that correct?

A Yes.

Q I'd like to show you what's marked as State's Exhibit 2. Just check all the pages, make sure you recognize the entire document. Do you recognize that 19-page document?

A Yes.

Q And how would you describe the contents of that exhibit?

A This is an example of the itemized list of discovery which was given to the Defense and they were – signed for the document – signed the document as having reviewed the items listed in each page.

Q So you use this to keep track of what you've given them and on what date it was provided; is that correct?

A Yes, it is.

MS. DIENER: Judge, may I leave a copy with him in order to –

THE COURT: Sure.

MS. DIENER: State would move to admit Exhibit 2 under seal.

STATE'S EXHIBIT 2 OFFERED

MR. BALDWIN: No objection.

THE COURT: All right. Without objection, 2 is admitted and sealed.

STATE'S EXHIBIT 2 ADMITTED

Q Now, can you point to that document and provide to us information about when this narrative report of Special Agent Pohl from the 2/17/2017 interview of Brad Holder would have been provided?

A That report should have been provided in the disbursement titled 04 Allen, dated as received by an agent from Mr. Rozzi's office on February 13th, 2023.

Q And when you look at the discovery disclosure that's number 04, by looking at that, would a person unfamiliar with the evidence drives or how they're named, know that this report is contained within that discovery disclosure?

A The disclosure says that there was a 3.5 inch SATA internal hard drive containing the files 04 Allen with several files and also a box containing hard drives, this also contained the FBI documents then. And we also maintained a copy of whatever was given to the Defense and a quantification of the data that was given to them on site in a particular file that goes along with this document.

Q And so the report that you identified in Exhibit 1 you identified as an ORION report and you believe it to be contained in disclosure number four?

A 04.

Q 04, yes.

A Yes.

Q And on that was on February 13th of '23?

A That's correct.

Q And then, in preparation for today, did you also print out screenshots that

would show what is contained within discovery disclosure number four, to be certain that the FBI reports, the ORION reports, and the State Police reports were all contained therein?

A I did.

Q Here's State's Exhibit Number 3; can you identify that? It is three pages.

A I can.

Q And can you describe it for the Court.

A This is a screenshot taken from the computer screen which displayed the files which were contained in this February 13th of 2023 disbursal of evidence. It shows the FBI files, Indiana State Police files, some search warrants, the 04 discovery receipt actually, and then – one, two, three, four – five Excel documents which quantify the data contained on the hard drives.

Q And then, on the subsequent pages, what does that provide for reference?

A Thank you. The subsequent page, the next page, shows the Indiana State Police report, which, at this time, was redacted, and it shows three separate files. They received three separate files because the report, in their system, was too large for one particular case report. The next page shows the file which had the FBI general reports in it. And then, the next is an ORION – the download of the ORION file, dated 12/2/2022.

Q Now, the interview by Agent Pohl of Brad Holder was subsequently discovered that the audio/video recording was no longer available; is that correct?

A That is correct.

Q Can you describe the circumstances and how you learned that it was no longer available.

A Where would you like me to begin?
Q Start with a description of where the interview recording was kept.
A At the beginning of the investigation, we started out at the Delphi Police Department, and at that time, as chief, I had just installed a new interview system, it was a DVR, which we had put in because we didn't have anything sufficient in the county to be able to record interviews within the city of Delphi. So as we used the facility at the Delphi Police Department for the investigation process, it became natural for everyone to use the interview room at the City Police Department, which was located downstairs inside the police department. And as interviews were conducted, officer would go into the interview room, flip on the switch on the outside, illuminate a blue light to indicate the recording was operating. And when they concluded, they would shut the interview room – the recording off by turning the switch off. The DVR was located inside the squad room at the police department and it was sitting on top of a filing cabinet. At that time, I was, more or less, obtaining the video off of the DVR for the officers at their request, so they could attach it to their reports.
Q And you were not part of the lead agencies for this investigation; is that correct?
A As chief of police, I was not part of the investigation, but I had become part of the Unified Command somehow.
Q Because of your position as chief of police in Delphi?
A Yes.
Q And so the lead agencies would be whom, if you know?
A Indiana State Police, Carroll County Sheriff's Department, and obviously, the FBI.

Q Okay. And so tell us about the discovery of loss of video that includes the Brad Holder 20 – February 17, 2017, interview.

A Around August of 2017, I went into the police department to recover a video off of the DVR, which I believe was unrelated to this particular case, and noted that the DVR was recording continuously. That meant that any video that was on the DVR prior to the date where it recorded up to was gone, it was no longer there, no longer recoverable. I, through my investigation, found that the last date of the interview was either the 19th or the 20th of February of 2017. So, unfortunately, all of the interviews that had been conducted during that period of time and after the crime – homicide was discovered up to that date were gone. Immediately when I discovered that the recorder was recording continuously, I unplugged it and contacted the vendor, and we determined that the videos were gone, and that somehow the settings had been changed in the DVR to only record when the switch was activated to record continuously, and we have no idea how it could have happened.

Q And have you consulted with the vendor about that particular issue to discern whether it was from a person versus just a spontaneous event like electricity going out or unplugging the equipment?

A I have. I've talked to the vendor and he has told me that on many occasions with the DVRs which he uses or sells that the – a power surge or unplugging the DVR could change the settings in the DVR so that it would record continuously.

Q So the murder of the girls is February 13th of 2017, or that's when they're reported missing; correct?

A Yes.

Q And the investigation began as soon as the bodies were found; would that be fair to say?

A Yes.

Q And then your discovery would indicate that interviews conducted in that interview room with that DVR were missing from 2014 [sic] until February 20th, but not including February 20th?

A I think there was some still available to be seen on the 20th.

Q Okay. There might be some missing, but some are there for the 20th?

A Yes. And I should also add that some of the audio was missing even for the times where there was actually video visible, so there may be video that's visible, but the audio randomly sometimes is not available to be heard.

Q Okay. And did you or anyone that you know of intentionally leave the recording on so that it would delete interviews?

A Absolutely not.

Q Do you consider this to be either human error or just a spontaneous event with the DVR recording?

A That's the only explanation I can provide.

Q Now, during that time period, there was also a follow-up interview with Brad – regarding Brad Holder; is that correct? Follow-up interviews to finish the lead or tip investigation? Is that right?

A Can you be more specific in your question, please?

Q Sure. When Brad Holder was initially interviewed, what was going on with the investigation during the first few days where officers would be – like Special Agent Pohl, would be sent to make contact with someone? Can you describe for us what was going on.

A My recollection of the process was, as each day would happen, we would start with a meeting at the beginning of the day and tips and leads would be assigned to officers to follow up on or, throughout the day, as officers became available, they would follow up on tips and leads as they had time to do so. If people walked into the city building, as a way to provide information to officers in the investigation, someone on station would take that interview and talk to the person who was providing the information. If someone came to the Carroll County Sheriff's Department, they would either be instructed to come to the Police Department so they could talk with them there or – (clears throat) – excuse me – a phone number or contact information would be forwarded to someone in the command structure so that that could be followed up on as soon as possible.

Q And were instructions given on – in the morning of these daily meetings about use of the DVR if someone wished to use it?

A Yes. They were instructed as to how to turn the recorder on and to be sure to turn it off afterwards.

Q And when you discovered that it had been continuously running, did you look to see if someone had left the switch on, which would cause it to then continuously run?

A Thank you. I did, but I knew it wasn't on, because the switch was located in a very conspicuous location in the hallway at the police department. If I were to walk in the police department through the door from the outside, I would immediately see the blue light on on the interview room switch and I would realize somebody left it on and so it would be turned off. On that day, there was no light on.

Q Okay. And the actual hard drive in this DVR, how much data could it

hold?

A I believe it was – I'm sorry, I think it was six terabytes. My report reflects the size.

Q It's quite a lot?

A A lot.

Q Okay. So my question to you is: During this time period between when the first – well, let's go back to the way that leads were conveyed. So you have these meetings each day, officers come, you have this contact with them to give them instructions. Would it be fair to say that you have different officers pretty much every day, depending on who's available?

A It was quite fair to say there was different officers every day. There were officers who worked within the departments who were coming every day, but there were also officers that came outside of the Carroll County Sheriff's Department, Indiana State Police. There were officers from West Lafayette, Lafayette, Tippecanoe County Sheriff's Department, others.

Q In fact, Special Agent Adam Pohl and Hammond Police Sergeant Christopher Gootee, who appear on these reports – or is it Gootee?

A Right.

Q -- are not local officers?

A No, they are not local to our area.

Q And so in what capacity were they at these meetings or assisting?

A Special Agent Pohl and Christopher Gootee were there to assist us in the process of following up on tips and they, like the others, would be there at the beginning of the day and receive instructions or, throughout the day, receive new instructions on who to go interview and to follow up on.

Q Can you give us a brief description of what a person in their capacity would be asked to do when following up on a lead or tip in order to be useful to the investigation.

A They would seek out the information from either the – seek out the person they were needed to talk with and then interview them concerning the information that was either provided about them or from them.

Q And then, if that person was – would there be anything about the person that might cause the officer to need to do more than just take an initial interview; for example, find out where they were on the day of February 13 or February 14?

A Yes. All the officers were asked to follow up on that completely or as much as possible to determine where they were at on February 13th around the time we believe the homicides were to have occurred.

Q Okay. So that brings me back to Brad Holder. Before the video was lost or discovered lost in August of 2017, and after Special Agent Pohl did his interview on February 17th of 2017, was there additional follow-up with regard to Bradley Holder that you know exists because of your intimate knowledge of discovery and taking care of reports with regard to this case?

A Yes, there is.

Q And do you recall what it is?

A I'm sorry?

Q Do you recall what it is?

A Yes.

Q I'm gonna show you what's marked as State's Exhibit 4. I apologize. Can you identify that? There we go. Okay, sorry. Can you identify that?

A I can.

Q Okay. Can you describe that for us.
A This is the report which was completed by Special Agent Rich Davies of the FBI, it details follow up which was done and relayed to him by Grid Officer – which is a task force officer assigned to the FBI – Fred Rogers, where he followed up on Brad Holder's work history on the date of February the 13th, 2017.
Q Okay. And so that would be a lead follow up; correct?
A Yes, yes.
Q And did the content of that provide information as to Brad Holder's whereabouts during that particular day when the murders were believed to have occurred?
A Yes, it did.
Q Okay. And so with regard to leads being assigned to officers, would this lead to a particular event with regard to lead follow up with Unified Command? Does it put it in a particular category? Is it considered completed for the time being?
A Yes.
Q Okay.
A It completed the investigation concerning Mr. Holder.
Q Unless something new became available?
A Correct.
Q Okay. During the time period between when the first interview was taken and recorded and the date that you were made aware that that first recording is missing, are these the only interviews of Mr. Holder that occurred?
A Yes.
Q And the second interview or the second report really isn't an interview of

Mr. Holder, it's follow up about Mr. Holder; is that right?

A That's correct.

Q Okay. So at the time that the video was lost, destroyed, whatever terminology one might want to use, was Brad Holder a key suspect in this case?

A No.

MS. DIENER: The State would move for the admission of Exhibit 4 under seal.

STATE'S EXHIBIT 4 OFFERED

THE COURT: Any objection?

MR. BALDWIN: No. I hadn't – have you given it to me?

THE COURT: All right. I'll show 4 is admitted without objection and sealed.

STATE'S EXHIBIT 4 ADMITTED

MR. BALDWIN: Yeah, no objection, Judge. I'm sorry.

MS. DIENER: Judge, did I admit Exhibit 3 that was the three pages of screenshots?

THE COURT: You did not offer it, no.

MS. DIENER: The State would move to admit Exhibit 3 with regard to the screenshots, it's a three-page document.

STATE'S EXHIBIT 3 OFFERED

MR. BALDWIN: No objection.

THE COURT: All right. I'll show 3 is admitted without objection.

STATE'S EXHIBIT 3 ADMITTED

Q In fact, during the first seven days of the investigation, from February 13 until February 20th, the period of time where the audio/video recordings are

missing, was anyone considered a key suspect, to your knowledge?

A To my knowledge, no.

Q Do you have knowledge that Patrick Westfall was interviewed –

A Yes, I do.

Q -- in February of 2017?

A Yes, I do.

Q I'm gonna show you State's Exhibit 5, it has two pages. Can you identify that?

A I can.

Q And what does that document contain?

A This is a report that would have been found in the FBI general reports, given to the Defense in discovery, detailing an interview which took place on Sunday, February 19th, 2017, conducted by Special Agent Adam Pohl and Grid Officer – I'm sorry, Officer Gootee with the Hammond Police Department, where they did an interview at Patrick Westfall's residence of Patrick Westfall.

Q And is that particular document also contained within discovery, as previously testified to?

A Yes.

Q In the same location as documents with regard to Brad Holder?

A Yes.

Q In FBI –

A In the FBI general reports.

Q And in ORION?

A And it is – I believe it's in ORION, yes.

MS. DIENER: State would move to admit Exhibit 5.

STATE'S EXHIBIT 5 OFFERED

MR. BALDWIN: No objection.

THE COURT: Show 5 admitted without objection.

STATE'S EXHIBIT 5 ADMITTED

Q There have been some questions raised about whether a video of Patrick Westfall exists or has been destroyed by the State. Do you have knowledge about that?

A One never existed.

Q And what do you rely on for that information?

A They went to Patrick Westfall's residence. One, it was uncommon for the FBI to record their interviews; two, we talked with Special Agent Pohl, who told us he did not record the interview by any means and only memorialized it in his report.

Q And just to reiterate, even though you've already answered this in a general sense, was Patrick Westfall a key suspect in 2017?

A No, no.

Q Did you make attempts to retrieve or somehow recreate lost video from the continuous play of the DVR?

A First of all, I contacted the vendor and we discussed options for recovery, and then I presented the DVR video – excuse me, the DVR DVD to the Indiana State Police to see if they could recover the video. It was never recovered.

Q It was never recovered?

A Correct.

Q In the discovery disclosures, did you share with Defense that the DVR for the time period of February 14th until the 20th had missing files, and if so, in

what way?

A From my memory, I believe that I informed the agent from Mr. Rozzi's office that there were problems with some of the video and that they could try to recover whatever video they could, but they had, in essence, the same thing that we did. I did not document that in any way at the time of the release at that stage, before they withdrew themselves from the case.

Q Okay. So on the discovery disclosure or transfer to Defense that we referred to as the 04, based on the number that's on the top, it's from February 13th of 2023, that contained these interviews in written form, but is that the same day or time when you would have transferred any audio recordings or is it possibly on another day?

A I'm sorry, Ms. Diener, can you rephrase the question?

Q Yeah. The 04 disclosure that you talked about that contained these written reports from FBI and ORION from February of 2017, if there was video recordings that were also given, would they have been at that same time or some other disclosure?

A I'm sorry, I can't remember exactly when I gave them what I gave them at this point, I'd have to look at my records to be able to refresh my memory. I'm sorry.

Q That's okay, it's a lot of information. And at some point, the Defense specifically asked for video of Brad Holder; is that correct?

A Yes.

Q And was a detailed response provided through a discovery disclosure?

A Yes.

Q And indicated to them that there were lost recordings –

A Yes.
Q -- and his was one of them?
A Yes.
Q Was Brad Holder's the only recording that was lost?
A Heavens, no.
Q Okay. And the recordings weren't just for this investigation, were they?
A There were other investigations that were probably conducted during that period of time in that same interview room that were destroyed, as well.
Q And do you have any way of recreating a list of all of the interviews that happened during that timeframe?
A I do not.
Q And if officers did what was expected, which is write a narrative for the interview that was recorded, then where would that information be contained?
A It would be contained within the reports and narratives that the officer memorialized their interviews and either the State Police reports, the FBI reports, or perhaps, in the ORION RMS system.
Q Or even other agencies –
A Or –
Q -- beyond those; correct?
A Yes, other agencies; and that's true, there were other agencies that did memorialize reports that we have turned over.
Q But the Court gave us a deadline of November 1st of 2023, to provide discovery, and did you do everything you could to provide everything to them that we had?
A Yes, ma'am.

Q In fact, what has been your directive from Prosecutor McLeland with regard to discovery and whether there should be decisions made about what we share and what we don't share?

A To share everything that we have with them, even to a fault.

Q Which means every tip that came in through the FBI tip line they've been provided?

A Absolutely.

Q If we have a record of it, they have it?

A Yes.

Q In the beginning – or when did you start your discovery transfers to the Defense?

A I believe December the 7th, 2022.

Q And that would have been shortly after their appointment, would it not?

A Yes.

Q And has it been on-going since then, as reflected in your documents that you prepared that are in Exhibit 2?

A Yes.

Q Now, there's some discovery that continues to be given to them; is that correct?

A Yes.

Q Even though the deadline has passed?

A Yes.

Q And some of that information is information you could not have had before November 1st of 2023; would that be fair to say?

A I'm sorry, I couldn't hear all the question.

Q That's okay. Some of the information you're giving them, you could not have given to them before November 1st, 2023, because it didn't exist; is that fair to say?

A Yes.

Q For example, what would something like that be?

A Recently, we recovered some interviews the State Police had located on one of their devices that had been recovered because of an inquiry about an interview that had taken place, and that was furnished to us a few weeks ago and we turned it over to the Defense as soon as we got it in our hands.

Q And those interviews had actually been requested to be downloaded and attached to the State Police records, was it not?

A Yes, and there was a report accompanying those, that evidence that was turned over to the Defense.

Q And specifically the officer who located that for you and did a supplement report –

A Yes, he did.

Q -- can you provide his name?

A Yes. Oh, his name is Matthew J Harper.

Q Thank you. And then, aren't you also providing information that comes in from the DOC?

A Yes.

Q And so that would be discovery that was not available before November 1?

A Yes.

Q And just to be clear, before the protective order for discovery existed, were there challenges to discovery and the transfer that were then alleviated by the

discovery protection order?

A Monstrous problems.

Q And what were those problems?

A The redaction of the data to remove criminal record information, Social Security numbers, phone numbers, anything that might identify persons' personal information which we had talked with or interviewed or followed up on in that six- or seven-year period of time.

Q And so once that protective order for discovery was granted, you then felt comfortable duplicating discovery and providing it to the Defense without redaction; is that correct?

A Yes, because we had the assurance that that information would not get out to the general public.

MS. DIENER: I'd pass the witness.

THE COURT: Mr. Baldwin.

CROSS EXAMINATION OF STEPHEN MULLIN

QUESTIONS BY MR. BALDWIN.

Q So let me get this straight, you knew – you knew, in August of 2017, that Brad Holder's video was missing, it had been taped over; right? Well, let me make – I'll strike that. You knew, in August of 2017, that from February – what was it? – the 14th up until February 20th of 2017, that there – those no longer existed, those videos; right?

A Yes, that's correct.

Q But then, when you provided the Defense with discovery in – let's say I think it was – the first time was in December, you didn't say, "Hey, by the way, I need to tell you this, there's some missing video of people that were interviewed

in the very early stages of this case"? You didn't tell me that, did you? You didn't tell Mr. Rozzi that, did you?

A I didn't tell you and I didn't tell Mr. Rozzi that, but I believe I mentioned it to you or agent – his agent. It's from memory, my memory, I didn't write it down, I didn't document it –

Q But it's not – okay. Well, did you tell Mr. McLeland that there was missing?

A Oh, yes, he knew.

Q You did? Okay. So in your – this is part of the packet that you just introduced into evidence, this is from August 22nd, that you just introduced that into evidence, I don't know which number it is.

MS. DIENER: Okay.

Q So in August of 20 – 22nd, we got – you're involved in these letters that go to Mr. McLeland or come from him. I want you to look at the very bottom that I've highlighted, and that's one of the exhibits that's been introduced, I don't remember which particular exhibit it was.

MS. DIENER: Number 2.

Q Exhibit 2, page 11, Exhibit 2.

A Page 11, Exhibit 2, yes.

Q Read the bottom of that just to yourself where I highlighted, just for ease. I'm going to ask you a question about that.

A Yes.

Q May I have that?

A Sure.

Q So in August of 2023, here's what you said about Brad Holder's video that we requested, "You had previously received ISP reports that document those

interviews and what was said in those interviews, though we did not locate any videos of those interviews"; right?

A Correct.

Q What you didn't say was, "That's because they were taped over," did you? You didn't tell us that, did you?

A I didn't include that information, no.

Q We did not learn about that, that this tape-over business happened, until February of 2024; isn't that right?

A Yes.

Q Then we asked for any reports that detail the lost recordings, and we just got that in evidence in the last couple weeks; right?

A Correct.

Q I'm gonna hand you what's gonna be marked as Defendant's Exhibit E and ask you to identify that for me –

A Thank you.

Q -- tell me if you know about that.

A Yes.

Q That is a document, a report that I requested – we requested about, "Hey, tell us about what – how did you memorialize the lost videotaped interviews"; right? And that's what you gave us, Exhibit C?

A Yes. Or –

Q It doesn't –

A It's E.

Q It's not dated though, is it?

A It's E.

Q E. Thank you.
A Sorry.
Q This document that we just got in the last couple weeks, it's not dated, is it? There's no date on it.
A There is no date on it.
Q Did you just produce this?
A No.
Q You produced – you wrote this out way back in 2017?
A Yes.
Q And we've just gotten it in 2024?
A Yes.
Q After we had to request it; right?
A Yes.
Q And that wasn't the only thing we got. I'm gonna hand you what's gonna be marked as Exhibit F. Because we wanted all reports about anything missing.
A Sure.
Q Review that document and then – this was provided to us in the last couple weeks. Tell me when you're ready to talk about it.
A Go ahead.
Q This says that, "drive 2 contained the – containing the data of recordings made" – this is in the third paragraph – "made by the DVR includes interviews in room one, two, and three, and four were missing from April the 28th, 2017, to June 30th, 2017; right? That's what that says? There's missing video for almost two months; right?
A I'm not certain that that was the final conclusion. I drafted this report

after the incident had occurred, but in that DVD – excuse me, that hard drive there were errors associated with that DVR and the compromise of the data on it –

Q And –

A -- and I explained in the report how that occurred.

Q You do, but the crux of it is from April 28th, 2017, to June 30th, 2017, there ain't no videos of any interviews; right?

A I'd have to go back and review now to make sure, but I believe there may be interviews, but they may not have sound.

Q And this was the first time this document, Exhibit F I think it is, was given to this off – to my partner, co-counsel and I, was within the last couple weeks and we had to ask for it; right?

A Yes.

Q But we did get a narrative report of Brad Holder; right?

A Yes.

Q About six paragraphs for Brad Holder, that's what his interview with police or law enforcement kind of came down to, just a number of paragraphs; right?

A Yes.

Q How long was this interview?

A I don't know.

Q What did he say in this interview, do you know?

A I don’t know.

Q What happened to his – when you discovered, in August of 2017, that he – his videotaped interview had been taped over, what did he say when you followed up in September of 2017, to follow up to make sure that at least that's

memorialized, what was lost was memorialized closer in time to 2017? What did he say?

A I'm just not sure if I understand your question.

Q Did you interview back Brad Holder in August of 2017, after you found out that his video was missing, just to give a good accounting of what he said, just another interview?

A I didn't.

Q That'd been a good idea, don't you think?

MS. DIENER: Objection. It wasn't his place to decide.

THE COURT: Sustained.

Q So I wanna go through those two timeframes, we've got February – what? – 14th through the 20th, 2017. There's not a single log, is there, of who went in and was interviewed; right?

A Not that I'm aware of.

Q The early stages of an investigation – you did an investigation, at some point?

A I talked to people and investigated leads.

Q Would you agree with me that, early on in an investigation, that can be some of the most important timeframe to receive information?

A Yes.

Q You didn't go back and reinterview any of those people from the first few days, did you? Not just Brad Holder, but anybody whose video interview was lost?

A I did not.

Q And nor did you try to recreate a log of, "Hey, I want to send a memo out

to all the police officers who interviewed people, please tell me who you remembered videotaping, because there's six days of lost video." Did you do anything like that or –

A I didn't.

Q -- did law enforcement?

A No.

Q No. Brad Holder was only interviewed in 2023 as a follow up because of our depositions that were focusing on him; would you agree?

A Possibly.

Q There's no other reason you would have gone and deposed – interviewed Brad Holder then; right?

A I did not interview Brad Holder.

Q You know he was interviewed?

A I've heard – yes, I've heard he was interviewed and there's a report about it.

Q I mean, if you could get the recordings back, you would want them back, would you agree?

A Absolutely.

Q The second video timeframe that we're talking about, April 28th through June 30th, there was an opportunity to get – unearth those lost videos with some type of Chinese equipment –

A Software.

Q -- software; right?

A Um-hmm. (Affirmative response)

Q Did you get the software?

A I turned it over to the State Police for them to follow up with.

Q Do you know whether they followed up with the Chinese software to unearth these?

A I know that we were able to view the videos, but some do not have audio; so it may have been successful, but limited success.

Q Okay. Okay. So did all the videos get recovered then with this Chinese software?

A I can't say whether all of them were recovered. We tried to see as many as possible.

Q Did you follow up – once the Chinese software came into place and something seems, according to you, to have been recovered, did you do a report on that and say, "Well, here's what's been recovered and here's, you know, I think here's what that is and here's what we don't have recovered"? You do anything like that? Because I don't see any report about a Chinese – the Chinese software working. Is there such a report somewhere that said the Chinese software worked?

A I don't have it.

Q Okay. You did these other reports.

A Um-hmm. (Affirmative response)

Q Undated; right? You should have put the date on there.

A Thank you.

Q Yeah. Can we agree on that?

A I'll do better.

Q Yeah. There were lots of tips – I mean, you're an investigator for the Prosecutor's Office. Early on, there were lots of tips about Brad Holder; right?

A There was a few.
Q More than a few. More than a few, would you agree?
A A few.
Q And some – and so what I understood on direct examination is that when people came in about a tip, then they were told, some of them, at least, to go to the Delphi Police Department and get interviewed on video; is that right?
A Yes.
Q So some of these people that were – if there were people, these few tips that were related to Brad Holder, they would have, theoretically, gone into the interview room, as well; is that correct?
A Likely, yes.
Q And those would be lost?
A Yes.
Q And because there's no log, you don't know who was interviewed or who was even interviewing; right?
A Correct.
Q You should have a log; would you agree?
A Hindsight's 20/20.
Q And the State was talking about, well, if they go – they were trained to look for specific information like alibis and then follow up on the alibis; right?
A Yes.
Q So that's kind of a no-brainer, alibis; but would you agree with me that, early on in the investigation, you don't know what's relevant or important related to things that could be found in the future?
A True.

Q So it's nice that you can do an alibi, but what happens if a single sentence – would you agree that a single sentence in an interview, taken in context with evidence in the future, might make a big difference in the case?

MS. DIENER: Objection: Speculation.

MR. BALDWIN: I'm asking him as an investigator.

THE COURT: Sustained.

Q And you talked and referenced one of the State's exhibits regarding – I think I have it here – the unclassified Federal Bureau of Investigation 413.17 follow up on Brad Holder's alibi; right?

A Yes.

Q And that's entered into evidence – here, I'll hand you this, I don't know what exhibit that is.

A Thank you.

MS. DIENER: I believe it's 5.

MR. BALDWIN: Exhibit 5.

Q It says, "The Human Resources director, Susan Case, said that the security camera at the scales may have picked up his vehicle," the video may have picked up the vehicle coming and going on that date; right? That's what it says?

A Yes. (Clears throat) Excuse me. Yes.

Q Did you get the video of this – from the Human Resources director? Is that a part of the discovery that we all have?

A No.

Q Shoulda had that; right?

A I didn't have it.

Q All that they had really was somebody – the Human Resources director said that somebody clocked in with Brad Holder – saying they were Brad Holder; right? That's all they said? Go ahead and read it.

A "I suppose they would have to work his with entire shift, running his machine, as well."

Q Did somebody go – is it your understanding that somebody went and talked to Bradley Holder's co-workers that day to say, "Hey, was Bradley Holder working beside you?"

MS. DIENER: Objection. It's irrelevant.

THE COURT: Sust –

MR. BALDWIN: I'll move on. I'm almost done.

Q Did you check to see if Brad Holder switched vehicles with his oldest son that day? Has that been –

MS. DIENER: Again, objection.

MR. BALDWIN: I'll move on.

MS. DIENER: This officer did not complete the follow up investigation.

THE COURT: Sustained.

Q Would you agree with me that if an officer failed to prepare his report before the video was the erased, and he was gonna use the video to help supplement, you know, as he wrote, that there may not even be a memorialized copy? Could that be a possibility?

A It would be difficult to, if you're going to use that process, because the video was gone; however, I should say, that it was a practice for a lot of officers to request the video be retrieved from the DVR before the erasal occurred.

Q Okay. So that was common, officers would come in and say, "Hey, I want to do a report. Can I see the video?"

A Yes.

Q Because there's things on a video that can be important to an officer. "Gosh, I just found out this one thing over here. Let me see, what was important over there on the video"; right? That's maybe why they want to do that; right?

A It's possible.

Q Yeah. You said that Brad Holder was never – has he ever been a key suspect to this day in this case?

A He was at work.

Q He was at work. So therefore, he has never been a key suspect, no matter what any other evidence that exists out there, he was at work?

A That's what the report says.

Q Patrick Westfall the same?

A His interview would be contained in the report that Agent Pohl did.

MS. DIENER: Judge, I would object to the question anyway. We're here on a motion to dismiss for destruction of exculpatory evidence or potentially useful, and that was –

MR. BALDWIN: No more questions.

MS. DIENER: -- specific to Brad Holder.

THE COURT: Sustained.

MR. BALDWIN: Sorry to interrupt. Sorry, Judge. No more questions.

THE COURT: Any redirect, Ms. Diener?

MS. DIENER: Yes.

RE-DIRECT EXAMINATION OF STEPHEN MULLIN

QUESTIONS BY MS. DIENER.

Q Investigator Mullin, you prepared two documents that have been marked by Defense as Exhibit E and F, which are the letters regarding the two different issues with DVR recordings. They do not contain dates, but they do have information at the top referencing Delphi case number and multiple others. Do you have those exhibits in front of you?

A I do.

Q And so at the top, can you explain what's under "Investigative Report" for the Court.

A It is titled "Delphi Police Department Investigative Report" and it shows the Delphi Police Department case number that we did for an assist in this investigation and the Carroll County Sheriff's Department case number for the double homicide and the State Police's case number, and the FBI number associated with their case reporting system.

Q So when this discovery was made and you documented this information, did you share it with other law enforcement?

A I did.

Q And can you tell from your memory or from these letters who you shared it with?

A I certainly advised first Sergeant Holeman immediately and Detective Liggett and Detective Kevin Hammond of the unfortunate events with the DVRs.

Q Okay. And they were part of Unified Command?

A Yes.

Q And so they could then pass that along to anyone that did an interview

that might need to be redone or follow up that might be necessary based on the fact that those interviews were no longer available; is that true?

A That is true.

Q And you indicated that you gave information to an agent of defense counsel that certain data was missing when discovery was turned over. Could you expand on that, how did you identify that and to whom would you have been speaking?

A An agent of Mr. Rozzi's office, and again, this is my memory, I didn't document it anywhere.

Q Did you mark the hard drives?

A Most recent, yes, I did. The most recent after their – they had been placed back on the case again, I marked them, each one as having no sound or –

Q So –

A -- no video.

Q Or no video. So when they got discovery back, after being removed and put back on the case, and you were giving them discovery in January and thereafter, you marked the DVRs that had no video and no sound?

A Yes, I did.

Q And when you say an agent of Mr. Rozzi's office, are we talking about Sarah Luxenberg?

A Yes.

Q And isn't it true that she picked up the evidence almost every single time?

A Yes.

Q Okay. Did you feel you had a rapport with her where you could share that with her and it would get passed along to defense counsel?

A Yes.

MS. DIENER: Okay. No other questions.

THE COURT: Mr. Baldwin.

RE-CROSS EXAMINATION OF STEPHEN MULLIN

QUESTIONS BY MR BALDWIN.

Q There was lots of video that had blank on it; right? Where – that you gave Sarah? Could you have been talking about that, where you open it up and there's nothing on there?

A I'm not sure how they appeared on the DVD – or the hard drive, excuse me. I believe only the videos that were left on the hard drive would actually appear, so you wouldn't be able to pull up something that was just blank.

Q I'm talking about empty files that were provided to us. There were things that you told Sarah Luxenberg, “Hey, you're gonna open up some things and there are empty files in there"; isn't that right?

A Perhaps at the first, because we had – and each one of those showed in progress as we were putting more information into them. That might be in December of ‘22.

Q But we didn't know about the April 28th through the June 30th, those two timeframes of missing video, until just in the last two weeks, you didn't tell Sarah Luxenberg about that, did you?

A I'm sorry, Mr. Baldwin, I didn't hear all of your question.

MR. BALDWIN: You know what, it's late, I'm gonna shut up. No more questions.

THE COURT: Anything else, Ms. Diener?

MS. DIENER: No.

THE STATE OF INDIANA RESTS

THE COURT: You may step down, sir.

THE WITNESS: Thank you.

MS. DIENER: No other witnesses.

THE COURT: You may step down, yeah. Do you wish to admit E and F? They have not been offered or admitted.

MR. BALDWIN: I do. I'm sorry, Judge, I do wish to admit E and F.

DEFENDANT'S EXHIBITS E AND F OFFERED

THE COURT: Any objection?

MS. DIENER: No.

DEFENDANT'S EXHIBITS E AND F ADMITTED

MR. BALDWIN: Thank you.

THE COURT: Does the Defendant have any additional evidence?

MR. BALDWIN: We don't, Judge. Thank you.

THE COURT: You wish to make any closing statements?

MR. BALDWIN: I'll wave, Judge.

THE COURT: Ms. Diener.

MS. DIENER: Judge, I believe that our response, filed with the Court on February 22nd, properly summarizes the issues and the case law, so I will waive.

THE COURT: All right. I will take the matter under advisement with all of the respective exhibits that have been admitted. And before you all leave, you have respectively filed – the State filed a motion for leave of Court to subpoena third party records to the Department of Correction. I've received no

objection or motions to quash from the Defense. The Defense filed a notice of discovery, indicating that Mr. Allen's medical records, part one and two, had been provided to the State, so does that take care of your request for the medical records?

MR. MCLELAND: Judge, no, because I think – Defense and I had a conversation, we're concerned that the records that were provided to the Defense may not be a complete set of records from the DOC. I found it necessary that we want the complete set of medical and mental health records to address those issues at trial and so that is the reason we subpoenaed the DOC, to make sure we get the complete record from DOC.

THE COURT: Okay. And the Defendant filed a motion to compel and request for sanctions, that needs to be set for hearing.

MR. BALDWIN: Judge, I amended that because, after I filed it, I found an e-mail from a few days before where Mr. McLeland had responded and, therefore, I would move to – well, I would ask the Court to focus on the motion to amend, because in that motion to amend, I explain that and then I focused on the things that weren't satisfactorily explained or provided.

THE COURT: So you want me to just rule on the amended pleading?

MR. BALDWIN: Correct, not on the first motion to compel.

THE COURT: And the State, you filed your response to the original pleading March 18th, so if you want to supplement, you need to do that quickly.

MR. MCLELAND: Will do, Judge.

THE COURT: And then, you also filed your third *Franks* notice and request for a *Franks* hearing. I'll have to review that and issue an order. Is there

anything else – oh – before we go? Then I will grant the State's motion for leave of Court to subpoena third party records to the Department of Correction, both of the ones that have been filed.

MR. ROZZI: Judge – I'm sorry, may I, Judge?

THE COURT: Yes.

MR. ROZZI: I'd like to speak on that issue, if that's okay.

THE COURT: Sure.

MR. ROZZI: Actually, I'm opposed to the Court granting that at this point. We're still within the 15-day notice period, and what's going on here is, is that I made a new request on the Department of Corrections after we were reinstated in this case and they had just provided that to me, and there's nothing untimely about any of this, but it just happened I want to say in the last – it was last week. Ms. Gallagher from the DOC has been working with me to try to get that information, and so there – it – and when I received it, we were having a difficulty – we were having difficulty, essentially, recovering that from their software program, which has been one of the – frankly, one of the challenges that we faced. You get discovery from one entity and it comes through Dropbox, and you get it from another entity and it comes through a Google account, and you get it from another entity and they've got their own software program, and so my staff member, up until I think this past Friday, was working with the DOC rep, Ms. Bedwell, to try and get that information converted into a format that we could read. And I do believe Mr. McLeland's correct, that I do think that there was information available to me that the DOC had about Mr. Allen, medical and psychiatric, when I made the first request that I didn't get; because now that I have kind of a refreshed request, I'm seeing additional stuff. So this is a short –

a long way of saying I would like a chance to review what I just received before I just agree to disclose it, 'cause I don't know what it is, and it's quite voluminous, as you might imagine with medical records. I know one of the files I think that I shared with Mr. McLeland was like 900 pages, so I mean, in fairness, there were some blank pages mixed in there, but my request is, is the Court allow me the 15 days or whatever time period is left to file my motion to quash. I really do believe that's probably not gonna happen, because I'm trying to be transparent with Mr. McLeland, I already showed him the first two dumps I got, so I'd like some time to look at that before my –

THE COURT: The 15 days is up March 29th, so it needs to be filed on or before that date.

MR. ROZZI: Very good. Thank you.

THE COURT: Okay. Anything else from the State on anything that we've covered yet today?

MR. MCLELAND: No, Your Honor. I think that covers it.

THE COURT: Anything else from the Defense?

MR. ROZZI: No, ma'am.

MR. BALDWIN: Thank you.

THE COURT: Thank you very much. We are completed. Jodie, you can go off the record. Thank you very much.

(THIS CONCLUDES THE PROCEEDINGS AT HEARING ON MOTION TO DISMISS CONDUCTED MARCH 18, 2024, IN THIS CAUSE.)

STATE OF INDIANA) IN THE CARROLL CIRCUIT COURT

)SS:
COUNTY OF CARROLL) CAUSE NO.: 08C01-2210-MR-1

STATE OF INDIANA,)
Plaintiff,)
)
VS.)
)
RICHARD ALLEN,)
Defendant.)

RECORD OF PROCEEDINGS AT MOTIONS

HEARING HELD MAY 7, 2024

APPEARANCES

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THE HONORABLE FRANCES C. GULL .....JUDGE

JODIE L. WILLIAMS..... .REPORTER

PROCEEDINGS

THE COURT: We are here in *State of Indiana versus Richard Allen,*

08C01-2210-MR-1. Show that the Defendant is here in person with Mr. Baldwin, Mr. Rozzi – and I'm sorry, I don't know the lady at your table.

ATTORNEY BRADLEY ROZZI: This is Ms. Auger, Jennifer Auger.

THE COURT: Okay. She's the attorney that entered her limited appearance for digital forensics information.

MR. ROZZI: She did, Judge; and then there was an appearance that was entered a week or so ago that was a general appearance.

THE COURT: And I entered an order on that and you should be receiving that shortly. It was a confidential order. State's –

MR. ROZZI: Would the Court – I'm sorry, may I?

THE COURT: No. The State's here by their chief elected-prosecutor, Mr. McLeland, Mr. Luttrull, Ms. Diener. Yes, what?

MR. ROZZI: Well, to the extent that it might have an impact on what she can do at the hearing today, I was suggesting maybe we could approach the bench and you could advise us as to the nature of the order, just so that we're not crossing some boundaries that the Court's not permitting us to do.

THE COURT: You may approach.

(Sidebar conference conducted.)

THE COURT: I was not aware of a limit – I granted your motion for an expert. She's the expert, apparently, in digital forensics. The limited appearance was for that very limited issue and then I see a general appearance. I don't know what that is and I asked for explanation. I don't have the order, it's not in the file –

MR. ROZZI: Okay.

THE COURT: -- 'cause it's confidential order, so no, I'm not

gonna –

MR. ROZZI: Well, she's not an expert, she's an attorney.

THE COURT: Well, she was listed as an expert in the field of digital forensics in Mr. Rozzi – or Mr. Baldwin's request.

ATTORNEY JENNIFER AUGER: (Inaudible) funds?

THE COURT: Yeah, for funds.

MS. AUGER: Oh, yeah, I just –

THE COURT: And I approved that – no, and I approved that. I know she's an attorney and then –

MR. ROZZI: Yeah.

THE COURT: -- so she entered a limited appearance for that specific purpose and then, all of a sudden, I see a general appearance. I don't know what that is. I haven't authorized a general appearance, I authorized a limited appearance.

MR. ROZZI: I understand that, yeah. I was –

THE COURT: So that's –

MR. ROZZI: -- articulating to the Court what the posture was to make sure we were on the same page.

THE COURT: I believe that we are. And I don't know what her role in this is gonna be, I assume it's limited to the digital issues that you have raised in the past.

MR. ROZZI: Yeah, I think that was the original intent, and then, obviously, because of the work load and the late discovery, which we're continuing to receive, which has just been the natural course of things, we felt like that we didn't want to be penned in when we got into court with her just

being able to talk about that limited issue. We, basically, just, you know, ask the Court to recognize her as one of the attorneys on the case so that she can –

THE COURT: Well, that's something that –

MR. ROZZI: -- assist us in litigating at this late hour.

THE COURT: Well, then that's something we'll have to discuss, because I haven't approved that.

MR. ROZZI: Sure, that's fine.

THE COURT: I've approved a limited appearance.

MR. ROZZI: I just want to make sure she's not doing something today that you haven't – that you're prohibiting her from doing. That's why I asked.

THE COURT: As long as she's limited to the digital issues then –

MR. ROZZI: Yeah.

THE COURT: -- I don't have a problem with that. That's what I've approved.

MR. ROZZI: Yeah, I think that the confusion is, is this – where are the parameters in that sphere, also? Because those are terms of art and we've learned all that in the last couple weeks as we've, you know, lit – as we've done some discovery in this field, so – I mean, those are just some of the things. We can talk about it when we're finished today, I'm fine with that.

THE COURT: Okay.

MR. ROZZI: Okay. Very good. Thank you.

MS. AUGER: Thank you, Judge.

(Sidebar conference concluded.)

THE COURT: All right. The Defendant filed a motion for pre-trial

hearing on April 30th. I set that for hearing today so that we could discuss the issues that you've raised. And before you get into that, earlier this morning, Deputy Attorney General Aaron Ridlen appeared on behalf of the Department of Correction. The Department of Correction is a non-party and the Defense filed a motion to enter a stipulated protective order. I granted that motion and sent the order to the Clerk of the Court on May 2nd. For reasons that I do not understand, the Clerk of the Court never entered it as an actual order of this Court and the Deputy Attorney General appeared. I've provided him a copy of the order. I've had my staff go ahead and enter that order and it was – it was previously scanned in, I don't know why it didn't go in, but I had my staff then go ahead and enter that order, dated it – it's dated May 2nd. It was entered into the CCS on May 7th. I've provided a copy of that to counsel on your tables. So I don't know why – what the disconnect was, but I did grant that.

MR. ROZZI: Judge, I spoke to Mr. Ridlen in the hallway and he departed the courthouse 'cause he felt like his business was finished today, so I think we're all on the same page about what we were trying to accomplish.

THE COURT: Okay. So then you'll get a duplicate copy of the order, then. Are you ready to proceed on your motion, Mr. Rozzi?

MR. ROZZI: Judge, I am. May I inquire as to are we dealing with a request regarding the scheduling issues or are we dealing with the request or joinder for a hearing on the State's motion in limine?

THE COURT: Both.

MR. ROZZI: Okay. Well, if it's – I guess it's the Defense's view that if we're gonna address the State's motion in limine, it's their motion, and so they would have the burden of proof to introduce what evidence they need to do to,

you know, make their arguments that the evidence should be limited and then we would respond to that.

THE COURT: So you filed a motion for a pre-trial hearing, but you do not wish to have a pre-trial hearing?

MR. ROZZI: I filed a motion consenting to the State's request for a hearing on the motion in limine.

THE COURT: Okay. So the motion for a pre-trial hearing that you filed April 30th, you requested a pre-trial hearing to discuss scheduling issues associated with the trial, secure the appropriate amount of trial time for Defendant Allen to present a full and comprehensive defense, and to address any other pre-trial matters that may be necessary.

MR. ROZZI: Very good. I can comment on that.

THE COURT: Okay. Go ahead.

MR. ROZZI: Judge, obviously, we're looking at the trial calendar and, you know, the Court had communicated with parties through an e-mail indicating that this trial was gonna commence on May 13th here in Fort Wayne and that this trial was gonna end on May 31st in Carroll County; and those dates, in my interpretation of the e-mail, I think you used the phrase "not more or less", they're not flexible dates, that that was – those were firm dates that were gonna be adhered to in this case. And naturally, I understand that the Court has not been a party to the exchange of the actual witness and exhibit lists because of the way the State and the Defense has chosen to communicate. We filed notices that those witness lists were exchanged, but we did not share those with the Court, so that they would not become public, at least on our side. And so I understand that the Court may not have a full grasp in terms of the context of

the number of witnesses that will be called and the amount of exhibits that would be introduced. With that being said, I think I shared with the Court in the motion that, you know, that I haven't counted them up-to-date, but I would say that each witness list, at this point, has over a hundred witnesses. And that's – probably half of those are duplicated, the other half are not. In the normal course of a trial, I would expect that, you know, only a percentage of those would be called; and so I don't expect the Court's gonna see 200 witnesses starting next week, but it's pretty obvious to me that the volume of witnesses and exhibits, at least in the opinion of the Defense, would require, you know, substantially more time than the two and a half weeks that's set aside to present evidence. And with the Defense going second, that puts us at a disadvantage, obviously, because we don't know how long it's gonna take for the State's case; and so we've got this problem of, okay, if you're gonna limit the time that we have to introduce and put on evidence, are you going to split that time in half? Is there gonna be some manner in which the Court divvies up that time so that there's some equity in the process? I just, practically, don't think that we can do this in that short of a period of time, and that's even taking into consideration that we're gonna be working on Saturdays and maybe into the evening hours a little longer. I don't want to be in a situation where for two or three or four weeks – or two and a half weeks, we're sitting here and we're staring at the clock every minute. And so I'm looking for a practical solution to that, I think the Defense is looking for a practical solution. I haven't had any conversations with Mr. McLeland about how long he thinks that it will take to present his case, but I feel like we both have a pretty good idea of the scope of the presentations and I just don't see that we're gonna be able to do it in that timeframe. In terms of the law that's

applicable, I did lay some of that out for the Court. I don't really feel like I need to sit here and make legal arguments. To me, it's more of a – it's a housekeeping or a business-related matter in terms of how much time the parties would need to present their cases adequately, but to the extent that the law is applicable, it seems to be pretty clear to me that one of the burdens placed on the Court is that the Court, before issuing any kind of – I'll call them restraining-type orders or orders of restraint, where you're setting specific timeframes, that the Court must be fully aware of the scope of the evidence that's going to be presented and the witnesses that may be called. And that's based in – mostly in Federal law that has trickled down to the state, because that's where you get most of the regulation regarding the length of trials and the presentation of evidence is in the Federal courts. But that law is out there. And I'm not sure whether – it's just – I think in this case, just because of the – kind of the nature of the communications between the parties, which we all acknowledge are, you know, not the most streamline, at least I acknowledge that, and that's just the way it is and that's fine, but we haven't had a lot of dialogue about what's ahead. We haven't had a lot of pre-trial hearings in terms of motions in limine and things like that, and so I understand that the Court doesn't have a grasp, a really good grasp – at least I feel like the Court doesn't have a good grasp on the scope of the evidence, and so I think it's a little premature to set firm dates without the Court having a better understanding of what would be offered up. I think in October – September or October, we had a phone conversation, and I believe, during that phone conversation, we were discussing the January, 2024, trial date at that time, and I believe the Court inquired to the Defense as to what we were thinking in terms of time as far as the trial is concerned, and I believe I'm the one who

actually suggested it probably would take us approximately two weeks, more or less, to present our case. I still think that's basically true. The words "more or less" matter a lot in cases like this when you've got juries that could be – jurors that could be sequestered for long periods of time, you're moving staffs from one jurisdiction to the other I understand, there's a lot of logistical challenge that are – challenges that are on the Court; but I still feel like our position hasn't changed, it's probably gonna take us a couple weeks to present our case. And obviously, with the May 13th through May 31st trial setting, with part of that being consumed by jury inst – or voir dire, it just doesn't provide us with the amount – adequate amount of time to present our case. And I'm opining that the State probably is gonna feel the same way, but Mr. McLeland and his staff can speak for themselves. So we're just looking for some practical solutions to those problems, and that was the purpose for the order, and so that's Defense's position.

THE COURT: Mr. McLeland.

ATTORNEY NICHOLAS MCLELAND: Judge, I – we have done what we can to streamline our witnesses and exhibits that we plan to introduce. You know, I'm not real sure how to respond. The State doesn't have any objection to the two weeks. The State hopes to have its evidence done and concluded by the 25th. That still leaves a whole nother week for the Defense to present any evidence and any rebuttal evidence. That's our best guess with what we've got. Again, we've tried to streamline it. We've got it down to about 40 to 45 witnesses, and a handful of those – it's a half a dozen to a dozen, would be chain-of-custody type witnesses. We're trying to work through some of those issues with the Defense in terms of stipulations and whatnot, but that's where the State's at.

The State's satisfied with the amount of time the Court set aside. That's the only comments I have, Judge.

THE COURT: So what is your request, Mr. Rozzi? You're indicating – I set this matter at your request for speedy trial. You made your request March 6th. On March 7th, I set it for trial May 13th to May 31st, and the first time I'm hearing that that specific dates are not adequate is April 30th in your filing.

MR. ROZZI: Yeah. The Defense's request is that the Court not bookend the back end of this trial to end on a certain date, that being May 31st, that the Court understand that the presentation of evidence is just part of what professionals do in a case like this and that that occurs in a natural situation and a natural setting and it ends when it ends. And to the extent that there is a need to, you know, regulate those timeframes in a more strict sense, that we would sit down and maybe the Court even consider requesting some – or issuing an order that might further define the witnesses, now that we're getting closer to the trial setting and the discovery is getting closer to being completed, and then make a decision after you've – you know, Mr. McLeland, for the first time today, for example, just suggested he thought they had about 40 witnesses. Well, that's, you know 30 to 40 percent of the witness list that we received, so that's an indication of how fluid this case is, and so I would ask that the Court either consider some further discussions with the parties to further define those witnesses – witness lists at the end of the week. But at the end of the day, we – it seems like we're kind of at their mercy in terms of how long it's going to take them to present evidence, and there's also rebuttal evidence that has to be taken into consideration, as well. I think those things are not overly predictable, especially in a case like this. We've got logistics in terms of getting experts to

and from, those will cause, I'm guessing, some further delays, and so what I'm asking the Court to do is not set an end date for this trial and understand that it's gonna take more time. I would ask that the Defense be given 15 days of actual trial time to present its case, 15 working days would be the request by Defense, and some of that's based on our predictions back in September and October of 2023, and having seen the witness list being modified over the last couple weeks because, frankly, discovery continues to come in and that's just the nature of this case. We're taking depos tomorrow. And it is true, Mr. McLeland mentioned that there's some stipulations that we're working on, Ms. Diener and I have been communicating in that regard to try and streamline some things so that we're more efficient; but at the end of the day, I think that we're gonna need probably 15 days of courtroom time to put our case on, that's what I'm asking the Court to consider and grant.

THE COURT: Well, you understand – well, maybe you don't understand. Jury Rule 4 requires that I issue summonses to the jury with the dates of the trial. The specialized questionnaire that you all approved some months ago was mailed to the jurors, and you now have copies of those, hard copies, at your request. You all came up and picked those completed questionnaires up. Jury Rule 4 requires that I issue summons to jurors with the dates. Particularly in this matter, the dates that I provided to the jury is May 13th to May 31st. Jurors have been asked to arrange their schedules accordingly around those dates and times, and the rule requires that I mail the summons to them at least a week in advance. I confirmed with the jury office that the summonses were mailed to your venire on April 19th, which was a Friday, and I anticipate that they started getting those summonses to appear on April 22nd.

So I've given the jury the dates that the trial has been scheduled for; and again, until now, I've not been told that you need this amount of time. I can't bookend a trial when I've already told the jury this is what the dates are going to be. You have a remedy and, again, I wish you would have informed the Court well before April 30th that you didn't feel that the dates that were selected at your request for a speedy trial were adequate.

MR. ROZZI: May I?

THE COURT: Of course.

MR. ROZZI: Judge, I appreciate that. You know, this was a situation too where, frankly, the Court never inquired with the parties about, you know, what was forthcoming. That request wasn't made that I'm aware of. And, you know, I think that might have helped solve some of these problems. But let's just pose the hypothetical: What if Mr. McLeland and the State's case runs into the 28th or 29th of this trial? So is the Court gonna allow us two days to put on witnesses and then we walk in one morning on the 31st and you say, "Hey, at noon, if you're not done, we're done." We all know that that's gonna pose a problem that's gonna end up causing this case to be retried, there's no doubt about it. There's got to be some flexibility on the back end of this to kind roll with the punches, so to speak, understanding that there are a lot of moving parts here. So I think, under the Court's current order, we're at the beck and call of the State. In fact, from a strategic standpoint, you've invited them to put on a more-verbose case, which might otherwise chew up our time and not permit Mr. Allen to, you knew, offer up an adequate defense; so how are we supposed to deal with that? I mean, I think it's just, practically, a problem. And I think it – you know, it violates his Sixth Amendment right to come in here and offer up

to the jury a full, adequate, competent, and complete defense, and we're asking the Court to consider the request – to reconsider the request for 15 days on our watch. Again, I said this back in September or October, I didn't say two weeks for a trial, I said two weeks for the Defense's case, and I think you even suggested or mentioned that in the e-mail or one of the orders that was issued. And so that's what I said, that's what we're asking for. I think our request is consistent with what we did – what we requested in the fall, and I'm asking the Court to reconsider any thought to putting a drop-dead date on when this trial's gonna end.

THE COURT: Well, then you need new trial dates, gentlemen and ladies. That's your solution. I cannot ask jurors that I've already tied in from May 13th to May 31st to extend indefinitely or for another two weeks after that timeframe. Again, had you informed the Court immediately upon receipt of the motion where I granted your motion for an early trial, had you notified me immediately, "Judge, these are not sufficient dates," I would have absolutely given you whatever time you needed on the Court's calendar, I have no problem with that. I've tried hundreds and hundreds and hundreds of jury trials, I have no problem at all with that. In my belief, two and a half – three weeks, I'm sorry, three weeks for trial was adequate. I'm now being told three weeks is not adequate. I get – I have in my hand the April 30th, 2024, Defendant's Notice of Submission of Supplemental Witness and Exhibit List to the State, it's one paragraph, it's completely – it's a notice to the Court that you're exchanging witness lists. I have no idea what you're doing. That's not my job to know what you're doing, that's not my job to micromanage attorneys. My job is to call the balls and the strikes during the jury trial and to conduct an appropriate

opportunity for the State to present its evidence and for the Defense to present its evidence. Again, had you told me when you got the order granting your motion for a speedy trial that this is not sufficient time, I would have absolutely given you however many more weeks you were asking for. I hear nothing from counsel, nothing at all from either side, until April 30th, your motion for a pre-trial hearing, that this inadequate time and now you're asking me to do something I cannot do. Under the Jury Rules, I cannot give you that extra additional 15 days at the end of the trial, I can't do it.

MR. ROZZI: So is the Court gonna divvy up the time equally, the time that does exist?

THE COURT: The Court is gonna ask you all to be professionals, and stipulate to what you can stipulate to. If you're telling me that you're stipulating – I don't know what chain-of-custody issues have been arising between the parties, I have no idea what that is. Again, you've been very closed-mouthed with the Court about what your evidence is, other than the Motions to Suppress, the multiple *Franks* Motions that you have filed, and the State's responses thereto. I get Notice of Submission, which is one paragraph that lists no information for the Court.

MR. ROZZI: May I?

THE COURT: Sure.

MR. ROZZI: There is the poss – we – the Court has sent out I think and produced 450 – roughly 450 jury questionnaires. My assumption is that we're gonna voir dire in panels of about 50 at a time I think is what the Court suggested roughly in some of its instructions. One of the things that the Court could consider doing is questioning the jurors, as part of the voir dire, about

whether or not they're able to spend more time sequestered to make sure that we can get this trial done, that might be an option. And to the extent that the jurors are not able to extend their calendars or their schedules beyond that May 31st date, then maybe they would be struck. I think 450 jurors is gonna be more than enough and I think we can find, in that pool, people that are willing to stay and serve the interest of justice and their civic duties without burden, so that might be one possibility in resolving this circumstance. I'm still not sure, even under the current schedule regime – or regiment, I should say, I'm not sure that I'm aware of how we would present our case, again, if our time is consumed. You're not telling me how we're gonna solve that problem if the State's case takes longer than what they're – they haven't even told you how long it's gonna take except for, "Well, it might be a week, we're not really sure."

THE COURT: Well, he's indicated 45 witnesses approximately.

MR. MCLELAND: Judge, yeah, we – what the State did is we took the time the Court set aside for the trial and we tried to – I guess I'm gonna use slang terms a little – we tried to cut the fat as much as we could and streamline this in the most efficient way we could. Now, can't predict what's gonna happen and how long the testimony of each witness is gonna be. We've tried to predict that and we tried to fashion our questions and our witnesses, again, in the most streamline way possible, knowing that we were set in that allotted amount of time, and so we've cut witnesses in that respect in order to present our case as efficiently as we can. And so that's what we've done, Judge, and I believe we're around 40 to 45. That may be reduced, depending on what we can stipulate to; we may have to throw a witness in there if we can't make some stipulations. But we've done our very best to, again, cut as many witnesses as possible while still

meeting our burden, Judge.

THE COURT: So your suggestion, Mr. Rozzi, is to proceed forward and hope that the jurors that we have summoned can give another three weeks? Which means the Court has made arrangements for the jurors for lodging, transportation, etcetera, you're asking me then to extend that. What if I can't? I've entered into contracts with vendors.

MR. ROZZI: Well, it sounds like the Court just invited me to move to continue the case to another date that my – I mean, that's the way I interpreted what you just said a few minutes ago, which would kind of run afoul or run in the face of you having all these things organized. I understand that, like that's why we're here having this professional discussion about time, but you're not hearing anything from the State that's suggesting that it's gonna take them a week. He's saying, "We're trying to streamline things." Well, that's not real comforting when you're sitting over here and you're on the receiving end of that, you know, so I am not hearing anything from the Court's that's – you know, that's confining the State to any specific amount of time; in fact, it's almost like you're not willing to do that in the context of this, which suggests to me that they can sit there and put on evidence until the cows come home. And I don't want to be in the situation where we just stop one day and we tell everybody to go home and we'll see you again in the fall, we're gonna do it all over again. It just doesn't make any sense to me. And I've never been involved in a situation ever – and I understand this is a unique circumstance – but I've never been involved in a situation where a judge set an end date, and not only said it's not gonna end sooner or later –

THE COURT: Excuse me, you've never had a Court set a trial date

for you, is –

MR. ROZZI: I've had a Court set –

THE COURT: -- that what you're telling me?

MR. ROZZI: -- starting dates, but I've never had a Court tell us, "It's gonna end on May 31st, no more, no less," those were the words of the Court in this case. I've never had that happen, which is one of the reasons why I filed the motion. And look, we're practicing in different areas of the state, doesn't mean that what goes on up here is, you know, better or worse than what goes on where I make a living, but that's the reality. That's – those are the –

THE COURT: That's a shocking reality, Mr. Rozzi. I've never heard any of my colleagues give open dates for trials. I'm surprised that that happens routinely across the state of Indiana –

MR. ROZZI: Well, in the –

THE COURT: -- because in this court and in my experience with my colleagues, you get a trial date, "Here's your trial dates, May 13th to May 31st", period.

MR. ROZZI: Yeah, well –

THE COURT: So your experience is vastly different than this Court's.

MR. ROZZI: And that's fine. The problem is we have to deal with those things and find some solutions, and I'm asking the Court, in this case, to recognize his right to put on a defense is just as important, and frankly, more paramount, than their right to prosecute.

THE COURT: I don't disagree. And again, I wish you'd have let me know.

MR. ROZZI: And so by pinning us in, it almost seems like – I used the word "invite" earlier – it seems like you're inviting them to make his situation, Mr. Allen's, more ten – you know, untenable, and I just don't – I don't understand that. I don't understand how it is that we – the Court couldn't reach out to the parties before the Court issued the order setting the dates and saying, "Hey, I'm getting ready to issue an order setting dates. Two weeks gonna be enough? Three weeks gonna be enough? A month?" I mean, a lot has occurred since September and October when we talked, and so – you know, it seems like to me that – why that didn't happen, I don't really care, I know that we're dealing with that circumstance as we're sitting here today. I just want to get the problem fixed and that's –

THE COURT: Well, it happened, sir –

MR. ROZZI: -- for the Court to consider.

THE COURT: -- because I don't feel – if I e-mail, my e-mails end up in pleadings. Obviously, we can't have a six-way phone conversation, and e-mails ending up in pleadings is not how I do business, so I do business in written orders. I gave you an order granting your motion. You're now telling me it's insufficient. Again, I don't know what you want me to do. I gave you set trial dates. I've always given you set trial dates. You've never indicated that those dates were inadequate, again, until April 30th, when we sit here now today, so –

MR. ROZZI: Can we have a five-minute recess, please?

THE COURT: Why?

MR. ROZZI: I would like to speak with my co-counsel here and have a discussion about the business issues such as scheduling, not here in a courtroom where everybody's listening to us. We've got, you know, 50 staff

members in this courtroom, people sitting behind. There's no privacy, and I'd like to talk to him in the hallway about some of the logistics of this so we can solve this problem so that he, Mr. Allen, can put on a defense.

THE COURT: Does the State have any objection to a recess?

MR. MCLELAND: No, Your Honor.

THE COURT: All right. Jodie, you can go off the record.

(Off record at 9:32 a.m.)

(On record at 9:42 a.m.)

THE COURT: All right. Have you had adequate time, Mr. Rozzi –

MR. ROZZI: Yes, ma'am.

THE COURT: -- to have some discussions?

MR. ROZZI: Yes, ma'am.

THE COURT: Okay. I note in your motion for a pre-trial hearing, as well, that you had indicated in your paragraph 15 that this case doesn't present itself to the Court as a case of first impression, at least not from a scheduling standpoint, and you are correct in that. I did preside over the case of *State of Indiana versus Bob Leonard,* which was a case venued from Indianapolis, Marion County, in 2016. I think it was commonly known down in Indianapolis as the Richmond Hills explosion case. That case was set for trial, you are correct, for 34 days, with nearly 140 witnesses. What you didn't include in your petition and your pleading is that that case was actually tried by this Court in 20 days with 161 witnesses and over 2000 items of evidence. I also tried *State of Indiana versus Cohen Hancz-Barron*, a life without parole with an individual who murdered his girlfriend and her three children, we tried that in seven days with 36 witnesses and over 200 items of evidence. Bryce Pope was a

life without parole case that I tried in four days with two victims. Dustin Neal was a 2017 murder that was tried in 2023, and I tried that in four days. And I tried a death penalty case earlier in my career in two and a half weeks with four victims. So I am experienced in scheduling matters for trial, gentlemen and lady. Again, I've given you the opportunity to consult with counsel and co-counsel to kind of see where you're at and to speak with Mr. Allen. What would you like to do, sir?

MR. ROZZI: Judge, first things first, I'd like to just make a record that we did have a chance to speak with Mr. Allen in the jury room –

THE COURT: Okay.

MR. ROZZI: -- and I appreciate it, some sense of privacy in that regard. I would like to make – I would like to note for the record that we have security staff standing next to us when we're talking to him, we're not permitted to talk to him in private. There are two gentlemen in there, I'm sure nice gentlemen, sure doing their job, but the idea that there's any confidences that are communicated to our client in this case, it's just – it's not true and that hasn't been the case throughout. It wasn't the case a few minutes ago when we walked in that jury room and had people, essentially, standing next to us when we're talking. The same was true when I was here a few weeks back, a month or so ago, when we were out in the hall. We were offered up a spot in the corner of the hallway to talk to our client while the security staff stood nearby. And I'm asking the Court to consider in the future to allow us to spend our time with some form of privacy, I would appreciate that.

SERGEANT JEREMY TINKEL: We can certainly take him down to our office and they can talk to him while he's in the holding cell.

THE COURT: Can we do that?

SGT. TINKEL: Yes, we can.

THE COURT: Okay. You can do that right now if you want, speak to him privately.

MR. ROZZI: Well, it's too late. I just – we just had this conversation, knowing that we had limited time and I didn't want the Court to, you know – we knew we had to get back in here. I asked for five minutes, so –

THE COURT: Sergeant Tinkel has informed me that you may speak with your client privately down in their offices.

MR. ROZZI: That ship has passed; okay? I appreciate the offer, but it doesn't make any sense for us to go to back in there and talk about what we just talked about. I'm asking the Court to consider, moving forward, that we be given some privacy with our client. Second, what we're requesting from the Court today is 15 business days to present our defense, our defense.

THE COURT: Okay.

MR. ROZZI: Fifteen business days. We believe that that's the amount of time it would take us to present an adequate defense on Mr. Allen's behalf. Third, to the extent the Court is inclined to deny that request, then we are asking that the Court – we're moving to lift our speedy trial request and we're asking the Court to give us a new date in earnest, when the Court can set aside the adequate time that we've requested to present our case. What the State does, that's on them, they can ask for however much time they need, but we're asking for 15 days.

THE COURT: Mr. McLeland? I'm sorry, were you done?

MR. ROZZI: I am finished. Mr. Baldwin would like to speak.

ATTORNEY ANDREW BALDWIN: Judge, we are filing a second request for you to be disqualified in this case. I have that here, if you – it will be filed by e-mail, as well as – or by filing. May I approach?

THE COURT: What do you have?

MR. BALDWIN: A motion to disqualify you as judge on this case.

THE COURT: Oh, okay. It needs to be e-filed.

MR. BALDWIN: Okay. Would you like a paper copy?

THE COURT: No, I can get one when it's e-filed.

MR. BALDWIN: Okay.

MR. ROZZI: I have nothing further.

THE COURT: Mr. McLeland?

MR. MCLELAND: Judge, in terms of response to Defendant's motion, I guess I'll just focus on the lifting of the speedy trial setting and trial date. Judge, we'd leave that discretion to the Court. Of course it's frustrating, we're ready to go on the 13th, we're ready to move forward; but I would leave that part to the discretion of the Court. In terms of the Defense's second verified motion to disqualify, Judge, I – it's 24 pages, Judge. I haven't read through it, I don't have any response to it at this point, and so I just leave it at that, Judge.

THE COURT: Well, he hasn't e-filed it; so when it gets e-filed, you'll have the opportunity to file your appropriate response.

MR. MCLELAND: Thank you, Judge.

THE COURT: So you're waiving your right to a speedy trial, then?

MR. ROZZI: Yes, at this moment we are.

THE COURT: Okay. And you're asking for 15 business days. I've looked at my calendars, and we were originally set in Carroll County October

14th through the 31st. If you are requesting an additional three weeks after that, we can go October 14th to November 15th.

MR. ROZZI: Is the Court granting a request for 15 days for the Defense to put on its case through – within that timeframe?

THE COURT: If you can't try this case in a month, gentlemen and lady, there's something wrong. I see no reason that this case cannot be tried in 30 days. We will work on Saturday, we will – the schedule that I've previously provided to you in an e-mail some month ago, I see no reason that it can't happen in that timeframe.

MR. ROZZI: You don't know anything about this case. I – with all due respect, Your Honor, you haven't seen a witness list or an exhibit list.

THE COURT: No, I have not.

MR. ROZZI: So I have no idea how you can have any context for what is involved in this case. And the discovery continues to come in, because every day that he sits in that hole down in Wabash Valley, there's new evidence that's presented –

THE COURT: So are you –

MR. ROZZI: -- by way of 24 hours of video, camcorder video, medical records, psychiatric records. How would you possibly know? We haven't had a pre-trial hearing on any substantive issue in this case. You have summarily denied everything we've put on your desk. How would you possibly know how long this case is going to take to try it? It's beyond me. I don't understand how that could possibly be.

THE COURT: I have 27 years of experience on the bench, Mr. Rozzi, trying multiple high-profile homicide, life without parole, and death penalty

cases. Are you telling me that 30 days is inadequate for the State and the Defense to try this case?

MR. ROZZI: I'm telling you that picking an arbitrary number is not – does not make sense. What makes sense is having the parties have discussions, maybe in an open court with a scheduling hearing that would be ordered, about really how many witnesses are coming, really how many exhibits are you putting in, what are your logistical challenges, those kinds of things, and then we can come to some conclusion on how much time it's gonna take.

THE COURT: Well, then why don't you have those discussions and then let me know that you cannot physically do it in 30 days. I'm waiting.

MR. ROZZI: Because we're not talking. It's probably pretty obvious at this point –

THE COURT: Oh, it is patently clear –

MR. ROZZI: Yeah.

THE COURT: -- to me, Mr. Rozzi, that the defense team and the prosecution team are dealing with each other in written form only.

MR. ROZZI: E-mail only is the instruction we've been given from the State. And so the line of communication is somewhat broken and some – you know, to the extent that those problems could be solved, they could be solved by ordering the parties into a courtroom to have constructive conversations about scheduling, which did not occur.

THE COURT: Well, we're all here now, why don't we have those discussions.

MR. ROZZI: Well, we have been and they're not bearing any fruit. We've made our request, 15 days to try this case. We're moving to lift the speedy

trial motion. My request – my simple request is: How much time between October 14th and November 15th will be dedicated to the State's – or the Defense's case, that's what I'm asking.

THE COURT: Mr. McLeland.

MR. MCLELAND: Judge, I can't give you a definite day of how long it'll take us to present the case. The burden is on us. When I presented to the Court before that I thought we would be done by the 26th, that was taking into consideration the time the Court had set aside for the trial, and that's only taking into consideration how long we think it'll take to do direct examination of the witnesses. No idea how long it'll take for cross examination, no idea how much cross is gonna be allowed, frankly. And so I'm not willing, from the State's perspective, to say, "Okay, Judge, give us this amount of days to put on our case." What I can present to the Court, what I wanted to tell the Court is that we are going to present our case in the most efficient, fast way we can with the time allotted from the Court. It is not our intention to take the time given by the Court and take up every single day so the Defense doesn't have an opportunity to present their case; however, we have the burden, but we are gonna take the time the Court gives us and do what we can to make it as efficient as possible, not only for the State, for the jurors, for the witnesses that are involved. We're gonna do our best, Judge, but I'm not willing to sit here today and say, "Give me seven days, give me eight days," that's just not something I can do, Judge, because I don't know the extent of the cross examination of the witnesses.

THE COURT: So, Mr. Rozzi, Mr. Baldwin, I will grant your motion to continue the jury trial and order it reset to October 14th through the 15th at 8:30, beginning at nine o'clock every morning down in the Carroll Circuit Court.

Show that you've withdrawn your right for a speedy trial. While you're all here, do you wish to schedule a pre-trial hearing or do you want to address the – well, we can set pre-trial hearings. And, Mr. Rozzi and Mr. Baldwin, when the Court summarily denies motions that have been filed, it is the Court's belief that there's nothing within the pleadings that have been filed that require a hearing. So if you wish to have a hearing on your various motions to suppress, I would entertain that. When would you like that set?

MR. MCLELAND: Judge, while they're looking at their calendar, can the – I'm sorry, Judge, I – there was some rustling in the background, I didn't hear the dates. October 15 through when for the trial date?

THE COURT: November – October 14th –

MR. MCLELAND: Oh, 14th.

THE COURT: -- to November 15th.

MR. MCLELAND: Okay. Thank you, Judge. Apologize about that.

THE COURT: I believe there are two, maybe three, motions to suppress that are still pending. I know one I just got and the State hasn't responded to, so you've got your ten days to respond.

MR. MCLELAND: Judge, I can tell you the plan with the – there was a – I'm sorry, I don't know if it's a third or fourth *Franks* motion filed. The State's intent, given that the trial date – we expected the trial date to start on Monday, was going to rest on the previous responses filed, but –

THE COURT: Okay.

MR. MCLELAND: -- the State will take another look at the most-recent motion to suppress filed and then draft a response quickly, Judge.

MR. BALDWIN: Whenever the Court can get it set, Judge, we can

look at our calendars, but whatever works for the Court.

THE COURT: We were supposed to be available to the Court May 21st through the 23rd, so why don't we set the motions to suppress for then.

MR. ROZZI: Yes.

THE COURT: We'll set aside three days for pending motions May 21st through the 23rd, so that can be the motions to suppress. I know there was a second one and I think maybe a third motion to suppress, as well as the State's motion in limine that we can resolve at that time, as well.

MR. MCLELAND: So, Judge, is the Court referring – with the motion to suppress, you're including the *Franks* – I think there's two *Franks* motions pending and two motions to suppress. Any pending motions, basically?

THE COURT: Not the *Franks* hearings.

MR. MCLELAND: Okay.

THE COURT: Not the *Franks*, just the motions to suppress and the motion in limine.

MR. MCLELAND: Okay.

THE COURT: Are there any other pending motions other than the *Franks* motions that you haven't replied to, Mr. McLeland, that the Defense has filed that you want a hearing on?

MR. MCLELAND: No, Judge. There's only one *Franks*, and I pulled it out, it's the fourth *Franks* motion the State has not responded to, was gonna respond to that orally today given the short trial date. The only other motion, I think there is a motion to compel perhaps filed by this Defense; and then last night, late in the evening, Judge, I filed a request for pre-trial ruling on admissibility. I would ask the Court to consider hearing that on the 21st through

the 23rd, as well. I don't think it'll take long, but I would ask the Court to consider that, as well. It was filed late last night. It may not have been accepted yet by the Court.

THE COURT: It has not. It's not in the –

MR. MCLELAND: I didn't think it would.

THE COURT: -- it's not in the file.

MR. MCLELAND: It was late last night when I filed it, Judge, so –

THE COURT: What was it – what's it called?

MR. MCLELAND: Basically, we want a ruling – we've got some documents we'd like the Court to review and rule on their admissibility. They're some pretty important documents to the State, they're incriminating statements made by Mr. Allen, and so we'd like the Court to review those. I'd like to give them to the Court under seal, because they are pretty incriminating, and so I would like the Court to consider those and give us a ruling on whether or not they could be admissible at trial. I can re-file it with the exhibits sealed or I can present those to the Court today under seal. I've not talked to Defense about that at this point.

THE COURT: You can just give me the sealed documents, but the motion is – again, it hasn't been accepted yet and, obviously, the Defense hasn't seen it.

MR. MCLELAND: There's nothing in the motion that needs to be sealed, Judge; I just didn't attach the exhibits to the motion because I didn't – when I filed it, I wasn't sure the process to make sure they were sealed, and so I just didn't want to file them. But I'd like to present them to the Court under seal, so the Court can consider those in conjunction with the I.C. code that we

cite so that we can talk about that on the 21st or the 23rd at some point.

THE COURT: Okay. Does the Defense have anything else?

MR. ROZZI: Judge, just an inquiry about what's gonna happen with Mr. Allen. He's – you know, his movements and location and housing circumstances are – we're unaware of what those are. What's the Court anticipating moving forward? I know he was – I learned in a deposition the other day that he was gonna be brought up here, so I don't know what – so is he gonna be in Tippecanoe County? Is he gonna be here? Is he gonna go back to Pendleton or –

THE COURT: If you really want to have this discussion in front of everybody, I'm happy to do that; but for security reasons, I don't think that's appropriate, Mr. Rozzi.

MR. ROZZI: Well, if the Court would be inclined to e-mail us and give us, you know –

THE COURT: I'm not e-mailing any longer because, again, my e-mails continue to end up in people's pleadings and I don't think that's appropriate. So again, if you would like to have this conversation in front of company, I'm happy to do that, but I don't think it's advisable based on security issues for Mr. Allen's safety.

MR. ROZZI: Okay. We can have that conversation in a setting that's more confidential, I'm okay with that.

THE COURT: Thank you. Anything else from the State?

MR. MCLELAND: I don't believe so, Judge.

THE COURT: All right. Then, we'll see you in court – be prepared – and we'll do May 21st through the 23rd for three straight days, starting at nine

o'clock and ending at whenever we end, so be prepared –

MR. MCLELAND: In Carroll County, Judge?

THE COURT: I'm sorry?

MR. MCLELAND: In Carroll County?

THE COURT: In Carroll County. Be prepared on the motions to suppress, the motion in limine, the motion for ruling on admissibility, and that's all I have so far – and the motion to compel, I'm sorry. All right. Thank you very much. Jodie, you can go off the record.

MR. MCLELAND: Thank you, Judge.

(THIS CONCLUDES THE PROCEEDINGS AT MOTIONS HEARING CONDUCTED MAY 7, 2024, IN THIS CAUSE.)

STATE OF INDIANA	)	IN THE CARROLL CIRCUIT COURT
	)SS:	
COUNTY OF CARROLL	)	CAUSE NO.: 08C01-2210-MR-1

STATE OF INDIANA, Plaintiff, VS. RICHARD ALLEN, Defendant.	)))))))

TRANSCRIPT OF MOTIONS HEARINGS

HELD JULY 30 – AUGUST 1, 2024

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JODIE L. WILLIAMS..... .REPORTER

PROCEEDINGS

THE COURT: All right. Well, good morning, everyone. I apologize we're a little late. We got a later start than I thought and, in typical Hoosier fashion, there's a lot of construction that I was not anticipating. So we are here for all of our motions, the pending motions that have been filed. I sent counsel an email and you all responded appropriately, so I appreciate that the schedule that I proposed was gonna work for you guys, as well. So my – I anticipated we would do the motion to vacate the safekeeping order first that was filed by the Defendant. Defendant then filed a motion to compel and motion for sanctions and we can take that up at that time, and then the motion to dismiss. I figured that would probably get us through the end of the day would be my guess. I mean, I don't know what kind of witnesses y'all have or argument or anything, but that – just based on the pleadings, I figured that's a good stopping point, at the motion to dismiss. I know the motions to suppress and the motion to suppress the second statement are pretty meaty and I figured that would be all day tomorrow. Is that safe to expect that that would take the entire day, then?

ATTORNEY BRADLEY ROZZI: I think so. I mean, that's my impression. I talked to Ms. Diener a little bit this morning about kind of what her approach will be on the suppression and feel like, based on what she told me and what I know about my presentation, that it'll take probably a half a day to do the suppression.

THE COURT: Okay. At least –

MR. ROZZI: And maybe the other half would be the second one.

THE COURT: Okay. Yeah, 'cause we've got two of them, the motion to suppress the second statement and then the motion to suppress.

MR. ROZZI: Judge –

ATTORNEY JENNIFER AUGER: Your Honor –

MR. ROZZI: So the answer is yes, I think most of the day.

THE COURT: Okay. Ms. Auger.

MS. AUGER: I'm sorry, Your Honor. In terms of the second motion to suppress, I don't know it's – I don't think it's going to be a half day. And just for housekeeping measures, if we finish those motions to suppress tomorrow, would you like us to get started on the motion in limine or are we going to –

THE COURT: There's a motion for admissibility and a –

MS. AUGER: Which kind of ties in, I think –

THE COURT: -- motion in limine. It does – I think it's kind of connected, yeah.

MS. AUGER: So just for housekeeping measures, if we finish with the – those three motions tomorrow, are we gonna move right into the limine or do you want to –

THE COURT: That would be my intent, if we're ready to do that. If we're not – I mean, we've got three days, so I'm trying to be kind of flexible with your time and with the Court's time.

MS. AUGER: Okay. We'll discuss that. I just want to make sure that –

THE COURT: Okay.

MS. AUGER: -- we're using a good – we're not wasting any of our – any of your time or anyone else's time.

THE COURT: Okay.

MS. AUGER: Thank you.

ATTORNEY NICHOLAS MCLELAND: Judge, the only other thing I would add is that – sorry. The only other thing I would add is the State filed a motion to dismiss the first motion to suppress.

THE COURT: Correct.

MR. MCLELAND: We assumed that it was gonna be included in the motion to suppress –

THE COURT: Yes.

MR. MCLELAND: -- even though it wasn't specifically listed in your motion, so I just wanted to be clear with all the parties. We intend to argue that within the motion to suppress – the first motion to suppress, as well.

THE COURT: Correct.

MR. MCLELAND: Okay. Thank you, Judge.

THE COURT: That was my intent, 'cause that was the – your motion specifically addressed that motion to suppress.

MR. MCLELAND: Correct, Judge. Correct, Judge. Okay. Thank you.

THE COURT: Okay. So with all of that, with the little housekeeping things taken care of, are we ready to begin?

MR. MCLELAND: Yes, Your Honor.

THE COURT: All right. So let's start with the motion to vacate the safekeeping order, please.

MR. ROZZI: Call Tony Liggett, Sheriff Tony Liggett.

(Witness sworn.)

MR. ROZZI: May I?

THE COURT: Yes, sir.

MR. ROZZI: Thank you.

DIRECT EXAMINATION OF SHERIFF TONY LIGGETT

QUESTIONS BY MR. ROZZI.

Q What's your name?

A Tony Liggett.

Q And, Mr. Liggett, tell us what your position with the law enforcement community is.

A I'm the Carroll County Sheriff.

Q Okay. And in that – how long have you been the sheriff?

A A year and a half.

Q And is it fair to say that you were not the sheriff when Mr. Allen was arrested back in October of 2022?

A That's correct.

Q It was Sheriff Tobe Leazenby was the acting sheriff at that time?

A Yes.

Q He still actually works for your department; is that correct?

A He does.

Q Are you in charge of the care and custody of Mr. Allen, with the exception of the fact that we have this safekeeping order in place?

A Yes.

Q And do you acknowledge that your office filed a request to relinquish jurisdiction of Mr. Allen back in 2022?

A Correct, yes.

Q And was that – did – custody of Mr. Allen was relinquished to the DOC?

A Yes.

Q And do you acknowledge that that occurred without Mr. Allen having a hearing on that matter, it just, basically, there was a motion, a notice filed, and there was an order signed by the sitting judge?

A I believe that's how it went, yes.

Q And basically, he got shipped off to Westville; is that correct?

A Correct.

Q And were you aware – when did you become aware that he was placed in solitary confinement at Westville?

A You mentioned it in a deposition to me.

Q And was that in the spring of, roughly, of 2023?

A That might be right.

Q Maybe the summer of 2023?

A Somewhere in there, yeah.

Q And are you aware that there'd been attempts by us to try and get him moved out of the DOC into one of the local jails?

A Correct.

Q And have you been – did you ever go to Westville and visit Mr. Allen's cell?

A Visit his what, I'm sorry?

Q His cell, his unit up there.

A No.

Q Did you – are you aware that he was moved to Wabash Valley in December of 2023?

A Sounds right.

Q And have you been down to Wabash Valley to visit him and just monitor the circumstances down there?

A No.
Q You're aware that we asked the Court to vacate the safekeeping order?
A Yes.
Q And you and I, frankly, have had some discussions about this, even in the hallway?
A Yes.
Q Tell the Judge what your plan is in terms of housing Mr. Allen – maybe she already knows, I don't know that – but tell her what your plan is in terms of housing him over the next couple of days while we participate in the pre-trial –
A Ed Schroder, the Sheriff of Cass County, has agreed to house him during this hearing. They're gonna transport him to Carroll County courthouse for us and then we will take him back to Cass County.
Q Okay. And so while he's here, as he is right now, is it your intention that you would be responsible for his custodial circumstances during the proceedings?
A Correct.
Q And this – were those arrangements, were those made in advance? When were those arrangements made is probably a better question.
A They were made for the previous hearing and they were just reaffirmed for this one.
Q All right. Excuse me, I'm having some allergies. So do you believe that these same circumstances can be maintained with Mr. Allen beyond the pre-trial proceedings until we conclude the trial in this case?
A I think it's possible, yes.
Q Have you talked to Sheriff Schroeder about that?

A Yes.

Q And has that – have those discussions even involved the finances that would be associated with housing him in another county?

A Yes.

Q Okay. And transportation, is that a big part of that discussion?

A Correct.

Q Is it fair to say – is it accurate to say that Sheriff Schroeder has asked for the assistance of one additional state trooper and a vehicle to assist with the transport?

A Correct.

Q And is that something that you've been able to accommodate?

A Not yet.

Q Is that something you think you're going to be able to accommodate?

A I believe it could be accommodated, yes.

Q And in fact, we took your deposition back in May of 2024; right?

A Yes.

Q And at that time, there were some questions posed to you regarding these transportation accommodations?

A Yes.

Q And do you acknowledge that you essentially told us in the deposition – us being Mr. Baldwin and I – that you had believed you'd worked out the transportation issues associated with this now?

A Correct.

Q And that involved getting some assistance from the State Police?

A Correct.

Q Do you agree – well, let me ask you this: Do you think that there's any circumstance that exists at Wabash Valley which would suggest that Richard Allen is in danger of serious bodily injury or death?

A At Wabash Valley?

Q Yeah.

A I don't know the circumstance down there.

Q Okay. And are you aware of any circumstances that exist where he's a threat to someone else because of something he's done while he's been incarcerated?

A I'm unaware of anything personally.

Q So your idea of getting him moved to another facility is mostly just a logistical issue; right?

A Somewhat, yeah.

Q And if he were to be moved to Cass County, are you comfortable that the facilities over there are adequate to house him while we await this trial?

A Sheriff Schroder believes they are, so I trust Sheriff Schroeder.

Q Have you been to the jail down there?

A It's been a long time. I haven't been there since their addition, but I've been there in the past.

Q Are you aware that we were graced with a new second half of the facility in the last year or so?

A Yes.

Q And that there's a couple hundred more beds that are available there?

A Correct.

Q Is it your understanding that's a pretty modern, state-of-the-art facility in

terms of jails?

A Correct.

Q And are you comfortable, in talking with the sheriff, that he has an adequate confinement circumstance there to house Mr. Allen?

A Yes, he believes so, so –

Q Does he have the right cells, the right type of cells and isolation and circumstance to assist him?

A Correct. He said he has, yes.

Q So you don't have any problems with that?

A I –

Q You have one problem?

A I do have one problem.

Q We talked about this in the hallway.

A We did.

Q Tell the Judge about that.

A So under our normal circumstances, we house people at Cass County already, and if there's a problem with an inmate or anything medical occurs, Cass County jail picks up the phone and says, "Come get this inmate, take him back." I don't believe that would be something we could accommodate if that were to happen, so my fear is if we're – if we vacate the safekeeping, that that may happen. So I guess if I have a question it is can the safekeeping just still be in place, but changed from DOC to Cass County?

Q So what you would want the Judge to do is, essentially, modify the last paragraph of the order to reference that he would be transferred to the custody of Cass County, but if those circumstances would change, that the DOC would

be the backup, essentially?

A Correct.

Q You could also just petition the Court and ask for it to be modification; right? That's also an option.

A I could, but that, I'm sure, will take a little bit of time for that to happen.

Q Well, the last time you petitioned, it happened immediately.

A When Tobe Leazenby did, I think it was relatively quick, yes.

MR. ROZZI: I don't have any further questions.

THE COURT: Mr. McLeland.

MR. MCLELAND: Thank you, Judge.

CROSS EXAMINATION OF SHERIFF TONY LIGGETT

QUESTIONS BY MR. MCLELAND.

Q So, Sheriff Liggett, if the safekeeping order is vacated today, Richard Allen comes back to Carroll County Jail; correct?

A Correct.

Q And he's put in general population with the other inmates in Carroll County Jail, because we don't have solitary confinement here?

A No, we do not have any kind of solitary con – we have a pad – a padded cell, but it is not housing –

Q There's no toilet in there, there's no shower, it's basically a padded –

A It's a padded cell.

Q -- square cell. And so, at that point, you absolutely could contact another county and see if they would house him?

A Correct.

Q And you've done that in the past?

A Correct.
Q But if he's housed in the Carroll County Jail, are – do you have concerns about his safety?
A Yes.
Q Do you have concerns about your ability to house him in the Carroll County Jail?
A Yes.
Q And so is it your opinion that the safekeeping order, at this point, is still necessary?
A Yes, I believe the safekeeping is still necessary.
Q And do you have any preference of where he's housed at this point?
A No.
Q And so do you believe where he's housed now, in the Department of Correction, is adequate?
A Yeah. I have no reason to believe differently.
Q Do you know that they have medical personnel down there to be able to take care of any medical needs he may have?
A Correct.
Q Do they have mental health personnel there that may be able to take care of any mental health needs that he needs?
A Correct.
Q And they're able to transport him back and forth to the hearings; is that correct?
A What – say that last part again.
Q When he's housed in DOC, who's responsible for the transport back and

forth to the hearings?

A The State Police have been taking care of that for us.

Q And so is it your testimony today that you want him housed at Cass County?

A I don't care where he's at. He can't be with mine, but the safekeeping should still be in place.

MR. MCLELAND: Okay. I don't have any other questions, Judge.

THE COURT: Mr. Rozzi.

RE-DIRECT EXAMINATION OF SHERIFF TONY LIGGETT

QUESTIONS BY MR. ROZZI.

Q Do you agree that he is being held currently in a solitary confinement setting?

A I've not been told that. I don't know.

Q What about when he was in Westville, do you agree that he was held in a solitary confinement setting?

A At some point, yes.

Q You're aware that Warden Galipeau has testified in this courtroom before regarding his detention circumstances; right?

A I know he testified, yes.

Q And you're generally aware that he, basically, had been living in an 8 by 12 cell for the last 15 to 20 months, if I did the math right?

A It's about the same size as our cells.

Q Okay. But you're aware that that's the circumstance?

A Okay.

Q And that he's been cut off from contact with other inmates other than just

yelling through the doors?

A I assume that, yes.

Q Okay. Now, in terms of – you said earlier that you thought that his current detention circumstances were adequate I think was the word that was used; you recall that? Just a few minutes ago, Mr. McLeland questioned you?

A Correct.

Q You and I talked about solitary confinement when I deposed you back in May of 2024, didn't we?

A Yes.

Q And did you acknowledge at that time that there are some very specific rules regarding solitary confinement –

A Yeah.

Q -- within the prison or the jail setting?

A Correct.

Q And you advised that you have standards which are actually offered up to, probably through the Sheriff's Association, on how to detain people in solitary confinement and the length of those stays.

A Yeah. It's through the Department of Corrections.

Q So it – basically, you adopted the DOC standards?

A Well, they set the standards for us, yes.

Q And you acknowledge that there is a threshold within those standards that basically says that 30 days is kind of the maximum limit that one should be solitary confined unless there's some exceptional circumstances?

A I believe the rule is that 30 days being a maximum, then they have to have some sort of administrative hearing to continue it.

Q Fair enough. That's what you told me at the depo; right?

A Correct.

Q And do you agree that the reason for that rule was because holding someone in solitary confinement could be detrimental to their mental health?

MR. MCLELAND: Judge, I'm gonna object at this point. I'm not sure how this goes into the safekeeping of whether or not he's in danger in Carroll County Jail or not or whether or not that safekeeping should be vacated.

MR. ROZZI: Judge, because Mr. McLeland asked Mr. Liggett if he thought his current circumstances were adequate, and his answer was yes. Our response is, is that they're not adequate, that's part of the reasons why we've asked the Court for assistance, so I think it's relevant.

THE COURT: Overruled.

MR. ROZZI: Thank you.

Q So you acknowledge that this threshold of 30 days exists; right?

A Yes.

Q And one of the reasons why that exists is because there's – it's known in the industry that holding somebody for longer than that in solitary confinement could be detrimental to their mental health.

A I'm sure it could be, yes.

Q And he's been alone now for the better part of a year and a half; right?

A I'll take your word for that. He's been in – held, yes. I don't know where that entire time.

Q Do you have any reason to believe he's in general population down in Wabash Valley?

A I highly doubt it.

MR. ROZZI: I don't have any further questions.

THE COURT: Mr. McLeland.

RE-CROSS EXAMINATION OF SHERIFF TONY LIGGETT

QUESTIONS BY MR. MCLELAND.

Q Is he gonna be in solitary confinement if he's housed in Cass County?

A He's gonna be in a segregation cell, yes.

Q By himself?

A I assume so.

MR. MCLELAND: Okay. I don't have any other questions, Judge.

THE COURT: All right. Thank you, Sher –

MR. ROZZI: Uh –

THE COURT: You had more?

MR. ROZZI: May I ask another question or two?

THE COURT: Sure.

RE-DIRECT EXAMINATION OF SHERIFF TONY LIGGETT

QUESTIONS BY MR. ROZZI.

Q Have you seen the cells at the new jail at Cass County, the solitary cells?

A I have not.

Q Has Sheriff Schroder explained to you what those cells – how they're set up and how they're structured?

A No.

Q You're building a new jail here; right?

A Correct.

Q Have you looked at the designs for your new jail?

A I have.

Q If I told you that it's – they're the same down there in Cass County, situated such that there are some rooms in solitary cell with access to the day room, would that sound consistent with your plans here in Carroll County, Sheriff?

A No. Ours are different.

MR. ROZZI: Okay. I don't have any further questions.

THE COURT: Anything else, Mr. McLeland?

MR. MCLELAND: No, Judge.

THE COURT: All right. Thank you, Sheriff. You may step down.

MR. ROZZI: Judge, may I approach?

THE COURT: Yes.

MR. ROZZI: Judge, I've got marked as Defendant's A an affidavit of Sheriff Schroder from Cass County. I'd be able to read it into the record, but I don't know that I necessarily need to do that, but –

THE COURT: I'm sorry, you were talking and walking at the same time.

MR. ROZZI: I'm sorry.

THE COURT: Repeat that, please.

MR. ROZZI: So I'm presenting to the Court Defendant's Exhibit A, which is an affidavit of Edward Schroder, who is the Sheriff of Cass County. This affidavit acknowledges that he has communicated with Sheriff Liggett and that there are arrangements that have been made to house Mr. Allen. The affidavit also acknowledges that the facility in Cass County is adequate to house him through the trial in this case. The affidavit also acknowledges that –

THE COURT: Perhaps we could admit it before we start arguing it.

Is there any objection?

MR. ROZZI: I move to admit Defendant's Exhibit A.

DEFENDANT'S EXHIBIT A OFFERED

MR. MCLELAND: No objection, Your Honor.

THE COURT: All right. Thank you. Without objection, I'll show A is admitted. You may proceed.

DEFENDANT'S EXHIBIT A ADMITTED

MR. ROZZI: I'm trying to summarize the affidavit, rather than – unless the Court wants me to read it into the record. I understand that, you know, you can read it yourself. Mr. Liggett – Sheriff Liggett's testimony is consistent with what's in the affidavit and I actually shared it with him today before the hearing to make sure that, you know, that information in the affidavit was accurate. So we're asking the Court to consider the language and the information in the affidavit. I tried to avoid having to bring Sheriff Schroder up here, 'cause he's got other things going on, as well.

THE COURT: Sure.

MR. ROZZI: I have nothing further, Your Honor.

THE COURT: Okay. Does the State have any evidence on the motion to vacate the safekeeping order?

MR. MCLELAND: Just argument, Judge.

THE COURT: So argument then, Mr. Rozzi.

MR. ROZZI: Well, Judge, you know, this, to me, seems to be a practical problem because, in any case, there is a law that actually dictates how these safekeeping orders are issued and whether or not they're appropriate, and that law is I.C. 35-33-11-1, which says that upon motion by the sheriff alleging

that an inmate in a county jail awaiting trial is in danger of serious bodily injury or death or represents a substantial threat to the safety of the other – safety of others, the Court shall determine whether the inmate is in imminent danger of SBI, serious bodily injury, or represents a substantial threat to safety of others. So basically, there's a process. And what I've heard today from Sheriff Liggett is, is that there are no concerns about whether or not there is any danger of serious bodily injury to him or anyone else, there just – there's nothing in the record that meets any of the standards that are referenced in the statute, and so, from a purely legal standpoint, I just – I don't think there's any basis for the safekeeper order to be in place at all. The practical side of me understands that you just can't put him in general population somewhere, I understand that, and so we've tried to find an alternative to that. I think the Cass County Jail is an appropriate alternative. Mr. Scho – Sheriff Schroder is on the board with that. Sheriff Liggett pretty much said he doesn't care where he's housed, I think those were his words, and so I would ask the Court to either modify or vacate the order. Now we're talking, you know, form over substance, but I understand his – Sheriff Liggett's concern about, "Well, what happens when things go south over in Cass County? What do I do with him?" So if that's a concern for the Court, then maybe modifying the order makes more sense from a technical standpoint; otherwise, we'd ask the Court to vacate the order, which would then be the cause for Sheriff Liggett resuming jurisdiction over his circumstances, in which case he'd be shipped down to Cass County. Thank you.

THE COURT: Mr. McLeland.

MR. MCLELAND: Judge, first, I'd ask the Court take judicial notice of the hearing we had back in June of 2023. It was a three-plus hour hearing

where we had everyone testify, including Sheriff Schroder, and we litigated this very issue and we litigated it at length. And in that hearing, I took some notes from Sheriff Schroder specifically, and what Sheriff Schroder said is that he's gonna be in a cell by himself, 7 by 9 or 10 by 8. He's gonna have one day of rec himself. They only have medical available 12 hours a day and they don't have them on staff, they'd have to call them. Mental health facility – or mental health personnel are only available one day a week. And so it could be argued that his situation in Cass County's gonna be more dire or worse than what he's at at the DOC, and I think that's what the Court found at the last safekeeping hearing that we had. And so, if the safekeeping's vacated completely, he goes back to Carroll County Jail in general population. It's up to the Sheriff whether or not he's moved to another jail, and that's a discussion with the Sheriff. And so, vacating the safekeeping hearing – or safekeeping order the State does not believe is appropriate. The Sheriff testified he's in danger, he feels like he's in danger if he's in general population, and so vacating that order, the State's opposed to that. That leaves us with can the Court dictate what facility he's held in if the safekeeping is kept in place. Safekeeping is not something I deal with on an often basis, Judge, so I don't know. I assume the Court can do that, can order someone held in a certain jail, but why are we moving where he's at? The only thing I've heard is that, "It's closer to my office. I want him moved here 'cause it's closer to my office." I haven't heard any different argument than what we had back in June of '23, and so what has changed from now – from then till now to warrant a modification of the safekeeping hearing besides that it's more convenient for Mr. Rozzi. The evidence to all the case, I presume, is still in Mr. Baldwin's office. Where he's held now is closer to Mr. Baldwin's office, and so I

don't understand what the reasoning is for the modification. In Cass County, he's gonna be in, essentially, the same situation, he's gonna be in solitary confinement, unless the Defense is arguing that he should be in general population. I don't think that's the argument. I think the argument's that, "We want him in solitary confinement, just not in DOC, we want it in Cass County Jail, 'cause that's right across the street from my office, I trust the jailers there, and I can meet with him when I want." That seems to be the argument from the email Mr. Rozzi sent. And so I don't know – again, let's go back to the same thing, what has changed since the last hearing that would warrant a modification? Again, the State has no preference where he's at, Judge. Want him to be safe, want him to be able to appear for trial, but again, with the testimony we've heard today, I don't know what has been the change in circumstances to warrant any kind of modification, so that's where the State's at, Judge.

THE COURT: Anything else, Mr. Rozzi?

MR. ROZZI: Judge, the substantial change, to the extent that there's any standard here, is, is that he's 200 miles away from my office. He's two hours from Mr. Baldwin's and Ms. Auger's office. There has been a substantial change since we were last here. The other circumstance that's significant is that he does have a Sixth Amendment right to counsel, and I believe, to the extent that it's difficult for us to access him, that that right, in some ways, is infringed upon. And it's not I can get in my car and drive three hours one way and three hours back, because, you know the expense and the burden that that's putting on the county here in Carroll is also a consideration and, you know, I wasn't opposed to him being moved out of Westville, I felt like

that was one of the worst places on the planet, I think the Court will eventually see that as we move forward with other hearings. But at the end of the day, there has been changes and that is the fact that he's been moved even farther away. For Mr. McLeland to sit here and say that he has no preference about where he stays, but then object to my request to vacate the safekeeping order is, you know, contradictory approaches. And so we're just trying to find a practical situation where we can have attorney/client relationships and where Mr. Allen will be closer to his family, as well. Obviously, there's that situation, he's 250 miles from his family at this point. So those are all changes in the circumstances and we'd ask you take those into consideration, as well as the transportation issue that Sheriff Liggett has now said and even told us in May at the deposition that he has resolved. Thank you.

THE COURT: Anything else, Mr. McLeland?

MR. MCLELAND: No, Your Honor.

THE COURT: Well, I guess my question, gentlemen, is does the statute give the Court any authority to modify the safekeeping order to a county jail? My understanding of the statute is that it is a commitment to the Department of Correction for safekeeping. So does the statute or do you have any case law that permits the Court to do what you are asking the Court to do?

MR. ROZZI: May I?

THE COURT: Yes.

MR. ROZZI: Judge, I'm reading 35-33-11-1, and down here in the middle of that statute, it says, "If the Court finds the inmate is in danger of SBI or death or represents a substantial threat to the safety of others, it shall order the sheriff to transfer the inmate to another county jail or to a facility at the DOC

designated by the Commission," so there you go. I think that satisfies that. Thank you.

THE COURT: All right. Well, I will take the motion to vacate the safekeeping order under advisement to review the affidavit that has been submitted and Defendant's Exhibit A.

MR. ROZZI: Thank you.

THE COURT: All right. Do you – so we completed that portion of our hearing. Are you prepared to proceed then into the motion to compel and motion for sanctions, and do you anticipate evidence on that or just argument?

MS. AUGER: We're prepared to procced, Your Honor, and I would anticipate just argument on that.

THE COURT: Okay. 'Cause it's 11:42. I didn't know what your lunch plans were and how long you wanted to go into the lunch hour.

MS. AUGER: Oh, I would believe that it's just a few minutes of argument –

THE COURT: Okay.

MS. AUGER: -- if you want to finish this.

THE COURT: And I'm sorry, I keep calling you Auger. How do you pronounce your name?

MS. AUGER: Auger.

THE COURT: Auger.

MS. AUGER: It's the gift that keeps on giving.

THE COURT: Okay.

MS. AUGER: Thank you.

THE COURT: All right. Motion to compel and motion for sanctions.

Ms. Auger.

MS. AUGER: Thank you, Your Honor. Your Honor, this – I presume any investigation that has now lasted over seven years is going to garner a wealth, if you will, of information. In this case, what we're talking about – and you may think that we've been talking about this ad nauseum, and I feel that way in my head sometimes – but what we're looking at is 26 terabytes of data, over 15 hard drives, five flash drives, three DVDs, e-discovery responses, and I think even more have come in since I last counted, which is fine, that's the nature of a case like this to some extent; but the problem that we have – and, Your Honor, if I could kind of break my argument down into two different parts, one is kind of an organization of what we have and two is the timeliness, and if I could kind of start with the organization of the data. Indiana Trial Rule 26 dictates that, if a document is being provided on a disk, each disk shall be labelled showing the caption of the case and the document. We believe that, in keeping with the spirit of the law, these documents need to be identified in some fashion that identifies the document. So, for instance, we have a drive of e-discovery, there are 48,701 files. Over 600 of those files are labelled by numbers and so we – in the course of preparing the case, we, you know, look for documents and it's like looking for a needle in a haystack. And you reach out to the prosecution, "Hey, can you tell us, do you have this? Where is it?" And the response is, "You have what we have. Go find it." I think that in keeping with the spirit of the law, at least, at the very minimum of Trial Rule 26 is that these documents, you know – I do a fair amount of civil work. The Courts are always wanting an order that documents in discovery being organized in some meaningful way, and that's just simply not what we have here. So that is

certainly, certainly an issue. For instance, one of the things we believe that we do not have is what I would refer to as round 2 of Google warrants. I don't know how familiar the Court is – I don't want to speak down – but the way Google warrants work is there is a warrant issued to Google, and we want all of the devices in this geographical area during this timestamp. That generates a lot of data; in fact, in this case, round 1 came back with over 18,000 lines of devices, times, and locations. And so, for privacy purposes, what Google does is when it responds, instead of putting names, it responds with device IDs, and so there are 18,000 lines of device IDs, times, locations, and the spirit of it is – and even the warrant that was sent to Google says, "Hey, we would like to ask for more data without an additional warrant listing out this." And so generally what happens is you go back and you say, "Google" – to Google, "We would like the subscriber information for these devices," and narrow down – you don't ask, obviously, for all 18,000 lines of data. When I asked Mr. McLeland about that, he referred to me to an FBI geofence report, and I think he – just there's a lot of data. It was done by the US Marshal Service, so I don't think the FBI actually did the warrant, and Trooper Vido prepared a report. So a half hour later, we were able to find the report, supplement number 118, "On Friday, September 25th, 2020, I received an email containing the Google geofence information from the FBI" – again, I think that's a mistake, 'cause we don't have any geofence information from the FBI – and he attached the FBI geofence analysis to his report. What we have are six spreadsheets of data that I believe are the original. He also – Mr. McLeland said FBI Agent Sabrick reviewed this data. I had searched – I don't know how many hours I've spent doing name searches, looking for documents, looking for FBI Agent Sabrick. I believe that they have this

information. And it's not for lack of effort, it's not that we say, "Oh, I wonder where this is. I'll email Nick." We spend considerable time diving through these numbered documents over all these different drives. So I don't want to sound as if we're whining, and maybe it sounds a little bit like that, but I think I have a solution I hope that might help everyone in the course of this, 'cause I get the sense Mr. McLeland, too, is frustrated just by the volume to data that exists. So alternatively, Your Honor, we would ask that, one, the State – because we didn't name these files, we didn't organize this data, we just are on the receiving end – that they provide a document index, "Here are the documents we have, here's where they are, and here's how they're named in the file." If it's "doc" followed by a bunch of numbers, fine, but give us an idea, as the trial rules dictate, what those things are. Alternatively, Your Honor, if we could reach out to the prosecutor – and again, we're not doing this without significant work on our end, because everybody's got a lot to do, too – that they have seven days to respond, they tell us what drive it's on and the file name, so we're not hunting, trying to do word searches over all of these different drives. And if they don't have it, say so and then it's not going to be admissible. What, of course, we're concerned about is, oh, yeah, we had it and it shows up at trial and we've never been able to find it, but – so, Your Honor, that's kind of one of the things we're asking for. On another issue is the timeliness. Things have been taking a very long time to get to the Defense, and the problem is – and again, I understand the volume, but the problem is we receive things, we rely on them, we then prepare a defense accordingly, we outline a strategy, these are the depositions we want to take on this day because we have this data, you know, these are the expert we feel that we need, these are the meetings we feel we need, there's a lot of work done in

reliance on that. So, for instance, we took the deposition of Sergeant Chris Cecil of the Indiana State Police on I believe it was Wednesday, May 15th, the day may be – that might be wrong, but, I mean, you know, this is seven years later, so we arrive at the deposition and Sergeant Cecil has conducted – done more work over the weekend using two updated programs. He provides us with the raw data, I don't even have the type of cord I need to hook it up to my computer, and says, "Yeah, I'm gonna do another report on this." And we still don't have that report. And once we have that report, I anticipate it might be somewhat lengthy, we need to get that to our expert, he needs to review it, we need to prepare, we need to have another deposition of First Sergeant Cecil. So these are the kinds of things that are not unheard of, but they're very frustrating. One of the things that we are asking the Court to order is that Sergeant Cecil's report be provided to us by August 13, so that we can do what we need to do with that report and get that second deposition in. Your Honor – and I have – if I may approach?

THE COURT: You may.

MS. AUGER: -- just kind of a summary of our requests. Thank you. Move to admit Exhibit B –

DEFENDANT'S EXHIBIT B OFFERED

THE COURT: Yeah.

MS. AUGER: -- just a summary of our requests.

THE COURT: Okay. I just had it marked as Defendant's B.

MS. AUGER: Okay. I just want to make sure. Your Honor, as you can see, I want to go back to our hearing request number one. Because of the delay in turning over a number of these documents, we did not feel we could delay our investigation. Mr. Baldwin, upon learning – being contacted by

someone, travelled to Georgia to obtain a picture. That later – that photo was later authenticated, if you will, by Detective Vido that, yes, he'd seen it. I'm sorry, Detective Purdy of the State Police, that he'd seen it. But had that photograph been turned over to us in a timely fashion as dictated by the trial rules, Mr. Baldwin and his staff would not have had to travel to Georgia, get a hotel, a conference room, meet with this individual, and compensate him for his services. They – okay, I apologize. They don't have the photo, we have it. At some point, we believe they should have, but we think that it would be appropriate for the State to compensate Mr. Baldwin for having to travel to obtain that photo.

THE COURT: Okay, wait. I – you've got a photo that the State doesn't have and you're questioning that?

MS. AUGER: Well, let me – I can fill in the gap. I understand your concern.

THE COURT: Well, 'cause you're telling me that the State should have provided you with a photo that the State doesn't have.

MS. AUGER: Your Honor, on April 12th, 2017, the individual with that photograph and with, quite frankly, a great deal of information reached out to the Indiana State Police and talked to Trooper Winters, identified himself, that he had these photos, gave a great deal of information about one of the suspects in this case. That information was not turned over and, had that information been turned over, we may not have been in a position where we had to travel all the way to Georgia to obtain this.

THE COURT: Okay, you lost me. So in April, somebody with photographs reached out to the State Police?

MS. AUGER: April – yes, Your Honor.

THE COURT: April 12th, 2017, talked to Trooper Winters. That information was not turned over to you?

MS. AUGER: Correct. I'll let Mr. Bald – Mr. Baldwin was more involved in this and I'll let him speak on this.

THE COURT: Did the State ever have possession of this information?

MS. AUGER: Yes.

THE COURT: Okay. Continue.

MS. AUGER: They can't – Detective Winters told us they can't locate that particular photo, but they were told about all of these photos and all of these items on social media. Going back to April 12th is when Detective Winters spoke with First Sergeant Holeman about the situation and that they wanted to follow up with one of the suspects based on that. So they had it, now it can't be found by them, but Mr. Baldwin and his staff had to travel to Georgia to obtain it.

THE COURT: And when you say "they", you're talking about the State Police?

MS. AUGER: Yes. I'm sorry. Your Honor, I have the report. It's – the State Police report from Mr. Boucher calling this information in. Your Honor, if I may, Defendant's Exhibit C, which is the initial report to the State Police called in by Mr. Boucher in Georgia.

DEFENDANT'S EXHIBIT C OFFERED

THE COURT: Any objection, Mr. McLeland?

MR. MCLELAND: Judge, I don't have any objection, but I guess I'm failing to see how this deals with the motion to compel. I think you're gonna

hear this theme throughout some of the motions we have over the next three days, Judge, but a motion to compel, at least from the State's point of view is, "Hey, we want you to provide something and the State won't provide it." They're talking about a document that they have that we don't have and I – this is somehow morphing into an argument that we should have had it, but since we didn't, we should be compelled to pay for them to go get it. And that's assuming it's discovery, on top of everything else. And so I guess I'm just not sure where this line of questioning is going, Judge. If we're here to compel, if there's something the State hasn't provided them, we can talk about that and move forward in that fashion, but I guess I'm just not sure where this is going with this line of questioning, Judge.

MS. AUGER: Your Honor, it has to do with sanctions for failing to turn over –

THE COURT: Oh, okay. Then, I'll show C is admitted.

DEFENDANT'S EXHIBIT C ADMITTED

MS. AUGER: Thank you. And then, Your Honor, very briefly, when we took the deposition of Chris Cecil and he told us that he had done additional reports using two different software versions, and so the way those work is you run the phone through the software, it generates a number of reports of data that is kind of dense and difficult to understand, and then it's usually – what Mr. Cecil did in 2019 is he prepared an 11 or 12-page summary report that kind of outlines the important parts and, you know, for those of us who aren't always sure what we're looking at, explains the data that he's been able to extract from the phone. He did say that he was going to do another summary report based on the new extractions he had done just several days before, and so I reached

out to Mr. McLeland about that several times. We need to get that to our expert, so on and so forth, so we would like to have that by August 13th. Your Honor, we would also like – at this point, they think they have all of the data they're going to get from the phone, so we would like an order that we're done creating new reports, extracting new data. They've done what they've done, give us what they have so that we can move forward and they can respond accordingly. It's been seven and a half years now. In terms of any new evidence – and, Your Honor, I think this should apply to both parties, that any new evidence that either side receives is turned over to the opposing side within seven days. And, Your Honor, to make sure, because of all of this data, what we would suggest is that both parties disclose their exhibits by October 1st; that way, each side has an ability to go through, make sure we've received everything ahead of time and were given – I think save a lot of time at trial, you know, did we receive this, when did we receive it, those types of issues. Thank you.

THE COURT: Okay.

MS. AUGER: I'm not gonna do that. Sorry. Your Honor, I have also Defendant's Exhibit D, which is the deposition of Detective Winters. On page 29, he said that they had received the attachments and he saw the picture Mr. Baldwin went to Georgia to get, but he could not find them. At one point, they had them, but then they could not access them and had not provided them. Your Honor – so I'd move to admit Defendant's Exhibit D, which is the deposition of Brian Winters.

DEFENDANT'S EXHIBIT D OFFERED

MR. MCLELAND: No objection, Judge.

THE COURT: All right. Without objection, D is admitted.

DEFENDANT'S EXHIBIT D ADMITTED

MS. AUGER: And to save you some time, page 29 is where the relevant testimony is, Your Honor.

THE COURT: Okay.

MS. AUGER: And I don't know if I told you, Your Honor, but the amount of expenses incurred by Mr. Baldwin is $12,640.34 from – he had some receipts and proof of those. I think that the way that we've generally done it is those kinds of exhibits have been admitted ex parte in terms of those items, and it's previously been provided. Thank you.

THE COURT: Okay. Mr. McLeland.

MR. MCLELAND: Judge, I'll try to organize this as best I can. They've brought up some issues today that or some sanctions they're requesting that weren't in their motion, frankly, and so this is the first time the State's hearing about some of these sanctions that they want the Court to impose, but first, I'll start off that – with the organization of the data. The data we gave to them is the data we have in the same format and organization that we have. We didn't intentionally name the files with numbers and didn't identify them, we have to do the same thing. We have to go through, open them, see what they are, try to tie them to other evidence in the case, and so we have to do all that, as well, when we want to look through the evidence. And when the Defense sends us a request, we don't say, "Hey, you have it. Go find it." Oftentimes, we write them a letter and attach a zip drive that puts what they're requesting in separate folders. I'm gonna move to admit what's been marked as State's Exhibit 1.

STATE'S EXHIBIT 1 OFFERED

MS. AUGER: No objection.

THE COURT: All right. Without objection, 1 is admitted.

STATE'S EXHIBIT 1 ADMITTED

MR. MCLELAND: Judge, this motion to compel is similar to the first motion to compel that was filed by the Defense earlier in the year that the Court denied without a hearing. In between that motion to compel and this motion to compel, the Defense had asked us for several things. We've provided that to them. That letter is a letter in response to this motion to compel. They sent us an e-mail on April 16th and April 23rd. We responded on April 26th. And as the Court can see from the letter, we not only outlined what they want, but had provided a zip drive with that that put it in separate files for easy access for them, and so it's not a situation where we're saying, "You have what we have. Go find it." It's a situation where they say, "Does this exist?" And we say, "You have what we have." We would have to go through and look through and see if it exists. We do the best we possibly can every time they make a request to appease them; but at the end of the day, it's their responsibility to go through the discovery and find what they're looking for, and so that's the first. With the timeliness, Judge, discovery began back in December of 2022. We talked about this issue, the Defense filed a motion, and the parties agreed that the discovery deadline would be November 1st of 2023, that's what we agreed on, and we've met that deadline, we've given them the discovery by then. The only discovery we continue to give them are phone calls he makes from the jail, recordings that are new recordings from the jail, those kinds of things, and so we complied with the timeline that's been set out by the Court. In regards to the photo that they had to go get, we don't have it, we still don't have it. The only way we've gotten

it, it's been provided through depositions by the Defense. And so to say that we should be held somehow financially liable for a piece of evidence we didn't have, I don't understand that. And that's assuming, Judge, that the piece of evidence is discovery. We have this big divide where the Defense wants to say, "Well, we think this is exculpatory and so, therefore, it is discovery and you should provide it to us and you should be required to provide it to us." That's not the rule. We have to provide discovery to them, that's exculpatory evidence and evidence of the crime, and we've done that. And so we've met the deadline, Judge, of November 1st, 2023. We've given them all the discovery that they've – that they – that we've had at that point. We continue to supplement that with new discovery from the Department of Correction, where Mr. Allen is housed. We talked about not all evidence is exculpatory. The State decided from the standpoint at the beginning, we were gonna give them everything, all the tips; all the information we had, we were gonna give that to him. That doesn't mean all the information's discovery, it just means we were gonna be open and give them everything that we had, and we've done that. When they ask us about where things are, we do our best to accommodate them. We've done – I've done everything I can to spoon feed them where the stuff is, including putting it in separate files for them to access with the labels, and you can see that from the letter I've put in there, it's labeled – for example, phone pings, it's labeled "phone pings" on this zip drive, they're all right here, this is what we have. And so we've done that. This is second motion to compel and for sanctions. The first one was denied without a hearing. They filed this motion to compel on April 26th, the State sent that letter on April 26th. They just made the request from us April 16th and April 23rd, three – gave us, they set the deadline, "If you don't respond

by now, we're filing a motion to compel." That's not what the rules say. They have to work with us and try to I guess resolve these discovery issues without the court intervention, and giving us a deadline of that short amount of time and having us respond, they're not really working through the rules, Judge, but we did respond, we sent that letter, we gave them everything they asked for with the exception of the standard operating procedures and the chain of custody and I didn't have those in my possession at the time, they've since been provided with those. And so everything they requested on their discovery request they already had, we just provided it to them in files that they could easily access, we did their job for them. We went through the 26 terabytes and did – and separated everything they wanted out into individual files for them, and so we've done that. The remedies – they've asked for some new remedies that are different from what their motion requests. The motion for reimbursement for him to travel to get a piece of evidence that he believes exculpatory – is exculpatory, I don't know how the State should be liable for that. We didn't – it's not like we had the piece of evidence, we were withholding it from them. You can see from the deposition, Brian Winters believes it was collected, but he can't locate it. We don't have it. And again, that's assuming it's exculpatory or part of discovery, which the State is not conceding that it is. And so the remedy of that, Judge, I think is just outside the scope. Further, they're asking for other remedies in their motion that I think are just ridiculous, frankly. They have asked to admit evidence that they believe exonerates the Defendant, they believe that they should be allowed to bring it in without any kind of objection from the State. Again, I think that's probably 'cause they can't meet their burden for third-party motive and so they're looking for an end-around to be able to get this piece of evidence into the trial.

And then they want to exclude the entirety of the evidence from L.G.'s phone. That remedy, if you take a look at the case law at specifically *Jester v. State*, 551 N.E.2d 840, it talks about the remedial measures are up to the Court and they – if remedial measures are warranted, most often a continuance is the proper remedy. Only if it can be shown that the State acted in deliberate action and thwarted the Defendant's right to a fair trial should the Court order the exclusion of that evidence, and that's *Phillips v. State*, 550 N.E.2d 1290. There's also *Wiseheart versus State*, 491 N.E.2d 985, talks about a trial court should seek sanctions that have a minimal effect on the evidence. The Defense got the information from the phone dump in September of 2023, nine months – we know they got it for sure on that day. We believe they got it before that, but we know they got it for sure on that day, 'cause we sent it with a letter, specifically the phone dump separated from everything else, nine months before the first trial date and over a year before the new trial date. And so the State doesn't believe the sanction of withholding or excluding evidence is appropriate. The sanction of reimbursing Mr. Baldwin for his expenses to get a piece of evidence that he believes is exculpatory, the State doesn't believe that's an appropriate remedy. The State has no problem with exchanging exhibits by October 1st of 2024. I don't know when Christopher Cecil will be done with the report, I'm hopeful soon. I think he'll be testifying later this week, so we can ask him. Any new evidence that we have we can provide within seven days, I don't have a problem with that as long as the same burden is put on the Defense, because we have not received much discovery, minus a few reports from an expert, from the Defense. The Prosecution has to follow-up within seven days a request from the Defense, I don't agree with that, Judge. We reply as fast as we can to their requests, but

the Defense seems to expect us to drop everything, "Go find this for me, because we can't find it; and if it doesn't exist, then tell us." That requires us to go through the 26 terabytes of information to, one, find what they're looking for, and then, two, if not, requires us to say, "Well, we couldn't find it, so it doesn't exist." Just because we can't find it doesn't mean it doesn't exist, it may be in there somewhere that we missed it, and so the State has a problem with that, Judge. Again, I feel like we're doing the job for the Defense. They want us to go through and label each file and organize it for them, all 26 terabytes. I don't know how that's possible, Judge. And they want us to organize all the information, not just discovery, everything; and what they deem is discovery they want us to organize, and what they deem is exculpatory they want us to organize. And so, Judge, I don't think that that sanction, that remedy, is appropriate. I think the motion to compel is moot, frankly. They've been provided with everything they've asked for, the Court can see that from the letter. The timeliness was done. We've obliged by the November 1st, 2023, discovery date; and every time they've made a request, we've responded and separated out the discovery that they've wanted. We've done everything possible to make this easy for them and here we are, Judge. So I think the motion to compel should be dismissed on its face, 'cause I think it's moot. I think they have everything that they should have. I think the sanctions aren't appropriate, Judge. I think the appropriate sanction would be a continuance. They've had the information well before trial, so they have time to prepare for that, prepare for trial. And the other sanctions that the State's outlined, they're in agreement with, the October 1st, 2024, deadline; any new evidence be exchanged within seven days of receipt. Those things are sufficient, Judge, and I think those are appropriate, but the

other ones the State does not agree with, Judge. Thank you.

MS. AUGER: Very briefly, Your Honor?

THE COURT: Yes.

MS. AUGER: Thank you. Your Honor, first of all, in terms of they've provided everything as soon as soon as they had it, that's just simply not true. Mr. – there was a Cellebrite extraction of the phone in 2017, there was a GrayKey analysis/extraction in 2019, that all should have been disclosed to the Defense within 30 days of the initial hearing, which was in 2022. Mr. McLeland just acknowledges that he didn't provide that information until nine months later, in September of 2023. So that – in terms of do we have it, yes, we do. Was it timely? No, it wasn't. And there are certain things, Your Honor, that are outside of our control. We don't expect to be spoon fed anything. We expect them to comply with at least the spirit of the trial rules. This isn't our data, it's theirs. They made the documents, they organize the documents, and they sent us the documents. So I don't think that we're being overly heavy for, you know, not trying to do our work by just saying this needs to be presented in an organized fashion with document names where we can identify what we're looking at. That doesn't seem to me to be something that we should even have to argue about, but regardless, Your Honor, in terms of Chris Cecil, they have the phone, they decide when to do the work. Now, I understand Cellebrite came out with an update in 2024, but that was early. They waited until the weekend before the deposition to do the work and said, "Yeah, we'll give it to you later." So we need that to stop. If they had it for seven and a half years – I understand you want to get the newest and best data, but they had the ability to do that for months prior to the date that First Sergeant Cecil did it, so we're asking that that be ordered

to be provided to us in – by, again, August 13. Your Honor, the one thing that I do believe that we are missing is, again, round 2 of the Google return. Mr. McLeland stated on May 3rd, "The information about the Google" – excuse me – "The information about the Google warrants that I believe you're referring to is in regard to the Google search warrant under cause number" – and he gives me the cause number, there were five different warrants to (inaudible) – "there is a corresponding file to that warrant in your discovery information", which is accurate. "You got that information last hearing, again on January 30th. You got the search warrant return in the raw data." Then he said, "Special Agent Michael Sabrick took that raw data and put it into a report." We have no reports from Sabrick, Andy and Brad searched everywhere. "This report is included in the FBI reports." I can't find it in the FBI reports. "You got those reports last year. Further, ISP Detective Dave Vido used the information that Sabrick gathered and used it in his report." That's the supplement 118 I read to you earlier that – where he says he has attachments, but we can't find the attachments. So if we could just, please, have that round 2 of the Google return that identifies the device IDs to the names. Thank you.

THE COURT: Anything else, Mr. McLeland?

MR. MCLELAND: No, Judge.

THE COURT: Okay. All right. Then, I will take the Defendant's Motion to Compel and Motion for Sanctions under advisement to review all of the exhibits that have been submitted. All right. Are we ready to take our lunch break, then, ladies and gentlemen? Why don't we resume – I'm not sure – would counsel approach.

(Sidebar conference conducted.)

THE COURT: I think – oh, it did mute. Okay. I'm just not sure with the mute thing up here. This is kind of – oh. Where is he going? Where is Defendant going? Is he going back over to Carroll County for lunch, to the jail?

MR. MCLELAND: I would think he just goes to the – the last time, he just went to the (inaudible)

THE COURT: Oh, okay. All right.

MR. ROZZI: (Inaudible)

THE COURT: Okay. So – 'cause I didn't know how long it would take for them to get him taken care of. Okay. Hour for lunch? Is that enough for everybody?

MR. MCLELAND: Yes.

THE COURT: Hour for lunch? Is that enough for every – okay. Thank you.

(Sidebar conference concluded.)

THE COURT: All right. Let's resume – it's 12:20. Let's resume at 1:20. And, Jodie, you can go off the record.

(Off record at 12:19 p.m.)

(On record at 1:26 p.m.)

THE COURT: Okay. We are back on the record. We are now, hopefully, ready to proceed on Defendant's second motion to dismiss.

MR. MCLELAND: Judge, before – excuse me – before we proceed to that, Judge, I would ask the Court to allow me to reopen evidence in the motion to compel. The Defense made some arguments that weren't in their motion, and I was able to do a little bit of I guess looking around over the lunch period and talking with Detective Vido and was able to find some documentation I'd like to

submit to the Court for their consideration, and so I would ask the Court leave to reopen that to enter two new exhibits that I found over the lunch period.

THE COURT: You may.

MR. MCLELAND: Thank you, Judge. And so I've given these to Defense already and I'll explain to the Court, it is State's Exhibit 2 and State's Exhibit 3, and I would move to admit those and then I can explain to the Court what those are.

STATE'S EXHIBITS 2 AND 3 OFFERED

THE COURT: Any objection from the Defense?

MS. AUGER: No, Your Honor.

THE COURT: All right. I'll show 2 and 3 admitted without objection. You may proceed.

STATE'S EXHIBITS 2 AND 3 ADMITTED

MR. MCLELAND: Thank you, Judge. State's Exhibit 2 is the supplemental report from Detective Vido that Ms. Auger referred to in her argument, supplement 118. That's the first page. If you look at the second page, it is a screen shot of the attachments to supplement 118, and I've highlighted that for the Court's convenience. Supplement 118 and, if you look at attachment, it has the number 118. And then, the third page is the first page of that attachment, and that is – State believes that is what Ms. Auger is looking for when she referred to the Google – second round of the Google returns. The second document, State's Exhibit 3, is a discovery receipt and it's signed January 30th. Now, that's when defense counsel were put back on the case. We believe they had those reports prior to that, but I just pulled the most recent discovery receipt; and in that discovery receipt, it shows that they did get the Indiana State

Police reports and the supplemental attachments. And so just an example, Judge, for the Court to consider that, oftentimes, they do have these things, but they're just not able to locate them, and so we'd like the Court to consider those things in the motion to compel. And again, this is information – not necessarily discovery, but information we provided them to in an effort to give them everything that we have.

THE COURT: Okay. Thank you. Is there anything else, then?

MR. MCLELAND: No, Judge, not from the State's perspective.

THE COURT: Anything from the Defense on this limited issue?

MS. AUGER: Yes. On that limited issue, Your Honor, that was very kind of Mr. McLeland to quickly find over the lunch hour. If – I will look tonight, if we could, and make sure that we can find that.

THE COURT: Sure.

MS. AUGER: And then, hopefully, that issues goes away.

THE COURT: That would be great. Thank you. Okay. I can add that to my pile.

MR. MCLELAND: Thank you, Judge.

THE COURT: Of course. I mean, I think we all know motions hearings, the rules of evidence are pretty relaxed in motion hearings as it relates to presentation of evidence, so since I am the factfinder in these motions, I want to have all the information I can possibly have, so I don't have a problem reopening, and I appreciate counsel's concession to that. Okay. Let us proceed, then. Are we then ready for the motion to dismiss, the second motion to dismiss? And who is – Mr. Baldwin. Okay.

MR. BALDWIN: Thank you. I appreciate your talking about rules

of evidence and the like. 'Cause I'm gonna try to move, I want the State to have opportunity to respond, as well, so I'm going to just kind of move quickly, but so that you can understand. And I'm gonna start with a packet that I'm – may I approach? And I'll give him – I'm gonna hand you what's going to be marked as State's Exhibit E for purposes of this hearing, and again –

THE COURT: Defense Exhibit E?

MR. BALDWIN: Defendant's Exhibit E.

DEFENDANT'S EXHIBIT E OFFERED

THE COURT: Okay. Is there any objection from the State?

ATTORNEY JAMES LUTTRULL: If I may look at it, Your Honor, just for a moment?

THE COURT: Okay. Yes. Yes, Mr. Luttrull.

MR. BALDWIN: For what it's worth, I'm only – I've highlighted the one that we'll be reviewing and I highlighted that for your benefit.

MR. LUTTRULL: No objection, Your Honor.

THE COURT: Okay. Then, I will show E is admitted without objection.

DEFENDANT'S EXHIBIT E ADMITTED

MR. BALDWIN: Judge, I have, in the right-hand corner of this document, which I will represent is – are emails between Jay Abbott and Doug Carter concerning early developments in the Delphi investigation; and in the right-hand corner, that is my pen, my blue pen, because I wanted – there's all kinds of notes in there and I wanted you to be able to –

THE COURT: Are you talking about these numbers down here?

MR. BALDWIN: Right, right.

THE COURT: Okay.

MR. BALDWIN: I wanted that so you could quickly get to where –

THE COURT: Okay.

MR. BALDWIN: -- I want to go. So I'm gonna highlight – on page 4, you'll notice that this is an email sent from Greg Massa of the FBI on February 17, 2017, at 7:02 p.m., and it – the highlighted part there on page 4 is over the past 48 hours, the joint investigative team worked suspects 1 through 4 incredibly hard. After interviews were conducted, several search warrants were obtained. But the main part is on page 5, and I'll read into the record what I want the Court to consider as the conclusion. 'Suspect number 6 is being worked hard right now. He has ties to Bradley Holder, who we have been working. He may have ties to the Vinlanders. DT squad apprised and tasked sources to collect any intelligence which may assist. Crime scene photos and victimology passed to BAU. They will deploy a specialist in support of this investigation, especially focused on what may be pagan rituals, the placement of branches and sticks on girls' bodies." And then we move to – page 7 is basically the same, I don't know if it was a repeat email, but I've highlighted it. And again, that was on February 17. And then the last thing I wanted the Court to look at is on page 12 that I've highlighted, my 12, it's in the bottom right-hand corner, and this is from a email between Greg Massa – I'm sorry, between Jay Abbott and Doug Carter and it says, "As of right now, after working this straight through since the bodies were discovered last Tuesday through tonight, we have exhausted every lead and utilized every technique available." So that on Exhibit 8, is it?

MS. AUGER: E.

MR. BALDWIN: E, that's all that I would ask the Court to consider on Exhibit E. Next – well, Judge, is it okay if I just approach without asking or would you –

THE COURT: Yes. No, that's fine, you may approach.

MR. BALDWIN: Okay. Next I'm going to admit Exhibit – Defendant's Exhibit – move to admit Defendant's Exhibit F. This is a listing of all the phone extractions that we received, in alphabetical order, of all the phones that the State Police and the county police, Unified Command, extracted, and I'm gonna move to admit that as an exhibit.

DEFENDANT'S EXHIBIT F OFFERED

THE COURT: Mr. Luttrull.

MR. LUTTRULL: No objection, Your Honor. The only question I have is these are marked E and F; were we picking up from the previous – this morning's hearings or are you starting all over with –

THE COURT: No, we're picking up from the – it's just gonna go A through to the end of Thursday.

MR. LUTTRULL: Okay. Thank you, Your Honor.

THE COURT: So I'll show F is admitted without objection.

DEFENDANT'S EXHIBIT F ADMITTED

MR. BALDWIN: Now we'll be commenting on the summations Judge, on why I feel that is important. Judge, I'm gonna represent – I'm not gonna admit these into evidence, 'cause I didn't want you to have to take it back to Fort Wayne, but I want you – this is being done for the purpose of visualizing what I'm about to tell you. This represents I believe six of those 101 phone dumps from the previous-admitted document. I think it's less than whatever –

considerably less than 10 percent. This is what that looks like. That is what that many – just six phone dumps alone looks like, and I wanted you to take a look at that and I will comment what I think is important. And for the record, it's, I don't know, maybe – three – two stacks about a foot tall and a brown, bound binder that, added up, that's maybe four inches tall.

MR. LUTTRULL: Your Honor, I didn't catch the description of what those stacks consist of. I would ask Mr. Baldwin to repeat that for me.

MR. BALDWIN: Sure.

THE COURT: Certainly.

MR. BALDWIN: I believe they are six extractions of the phones, six of the phones identified in State's Exhibit F [sic]. Next, I'm going to –

THE COURT: Before you go on, is there any significance to the six?

MR. BALDWIN: No, no.

THE COURT: Okay.

MR. BALDWIN: I was gonna do 10, about 10 percent, 'cause there's 101 –

THE COURT: Okay.

MR. BALDWIN: -- but that would have been too much money, so I just – thank you for asking. Next, I'm moving into evidence Defendant's Exhibit G. Judge, this is – I've highlighted the part that I want you to pay attention to. This is the – the first motion to dismiss was concerning a video that the – that was, apparently, taped over, and this is the memorialized recitation of what that – what was contained on the – on – during that interview. This was also entered into exhibit – as an exhibit in the first motion to dismiss. For this purpose, I'm asking you to focus on – and I'll read it into the record – "Holder believed" – this

is in the fourth paragraph – "Holder believed that this is when Logan would contact A.W. Holder" – talking about Brad Holder – "actually met – never" – I'm sorry – "Holder never actually met A.W. himself and he believed that Logan only actually met her one time, as they attended different schools." So this – and for the record, this was an interview conducted by Brad – on Brad Holder by Adam Pohl of the Hammond Police and Sergeant Christopher Gootee three days after the girls were found.

DEFENDANT'S EXHIBIT G OFFERED

MR. LUTTRULL: I believe that's Agent Pohl.

MR. BALDWIN: Oh, Special Agent Adam Pohl. Thank you.

THE COURT: Any objection?

MR. LUTTRULL: No objection.

THE COURT: All right. I'll show G is admitted without objection.

DEFENDANT'S EXHIBIT G ADMITTED

MR. BALDWIN: Next, Judge, I'm going to play a video that will – we have it already – can we – is it okay if we mark it? 'Cause we already have –

THE COURT: Yeah, that's fine.

MR. BALDWIN: This will be Defendant's Exhibit H, I think, but – and this is a videotaped interview with Brad Holder from August 30th, 2023. I have provided the entire video that was provided to me, but we're only going to play from 5:25 to 6:25, because that's what is pertinent for purposes of this hearing.

DEFENDANT'S EXHIBIT H OFFERED

THE COURT: Any objection?

MS. AUGER: How about 5:15?

MR. BALDWIN: That's fine.

THE COURT: Any objection?

MS. AUGER: Judge, can you see it?

THE COURT: Yes.

MS. AUGER: Okay.

MR. BALDWIN: Yeah, hold up, hold up.

THE COURT: Before you – wait, it hasn't been admitted it.

MS. AUGER: I'm sorry, Your Honor.

MR. LUTTRULL: Excuse me, Your Honor. No objection.

THE COURT: All right. Without objection, H is admitted.

DEFENDANT'S EXHIBIT H ADMITTED

MS. AUGER: Can I play it?

THE COURT: Yes, you may.

DEFENDANT'S EXHIBIT H PUBLISHED BY PLAYING

MR. BALDWIN: That ended at – for the record, that video ended at 6:46 and started at 5:15. Next –

MS. AUGER: Do you want this or –

THE COURT: Whatever you just played, give that to Jodie.

MS. AUGER: Thank you.

MR. BALDWIN: Is it okay proceed, Your Honor?

THE COURT: Yes, go ahead. We're just getting that marked, sir.

MR. BALDWIN: Next, I would move – offer into evidence Brad Holder's deposition from May the 2nd, 2024, and I will refer to lines – to page 19 through 21, and I'll read the relevant parts of that that I would like the Court to consider into the record. This is – for the record, this is – I am deposing and

asking questions of Brad Holder and then the answers will be his answers. "How many times did you meet A.W.? Those two times, twice. Were you a part of the supervised – I would guess so, maybe. It was – you know, I mean, we both gave them distances where they could, you know, sit there and talk or whatever. How long were you there? Maybe 30 minutes to an hour, something like that. Each time? Yeah. One time was at my buddy, Patrick Westfall's house, and there was a little park over there. The Erie Canal, like, is right there, and we were both kind of close. They were at that park, kind of talking an stuff. That was about it. So, Patrick, he actually saw A.W., as well? Yeah, I think so. Yeah, I'm pretty sure he did. I don't know." And then, on page 21, just the other thing. "Question: You chaperoned A.W. a couple of times. One of those times you were at Patrick Westfall's house and Logan and A.W. kind of walked away from you guys and kind of did whatever they did? Yeah. They were in view. They were just at the park. We were over there, too, so it's kind of like everybody was there." So I would move – I'm sorry, Judge, I think it's probably just – I'm moving all of this – move to admit Defendant's Exhibit I, the deposition, into evidence.

DEFENDANT'S EXHIBIT I OFFERED

THE COURT: Any objection?

MR. LUTTRULL: I have no objection.

THE COURT: All right. Without objection, I is admitted.

DEFENDANT'S EXHIBIT I ADMITTED

MR. BALDWIN: I'm gonna hand you, Judge, what I marked as Defendant's Exhibit J, move to admit that.

DEFENDANT'S EXHIBIT J OFFERED

THE COURT: Any objection?

MR. LUTTRULL: Your – Mr. Baldwin, are you offering them intending them to be seen?

MR. BALDWIN: I don't want – that would be fine by me as far as – that's why I was – did not (inaudible)

MR. LUTTRULL: I would object unless they are – if they're made part of the record, I'd ask that they be sealed. I have no objection otherwise.

MR. BALDWIN: I have no objection to them sealing these.

THE COURT: I'll show that J is then admitted without objection and will be sealed in the record.

DEFENDANT'S EXHIBIT J ADMITTED

MR. BALDWIN: Now, I'm not admitting this as an exhibit, I just want to show it because – so you understand. This is the thing that – this is the photo I went down to Georgia for, so you have some context and understanding, and that is what is contained on that side-by-side. And the other side-by-side is L.G.'s body. Next, I would call Kevin Murphy here. We're gonna take some testimony from Kevin Murphy. He stepped outside for a minute. Let me see what I can do while I'm waiting. Oh, let's do this. I moving to admit Defendant's Exhibit K, which is a side-by-side – it is a side-by-side drawing of A.W. and a hand-drawn figure on Brad Holder's hand that he posted to his Facebook account in April of 2017.

DEFENDANT'S EXHIBIT K OFFERED

THE COURT: Any objection, Mr. Luttrull?

MR. LUTTRULL: No objection.

THE COURT: All right. I'll show K is admitted without objection.

DEFENDANT'S EXHIBIT K ADMITTED

MR. BALDWIN: Move to admit Defendant's Exhibit L, which is – it is A.W.'s body and a painting by Brad Holder nearly one year to the day of the girls' murders, as well as a tarot card.

DEFENDANT'S EXHIBIT L OFFERED

THE COURT: Any objection?

MR. LUTTRULL: Objection to the time – the foundation, because I don't think there's any basis for that. I have no objection to the exhibit, but the way – I don't think he's laid a foundation for (inaudible) the time.

THE COURT: Okay.

MR. BALDWIN: You're not – I'm sorry. No objection to the actual photo, but you – are you objecting to the – my claim that it's Brad Holder's painting?

MR. LUTTRULL: I'm objecting to the fact that it's Brad Holder's painting and the timeframe that you stated, 'cause I don't –

THE COURT: So there's –

MR. LUTTRULL: I've heard no evidence to support that.

THE COURT: So it's the foundation you're objecting to?

MR. LUTTRULL: Yes, Your Honor.

THE COURT: Okay. Can you lay a foundation for it?

MR. BALDWIN: Judge, I can. It's in – if you look at his deposition that I've tendered into evidence, Brad Holder's deposition, I asked him – and I can – if I got it back, I could tell you page numbers, but he, Brad Holder, admits that that is his painting.

THE COURT: Okay. Well, the deposition was admitted in a very limited frame for pages 19 to 21.

MR. BALDWIN: True. We'll, I've got it right here. I'll call Roland Purdy to the stand.

THE COURT: Yeah. So I'm gonna show that K is not admitted, then. Or J, I'm sorry – K. K, K is not admitted.

ATTORNEY JAMES LUTTRULL: It's –

THE COURT: L.

COURT REPORTER: L is –

THE COURT: Okay. Thank you, I got –

MR. LUTTRULL: Sorry, Judge.

(Witness sworn.)

DIRECT EXAMINATION OF DETECTIVE ROLAND PURDY

QUESTIONS BY MR. BALDWIN.

Q Thank you for this surprise appearance. State your name for the record.

A Roland Richard Purdy.

Q And what do you do for a living?

A I'm a detective with the Indiana State Police.

Q Did you work on the Delphi murder case?

A Yes, I did.

Q Did you investigate, at some point in time, Brad Holder?

A He had been cleared, so I had looked at his Facebook, that type of thing, with the understanding that he'd been cleared already.

Q Okay. So you were familiar with the social media; is that correct?

A Yes.

Q Okay. I'm going to hand you what's been previously marked Defendant's Exhibit L and I want you to look at the middle, the middle, and tell me if that is

recognizable to you.

A I had never seen this photo before I think the deposition. I can't remember if you showed me this photo at the deposition back last August, but I had never seen this photo before.

Q Okay. Now –

MR. BALDWIN: Can I have –

THE COURT: You have L.

MR. BALDWIN: I – okay. Let me give that back, 'cause I know, when I came up, I promised I'd give it back. If I could have the one with the –

Q I'm gonna hand you Exhibit J, it's already been admitted into evidence. Can you identify that for me?

A Yes. The left photo is a picture of L.W.'s deceased body. The right photo is a – pictures of bodies and stick formations that I believe was on Brad Holder's Facebook page.

Q And you verified that in a previous deposition?

A Yes.

Q That you saw that, what's on the right-side photo of Exhibit J, that was in Brad Holder's Facebook –

A Yes.

Q -- page? But your testimony today is – and that's okay – that the one with the hanging man upside down, you don't remember seeing that?

A I don't remember seeing that one.

MR. BALDWIN: Fair enough. Okay. I don't have any other questions.

THE COURT: Mr. Luttrull.

MR. LUTTRULL: Thank you, Your Honor.

CROSS EXAMINATION OF DETECTIVE ROLAND PURDY

QUESTIONS BY MR. LUTTRULL.

Q Detective Purdy –

MR. LUTTRULL: If I may see Exhibit J?

Q -- in reference to Exhibit J, you've indicated you're familiar with that photo?

A Yes.

Q It's a side-by-side photo, one side is from the crime scene in this case.

A Yes.

Q What is – where is the other photo from?

A I believe Facebook.

Q And how do you know that?

A I believe I saw it on Facebook.

Q Okay. And were you asked about it in your deposition –

A Yes.

Q -- that was – I think you – it was referenced in August of –

A Yes.

Q -- 2023?

A That's correct.

Q And you recognized that photograph as it indicated – you thought it was dated some years before the crimes?

A Yes. I believe it was dated 2012.

Q That's when it was posted on Facebook?

A That's correct.

MR. LUTTRULL: Thank you. I have no further questions.

THE COURT: Mr. Baldwin.

RE-DIRECT EXAMINATION OF DETECTIVE ROLAND PURDY

QUESTIONS BY MR. BALDWIN.

Q Just to supplement the record, 'cause I think that's a limited photo, I'm gonna ask one more question. Thank you. What is the proper thing to call you? Detective?

A Detective is fine, yes.

Q Detective, thank you. This is Exhibit M, that – can you tell me what that is?

A I believe that's the complete photo that was in the last – the right half that you'd showed me a little bit ago, the prior.

Q And that's the one that you saw on Brad Holder's Facebook post?

A Yes.

Q Okay.

MR. BALDWIN: Move to admit – I'm sorry, I didn't show that to them. Defendant's Exhibit M. This is the full photo of what was on Brad Holder's Facebook page.

DEFENDANT'S EXHIBIT M OFFERED

MR. LUTTRULL: No objection.

THE COURT: All right. Without objection, M is admitted.

DEFENDANT'S EXHIBIT M ADMITTED

MR. BALDWIN: I have no other questions.

THE COURT: Mr. Luttrull.

MR. LUTTRULL: Just one moment, Your Honor. Your Honor, if I

may, I have some outside-scope-of-direct questions for this witness that will allow him to be excused once we're finished with him at this time.

THE COURT: Any objection?

MR. BALDWIN: Nothing.

THE COURT: Okay, perfect. Go ahead. No, you're not done yet.

THE WITNESS: Okay.

THE COURT: No, we were – he's gonna ask you some questions outside the direct; that way, when he's done, then you're done, and then you can go for the day.

RE-CROSS EXAMINATION OF DETECTIVE ROLAND PURDY

QUESTIONS BY MR. LUTTRULL.

Q Detective Purdy, approximately what timeframe did you work and assist on this investigation?

A Approximately March of 2017 to probably March of 2018.

Q And prior to that, what was your assignment with the Indiana State Police?

A I was a detective with the State Police, I had been assigned to a FBI task force as a task force officer. During the process of becoming a task force officer, there's a background investigation, and there was a hold-up on my investigation, so they sent me to Delphi to help with the investigation while all of that was going on, while my investigation was being done.

Q In the process of assisting during that approximately one year, did you interview Brad Holder?

A Yes.

Q And where did that interview take place?

A Logansport Police Department.

Q And did you question him about the murders at Delphi?
A No.
Q Would you tell the Court what you did question him about and what did Brad Holder tell you.
A I was told that Brad Holder would be a good source of information concerning Odinism, and so myself and Detective Laurie Lemler asked Brad Holder to come to the Logansport Police Department and we talked to him about the Odinism.
Q Was there anything shared by Brad Holder that shed light on who killed the victims in this murder?
A No.
Q Did you write up a report?
A Not to my knowledge.
Q And did you record the interview?
A I didn't have a recorder. If it was done, it was done by Laurie Lemler; and I called Laurie and she didn't even remember the interview.
Q Was it her understanding that it was not recorded, as well?
A Yes.
Q Have you ever come across a report or a reference to a recording documenting this conversation you had with Brad Holder in Logansport?
A No.
Q Do you have any reason to believe that there's a recording out there of that –
A No.
Q -- interview that did not cover the Delphi murders?

A No.

Q Were you deposed – well, you've already testified you were deposed in August of 2023; and did you mention this interview of Brad Holder?

A Yes.

Q And did you tell Defense that you did not know if it was recorded, that you did not record it yourself, and had no record of it being recorded?

A That's correct.

Q Did you tell the Defense that you did not write up a report?

A Yes.

MR. LUTTRULL: I have no further questions of Detective Purdy.

MR. BALDWIN: So if – I'm sorry, Judge, I'm –

THE COURT: Go ahead.

RE-DIRECT EXAMINATION OF DETECTIVE ROLAND PURDY

QUESTIONS BY MR. BALDWIN.

Q Brad Holder didn't say, "I killed those girls" to you?

A No.

Q Okay. You should have written a report; correct?

A Not necessarily. I mean, is that a question?

Q It is, yes.

A Okay. In cases where we talk to somebody concerning subject matter, a report wouldn't necessarily be made.

Q I mean, you could have written down – because, later on, there might be a trial or a hearing like this – "I talked to Brad Holder and here's what he told me about Odinism," and then the Defense could then compare what he says with the crime scene or with anything else; right? I mean, we could have used the

words out of Brad Holder's mouth to you for that interview.

A Okay. I didn't do a report.

Q You should have recorded it, too; right?

A Not necessarily on a – again, a case like that, where we're just looking for information –

Q Becky Patty is the one that led you to Brad Holder; is that correct?

A That's who first told me that Brad Holder was an Odinist, yeah, that's correct.

Q And what interested you about it was that – the unusual stick configurations found at the scene and Norse paganism as a possible explanation for how those girls were murdered; right? That's why you went over to talk to Brad?

A That's correct.

Q And you –

A Or not – that's not why I talked to Brad, 'cause I was told he had been cleared, just for information from Brad concerning Odinism.

Q My gosh, there's – did you go talk to Patrick Westfall about Odinism?

A No.

Q Did you go talk to anybody else about Odinism?

A Yes.

Q Who else?

A Tony Portwood.

Q And he works for the State Police?

A Yes.

Q All right.

A The Beverly Shores police chief, and I don't recall her name.
Q Okay.
A There was an Indianapolis officer who was also an Odinist and we had spoken with him.
Q So at – this is about a month or so after the girls died that you think you went and talked to – we don't have a report, I don't know the date, so let's try to narrow that down.
A It would have been August at some point, sometime during August. Laurie Lemler was only in Delphi I believe one month, and I believe that month was August.
Q In?
A 2017.
Q Thank you.
A Sorry.
Q No, that's good. And I thought – maybe I misunderstood you, I thought you said that Laurie Lemler said she couldn't remember if it was recorded.
A Right.
Q Okay.
A She couldn't remember the interview at all.
Q So if Brad Holder testified in his deposition that he thought it was recorded, he's probably mistaken would be your thought?
A Probably mistaken.
Q Okay. And if Brad Holder said that you asked him a lot of questions about Patrick Westfall, would he be mistaken about that, as well?
A I don't recall asking him about Patrick Westfall.

Q Okay. Did you know Patrick Westfall's name?

A Yes.

Q Okay. And you knew he was a Norse paganist; correct?

A Yes. I believe he mentioned Brad – or Patrick Westfall, that he was the leader of the Odinist group that he was part of and that they'd been in the military together.

Q And by August, you would have seen Brad Holder's Facebook posts with the rune that he had – I'll call it a rune, but the configuration that he drew on his wrist; right?

A Yes.

Q I'm gonna hand you what's been marked as Exhibit K. Tell me when you're – have you seen what's on the right-hand side there before?

A Yes.

Q Okay. And what – that is –

A Which way are we –

Q I'm sorry, yeah.

A Okay.

Q The marking on the – not that –

A Okay.

Q Not A.W.'s body, but the other.

A Okay.

Q Have you – are you familiar with that?

A Yes.

Q That is the marking on Brad Holder's hand that he posted a couple of months after the deaths; correct?

A I'm not sure when it was posted, but it – yeah, I believe this was a tattoo-type marking on his hand.

Q And that was very similar to the way the sticks were formed on A.W.'s body; would you agree?

A Yes.

Q So – thank you. And in spite of the fact that a couple of – well, at some point in time after the girls were murdered, there's a stick configuration on A.W. that looks very similar to the way that Brad Holder drew on his wrist, you didn't – you weren't over there to ask about that, because he had been cleared; correct?

A That's correct.

Q And you didn't clear him?

A That's correct.

Q Do you think he should not have been cleared?

A I trust the people I work for, and if they say – there were so many leads to follow up, so if somebody told me someone had been cleared, that'd be – I would move on and trust their judgment.

Q And you also know about the – what I call the mimicked crime scene photo that you say was from 2012 that was on Brad Holder's Facebook page –

A Yes.

Q -- right? And that was similar – I mean, first of all, that's real weird, isn't it? Isn't it weird?

A Yes.

Q And especially knowing that L.G.'s body is, you know, posed similarly to the way that that lady was posed on his Facebook page; right?

A Yes.

Q And still, in spite of that – in spite of that, you did not go to Brad – you just said, "He's been cleared, that's all I need to know, but I do want to find out about Odinism"; right?

A Yes.

MR. BALDWIN: No other questions.

THE COURT: Anything else, Mr. Luttrull?

MR. LUTTRULL: Nothing further.

THE COURT: All right. Thank you, Detective. You may step down.

MR. LUTTRULL: May Detective Purdy be released?

MR. BALDWIN: Yes.

THE COURT: And you are free to go, Detective. Thank you.

THE WITNESS: Okay. Thank you.

MR. BALDWIN: I'm gonna move to admit N and O, and the foundation, Judge, was laid in the previously admitted deposition of Brad Holder on page 88. Those are – we just, actually, put the tape – the new exhibit markers over the old exhibit markers, but that was 17 and 18, as an officer of the court, I will tell you that. If you lifted them up, you would see – if you lifted those new stickers off, you would see 17 and 18, and I took those right out of Brad Holder's deposition. And Brad Holder is asked, "Are you familiar with" – so Exhibit 17, this is page 88, line 19 – "Exhibit 17 is what you painted? Yeah. It's a picture of Odin hanging from the Tree of Life. On the right-hand – Question: On the right-hand side it says, 'Brad Holder, 2018.' Well, I started back acrylic Hail Odin in Logansport. Why did you write that?" Okay, so that's Exhibit 17. Exhibit 18 is on page 89, the foundation for that, "I'm gonna hand you now Exhibit 18, that's a close-up version I wanted to ask you about. What are those

circles around at the bottom? Well it – Answer: According to the story, when he hung himself on the Tree of Life for nine days, at the end of nine days the runes appeared on the ground and that's how he found the runes." So I would move to admit – oh, yeah, I would move to admit those. I don't know if they – is there any objection? I didn't –

DEFENDANT'S EXHIBITS N AND O OFFERED

MR. LUTTRULL: I have no objection.

THE COURT: All right. Without objection, N and O are admitted.

DEFENDANT'S EXHIBITS N AND O ADMITTED

MR. BALDWIN: And because of those admissions, Judge, I believe – and it has the date on there of the – I would move to admit Exhibit L, representing that the center is the same painting that Brad Holder foundationally admitted to his – being his painting on the exhibits I just entered.

DEFENDANT'S EXHIBIT L OFFERED

THE COURT: Mr. Luttrull.

MR. LUTTRULL: Was the photo on the right identified by Mr. Baldwin?

MR. BALDWIN: Just the mid – I'm talking about the middle one. The right is – that is just – I would say it represents – the right on that exhibit is a tarot card that we found on the Internet that I'll be talking about.

MR. LUTTRULL: Not identified, nor a connection to Brad Holder?

MR. BALDWIN: No.

MR. LUTTRULL: And you're not representing that?

MR. BALDWIN: Not – thank you for making sure that that's clear.

MR. LUTTRULL: With that qualification, I have no objection to L.

THE COURT: All right. With that qualification, L is admitted.

DEFENDANT'S EXHIBIT L ADMITTED

MR. BALDWIN: Thank you. I'm going to admit a number of other documents (inaudible). Judge, I'm going to offer at this time Exhibit – I can't tell if that's a Q or an O.

COURT REPORTER: Q.

MR. BALDWIN: -- Q, and I'm going to represent that that is the tree – I'm sorry, so I can tell you which is which – on the right is the tree from the crime scene with blood from – L.G.'s blood was on the tree and that's what's in red. In the other – on the other side is a stick formation that was found on Brad Holder's Facebook page in the form of sticks that looks like an F.

DEFENDANT'S EXHIBIT Q OFFERED

THE COURT: Any objection?

MR. LUTTRULL: No, Your Honor.

THE COURT: All right. Without objection, Q is admitted.

DEFENDANT'S EXHIBIT Q ADMITTED

MR. BALDWIN: Gonna hand you Exhibit R. I represent to the Court that this is a screenshot off – or two screenshots off of the video from a March – that was provided to the Defense of a paganist ritual that – activity, ceremony that occurred in Fort Wayne, actually, in 2016, and that person represented there is Patrick Westfall touching the tree. Foundationally, that is on Brad Hol – Brad Holder was shown that video and he was shown that part in the video where Patrick Westfall is touching the tree on page 79 of his deposition and on page 82 of his deposition. It starts on page 78, for the record, and it ends on page 82. He – Brad Holder does indicate that the person touching the tree is

Brad – is Patrick Westfall. Brad Holder is actually taking the video and he admits that it is Patrick Westfall and he's touching his hand to the tree in some way on page 82. And I move to admit that.

DEFENDANT'S EXHIBIT R OFFERED

MR. LUTTRULL: I have no objection.

THE COURT: All right. Without objection, R is admitted.

DEFENDANT'S EXHIBIT R ADMITTED

MR. LUTTRULL: Your Honor, I'd like to clarify: I must have missed P, P as in Paul.

COURT REPORTER: It's marked, but not offered.

THE COURT: It's marked, but not offered.

MR. LUTTRULL: Okay.

MR. BALDWIN: Which one was that?

THE COURT: P.

MR. BALDWIN: Oh, P. Yeah, I was reading that out of order. I will now offer P and represent that that is a Facebook post that Brad Holder posted on his Facebook page after the murder of the girls where he is talking about – it's a meme, a *Goodfellas* meme, where he's talking about – I mean, you can read it yourself, but essentially, you don't – your good friends help you to hide – move the body.

DEFENDANT'S EXHIBIT P OFFERED

THE COURT: Any objection?

MR. LUTTRULL: I have no objection. I would ask if – was that referenced at the Brad Holder depo, Mr. Baldwin?

MR. BALDWIN: Yes. Judge, we're looking for Brad Holder's

reference to that. For the record, that is something we received from the State and even the headings on it and so forth are not from the Defense, that is all what we – how we received it from the State. Rather than hold up everything, I'll withdraw that at this time. I don't – didn't think they objected, but I can't remember that far back.

THE COURT: He didn't object, but he wanted to know where in the depo it was mentioned.

MR. LUTTRULL: And we can move on. I have no objection to it.

MR. BALDWIN: Oh, okay.

THE COURT: Okay.

MR. BALDWIN: Thank you.

MR. LUTTRULL: You can let me know the page.

MR. BALDWIN: (Inaudible)

THE COURT: Thank you.

DEFENDANT'S EXHIBIT P ADMITTED

MR. BALDWIN: Before I put on my next witness, I'd – I wanted to do this before I forget: Ask the Court to take judicial notice, for purposes of this hearing, of *Franks* 1 through 4. The dates of filing are – just for – okay – *Franks* 1's filed September 18th, 2023; *Franks* 3, filed March 13, 2024; and *Franks* 4, filed April the 24th – or the 29th I think of 2024. They did – my interns weren't able to find Number – *Franks* Number 2, but I believe it was filed October of 2023, I just don't have the exact date, I apologize. But I'd ask you to take judicial notice of those motions and the exhibits contained in all of those motions.

THE COURT: The Court will take judicial notice of the *Franks* motions that were filed, 1 through 4, and note that the *Franks* 1 and 2 were

denied by the Court previously, and *Franks* 3 and 4 were filed March 13th and April 29th of 2024.

MR. BALDWIN: Call Kevin Murphy to the stand.

(Witness sworn.)

DIRECT EXAMINATION OF OFFICER KEVIN MURPHY

QUESTIONS BY MR. BALDWIN.

Q Good afternoon.

A Afternoon.

Q State your name for the record.

A Kevin Murphy.

Q Kevin, what do you do for a living?

A I'm a police officer in Beverly Shores, Indiana.

Q How long have you been at Beverly Shores?

A Two years.

Q What did you do prior to that?

A I worked briefly in court security in Porter County, Indiana, which is our courthouse. I substitute taught auto shop. I worked briefly at Valparaiso University.

Q What about before that?

A I was with Indiana State Police from June of 1995 to July of 2021.

Q How many years is that?

A Twenty-six and some change.

Q And how did you leave the State Police? Did you retire? Were you fired? That's what I'm getting at.

A I retired.

Q Okay. And in your 27 years, did you ever have any write-ups or anything, and problems or –

A Like a 553(A), allegation of misconduct?

Q Sure.

A No.

Q Okay. Did you ever work in any capacity on the Delphi murders, investigating the Delphi murders?

A Yes.

Q Tell the Judge about that, how you got involved and what you did.

A Around February 13th of 2017, I was made aware that two girls had gone missing. I offered, with other members of my task force, to be available if needed, and we got the call on Sunday night, which'd been the 19th, because we were here on Tuesday the 21st of 2017.

Q And what happened when you started getting involved in the investigation?

A We met at the town hall, where – that was the command center at that point, and I met Kevin Hammond and Sheriff Liggett and we started grabbing tips and just started hammering them out.

Q Okay. And that was in – really early on, February of 2017. Where – when did your time working on the case end?

A October 1st, 2019.

Q So from 2017 to 2019, were you working on anything else or was it pretty much just Delphi?

A I was on a task force at the FBI Merrillville. Sometimes we had terrorism details to go out on; but if we didn't have something on the burner, then I was here.

Q Okay. Have you ever heard of the name Brad Holder?
A Yes.
Q Who is he?
A Brad Holder is a subject of interest in this case, was a subject of interest from very early on.
Q Okay. And would you call him a – was he a suspect in this case?
A He was not considered a suspect in some circles. In the circle that I was a part of, with the investigation we led, the answer to that is yes.
Q Okay. And why was he a suspect in the circles – well, strike that. Let's define some of our terms here. Who were the circles that you're talking about?
A Specifically Greg Ferency, Terre Haute PD, he's now deceased; Todd Click, the assistant chief of Rushville Police; and myself.
Q And when you were investigating the Delphi murders, who are you reporting to?
A We had a chain of command, of course, and I always reported to Jay Harper, a detective out of the Lafayette post.
Q And would the same be said, if you know, for Greg Ferency? Would he be – is that – would he follow the chain of command and go up to Dave Harper [sic] or someone else in Unified Command?
A Greg Ferency would go through me and then I would forward it to Jay Harper.
Q Okay. So you were familiar with what Greg Ferency was doing, as well?
A Yes.
Q Okay. And what was he doing?
A He was doing most of the social media work, making a connection between

Rushville, Indiana, and Delphi, Indiana.

Q Okay. So when you say social – some of the social media, are you talking about Greg Ferency was looking at – whose social media was he looking at, if you know?

A There were multiple people involved. Brad Holder, one who we've mentioned; Patrick Westfall; Elvis Fields; Johnny Messer; Ned Smith; Rod Abrams.

Q And can you just – and we're giving a little bit – well, strike that. I need to remember why I'm here today. Let me pause for a second, 'cause I'm getting in – why did you think that Brad Holder was a suspect?

A Based on notes and discussions and hours of investigations with Greg Ferency initially and then the mulitplitude of trips we made to Rushville, where we had the – initially, just the services of Todd Click and then he joined in the investigation. We just thought it was an undeniable link between the two communities with the activities that all of them that I've stated were involved in.

Q Okay. I'm handing you what has been marked as Defendant's Exhibit S; can you identify that for me and tell me what that is.

A This is a multitude of field notes that are a printed-out Word document that I saw at my deposition, but I've never seen it prior to that deposition in printed form, because every supplement I did involving this case was field notes at the interview in this notebook and then that was followed up by a Word document on my issued State Police laptop, and then that Word document helped create my report, my leads, my tips, the supplement to the case, and notes like this were always attached in a Word document to those said cases or those said leads.

Q And you have seen that document before at your deposition; correct?
A The one and only time, yes.
Q Okay. And you – are those your words? Are those your notes?
A Yes and yes.
Q And just give the Judge a little flavor of how you would get from the investigative part – portion, where you're interviewing somebody, to those notes; how did that all happen? It's kind of a bad question, but –
A I can answer you.
Q Okay.
A I would get a tip or a lead from either Jay Harper, Tony Liggett, or Kevin Hammond, and then I would advise them, "Well, I'm going on that tip, I'm going on that lead." Sometimes I had someone with me, most often times I did not. I would contact the person that I needed to talk to, make arrangements to speak with them, preferably in their home. I would sit down, interview them the way I've done for years, take notes. More often than not, I was getting cooperation from them for a swab, 'cause I normally always got a DNA swab, and then I would put everything into my notes, and I wouldn't even leave their driveways, I'd get on my laptop, print up my Word document, I'd come back here to the command center, and I'd put my tip or lead together. And one thing that important to me is I didn't go to bed at night till whatever I did that day was completed, and I stuck to that for two and a half years.
Q What is your memory of any linkage between – well, strike that. The very –
MR. BALDWIN: Well, I'd move to admit Exhibit – what's the sticker number?

THE COURT: S.

A S. S, as in Sam.

DEFENDANT'S EXHIBIT S OFFERED

MR. MCLELAND: No objection, Your Honor.

THE COURT: All right. Without objection, S is admitted.

DEFENDANT'S EXHIBIT S ADMITTED

Q The second entry there, can you read that, the second entry, can you read that out loud for me, please.

A February, 2018, sir?

Q Yes.

A "Troopers Holeman and Murphy interview Elvis Fields at Rushville PD. Elvis denied being part of any murders in Delphi. Elvis consents to DNA swab, buccal swab, taken by Murphy. Elvis ends interview, stating he is tired and wants to go home. Murphy drops off Elvis at his residence in trailer park. Elvis exits car and starts walking toward his trailer. Elvis then turns around and comes back to Murphy's car. Elvis asks Murphy that if his spit is found on one of the girls, but he could explain it away, would he still be in trouble."

Q Okay. Thank you. Was – you heard those words from Elvis Fields?

A Word for word.

Q And what did you do after you heard those words?

A Number one, I documented it, and number two, I got ahold of Jay Harper at Unified Command and told him what I'd just been told.

Q Had you explained, prior to dropping Elvis off and prior to him asking that question, what the purpose of the buccal swab was?

A Yes. He was clear on what it was.

Q Was there any connection that you found or Ferency found between Elvis Fields and Brad Holder?
A Yes.
Q What were those connections?
A Through the Rushville/Delphi connection through the Facebook, and as I recall sitting here, Elvis liked to follow others and he had this knack of wanting to follow Brad Holder and Patrick Westfall, and he would often, from Greg Ferency's explanation, follow what they would do on Facebook.
Q Okay. And so when you say he would – they followed each other or who followed who, to your knowledge?
A Elvis followed Brad Holder and Patrick Westfall.
Q Was there any explanation as to why, that you found out, a guy in Delphi, Indiana, Brad Holder, whose son dated A.W., was – knew about a guy named Elvis Fields 125 miles away or whatever it is between Rushville and Delphi?
A So what are you asking me?
Q Did you ever figure out how that connection might have formed? Was that part of your investigation?
A Yes.
Q And what did you learn?
A Through the rituals that they would conduct and through wanting to be a part of what they conduct, and Elvis's connection to all of that was through Johnny Messer.
Q Now, that document that I handed – just handed you, when was the – actually the first time that you saw that?
A It was on August 10th, the date of my deposition.

Q Who had that document the first time that you saw that?
A Lieutenant Holeman.
Q Okay. Let's talk about that day. You were – this is August the 10th, you said?
A Yes.
Q Of last year?
A Yes.
Q We had subpoenaed you to come in to – right next to the back wall there's a jury room, we asked you to come in for a deposition; correct?
A You did.
Q Can you tell – I heard a commotion out in the hallway. Can you tell the Judge what happened out in the hallway?
A Lieutenant Holeman had been in a lengthy deposition, as you're well aware, because you took said deposition. I had not seen Lieutenant Holeman in almost four years, I thought when he came out it'd just be a big embrace, a hug, but he was frustrated, I was frustrated. And he had this document and I didn't know what it is.
Q Okay. Then what happened?
A I went to embrace him and he said, "What the eff is this?" And I said, "Jerry, I don't know, Jerry." And then I started looking through it and I went, "Those are field notes that I did that were attached to supplements electronically from the Delphi case." And I had not seen them ever, other than when I sent this document into my Word document to save. And he said, "Well, how the eff did they get them?" And didn't know if "they" is the State, if it was the Defense, if it was the Prosecution. I didn't know where it came from.

Q So it was first, "What the eff is this?" And then, "How the eff did they get it?" Is that right?

A Well, yes, but you're talking about two football coaches just in the heat of the moment being upset with – you know, a little bit, so yeah.

Q It was pretty heated in that hallway?

A Very briefly, but –

Q So it was a brief amount of heat for a brief –

A Yes.

MR. MCLELAND: Judge, I'm gonna object at this point. We're here on a motion to dismiss. Brad Holder – and they're alleging that the State intentionally destroyed Brad Holder's phone dump, an interview with Brad Holder, and images from Brad Holder's Facebook page. I've let Mr. Baldwin go very far afield here, but how is this relevant to what we're here to argue?

THE COURT: How's it relevant?

MR. BALDWIN: Because, in order to grant the motion to dismiss, Judge, you have to either find that evidence, in this case Brad Holder's phone dump, before it was the missing evidence or the taped-over of Brad Holder interview, was either exculpatory or potentially useful. If it's exculpatory, it's out. If it's not and it's potentially useful, I still have to prove intentional acts on – or bad faith, if you will, but intentional behavior on the part of law enforcement. And I think what we just heard was Jerry Holeman asked, "How the eff did they get this?" Which, Judge, could mean, "How did they get this? They weren't supposed to get this." And that's why, because we have to prove intentionality, Judge, we have to prove that. I'm not expecting anybody to get up on the stand, Jerry Holeman or anybody else, and say, "Yeah, we destroyed the – Brad Holder's

phone extraction. We intentionally erased things." I don't expect that. So what we are left with is, basically, circumstantial evidence. This is a piece of that circumstantial evidence, as is a number of other things I will be arguing when I conclude, so that's what the relevance is.

MR. MCLELAND: May I respond, Judge?

THE COURT: Sure.

MR. MCLELAND: The first step is they've got to establish these things existed, the Brad Holder phone dump existed; the Logan interview – the Brad Holder interview at Logansport existed. They haven't even made it over that first hurdle yet. And I don't know how any of this is relevant to whether or not those things existed, and then show that the State somehow – or law enforcement intentionally erased those or covered those up or withheld those. I just – I don't see how this – any of this is relevant to the motion to dismiss. It may be relevant to third-party motive later, but I don't see how it's relevant to the motion we're here to argue right now, Judge.

THE COURT: Is this gonna get tied up at some point in time?

MR. BALDWIN: We're – I'm done with him, actually.

THE COURT: That's not my question.

MR. BALDWIN: Oh. Oh, yeah, yeah, absolutely. Yeah, I mean, on my final summation, I'll be tying everything together.

THE COURT: All right. I'll give you a little leeway, but we're getting really far afield.

MR. BALDWIN: Okay. And I'm going to be tying it up with my final summation, so –

THE COURT: Are you done –

MR BALDWIN: Yes.

THE COURT: -- with your direct?

MR. BALDWIN: No other questions.

THE COURT: Mr. McLeland.

MR. MCLELAND: Thank you, Judge.

CROSS EXAMINATION OF OFFICER KEVIN MURPHY

QUESTIONS BY MR. MCLELAND.

Q Officer Murphy, good afternoon. Did you ever personally interview Brad Holder?

A I've never met Brad Holder or spoke to Brad Holder.

Q And so safe to say you never asked Brad Holder for his phone to be able to dump his phone?

A Never.

Q Okay. And did you ever examine Brad Holder's Facebook page?

A No. I don't know how to do that kind of stuff.

Q Okay. And I don't want to get too far away from the motion, but some of the questions Mr. Baldwin asked you about you interviewed these various people, were you ever able to – in your entire investigation, ever able to place Elvis Fields in Delphi at the time of the murders?

A No, I could not.

Q What about Brad Holder?

A In Delphi?

Q At the time of the murders?

A No.

Q Did you ever gather any information through your investigation that there

was evidence related to the murders on Brad Holder's phone?

A No.

Q Did you ever gather any evidence in your investigation that there was any evidence related to the murder on Brad Holder's Facebook page?

A I never saw Brad Holder's Facebook page prior to my deposition.

Q And you had nothing to do with an interview of Brad Holder at Logansport Police Department?

A I didn't know it happened.

MR. MCLELAND: Just a moment, Judge. I don't have any other questions, Judge. Thank you.

THE COURT: Okay. Mr. Baldwin.

MR. BALDWIN: No other questions. Thank you.

THE COURT: All right. Thank you, Officer. You may step down. Could we retrieve that exhibit, please. I'll take that.

THE WITNESS: Your Honor, I apologize.

THE COURT: No, that's all right. Thank you, sir.

MR. BALDWIN: Lastly, Judge, I would ask the Court to take judicial notice of a finding of this Court on June the 20th, 2023, which is a report by Tony Liggett concerning the transportation of Robert Baston or the non-transportation of Robert Baston, why he was not transported. It was filed in this court on June the 20th, 2023. And also, I would ask the Court to take judicial notice of, I believe it's a May 31st order of judgment of the Court denying our second motion denying disqualification, and I will tie that up into our argument, as well.

THE COURT: May 31st what year?

MR. BALDWIN: It's called order or judgment of the Court and it

was for –

THE COURT: No, answer my question: May 31st of what year?

MR. BALDWIN: Oh, I'm sorry. 2024.

THE COURT: Okay. Thank you. I will take judicial notice of June 20th, 2023, and May 31st, 2024.

MR. BALDWIN: And with that, the Defense has no other evidence on this issue, the motion to dismiss.

THE COURT: Does the State have any evidence to present?

MR. LUTTRULL: Yes, Your Honor. We would call Lieutenant Holeman.

(Witness sworn.)

DIRECT EXAMINATION OF LIEUTENANT JERRY HOLEMAN

QUESTIONS BY MR. LUTTRULL.

Q For the record, state your name.

A Jerry Holeman, H-O-L-E-M-A-N.

Q And explain what your current assignment is and where you work.

A My current assignment is the – (clears throat) – excuse me – area investigative commander, I oversee Lowell, Lafayette, and Peru posts, the investigative side of all three of those posts; and my current rank is lieutenant.

Q And you've testified previously regarding – in depositions and in hearings, regarding your role in these murders; is that correct?

A Yes. At the time of the investigation, I was the first sergeant, which is the DIC of Lafayette post, which oversees all criminal investigations.

Q And you were part of the central command or in command of this –

A Yes, I was.

Q -- investigation; is that correct?

A Yes.

Q Regarding the – a phone extraction or any examination of any kind of a Brad Holder phone, do you have any knowledge of that?

A No, sir.

Q Have you observed any records or any evidence that such an extraction ever was – ever occurred?

A No, sir.

Q Regarding the interview by Detectives Lemler and Purdy at Logansport PD of Brad Holder sometime in – later in the last summer or fall, 2017, do you have any information about the records or reports or recordings of that interview or conversation?

A No, I do not. I didn't recall – I never knew that they went over and interviewed him. During that timeframe, I was at a training. I think I took vacation in September, starting training October, finished the training in December, and I think I came back middle of January, so I wasn't involved in that investigation during those 14 weeks. I was at the FBI National Academy in Quantico, Virginia.

Q What I understand, if Detective Purdy's memory is correct, he said he believed August of 2017; but regardless, you were not aware or have – aware of no recording of that conversation with Brad Holder?

A Yeah. I have no knowledge of the interview happening or any recordings whatsoever.

Q Lieutenant Holeman, based upon your department's examination of L.G.'s cell phone, including the video taken on February 13 of 2017, at

the Monon High Bridge, but all the other data collected on that phone, as well as the crime scene evidence, can you tell us when and where these murders occurred?

A Through all the information that we discussed and evidence that was presented to us, we believe that the murders occurred between 2:30 and 3:30 p.m. on February 13th on Ron Logan's property, across the creek from where the Monon High Bridge is.

Q And the time of the video is what time?

A I believe it was 2:17, 2 – somewhere in there.

Q And the – you believe that the abduction occurred at that time?

A Yes. I believe, from the video, that Mr. Allen told the girls to go down the hill.

Q And you believe that the murders occurred sometime within that hour or so?

A I believe so, yes.

Q And is that based upon your review of the evidence, specifically the evidence that I summarized, the cell phone data, the crime scene evidence?

A Yes.

Q Mr. Baldwin introduced at exhibit a little bit ago from Agent Pohl's report of the interview of February 17th, 2017, of Brad Holder; are you familiar with that?

A Yes.

Q To your knowledge, where did Brad Holder claim that he was – assert that he was on the afternoon of February 13?

A He claimed to be at work at the Liberty Landfill in Buffalo, Indiana.

Q Are you familiar with Buffalo, Indiana, and the landfill?

A Yes.

Q Do you know approximately how far it is from the Monon Bridge area of Delphi?

A Approximately maybe a 30-minute drive, 30 to 35-minute drive.

Q Did he indicate where else he was after work when he was speaking to the officers on February 17th, 2017?

A Yes, he did. He told them that he went to a workout facility in Logansport, Indiana.

Q I'm gonna hand you what I've marked as State's 4. Could you identify what that is.

A Sorry. This is an e-mail from – looks like Michael – it's basically the check-in times at Workout Anytime in Logansport, Indiana. I believe that's the – oh, I'm sorry, this is his work records, sorry about that.

Q From where?

A From Liberty Landfill.

Q The facility in Buffalo, Indiana?

A Yes.

Q And Exhibit 5, since you mentioned –

A Yeah.

Q The work – fitness place.

A Yes, this is a login, they had a key fob login system, and this is the time he checked in at Workout Anytime in Logansport, Indiana.

Q So those are documents, Exhibit 4 from Liberty Landfill in Buffalo, Indiana, and the other is Anytime Fitness from Logansport, Indiana?

A Yeah, Workout Anytime, Logansport, Indiana.

MR. LUTTRULL: I would move the admission of Exhibits 4 and 5.

STATE'S EXHIBITS 4 AND 5 OFFERED

MR. BALDWIN: No objection.

THE COURT: All right. Without objection, 4 and 5 are admitted.

STATE'S EXHIBITS 4 AND 5 ADMITTED

Q And, if you would, indicate to the Court what does Exhibit 4 say about Brad Holder's work hours on February 13th, 2017?

A On February 13th, 2017, he clocked in at 4:55 a.m., clocked out at 12:12 p.m. for lunch, clocked back in at 12:42 p.m., and then clocked back out at 2:45 p.m.

Q In terms of Exhibit 5, when does it say that he entered Workout Anytime facility?

A On February 13th, he arrived at that facility at 4:08 p.m.

Q In the Brad Holder deposition that the Defense took, are you familiar with the fact that he indicated that he believed his phone had been handed over to the police?

A Yes.

Q And did he also equivocate and say that he was not sure?

A Yes.

Q It's been alleged in our pleading that those – the conversation took place on page 13 and 14 of the deposition. I haven't taken the time to give that to you today, but does that sound correct to you?

A Yes. I – we've discussed what he said.

Q Did he also indicate in that deposition that he oriented that experience of

turning over his phone, that his phone and his son's phone was collected at the same time?

A Yes, he did.

Q Did he say that was at the Delphi Police Department?

A Yes, I believe so.

Q And, in fact, as the document offered by the Defense and you've testified, Agent Pohl and Officer Gootee interview Brad Holder on February 17th, 2017; is that correct?

A That is correct.

Q Are you familiar with the fact that the Indiana State Police did collect Logan Holder's phone?

A Yes, I am.

Q I'm gonna show you what has been marked for identification purposes as State's Exhibit 6; can you identify that, sir?

A It is a consent to search cellular telephones, looks like it was located in Logansport High School, conducted by Sergeant – at the time Sergeant Brian Bunner with the Indiana State Police and it – they took Logan Holder's phone, and it's signed by his mother, Shannon.

Q At Logansport High School?

A Yes.

Q On what date?

A 2/14 of 2017, at 12:45 p.m.

MR. LUTTRULL: I'd move the admission of Exhibit 6.

STATE'S EXHIBIT 6 OFFERED

MR. BALDWIN: No objection.

THE COURT: All right, 6 is admitted without objection.

STATE'S EXHIBIT 6 ADMITTED

Q Is it your understanding, based upon this documentation and the work of Sergeant Bunner, that the Indiana State Police collected the Logan Holder phone at Logansport High School on February 14th, not at Delphi Police Department on February 17th?

A That is correct.

Q In fact, did Sergeant Bunner document or – and indicated why he was at Logansport High School on February 14th, approximately noon?

A To collect Logan Holder's phone.

Q And was it while he was present at the high school that he learned that the girls' bodies had been discovered?

A Yes, he did.

Q Sergeant Bunner would have arrived at Logansport High School with the intent to obtain this phone, if possible, in order to assist in the – searching for the girls; is that correct?

A That is correct, yes.

MR. LUTTRULL: Nothing further.

THE COURT: Mr. Baldwin.

CROSS EXAMINATION OF LIEUTENANT JERRY HOLEMAN

QUESTIONS BY MR. BALDWIN.

Q Law enforcement believes that once Richard Allen left the scene, he never came back on the 14th; is that right?

A That is correct, yes.

Q Who turned on the phone at 4:33 a.m.?

A I believe the phone was still on. I think there's some conflicting reports on whether – when it – actually the battery died, and I think there's some confusion on the pings, the pings will still go; so I think the phone was still on, it just – there's some confusion on that, when it actually went –

Q Who have you talked to about the phone turning on at 4:33 a.m.?

A I just heard about that recently, was discovered in the new software that they used. Before that, we were told it was – the phone went off I believe at 5 p.m. that day, but now I think there's some new technology shows that it was on.

Q I knew about it last fall. Did you – do you think that the new software came out before – after last fall are you talking about?

A I don't recall. I don't recall.

Q So you did not know about the 4:33 a.m. –

MS. AUGER: On the 14th.

Q -- on the 14th – thank you – that the phone was turned – that the phone turned on at 4:33 a.m.? You did not know about that last fall; is that correct?

A No, I did not.

Q You've been in the courtroom during this – these hearings; is that correct?

A Yes.

Q You heard about Exhibit F, which was admitted into evidence, which is a listing of, by our count, 101 people whose phones were extracted?

A Yes.

Q So tell me about – if you know, about Noah Dillon. Did Noah Dillon date A.W.? Because his phone was extracted.

A Not to my knowledge.

Q Did he have a mimicked crime scene, Noah Dillon, on his Facebook page?
A Not to my knowledge.
Q Okay. Did he have a hand rune that mimicked what – the sticks that were on A.W.'s body? Did he have that?

MR. LUTTRULL: Objection to relevant, Your Honor.

THE COURT: What's the relevance?

MR. BALDWIN: It is – I'm trying to make the point here that – and I'm – that Brad Holder had all those things and they claim that they did not extract his information from his phone, but we have 101 people whose phones were extracted that did not have nearly or any connection whatsoever. That's the relevance.

THE COURT: Okay. Well, you've made the point.

Q You heard me read into the record – may I have the first one, the FBI e-mails, please? I thought that was E. You heard me read into the record e-mails between J. Abbott of the FBI and Doug Carter; did you not?
A I did.
Q February 17, here's, "Suspect 6 is being worked on right now. He has ties to Bradley Holder, who we have been working. He may have ties to Vinlanders. D.T. squad" – what's that stand for? Do you know?
A Drug Task.
Q -- "Drug Task Force squad is apprised and tasked sources to collect any intelligence which may assist." That is a February 17. What day was Brad Holder interviewed?
A The 17th, I believe.
Q Okay. Brad Holder was a suspect at that time; correct?

A Like Kevin Murphy said, I think some people might have considered him; others did not. I think just because we get tips or information on somebody – in this case, the father of a subject that's dating the victim doesn't necessarily make him a suspect, but it's definitely somebody that we want to gather intelligence about.

Q And intelligence – part of gathering intelligence would be, "Hey, Brad Holder, thanks for coming in today. Can I have your phone?" Right?

A Early on, maybe not; but that was done by the FBI, so I'm not sure what their –

Q Well, Logan Holder's name is not in this document as somebody that they're working hard.

A Who is suspect 6?

MR. LUTTRULL: Objection: There's no question in front of the witness.

THE COURT: Yeah. Sustained.

A Can I read that? 'Cause –

Q Sure.

A Thank you. Thank you. Yeah, it doesn't say who suspect 6 is, so I don't know who you're referring to.

Q Well, Logan Holder's – I mean, they mention Bradley Holder. If they were gonna mention – are you suggesting the suspect 6 is Logan Holder?

A No.

Q Okay. Logan Holder had his phone taken on the 14th of February, just – we just heard that; correct?

A Yes. That was part of the missing persons investigation at the time.

Q Right. Bradley Holder, three days later, you're saying that they did not take his phone?

A I'm saying that there's no documentation or evidence indicating that the FBI or anybody else took anything from his phone.

Q Even though he says that he thinks that he did – that they did?

A I think he was confused, yeah, on that.

Q Okay. I mean, he could be confused about the day it happened and where it happened, when I think what he said is, "Logan and I turned it over at the same time," but there – but he might not be confused about whether the phone was taken. Can –

MR. LUTTRULL: Objection. If that's a question, it calls for speculation.

MR. BALDWIN: I'll withdraw it.

Q Would you agree with me that Lemler and Purdy should have recorded the interview in Cass County at Logansport?

A No, I would not.

Q How – can you give me this: What about a report? Should they have written a report?

A As Detective Purdy said, when you're just gaining information about a subject matter, the State Police does not require you to document that information; so I would say most detectives would not have documented that when they're just trying to gain subject matter.

Q They should have taken Brad Holder's phone though on the 17th; would you agree?

A No, I would not agree with you.

Q You would have taken his phone, were you –

A No. I don't know if I would have or not, but at that time he was the father of the boy that was dating A.W., a victim, so we're just getting information from them, and we didn't get the other information until later.

MR. BALDWIN: No other questions.

THE COURT: Mr. Luttrull.

MR. LUTTRULL: Nothing, Your Honor. Thank you.

THE COURT: All right. Thank you, sir. You may step down.

THE WITNESS: Thank you.

MR. LUTTRULL: We have no further evidence.

THE COURT: Does the Defense have any further evidence?

MR. BALDWIN: No, Your Honor, just argument.

THE COURT: So just argument. Okay. Do you want to proceed into argument or do you need to take a break?

MR. BALDWIN: A break would be good.

THE COURT: All right. It's about 3:10, so why don't we take about 15 minutes; okay?

MR. BALDWIN: Thank you.

THE COURT: All right. We'll see you back here in about 15 minutes. Jodie, you can go off the record.

(Off record at 3:11 p.m.)

(On record at 3:33 p.m.)

THE COURT: Okay. We are back on the record. When we took our break, counsel had indicated that evidence had been completed on the motion

to dismiss and the State's reply and you were just ready then for argument. Is that – continues to be the case, Mr. Baldwin?

MR. BALDWIN: Yes, Judge.

THE COURT: Mr. McLeland? Mr. Luttrull?

MR. LUTTRULL: Yes.

THE COURT: Okay. Mr. Baldwin.

MR. BALDWIN: Thank you. I want to talk about this right here. We had to go to Georgia to get this. We gave you the side-by-side to compare this weird, bizarre image that you have since learned was on Brad Holder's Facebook page, as seen by Trooper Purdy, and how he, even Purdy, admits that the positioning of the body on this pose – and you can see it with your own eyes – is similar to the position of L.G.'s body. And you know that –

MR. LUTTRULL: I don't believe that question was ever asked of the officer, Your Honor, and so I'd respectfully object. He was asked about other sticks, but not relating to that photograph.

MR. BALDWIN: I think I did ask him about the positioning of her.

THE COURT: I think he did.

MR. BALDWIN: Now, of course the sticks don't look the same, but just the fact that there are sticks on that body and Brad Holder had that in his Facebook page is something we'll be talking about on Thursday, but it's – for purposes of today's hearing, here's the point I'm going to make: If we weren't able to locate that on our own, here's what would have happened, Mr. Baldwin and the Defense can't even find this, we don't even know what this is. We – even if we did find it, we don't know whether it would be exculpatory or possibly useful for the Defense. See, this is why it's – when we can't find something, when

something is not provided to us, we have to take them at their word about it actually ever existing or not existing. This existed, this actually existed, and I had – we had to drive down to Georgia to get it. And I respectfully disagree with Mr. McLeland that this is not, you know – well, I believe it is exculpatory, as it points to a third-party suspect; in that regard, it is exculpatory and it is, at a minimum, useful. Now, 101 people had their phones extracted, and you can see where I was going and I appreciate you cutting me off, actually, 'cause I can get a little long sometimes and go and beat a dead horse, but the point here is that none of those people had that wierdo kind of thing on their Facebook posts mimicking the crime scene, they didn't have hand runes that mimicked A.W. – what was on A.W.'s body, they weren't – didn't have a son that was dating one of the victims. Yet, what did they do? They got 101 extractions. Well, maybe he wasn't a suspect on March the 17 – or February 17th, 2017, when he was interviewed, that being Brad Holder, yet we have the FBI – that was the very first thing that I showed you, Judge, or tendered into evidence, where the FBI is saying, "Yeah, Holder is involved with Vinlanders maybe, he – somebody might be related to him. He's definitely in play." Holder's in play February 17, the same day he was interviewed. "You are to use all – everything at your disposal" is what the – I mean, I'm paraphrasing, but that's essentially what is says. Whatever you need, you use. A phone. Brad Holder has testified, "I believe I gave them my phone. I'm not sure." It makes sense that he turned his phone over, it just makes sense. It's some of the worst – I mean, with all respect, for Lieutenant Holeman to stand up there and say that it was, you know, unimportant or whatever he said, "I wouldn't have gotten the phone. It's not a big deal that the phone didn't" – it's not – with everything that we have seen and

everything that we know, that's just wrong. I don't know how you actually can trust him after he says that honestly; and therefore – this is just less than 10 percent of what they got, of people that – every Tom, Dick, and Harry that had nothing to do with this case; but Brad Holder, the guy who, on February 17th, who says that he gave his phone over, which makes sense, we don't have the phone. And you know what? We can't do anything about it other than make these arguments, that's all we can do. They say that they didn't – that they never took the phone, he says they didn't need to take the phone and get it extracted, and here we are. We have these, which give us, except for a few of them, no value at all, but Brad Holder's would have. Here's what we don't have, Judge – and this is – come in - came in though evidence – video of Brad Holder's first interview, gone, we know that. We – it's gone. We don't know what happened to that. Well, I mean, it was taped over. Video of Logan Holder's interview, he was interviewed, we don't have that. Data from Brad Holder's phone extraction, either they got it and we didn't get it or they never – they didn't get his phone. The video from Brad Holder's second interview. Well, they're gonna say that they never interviewed him, and I want to talk about that for a second. You heard Roland Purdy, Detective Purdy – and I appreciated his honesty – he admitted that the hand rune resembled A.W. – the sticks on A.W. He admitted that this faked crime scene – both of these on Brad Holder's Facebook page resembled the crime scene, the way that L.G. was positioned. But when he went in to interview Brad Holder around August of 2017 he says – and I believe him – he was just gonna talk about Odinism? "Hey, Brad, how's Odinism? I just wanted to learn a little bit about it. I'm not gonna ask you about these – this thing on your Facebook page or the hand rune that was on there or the upside – the hanging

man that resemble" – also, by the way, please look at the positioning of A.W.'s body and the positioning of the way that Brad Holder drew that very weird image, painting. The positioning is eerily similar, and it's eerily similar that it happened – it was painted almost a year to the day of her death. But when Trooper Purdy – Detective Purdy went there, he claims that all he did was talk about what Odinism is. Brad Holder says, "No, I talked to him – he asked" – in his deposition, which is in evidence, he talked about Patrick Westfall – that's what – "Whoever talked to me, he talked to me about Patrick Westfall." He says no, it was about Odinism. And I'm gonna move on, 'cause I'm beating that dead horse right now, but I just – it's hard for me to understand how you don't go there and ask about this and the other things and the sticks that are on the bodies and his fascination with sticks, but we're never gonna know, because they say they never took notes, and Lieutenant Holeman says, well, he didn't need to, it's not necessary. Didn't need to tape record it, not necessary. This is what we're up against. Notice that all these items that we're talking about relate to one person, Brad Holder. Let me look at what other evidence we brought in and see if I want to comment on it. In order for us to prevail, it is a tall task, admittedly. We have to prove, in this case, that a phone dump existed, and I've already told you why – you know, how we are attempting to do that, it is through this and through the illogic and through the FBI emails that they had the ability to, Brad Holder saying that, "I turned my phone over," and just all of that and just common sense and logic. And again, I would ask you to really take into account Lieutenant Holeman's claim that it was not necessary to take Brad Holder's phone. And is that an honest answer? Because if you believe that that is exculpatory, this case is over. If you believe that that is – the evidence is, you know, useful to the Defense – I

always struggle with that phrase – then we have to prove that there's an intentionality there, and I would think that Brad Holder's – yeah, thank you. We – I wanted to talk about another reason why they should have had his phone and why you should believe that he's a suspect here, because in Mr. McLeland's response he says, "Hey, Brad Holder's not even a suspect, he's not a third-party suspect." Well, you've heard a lot of evidence that shows that he is. You heard from Kevin Murphy, for one, that said that there's a group of officers that said that he was. And here's another thing – and this is why it's potentially useful – that's the phrase – this is why it's potentially useful, at a minimum, the missing evidence, what I'm calling missing evidence: Brad Holder, first interaction, February 17th, 2017, missing video, it's been erased or whatever. What does Brad Holder say? "It's in evidence. I turned it over. Never met A.W. Never met her. My son dated her or was talking to her. I never met her." Want you to think about that, the context of that. February 17th, three days after these girls are found murdered. Your son has dated these girls and you are asked this question, "Did you ever meet her? Did you ever meet her?" "No, never did." That is the moment in time when the rubber hits the road if you're Brad Holder. "This is freshest in my mind. This is a big deal." A that point in time, if I know those – they've talked and I met her, I better say that right now, because – but he said no, that's the way it's recorded, that's the way it's recorded in the one document from – that memorialized the missing tape. Want to move to the deposition – I'm sorry, to the statement that we played on the tape – the television. Thought that was super interesting. "Brad Holder, how'd you get involved in this?" "I can't remember which one it was, was it A.W. or L.G. or – I don't remember." Come on, we all know that that's not true. He knew exactly who it was and he said, "I

met her one time." So now he changes from this to that. Now, if we move forward a few months and you're now at a few months ago when we deposed him, he says – adds some new information. "Maybe it was twice" – I read that into the record – "One of those times was at Patrick Westfall's house." He's not a third-party suspect is one of the answers, and so even if that's the way the State answered – responded to the motion to dismiss, and he wrote that because, therefore, he can say even if – it doesn't matter whether it's missing, because he's not a third-party suspect. You know, I also bring that up, the three different stories, to say that to highlight how important it is for criminal defense lawyers defending a guy, we win these cases on the little nuanced difference and stories much of the time, and we don't get that here. He loses. We could have taken one sentence or one word or one even letter that – from plural to singular or opposite, but we don't get that because the first statement is missing. The interview in at Logansport is nonexistent. It matters. I'm gonna finish by talking about what evidence is there of intentionality. Well, I start with Jerry Ho – Lieutenant Holeman's claim at the phone dump, the phone of Brad Holder, didn't – it wasn't needed to get. I just – that's just – I know I've repeated that, this'll be the last time I say that's just beyond the pale of common sense. That shows an intentionality. They can't be honest on the stand about how important that phone was at that time, when the FBI knew that he was a suspect on the 17th. We have – well, let me to go my – on – well, this wasn't part of the evidence, so I can't get into that. Oh, yeah, Murphy testified, "What the hell is this and how the eff – and how to eff – how the eff did they get it?" That – I'm – I implore you to read that 12-page report, Judge, and all the exculpatory evidence that is – it contains. It's in evidence, I can talk to you about it. Amber Holder says Brad

Holder and Patrick Westfall, they split up, they were friends. They had some – something happened in the woods by a river and they had an argument over a ritual that took place, that's in that 12-page report. Brad Holder points the finger at not himself, but Patrick Westfall committed these crimes, that's in there. Elvis Fields says, "I – if I spit on those girls, but I have a good reason, does that – will I be – still be in trouble?" All of that is contained in that report, and that's the report to which, in this hallway conflict or whatever, this short burst of anger or whatever, Lieutenant Holeman says, "How the eff did they get that?" I don't know, you know, maybe that's gonna be interpreted in different ways. I interpreted it the way that I interpret it and that is we weren't supposed to get that. And perhaps we weren't supposed to get Brad Holder's phone dump, as well. The last thing is I ask you to take judicial notice when we had the hearing last June 15th, we wanted a witness to come here and testify about how Mr. Allen here was being treated, and here's – we didn't get that witness. And here's how the Carroll County Sheriff's Department memorialized the reasoning for us not being able to have our witness there, "On the 14th day of June, communication wit the Court was established by Sheriff Major Chief Deputy Tobe Leazenby, wherein Major Leazenby was advised by the Court to disregard any further efforts to retrieve Inmate Baston from the Westville facility." Said you, this Court, told them it was okay, advised by the Court to disregard the further efforts. And I appreciate that you cleared that up, here's your response to that, "The decision by the deputy to leave the witness – without the witness was his and was not directed by the Court." That is intentionality. We did not have a witness here that we wanted and that was the Carroll County Police left him behind and then they said that you were the one that told them that they had the right or the

ability to leave, they advised that you advised them. And the Defense was hampered by that. Maybe he's not sitting in the jail cell or in the Department of Corrections in Westville had our witness showed up. So they left him behind and then they blamed you for it and it looks like they lied about it. All of this shows intentionality and what we believe the evidence shows, there was a phone extraction, that the phone extraction was, at a minimum, potentially useful, and that there is intentionality on the part of law enforcement to keep evidence from us and, therefore, we're asking you to grant our motion to dismiss, an extreme remedy, but when we don't get those little nuanced things that – the sentences that would come from a report or the phone and all the information you get off of that, this guy's rights, his Fourteenth Amendment rights, his Sixth Amendment rights have been violated, he's never gonna get a fair trial, and that's why we ask for a dismissal.

THE COURT: Mr. Luttrull.

MR. LUTTRULL: Thank you, Your Honor. The law is very clear, dismissal of charges due to the State destroying or losing evidence is only permitted when the evidence is materially exculpatory or when the evidence is deemed potentially useful to the Defense and the destruction of the evidence was because of bad faith. The Defense have alleged three things were destroyed in their motion. Brad Holder phone extraction data. There was no evidence to support that law enforcement ever extracted data from Brad Holder's phone, and really no evidence that they ever possessed his phone. I think it's noteworthy, as you review the exhibit of Agent Pohl's summary, his report summarizing his interview, he makes no mention of Brad Holder's phone or obtaining Brad Holder's phone, though he has many details in there about what they talked

about and how the interview was conducted. Brad Holder himself, the only source of any indication that the police may have possessed his phone at some point, said in a deposition, pages 13 and 14, reading from that, "I believe they took my phone. They took my phone, yeah. They took my phone, I'm pretty sure. I'm pretty sure. I'm pretty sure they took my phone. I'm not gonna say that positively, but I'm pretty sure they took my phone." He went on to say they took his phone and his son's phone at the same time. "There, right there, they did it in the lobby," referring to the Delphi Police Department. "I'm pretty sure they took both of our phones. Don't quote me on that, because it was a long time ago." That's the only indication, by anyone, that the police may have ever possessed his phone. No one has ever suggested that the police extracted data from it and there's no record the police ever possessed Brad Holder's phone. The second item is the evidence of Brad Holder's second interview with law enforcement. Very clear from Detective Purdy that that interview, he did not record it, he did not ask that it be recorded, he does not have any reason to believe it was recorded; and so they have alleged in their motion that the State lost or destroyed evidence, but there's no evidence either of those ever existed. The third item they mentioned is this so-called mimicked crime scene photo image that Detective Purdy says he believed he saw on a Facebook site associated with Brad Holder, doesn't say who posted it, just said he believes it was on Brad Holder's Facebook site as of 2012, but they have that photo. Implicit in a motion to dismiss based upon evidence that's been lost or destroyed is the fact that that evidence cannot be reproduced; as cited in *Chisolm v. State*, cited in our motion, it must be of such a nature – in order to be materially exculpatory, it must be of such a nature the defendant would be unable to obtain comparable evidence by

any other reasonable, available means. They have it, and yet they ask you to dismiss the charges. That's not what the law says. This motion should fail based upon the authority that they themselves cite, the *Chisolm* case, the *Blanchard v. State* case. There's nothing to support the fact that the State lost or destroyed evidence, Brad Holder's phone data or the recording of the Logansport interview in bad faith or otherwise. There's no evidence that they ever were in possession of the – law enforcement. And, as I indicated, the possession of the image that they have does not being to beat the test of a motion to dismiss, as they have it. Finally, we believe that there's no evidence, even if it had existed, that it would be materially exculpatory or even potentially useful. It's clear that Brad Holder had no connection to this crime and has an alibi and there's been no tie-in, tying him to the horrible events that occurred on February 13th. Thank you.

THE COURT: Mr. Baldwin.

MR. BALDWIN: We would ask you, Judge, to reconcile any factual disputes in a manner favorable to the Defense as it relates to whether there was a phone dump based upon all the evidence that was provided and the arguments that I've just made. Murphy's statement as he relayed what Holeman said to him and also what occurred at the Logansport interview and whether there were notes taken or not and whether that was tape recorded or not, based upon the – based upon all the evidence as presented and I think that's all I have. Thank you.

THE COURT: Mr. Rozzi, anything else?

MR. ROZZI: No, Your Honor.

THE COURT: Okay. Ms. Auger?

MS. AUGER: No, thank you, Your Honor.

THE COURT: All right. I will take the Defense motion to dismiss under advisement to review all of the evidence that was submitted by counsel. I've taken judicial notice of the things that you've asked me to take judicial notice of. Is there anything else, then, that we can – need to discuss as it relates to today's events?

MR. BALDWIN: No, Judge.

THE COURT: No?

MR. ROZZI: I have a question about the scheduling tomorrow.

THE COURT: Sure.

MR. ROZZI: Just wanted to make sure we're starting at 9. I think that's the –

THE COURT: Um-hmm, yes.

MR. ROZZI: -- information we exchanged, but I –

THE COURT: Yes.

MR. ROZZI: Okay.

THE COURT: Anything else from the Defense?

MR. BALDWIN: We have some witnesses subpoenaed for the motion in limine hearing on Thursday.

THE COURT: Okay.

MR. BALDWIN: If we get started – if we get – if we end early, we may not – I just wanted the Court to know we may not have those witnesses available.

THE COURT: No, and you had advised me of that previously, that you've got people coming in, but if we get done early tomorrow, we get done early tomorrow, 'cause we can't then start with the motions to – in limine and the

motion for admissibility. Okay. Anything else from the Defense?

(No response or indication.)

THE COURT: Anything from the State?

MS. DIENER: Judge, the motion for admissibly is specifically with regard to Dr. Wala –

THE COURT: Yes.

MS. DIENER: -- and she is one of the subpoenaed witnesses for tomorrow's first motion, so will we address that –

THE COURT: I think we can, don't you think?

MS. DIENER: -- so that she would be released? That way, we've got the afternoon if we've got a (inaudible).

THE COURT: Okay.

MR. ROZZI: Yeah. I think that the issues all kind of –

THE COURT: They all kind of mush together, don't they?

MR. ROZZI: Yeah, so I feel like that's all gonna come in play.

THE COURT: Okay. Yeah. I think –

MR. ROZZI: So we're okay with that.

THE COURT: -- you're right, Mr. Rozzi, I think we can go ahead and kind of pull in that, because that's the basis of her testimony would – is it admissible and it relates directly to the motion to suppress. Any just briefly, would counsel approach.

(Sidebar conference conducted.)

THE COURT: I just want to advise you, she called, this Dr. Wala – is that her name? – she called the Court. I didn't speak with her, but somebody with the court spoke with her, that's she's concerned about standing in a queue

outside. I directed the – I don't remember who it was that came and told – the court person? I don't know who it was. I don't know who it was, but we directed her to go to the Sheriff to – if she's got a concern. She had a subpoena, she wanted to come right up to the front of the line. I'm like we don't – no, you talk to the Sheriff about that. So we directed that court staff person to Sheriff – Chief Deputy Leazenby to figure out – to put her at the front of the line, to show her subpoena.

MR. ROZZI: Her concern was where she was gonna be in line, not for (inaudible)

THE COURT: Well, and that – no, no, no, and that she was concerned about standing in a line outside. I don't know if there's a bunch of people out there, I don't know, I don't care.

MR. ROZZI: She wants a fast pass, is that what –

THE COURT: Basically, yeah, she wants to be at the front of the TSA line.

MR. ROZZI: Okay. Whatever.

THE COURT: So I just wanted you to be aware that she's called.

MR. ROZZI: (Inaudible) the lay people think that they've got a place to sit, rather than the hallway and kind of exposed to all of this.

THE COURT: Yeah.

MR. ROZZI: Yeah, that would be kind of nice if they could put them downstairs. I don't know what the capacities are here, but –

THE COURT: I have no idea.

MR. ROZZI: You know, I'm just –

THE COURT: I'll have to find out.

MR. ROZZI: 'Cause they're just sitting out there and people are coming out and talking and –

THE COURT: Oh.

MR. ROZZI: It's kind of a confined area.

THE COURT: Yeah.

MR. ROZZI: You've got the gallery out there –

THE COURT: Yicking and yacking.

MR. ROZZI: -- the witnesses are all out there, just talking –

THE COURT: Yeah. I think, as we get closer to trial, we'll have – I'll have to figure out some of that stuff. Okay.

MR. ROZZI: Yeah.

THE COURT: Okay. Thanks.

MR. ROZZI: I don't care – my – I don't care if we get her up in the line.

THE COURT: Okay. I didn't care, either. I just wanted you to be aware of it.

MR. ROZZI: Okay.

MS. AUGER: Thank you.

(Sidebar conference concluded.)

THE COURT: All right. Well, then we'll see everybody tomorrow morning at nine o'clock, and we will work until we're done. Okay. Thank you, gentlemen and ladies. Jodie, you can go off the record.

(Off record at 4:07 p.m.)

(On record July 31, 2024, at 8:59 a.m.)

THE COURT: All right. Well, good morning, ladies and gentlemen. We are on the record back on *State of Indiana versus Richard Allen.* I'll show the Defendant's here in person with counsel, Mr. Rozzi, Ms. Auger, and Mr. Baldwin. The State is here by Mr. McLeland, Mr. Luttrull, and Ms. Diener. Before we start, I just wanted to advise counsel, last evening I was in communication with our jury office to just kind of ask about the jury questionnaires. As you know from your experience at our last trial setting, there was a lot of questionnaires that we had to process and go through. Just so that you're all aware of what the timeline is for the questionnaires, they are going out this morning to Postmasters. Postmasters will then make all of the necessary copies. We're, again, going to be doing 600 questionnaires out to citizens of Allen County. They will receive the questionnaire sometime next week. There will be a letter contained in that questionnaire that just advises the jurors that they have been selected as potential jurors in this particular case. I know you all looked at the questionnaires and submitted your requests and those have been included in the gross questionnaire. They will be asked to return that questionnaire by August 5th. We will then return that ques – those – all of the questionnaires then to Postmasters, and they will get those back to us, hopefully – we're asking them to have those back to us by August 23rd, and then we'll get those back to counsel. And we should have everything out – and I think last time you wanted them on flash drives and on – in paper. So is that still your request for this round of questionnaires, paper and flash drive?

MR. MCLELAND: Yes, Your Honor.

THE COURT: Gentlemen? Lady?

MR. BALDWIN: Yes, Your Honor.

THE COURT: Okay.

MS. AUGER: Yes.

THE COURT: Okay. And then, we'll get those delivered to counsel. Again, we'll be doing jury selection October 14th through the 18th in Fort Wayne, Indiana. We'll do the split check-in times like we had before with 8:30 in the morning and one o'clock, and you will get 50 jurors per round, so we'll be doing 100 people per day and, hopefully, get a jury by the end of the 18th. So I just wanted to update counsel on my activities with our jury office. Is there anything that we need to do before we begin the hearing? And which motion to suppress are we gonna start with? Are we doing the second statement or the motion to suppress, Mr. Rozzi?

MR. ROZZI: May I, Judge?

THE COURT: Yes.

MR. ROZZI: In consultation with our team over last night and this morning, we are moving to withdraw the second – the statement – I'm sorry, the motion to suppress Mr. Allen's second statement to law enforcement, so that issue will not be addressed today, which leaves us with the other regarding incriminating statements.

THE COURT: Okay.

MR. ROZZI: Thank you.

THE COURT: All right. So that was the motion to suppress Accused's second statement that was filed with the Court on April 15th and that is being withdrawn by counsel?

MS. AUGER: Yes, Your Honor. Thank you.

THE COURT: All right. Well, thank you, then. We are proceeding

on the motion to suppress filed April 11th of 2024. All right. You may proceed.

MR. ROZZI: Judge, would the Court appreciate some type of opening or waiving that or –

THE COURT: Sure.

MR. ROZZI: -- do you want to just get right into evidence?

THE COURT: No, go right ahead.

MR. ROZZI: I know judge have different opinions about those kinds of things.

THE COURT: Go right ahead.

MR. ROZZI: All right. The motion itself is intended to address the issue of incriminating statements that were made by Mr. Allen while he was housed – while he has been housed at the Department of Corrections. Basically, we're here on some constitutional law issues today, which I have acknowledged in the past to some of my colleagues is not my strength, but I feel like I'm pretty versed on what's going on with Mr. Allen's detention circumstances and what you're gonna hear today is, is that there are several different amendments that apply. The first one, which is identified in our motion, is the Fifth Amendment, his right against self-incrimination, which is also joined by Article 1, Section 14 of the Indiana Constitution; the Sixth Amendment, his right to counsel, which is paired with Article 1, Section 13 of the Indiana Constitution; the Fourteenth Amendment, due process clause of the United States Constitution, which is paired with Article 1, Section 12 of the Indiana Constitution; and there's a sprinkling, so to speak, of the Eighth Amendment in this scenario, which is the Federal amendment regarding cruel and unusual punishment, but that actually flows through the Fourteenth Amendment due process clause, so I'm not gonna

put that amendment front and center today, because he's not a convicted offender. But if you look at some of the case law that pertains to these detention circumstances, the Eighth Amendment is definitely part of that narrative, but the Eighth Amendment is connected with the due process clause, so really all those – it all is covered by the umbrella of the Fourteenth Amendment. So that's the basic law that we're gonna address. There's also gonna be some discussion today about a couple of different statutes, the first one being Indiana Code 34-46-3-1 and that is the statute that basically articulates the doctor/patient privilege, as well as other privileges that exist in the state of Indiana. The second statute, which is kind of married to this privilege statute is 25-33-1-17, and those are the exceptions to the privilege statute. And those two statutes are not overly complicated. Basically, the first one says that the doctor/patient privilege exists and that any communications between the two parties are confidential. The second one says, oh, there's an exception to that rule, and that exception is, is that if there are statements made regarding a homicide or a homicide case, that those statements are not privileged. So we're gonna talk about those two things more at the end of the presentation. And I think that kind of covers the basic law. The other thing I would articulate to the Court is, is that in terms of the statements themselves, I like to think of them in, basically, five different buckets, if you will. I tend to try to compartmentalize things in my mind, and using buckets is a way for me to do that. The first bucket would be statements that were made to family members. The second bucket would be statements that are made – that were made they believe to other inmates, they're gonna be referenced as "inmate companions" in this case; basically, individuals that were assigned by the prison to sit at his doorstep and, theoretically, observe him. The

third bucket would be statements made to guards that were assigned to his doorstep, so to speak. The fourth bucket would be statements made to the warden and to the chaplain in written form. And then the fifth would be the statements made to the psychologist, Dr. Wala, who'll testify here today. So those are – that's kind of a – my way of breaking this down, trying to make it consumable to the Court, and I think that's how – an approximate road map I'm gonna follow. Thank you.

THE COURT: Ms. Diener.

MS. DIENER: Yes, Judge, may it please the Court. The State has flied a motion to dismiss the request for suppression and that would be where we would begin. I would agree with Mr. Rozzi on his summary of the constitutional amendments or the one that pertain to their request and also the doctor/patient privilege and the exceptions that flow from there. We, specifically, filed that motion with regard to a psychologist, so that is the one we're prepared to address today. I would agree with Mr. Rozzi that there are categories of statements and I would mirror his list, except to say that there is another category that contains multiple people within those buckets. So we do have calls to family, we do have statements to inmates that were assigned as companions at his door, or we do have statements to guards that were assigned as companions to his door, the warden, Dr. Wala. We do not have access to chaplain, none of those have been provided to us; so to the extent there are any to the chaplain – I don't know if that was an oversight because we were asking for mental health/medical and that's somehow in another category, so the State doesn't have chaplain records. Dr. Wala – but then there's also video movement of Mr. Allen during which times he's making statements, and that may include

nursing staff; the physician, Dr. Martin; it may include Dr. Wala; it may include the warden, but those statements might fall in another category, I would put them in another category, and so we may address some of them in that context.

THE COURT: Why have the chaplain's statements not been provided?

MR. ROZZI: May I?

THE COURT: Yes.

MR. ROZZI: Judge, I appreciate her bringing that up. Actually, I'm not able to locate that. There was a reference I think in the deposition maybe with Warden Galipeau or maybe it was in one of the other thousands of documents that I saw that there may have been some type of letter written to the chaplain that may have been incriminating, and I'm not able – I was not able to locate it, but I – so I'm glad that she brought that up, because I don't really have it, I just know that there's some reference to it somewhere in the record that it might exist. So that's my response. I do have a couple of things to –

THE COURT: Go ahead.

MR. ROZZI: -- just to follow-up on Ms. Diener's statements. This is kind of my view of how this might work, subject to the Court's input. What I did today – and I actually have talked to Ms. Diener before today – I think what you're gonna get are exhibits from us that just, basically, have – at least from me, what I believe to be the statements that are at issue that we have on paper, and I'm gonna hand those to you with a thumb drive and you'll be able to, you know, sort through those. I think the idea – because of the volume of evidence – so what we're talking about here is a video camera, for example, that she mentioned that runs 24 hours a day, pointed on Rick Allen for the last 18 months. So just,

naturally, the volume of that is almost unmanageable in terms of picking out each and every little, you know, segment of that that could be incriminating. The second – and this is also in the video bucket – would be there is evidence, you will hear, that they also used a handheld camcorder that was focused on him whenever he would be moved outside of his cell. So any time he was moved from cell door to any other place in the facility and back, I think even for showers and medical appointments, he'd – there would be a – literally like an old-fashioned, you know, camcorder, and so there's footage from that; and naturally, there's just hours and hours of that stuff. The third bucket that we talked about would be – and now we're kind of going back to the beginning – would be the family members, and that would be in the form of audio and transcribed statements from that audio. And then, the statements to the inmate companions would be in the form of log sheets. There's a different name for those sheets; I'm just gonna refer to them as log sheets. So those are mostly written. And then, the same with regards to guards. And then, the warden is just a letter. So my point in telling you all this is that, because of the volume of all this, it's difficult to be confident that we – that I've got everything marshalled in one place and packaged for you to say, "Okay, these are the only statements that matter." So my view of this would be is that if the Court either grants the Defendant's request or either in whole or in part or some kind of limitations on this, that we would probably come back and have kind of a second hearing, if you will, where we're filtering through some of this. It's not just as simple as saying, "He said on April 1st that, 'I killed those two girls." Because what's – what happens is, is that statement is made and then, six months later, there are statement to the effect of, "Well, they say I confessed." And so it's – I guess, for lack of a better phrase, it's kind of

fruit of the poisonous tree type stuff. I don't want to get too technical, but that's the challenge with all this, and I'm trying to explain to the Court my view of how we could work through that, if there's some limiting instructions given by the Court in whole or in part.

THE COURT: Anything else, Ms. Diener?

MS. DIENER: No.

THE COURT: All right. You may call your first witness.

MR. ROZZI: Judge, I'd move for a separation order. May I just identify the witnesses and then you can admonish them?

THE COURT: Yes.

MR. ROZZI: Are they all in here?

MS. DIENER: And before he steps out, Your Honor, I wanted to make a legal argument on dismissal of their motion for failure to be specific enough for the State to respond, if I may.

THE COURT: Yes.

MS. DIENER: We did file a motion to dismiss the suppression on May 17, and the reason for such request was that, in our response to the motion, we laid out some case law that I would ask the Court to consider as a result of today's hearing if witness testimony is taken with regards to whether the Defense is even stating a claim that can be granted by this Court. The motion itself starts out telling the State that they want to suppress all statements to State actors, so in interpreting that into plain language, that would not include statements to his wife or his mother, because they are, clearly, not State actors. Then, we could have a debate about whether the guards or the nursing staff or the doctor or the psychologist, who are there to do their job, are acting on behalf of the

State. But then, the motion concludes by saying all statements should be suppressed, which, to me, includes statements to mother and to wife. So it starts out with lack of clarity. The Defense even goes on to state their issue is whether the State violated Allen's constitutional rights by detaining him in solitary confinement while awaiting trial, all of his statements are involuntary and should be suppressed. In preparing for this hearing and in looking at all of the case law they cite and all of the case law that I ask the Court to consider in the response and now ask the Court to consider in this motion to dismiss, basically asking for clarification, is that all of the cases talk about a clearly identified statement. In fact, the statement is contained within the case discussing it and the analysis of how that statement was evaluated by the court with regard to admissibility. And then, there's clearly circumstances of custody. And we can see, he is in custody, there is no question about that; but is he in custody for the purpose of an interrogation? That's the question. You can't take the words out of context. And so the case law talks about custodial interrogation by law enforcement or someone acting on behalf of law enforcement. And so when you say, "We want to exclude everything that is said to a State actor," someone might say, well, a person employed by the DOC or by a contractor who provides a personnel to the DOC, clearly they get – they work for the State, they're getting paid by them, but that doesn't mean that they're acting on behalf of the State in the context of custodial interrogation, and that is what is missing from this equation. And so without them making an allegation that the State, through law enforcement or someone on behalf of law enforcement, has acted to influence or coerce the Defendant's situation in order to elicit statements that are incriminating, I believe that their motion fails before we even get to the first witness.

Interrogation is defined in *Curry v. State*, which I cite in the response, found at 643 N.E.2d 963, indicates that interrogation can only extend to works or actions on the part of police that they should have known were likely to elicit an incriminating response during custody questioning. And so irregardless [sic] of the headnotes that you grab from a particular case or whether they are contained in the analysis of the Court, they always come back to was this person in custody being questioned by law enforcement to obtain incriminating statements or someone on behalf of law enforcement. In this particular situation, Judge, the State's position is that the motion fails because they're not stating a basis that is found in current law. Their motion and their memorandum claims that they are not saying that the incriminating statements or all statements are the result of interrogation, they are asking this Court to suppress all statements for a novel basis. They say that they want the Court to make new law here by saying coercion illegally directed to Richard Allen resulting in involuntary statements that he made to State actors, not that the coercion came from State actors or that the statement was the result of interrogation, but he also made incriminating statements to his wife and his mother, and there would be no State actor in those. So the Defense memorandum says the methodology used by the justice system is one of first impression. Again, this is not based in existing case law or statutes, they're asking this Court to reach beyond and take the standard applied for the admissibility of a statement in custodial interrogation and then the analysis of whether that statement is voluntary – is it a voluntary waiver of *Miranda?* Is it a voluntary waiver of the right to counsel? Was it made knowingly, intentionally, and with free will? – but they're jumping to the voluntariness without meeting the threshold. So in an effort to address their representations

to the Court at length about all of the conditions that he is under and how they are so unique and so coercive that this Court should step outside the law, one of the main things they say is, "Well, Warden Galipeau at Westville was deposed and he indicated that he is aware of no pre-trial detainee in DOC other than the ones that he has dealt with", being Richard Allen and one five years prior. However, that witness is not the appropriate source for that information. Mr. Allen is not unique. He is here, in this current situation, under this Court's order based on the safekeeping statute that allows this Court to make a determination that his safety is at risk, not just as a threat to others, but to protect him, he himself. And so in an effort to make this clear for the Court, I have an affidavit of Dawn Stephens, who is the Indiana Department of Corrections operational support services – and I provided one to Mr. Rozzi – and she is, essentially – and I have it marked as State's Exhibit 7, and I'd like to provide it to the Court, which lays out the familiarity of this particular employee of DOC with the safekeepers and the statute under which they are directed to DOC and the number of people in DOC as safekeepers, which are all pre-trial detainees, and gave a five-year history. So obviously, 2024 is still on-going, but for the year that Mr. Allen was admitted to DOC in 2022, there were 36 pre-trial detainees in safekeeping in DOC and eight that were referred to them that were denied. So I would submit State's Exhibit 7 for the Court's consideration.

STATE'S EXHIBIT 7 OFFERED

MR. ROZZI: No objection.

THE COURT: All right. Without objection, 7 is admitted.

STATE'S EXHIBIT 7 ADMITTED

MS. DIENER: So, Judge, to sum up the State's position, we believe

that it is the Defendant's obligation under Criminal Rule of Procedure 2.7(B) to clearly state items to be suppressed that actually have a basis in law for a suppression. We feel that their request, as it is stated in this motion, is asking the Court to create new law outside of what exists and that a legal basis for that does not exist. They say his pretrial detention runs afoul of his constitutional rights; therefore, any and all statements should be suppressed. The Defendant is charged with two counts – well, the murder of two people, he has four counts. There is no statutory right to bail. People who are charged with murder are generally found in pre-trial detention, it would be very unique for someone not to be. And if the DOC is following their standards and following this Court's order and following the procedures for where he's placed, then his placement is not illegal and – nor is the circumstances of his detention. So the law does not provide a basis for suppression due to environmental factors without a person identified that would render all statements involuntary. I would submit that the Defense is fully aware that his Defendant – that his statements were unsolicited in the presence of suicide companions; staff; medical personnel; mental health personnel; the warden; the lead psychologist, Dr. Wala; and to his mother and his wife, and custodial interrogation, by any legal standard, is not taking place. For that reason, we ask the Court to dismiss their motion for non-compliance under Rule 2.7(B) and the existing law that we have to work with today.

THE COURT: Mr. Rozzi.

MR. ROZZI: Thank you, Judge. So let's talk about Rule 2.7, the trial rule that regulates the filing of motions and the parameters for how that occurs. If you look at 2.7 – first of all, I guess I should just point out the obvious, that we're in a notice of pleading state. The rule does further define that general

concept that all lawyers are familiar with. And in this particular rule, the language that's pertinent is the following: It says, "All written motions must include specific contentions supported by cogent reasoning and pertinent legal authority." So there's three prongs to that: Specific contentions, cogent legal reason, and pertinent legal authorities. And I would suggest to the Court that the first part of that, the contentions, all you gotta do is just Google the synonyms for that word and what you're gonna find is that "contentions" means a dispute or an argument; so you have to raise a dispute or an argument in your pleading, it's as simple as that, which also is consistent with the notice of pleading concept. Pertinent legal authorities – I'm sorry, specific contentions. The second one, the cogent reasoning, well, that's the argument section which is contained in the memorandum, which is required to be offered up in some form with the motion itself, and we did that. The memorandum has plenty of detail and citations to all of the authority, a nice roadmap for you to work through each of those statements and confirm that those facts that are in the memorandum are accurate, that's the cogent reasoning portion of the – the rule. And then, the pertinent legal authorities, of course there are authorities cited in the memorandum, which I think we gave you – well, I haven't given you a table of those authorities, but they're cited in there, and so you can Shepardize those citations and work through that in any manner you see fit. So I think the rule itself and the language of the rule is drafted, you know, in a – kind of parallel with the idea that we're a notice of pleading state. And I think, for those reasons, the motion meets the minimum requirements. The other thing I would say is the motion itself does reference these buckets of statements, save the video statements that have been mentioned by Ms. Diener earlier, and I do agree that

those would also fall within this umbrella of statements, but it does mention each of those, the statements to the inmates, the statements to the family, the statements to the warden, and so on and so forth, so there is some more detail in the motion. The body of the motion itself, the very first paragraph, references any and all oral and written communications, confessions, statements, or admissions alleged to have been made during his pre-trial detention, that's – covers, you the know, the gamut of statements that we will be addressing today. The State claims that – the State wants to drag the Court into this idea or this argument that, well, this is about the custodial interrogation, and I do agree with that in part. There's, obviously, no argument that he's not in custody; he is obviously in custody is the other way of putting that. So that's really not on the agenda for today. Whether or not these are interrogations is an issue of fact to be determined by the Court, and I would suggest that that is probably where the battle is: Where are the parameters or what are the parameters as to whether or not any particular conduct by the State rises to the level of an interrogation, and so that's gonna be one of the things the Court's gonna have to reconcile moving forward, Your Honor, to the law, "Here's the facts, now look at the law." That only pertains to the Fifth Amendment. This motion also references the Sixth Amendment, on which is Mr. Allen's right to counsel at all critical stages of the proceeding; and to the extent that he is detained by the State and to the extent that they are assigning State actors to his surveil or his observation and those people are engaging him, the Defense argues that those are critical stages, and so the Sixth Amendment applies to, which is not an argument about custodial interrogation. In addition, the Fourteen Amendment, also referenced in the motion – the due process clause, kind of the umbrella again here – applies,

as well, and has nothing to do – the standard has nothing to do with a custodial interrogation. So there are other bases upon which the motion is brought to the Court today. The – one second, please. From a practical standpoint, I think the argument in the motion to dismiss is, "Well, we don't know what statements they're talking about." If you just read the motion, that's really what it says. And the practical side of this is, is that's why we have hearings, is so we can educate the Court about the details involved in these circumstances. And again, I would report to the Court that there have been two depositions taken in this case that I think are pertinent, one of Warden Galipeau, who you're gonna hear soon, and the second by Dr. Wala, who you're gonna hear from today; and throughout the course of those depositions, the parties, both the State and the Defense, vetted, if you will – or I should say reviewed the documents and other forms, whether it be video or audio, that exist where these statements were made. And in fact, I believe – I'll ask her when she's on the stand today – I believe I gave all of those documents to Dr. Wala before I deposed her, I packaged them up and sent them to her and said, "You need to have these ready to go, 'cause we're gonna talk about them." And I packaged those up for the Court today again in the exhibit. So I think there'll be some definition, if you will, of those statements that would be offered up at a hearing. This is what hearings are for. And beyond that, I have one other thought, but – oh, and the other thought's a kind of obvious and that is, is that a great deal of this information was given to us by the State, so, you know, to sit and act like, "I don't know what statements they're talking about," yeah, I mean technically maybe when it comes down to every little statement, because of the volume of them, it is hard to track; but this is information, by and large, save Dr. Wala's involvement, but the rest of the

information is information given from them, it's the typical, "Here's your weekly discovery dump. Here's more video. Here's more audio. Here are transcripts of statements of officers that police – that the law enforcement team has gone up an interviewed." And they give those to us, so we learn about them later in time, but these are things that we've gotten from them. So it's not like there's some, you know – that we're playing some reindeer games here and, you know, not offering these things up. We're getting them from them and trying to sort through all those to figure out, you know, what's damaging and what's not. And so that's the context of those. And I'll finish with this, you know, Ms. – the State argues that the basis upon which we are requesting suppression is novel, that was the word she used "novel". And I'd suggest to you that there's nothing novel about the Fifth Amendment of the United States' Constitution, the Sixth Amendment to the United States' Constitution, the Fourteenth Amendment to the United States' Constitution, or any of the provisions in the Indiana Constitution that deal with those amendments, and I'd ask the Court to take that into consideration moving forward.

THE COURT: Anything else, Ms. Diener?

MS. DIENER: No, Judge.

THE COURT: So here's my concern: How do the statements that Mr. Allen made to his wife and mother come under the umbrella of State actors, as argued by the State?

MR. ROZZI: Thank you, Judge. Well, first of all, again, that's a due process issue, it's a Fourteenth Amendment issue, and that is to say that because of the way he has been treated pending trial with pre-trial detention that occurred by the way of the safekeeping order that was entered by the former

judge in this court without a hearing, without notice and opportunity to be heard by him or his lawyers, put him in that hole up in Westville where he was detained for seven months before any of these things occurred, and so it's the action by the State, i.e., the signature on that order and then their ultimate detention of him in the circumstances and the manner that they saw fit, not that he agreed to or not that you agreed to, for that matter, that drive that argument. So they're due process arguments and they're – and that is – you know, that's how, out of those circumstances, came these statements to his family members, and that's why we believe they're suppressed.

THE COURT: But doesn't your argument go to the weight that a jury would give those statements, rather than its – their admissibility?

MR. ROZZI: I appreciate that and I thought about that a lot lately. And as the Court may be aware, there is a statute – there's – it might – it's actually case law I think that requires at a trial in this case that a jury would find beyond a reasonable doubt that those statements were voluntary. So if we tee this up, so to speak, in October and those statements are part of the evidence, in other words, if we fail today, then there is a standard that exists, but our argument is, is that that's putting the cart before the horse. You are the finder of fact today as it relates to reconciling facts in terms of testimony; but at the end of the day, we're asking you to make a legal decision or render a legal opinion on the righteousness, if you will – kind of a broad word – term – for how these things were acquired; but when we get to the jury, the idea that they would be dealing with that standard beyond a reasonable doubt and the voluntariness of those is a factual reconciliation by the jury, so I see it two different ways.

THE COURT: Ms. Diener.

MS. DIENER: Judge, with regard to this Court's function of being a fact finder with regard to admissibility, it still takes you back to the case law about due process, the Fifth Amendment, the Sixth Amendment, Article 1 of the Indiana Constitution, and the question of voluntariness comes after an analysis about whether his *Miranda* rights were given and waived appropriately, which would cover both the Fifth and Sixth Amendment. So when you have him making statements to his wife and mother in a phone call that he initiates that has an advisement that this conversation is subject to recording, they're jumping over the hurdle of custodial interrogation and asking this Court to find environmental factors as the coercion that would normally be attributed to a person in every case. I cannot find a single case that says environmental factors can be the coercion that results in a defendant's statement being involuntary because it violated his Fifth and Sixth Amendment right. I can't prove a negative, it's just not there. And when they say that we're supposed to show that the voluntariness of the statement is beyond a reasonable doubt without the jury being able to hear all of the statements that we choose to present in their context, which they can then respond to and provide additional context to, we would be asking them to operate in a vacuum. So again, if there's a particular statement that they can point to that says this particular suicide companion was harassing Mr. Allen until he gave him a statement, then let's talk about that, we wouldn't want that to be happening; but we're talking about 61 statements over the course of two months that are made to all of these buckets and they are given over a period of time to different individuals. If you can point to a person that interrogated a statement out of him, we would be happy to respond in kind, but they're skipping over the threshold that this Court would be most involved in,

because even if you find it's voluntary, we argue that to the jury. So today, I believe the question is: Did we violate his rights by subjecting him to custodial interrogation? Because even the cases that talk about coercion outside of an officer acting blatantly, the case law says that it is only what an officer could anticipate or be – you know, should have known would have coerced the defendant to make a statement. We have cases about mental health, but again, the Court says mental health alone is not enough to make a statement involuntary. We have intoxication, whether that's a person voluntarily being intoxicated or someone who's ordered to be medicated or is under the influence of a drug for whatever reason; again, by itself, not dispositive of a voluntary statement. So that's why the State feels so strongly about the Court recognizing that they are skipping over custodial interrogation and there is not a case out there that says that that's not important. And even in the cases where they say that the officer was not overtly coercive, they did – there is a case where they hold him responsible for questioning a person who's in a mental health ward and is under the influence of psychotropic medication. That doesn't fit this case, there's no police interrogation.

THE COURT: Anything else, Mr. Rozzi?

MR. ROZZI: Judge, I feel like we're kind of getting down the road to, okay, now we're making final arguments after we've heard the evidence. The idea that we – there is case law that either does or doesn't support this concept of environmental factors being a party to or applied to his circumstances is more of an argument that the Court really should tackle and I would suggest to you – look, Ms. Diener says that there's no cases out there that support this. Well, there are cases that talk about environmental factors. The majority of those

cases pertain to circumstances where you've got police officers bringing in accused parties or suspects or persons of interest and putting pressure on them in different circumstances, whether it be locking them in a room at the police station with no light and for hours and hours and depriving them of food and all these other things that are environmental factors, and so there are cases out there that do exist. How many cases there are with regard to 51-year old men who are pre-trial detainees who have no criminal history who have been incarcerated without a due process hearing, that's novel, that's when you use the word "novel". There are none that I can find, I do acknowledge that. I'm not saying I might not come up with one between now and, you know, the time that we're done submitting evidence in this case and arguments, but I agree, it's an unusual situation. Thank you.

THE COURT: Well, thank you for the great legal argument. I mean, I had concerns when I read the – I mean, this is the motion in limine that you submitted, I mean it's three inches thick and it has an awful lot of information. The State then filed its response requesting dismissal, and the State's arguments are well founded. At this point, I'm gonna take the State's motion to dismiss under advisement pending the resolution of the hearing, but I am concerned about there's no police interrogation, I am concerned that there's family members that are clearly not State actors, but we're all here, and I will take the State's motion under advisement, and you may proceed.

MR. ROZZI: Very good. Thank you. Now I'm back to where I started when I was trying to leave.

MS. DIENER: Yes.

MR. ROZZI: One second, Judge, if I could grab the witnesses.

Judge, I have Nia Mapps –

MS. KENNEVA MAPPS: Kenneva Mapps.

MR. ROZZI: -- Ms. Mapps, Dr. Wala, and Warden Galipeau, and we intend to call Officer Holeman and Officer – or Investigator Mullin, I assume will be back (inaudible). So if you – I move for separation.

MS. DIENER: The State intends to call Warden Galipeau, Dr. Wala, and Detective Harshman, who is seated in the back of the room.

THE COURT: All right. Well, ladies and gentlemen, those of you that have been identified as witnesses in this particular hearing, you're instructed that the parties have filed a motion for separation of witness orally. I'll grant the motion for separation of witness. What that means, folks, is that you are not to speak in the hallway about your testimony, you are only allowed in the courtroom during your testimony. The only ones that you can talk to about your testimony is the attorney that called you. So, please, don't violate that motion for separation of witness. If you violate the order, you are subject to contempt of court. So you'll need to wait out in the hallway until you are called in to testify in this matter.

MR. ROZZI: Thank you. I would call John Galipeau.

(Witness sworn.)

MR. ROZZI: May I?

THE COURT: You may.

DIRECT EXAMINATION OF WARDEN JOHN GALIPEAU

Q What's your name?

A John Galipeau.

Q And we've met before; right, Warden?

A Correct.
Q Three or four times now I think; right?
A Correct.
Q And tell the Judge where you work.
A Currently, I work at Laporte Juvenile Correctional Facility.
Q Okay. And how long have you been at the – and what is the – in what capacity are you employed in Laporte?
A I'm the warden at Laporte Juvenile.
Q All right. And how long have you been with the DOC?
A Approximately 28 years.
Q Okay.

MR. ROZZI: The sound is – we're getting, like that –

COURT REPORTER: If he can move the microphone away –

THE WITNESS: Away?

THE COURT: Oh, just move the microphone away. Okay.

Q Warden –

THE COURT: Yeah, and I think if you just speak up loud, it will capture you.

Q We're still experimenting with a new system here, so bear with us.
A I will.
Q You said you've been with the DOC for about 28 years?
A Correct.
Q And you were previously with – you were – previously, you were the warden at Westville; is that right?
A Correct.

Q And how long were you the warden at Westville?
A Approximately five years.
Q And what is – so when was it that you left Westville and went to your current position?
A I believe I started at Laporte beginning of February, so eight months roughly.
Q And you suggested to me previously, did you not, that you basically had a lateral – I think that was the way you defined it, a lateral transfer?
A A reassignment.
Q Okay. You went from supervising – is it fair to say you went from supervising about 2300 inmates down to 60?
A About 2800 inmates to right around 55.
Q So 2800 adult felons at Westville roughly?
A Correct.
Q And now there's – you're supervising 60 teenage females in Laporte; right?
A Currently 54, yes.
Q Fifty-four. Thank you. And you recall me taking your deposition back on March 22nd of 2024?
A I do.
Q You took an oath at that time to tell the truth; is that right?
A Correct.
Q And you did that; right?
A Correct.
Q I asked you – do you recall me asking you questions about Mr. Allen's safekeeping order and generally how familiar you were with those

circumstances?

A Correct.

Q Did you tell me that you were not aware of any other circumstance in the time that you had been at the DOC where someone in his situation had been confined on a solitary basis?

A Confined on a solitary basis? We have 255 on a solitary basis. It was the first safekeeper I said that I've had.

Q Yes.

A Yes.

Q So you told me that this is the first time you've even been in a situation involving a safekeeper in Richard Allen's circumstances?

A That I've – yes, this is the first one I've been involved with.

Q Twenty-eight years?

A Correct.

Q And one of your responsibilities – is it fair to say that one of your responsibilities as the warden is to manage the custodial staff and the inmates at the prison?

A That's correct, yes.

Q And that would include being knowledge – and having knowledge of what kind of offenders are being housed there, safekeepers, those types of things?

A Basic knowledge, yes.

Q And do you agree that Mr. Allen was held at your facility in Westville for the better part of a year?

A Yes, I would concede to that, maybe a little longer.

Q I'm just kind of estimating here, but basically November of 2022, through

early December of 2023; does that sound right?

A Sounds about right, yes.

Q And do you – is it true that during that time, that he was either on constant watch or on close supervision?

A Or neither, correct.

Q Okay. There were times when he was on neither one of those?

A Yes, there was times where he was off mental health orders.

Q Okay. All together?

A Correct.

Q Okay. Do you agree that during Mr. Allen's detention at your facility, that he was afforded very little privacy?

A He was afforded – yeah, he was afforded very little privacy, yes, I would concede to that.

Q It would be reasonable to say that he had no privacy; is that correct?

A At time periods.

Q Okay. Well, let's just start out at the obvious: His cell, if I recall, you said it was about an eight and a half by twelve and a half foot cell; is that right?

A Correct.

Q And that cell, is it accurate to say it was contained in a maximum security unit within the penitentiary itself?

A That is correct.

Q If I say it was in a prison within a prison, is that a pretty nice way of describing the facility or WCU, where he was housed?

A It's a fair description.

Q A lot of acronyms in this business; right?

A There is.
Q But the WCU is the way you describe the unit where he was housed?
A Correct.
Q Tell the Judge what those – what that acronym is.
A WCU – or MCC, maximum control complex.
Q And what's W – what's the W? Where did that come from?
A WCU, Westville Control Unit.
Q Westville Control Unit.
A Correct.
Q Thank you. And – so that unit is a unit with – inside the prison, where, basically, you have to go through another set of fences and then into a confined unit to access Mr. Allen; right?
A That is correct.
Q And is it true that during his entire stay at the facility, that he had a video camera installed in his cell?
A That is correct.
Q Okay. And that particular cell – well, you'll have to correct me, I think it was A-107.
A That is correct.
Q That cell, is it fair to say, is used for specific purposes?
A Yes.
Q And one of those purposes is that it was used for monitoring suicidal offenders?
A That is true.
Q Is it also accurate that that cell was situated in a unit where there are a

number of other confinement cells?

A Fifty-five.

Q And those are all very similar in terms of their characteristics; right?

A All the same except for the bed, yes.

Q Same size, same – oh, I was gonna say amenities, that's probably not the right word, but in general –

A Same dimensions.

Q Same dimensions?

A Yep.

Q Okay. So basically, he's in a suicide observation cell, but his neighbor right next door a few feet is in a cell just like the one he's in?

A Correct.

Q But he gets a camera; is that accurate?

A That's accurate.

Q And that camera, basically, is focused on his cell 24 hours a day, seven days a week?

A Yes, sir.

Q And that camera – is it accurate to say that that camera was recording his movements, activities, and everything that he did, everything that he did, in that cell during those times?

A That is correct.

Q And just to be clear so the Judge is aware: That camera, is it fair to say, did not have audio, it's just video?

A That is correct, no audio.

Q And did you then instruct Ms. Mapps, one of the employees at the prison,

to preserve all of that video?

A Yes.

Q And so that happened early on in Mr. Allen's stay that you instructed her to do that?

A I'm not sure when it happened, but yeah.

Q What were your intentions of having her preserve all of that video?

A Just for proceedings just like this.

Q Okay.

A Just so we could have, you know, knowledge of – be transparent.

Q Purposes of litigation; right?

A Or just to be transparent, yeah, to capture anything that may have happened.

Q Okay. Well, when you say proceedings just like this, you're talking about us being here in a courtroom.

A This is one of them.

Q Okay.

A Correct.

Q We were talking about privacy; do you agree that even when Mr. Allen would use the restroom that – whether it be a number one or number two, so to speak – that that would be on video?

A Correct, it would be.

Q Do you agree that there were lights on in this observation cell throughout his stay at Westville?

A Correct.

Q And in fairness, there's a window in the cell; right?

A There was.
Q Do you recall us talking about that in our deposition?
A Briefly.
Q If I describe the window as kind of window slit, if you will, is that a pretty good way of describing it?
A It is. I would describe it probably five feet by ten inches maybe.
Q Okay. So pretty narrow, but it's taller than it is wide; right?
A Yes, sir.
Q And from what I could see on the video when I was watching, the bottom of that window is actually elevated quite a bit in that room, maybe face level or higher; right?
A I would say so, yes.
Q Okay. So the higher portion of the window, you really can't see, because you (inaudible); right?
A No. The window probably starts probably I would say waist-high maybe.
Q Okay. Do you recall specifically Mr. Allen's window being damaged when he was moved into that cell?
A I remember it being scratched.
Q Okay. And then, it had to be replaced?
A We replaced it, yes.
Q There are pol – is it fair to say there are policies regarding the amount of recreation that Mr. Allen would get while in that setting?
A Correct.
Q And you told me in part of the deposition that he would get three to four one-hour sessions a week; is that right?

A I think they're allotted five, yes.
Q In depositions, you told me three to four.
A I believe they're allotted five.
Q So did you go back and check the policy since I last talked to you?
A No. I just – I believe they're allotted five.
Q Okay. Very well. So five one-hour sessions?
A Correct.
Q All right.
A When available.
Q And do you acknowledge that there are times when those sessions can be curtailed because he is on some other form of watch, whether it be constant or close supervision?
A Correct. Or refusals.
Q And do you acknowledge that there were long periods of time while Mr. Allen was detained in Westville when, in fact, he was on either constant or close watch?
A Yes. I'm not sure the duration he was on them, but he was on both those.
Q And in fact, do you acknowledge that when he showed up at the prison doorstep, so to speak, in November of 2022, that he was immediately placed on suicide watch?
A I don't recall whether he was placed on suicide watch. If he was, it's because he was on suicide watch as he was transported to us. I'm not sure when Westville put him on suicide watch.
Q Okay. Very good. Do you recall that he was placed on suicide watch roughly from about April 1st of 2023, through the rest of his stay, December 5th

I believe of 2024?

A There was intermittent periods where he was on or off, so I'm not sure of the exact dates when he was on or off, but it was intermittent.

Q Thank you for that. The point being that when you're on this particular watch, then some of your privileges can be cut off; right?

A That is true, if he's on constant.

Q Let's talk about Mr. Allen's visitation at the prison; okay?

A Yes, sir.

Q Do you acknowledge that when there were visits with his lawyers and his family, that he was transported by a number of guards?

A Yes, sir.

Q Do you acknowledge that he was fully shackled when that occurred?

A I do.

Q And when we describe the shackles, we're talking about handcuffs; right?

A Correct.

Q And those handcuffs are a little different than just a regular, traditional set of handcuffs. They're box cuffs; right?

A Well, the handcuffs are the same, they just place a box over the handcuffs.

Q Very good. Thank you for the technical explanation. So traditional handcuffs with a box in them; right?

A Correct.

Q And the box makes them more restrictive?

A Correct.

Q Do you acknowledge that he also had a belly chain on him when he was transported?

A That'd be standard.
Q And do you acknowledge that he had ankle shackles or foot shackles when he was transported?
A Yes, sir.
Q Do you acknowledge that he also had what we – I don't want to get too technical here, but the belly chain is hooked to the box cuffs; right?
A Correct.
Q So you can't really move your hands?
A You can move them. They're designed for transportation, so you can eat with them, you can go to the bathroom with them.
Q Well, you have to unhook them from the belly chain to eat; right?
A No.
Q You don't have to?
A No, sir.
Q Okay. Do you acknowledge that he also was, essentially, walked around with a – I called it a leash, you called it a lead, but it looks like a leash; right?
A It is a lead.
Q Just like you would use with a dog?
A No. It's a –
Q Has a little hook on the end with a ring?
A It's a security lead, correct.
Q Transported with that; right?
A Yes, sir.
Q Now, you acknowledge that every time that you moved Mr. Allen out of his cell, that there was – strike that, let me rephrase the question. Do you

acknowledge that a majority of times that you moved Mr. Allen out of his cell, that you used a video camera to record those movements?

A It should have been every time, yes, sir.

Q Okay. I wasn't sure when it started, so I didn't want to force it to a technical error.

A Right.

Q So you think it was every time?

A When the order came down, it was every time, yes. I'm not sure when that was started, but it wasn't too long after he got there.

Q Okay. And so, essentially, while he was being walked to the shower, he had a video camera on him?

A Correct.

Q While he was being walked to see his lawyer, Mr. Baldwin and I, he had a video camera on him?

A Yes, sir.

Q Actually assigned an individual to just do that?

A Yes, sir.

Q And there were even occasions when his lawyers would meet with him, do you acknowledge, when you were video cameraing – or videoing those meetings?

A Yes, sir.

Q Now, in fairness, it was not in the room; correct?

A Correct.

Q But the video camera was located directly outside of the window, very near where his lawyers were then?

A Correct.

Q Do you acknowledge that that video camera was pointed directly at Mr. Allen as he was communicating with his lawyers?

A I would hope so. I'm not sure how it was pointed, but that's the intent.

Q And that he was required to sit in certain spots that would be for him, certain chairs?

A Correct.

Q So that the video could be affixed on him firmly?

A When he was on suicide watch, correct.

Q And during these meetings, he was fully shackled, as we've de – as you've described earlier; right?

A I'm not sure if – I know he was unshackled during his visitations.

Q What about the meetings with his lawyers?

A I'm not sure. I don't recall. I didn't walk him down there.

Q Okay. Did you ever look at any of the video?

A Not that video, no.

Q Not any of that video?

A Not with the attorneys, no.

Q Not by yourself?

A Never.

Q Okay. You mentioned his visitation and you thought he was unshackled just a second ago; right?

A He was.

Q Let's educate the Judge about that. So he was taken to visitation in the shackled manner that we discussed; is that accurate?

A He was transported there, correct.

Q Okay. And then, when he got there, there actually is a process where you go through that's called the changing of wardrobes?

A Correct.

Q And he was allowed to sit at a table during that visit; right?

A He was.

Q And his wife was – he was allowed a brief embrace with her; is that accurate?

A I believe so, yes.

Q And do you acknowledge that the two of them were required to sit at a specific table in that visitation room?

A That's policy, yes.

Q And do you acknowledge that that visitation room was basically empty, with the exception of a couple lawyers and some prison guards?

A It was empty 'cause we made accommodations for Mr. Allen, correct.

Q Okay. And do you acknowledge that there were prison guards that were located near him while he visited with his wife?

A Absolutely.

Q And are basically sitting on each end of him as he sat and talked to his wife?

A Well, they were in the room. I'm not sure where they were standing, but they were in the room.

Q Well, we've talked about this before – haven't we? – when I took your deposition.

A I'm not sure we talked about this specifically, but –

Q I'm sorry, I didn't mean to talk over you.

A I'm – I don't know if we talked about this specifically, but there's guards in every visitation room.

Q All right. Well, there are guards located around the visitation; is that right?

A Correct.

Q Those people could overhear the things that were being said in the room with him.

A I don't know where they were standing at.

Q All right. Do you acknowledge that he was not given the basic provision of water during those visits?

A There's no water during visits.

Q There what?

A There's no water during visits.

Q So the answer's yes?

A The answer's yes.

Q Okay.

A Visits, it's –

Q There is a water fountain in that room, isn't there?

A There is.

Q But it's just right next to where he was sitting.

A There is.

Q And there are vending machines in the room.

A Also true.

Q And when other inmates have visitations, their family members get to buy things for them, don't they?

A I believe $4 or $5, correct.

Q Well, there's like ten vending machines in there; right?
A There is.
Q Okay. So having something to drink in that room is not a novel idea, is it?
A Having something to drink in that – nobody from Westville gets water in there.
Q Okay.
A Visits are – tend to be an hour long, I think we granted Mr. Allen two hours visits –
Q His wife didn't get any water either, did she?
A No, sir, not that I recall.
Q Pretty reasonable request though.
A It's policy, sir.
Q I'm sorry?
A I said it's policy.
Q Policy?
A Yes, sir.
Q So you can have a Pepsi, but you can't have water?
A Correct.
Q All right.
A You're not allowed to get up is probably why that's there, you're not allowed to use the restroom, you're not allowed to use water, you're not allowed to get up and walk around. Your visitors can, but the inmates cannot.
Q All right. So there's no reason why she shouldn't have been able to get a drink?
A I'm not sure.

Q Do you recall that during Rick's stay at the unit, that there were tasers that were used to assist with his detention?

A I recall two incidents, yes.

Q And do you recall that those incidents basically involved a situation where he was placed back in his confinement cell and wouldn't remove his hands from the cuff ports?

A That is correct.

Q So to educate the Judge again, the cuff port is the phrase that you use for the little slit in the door where you put the inmate's food?

A Correct.

Q Or pass other items to the inmate without opening the door; right?

A Yes.

Q And that cuff port – actually, I looked it up on the Internet the other day to see, I thought it was like a five by ten portal or something. Is that generally –

A I don't know the dimensions of it. I would guess, just guessing, probably three foot in diameter, eight inches high.

Q Okay. When I say five by ten, I'm talking inches, too, just to be clear. You think it's about three foot wide?

A Probably, yeah.

Q But that's what you use to – for taking handcuffs off and things like that; right?

A And pass food.

Q We're talking about the use of force. Is it accurate to say that the two times that the taser was at least deployed was because he wouldn't take his hands out of the cuff port; right?

A Correct.

Q And I suggested why don't you just walk away for a second until he takes his hands out and then close the door; right? Remember we suggested that to you?

A I remember the suggestion.

Q And what was your answer?

A I don't know what my answer was, but my answer today was that would be dangerous to leave the cuff port open.

Q Okay. Because he was some threat to these officers?

A He could be, yes.

Q I mean, he's in the most confined place in your entire prison; right?

A All 255 cuff ports are shut.

Q Okay. But do you agree that he was in the most confined cell in your entire prison?

A Same cell, just with a camera.

Q Did he have any record – track record at all of doing anything to harm any of the guards –

A Not that I –

Q -- leading up to those circumstances?

A Not that I recall.

Q So he wasn't a threat to anybody, was he?

A There was some noncompliance, but not a threat, no.

Q So when you don't comply, you get punished by getting tased, is that what you're saying?

A If we can't secure your door, yes.

Q Now, let's talk about statements made by Mr. Allen. You told me that you heard him make some incriminating statements, I think you told me about three to five different times when you were at the prison.

A Roughly.

Q And those all occurred at the cell door; is that accurate?

A Either through the cell door or through written communication.

Q Okay. Well, I'm talking about what you heard.

A Yes, through the cell door.

Q And do you acknowledge that those communications also occurred when someone else from the prison, whether an inmate companion or a guard, was present?

A Yes, sir.

Q And you told me that you never documented any of this stuff; right?

A I did not.

Q But that those interactions would have been documented by either a prisoner or a guard?

A They could have been, yes.

Q And I think what you told me was, forgive me if I'm wrong, but those statements that he made were what I'm gonna call – my term – generic statements, basically, "I killed those two girls"?

A They were a little – I mean, he mentioned them by name.

Q Okay, he mentioned them by name. Nothing – there was no detail involved in the statements – right? – other than that.

A No, sir.

Q Now, you were aware – are you – were you aware that there was an active

law enforcement investigation ongoing while he was detained in your prison?

A I wasn't aware of it.

Q You didn't know that.

A It wouldn't surprise me, but I wasn't aware of it.

Q Okay. Are you aware that law enforcement officers were coming into your facility during his stay at Westville and interviewing your guards and inmate companions?

A I don't recall them interviewing any inmates.

Q Okay.

A No.

Q You don't have any knowledge of that?

A No.

Q If that were happening, would you expect that that would be something that you would have knowledge of?

A I would hope so, yes.

Q All right. Do you have any recollection of any police officers coming into the facility to talk to anybody about Rick Allen's detention circumstances between December – I'm sorry, November of 2022 and December of 2023?

A The only law enforcement that I – I can't even remember his name, but came into my office and spoke to me briefly, but I don't remember anyone interviewing guards or inmates there, no.

Q I couldn't hear, what'd you say at the end?

A I said I don't remember any law enforcement coming in and interviewing Mr. Allen or guards, no.

Q Give me one second, I need to look real quick. Let's just talk about prison

life in general. You'd acknowledge that living in prison can be really tough on people?

A It can be uncomfortable.

Q And especially on their mental state?

A Sure.

Q And that detaining someone in a secure unit like the WCU can be even tougher on an inmate?

A Some prefer it, so –

Q But it can be tougher on an inmate?

A Sure.

Q For those who don't prefer it?

A Concede to that.

Q Was there ever any suggestion from Rick Allen while he was there that he preferred to be in that confinement cell?

A No, not that I'm aware.

Q Thank you. You acknowledged to me in the deposition I think the phrase was a major adjustment for somebody in their life; right?

A Sure.

Q Especially if you've never been in a prison before?

A Correct.

Q Are you aware that Rick Allen has not one speck of criminal history before he walked into your facility?

A I don't know his background.

Q Okay. Let's talk about the inmate companion program; okay?

A Sure.

Q You guys refer to it, you staff members, refer to it as the suicide companion program; is that right?

A Correct.

Q Is that the technical phrase?

A It's one of the phrases, suicide companion, yeah.

Q Is it accurate to say that, basically, there are employees at your facility that recruit inmates to participate in this program?

A I don't know if we recruit them. They come from the PLUS Program.

Q Okay. PLUS Program is a program in the prison that offers inmates up an opportunity to engage in positive activities; right?

A Correct.

Q I'm talking pretty broadly here; but that's generally accurate?

A Yes.

Q With those activities can come time cuts and things that they can do to get out earlier; is that fair?

A I don't know if they involve time cuts, I'm not sure really. I don't know if they do or not. It's – PLUS is a Purposeful Living Unit.

Q Okay. So it's a unit – is it kind of like a trustee unit, where you've got people that garner a little bit more trust than normal?

A In theory, yeah.

Q And these people are all still convicted felons; right?

A Correct.

Q And those convictions, is it accurate to say, can include anything from murder down to theft?

A I would suppose.

Q And everything in between?
A Sure.
Q And so one of the incentives – is it accurate to say that one of the incentives for getting into this program would be you'd get to be in this other dorm, the PLUS unit or whatever you call it?
A I couldn't hear you. Say that again, please.
Q Yeah, I'm sorry. Is it accurate to say that one of the incentives of being in the suicide companion program is that you get to live in the PLUS house – the PLUS dorm?
A That's one of them, sure.
Q It's a better place to live than being in general population; right?
A I mean, it's the most crowded place to live.
Q Okay. Well, but the amenities are better, they get more privileges?
A No.
Q Okay. Then, why would people want to live in there, rather than living in the general population?
A To be around more positive people.
Q Okay. It's a different unit altogether though; right?
A Correct.
Q Different set of walls?
A Yes, sir.
Q And these companions, one of their responsibilities is, is that they would sit at the door of someone, an inmate, another inmate, and basically engage in observations; right?
A Correct.

Q And is it accurate to say that they're given paper and pens and things of that nature to assist in that process?

A Yes.

Q And is it accurate to say that the companion program is really set up for that purpose, to help you monitor other inmates?

A Yes.

Q You being the custodial staff; right?

A Correct. I mean, custodial staff still check them, they still do their normal rounds, they just don't ignore and say to the companion just – "You have this individual" and we're not gonna while they're checking them, so – I mean, we still do our normal rounds.

Q I understand that. Thank you. So you've got a guard in the unit, but basically, you've got this companion sitting at the doorstep – that's my phrase – at the door of the inmate making these observations?

A Yes, sir.

Q I think you told me at one point they're like five-minute observations; is that accurate?

A It depends what they're on: Close, constant, 15-minute check.

Q Would Rick have been on those observations at times during his stay?

A Intermittently, yes.

Q And they're, essentially, reporting what he's doing; right?

A Yes.

Q And I've read the log sheets.

A Sure.

Q They might even report that he's doing nothing; right?

A Fair to say.
Q What he's saying, they record that?
A Yes.
Q The way he's acting?
A Yes.
Q Emotions are even communicated in some of those sheets?
A Probably.
Q In terms of being on formal suicide watch, is it fair to say – is it accurate to say that Mental Health makes that decision?
A Correct.
Q Is that in consultation with you as the warden?
A No.
Q I might have asked you this question earlier, so forgive me, but do you acknowledge that Rick Allen was on suicide watch at times in your penitentiary when he was not suicidal?
A I would – I'm not a mental health professional, so they give the orders, we follow them.
Q You don't know that?
A No.
Q Would you defer to Dr. Wala with regard to that issue?
A No.
Q She wouldn't have information about whether or not he was on suicide watch?
A She would write the orders and we'd follow them.
Q Okay. Maybe the word I used was the wrong one. Let me ask you this:

Do you agree that she would be a better source of information about when he was on suicide watch and when he was not?

A Yes. They're her orders.

Q Thank you.

A Yeah.

Q Some of those prison companions were people that were convicted of crimes of dishonesty; is that accurate?

A I would suppose. I'm not sure what they were committed for.

Q Theft, fraud, forgery, those kinds of things?

A Supposedly, yes.

Q Well, do you have those kind of people in the prison?

A We do.

Q And the rules regarding the companions, do you acknowledge, prohibit communications between the companion and the inmate?

A Yes.

Q There's no doubt that the companions aren't supposed to be discussing legal matters with the inmates; right?

A Correct.

Q Did you ever discover that there were companions that were talking to Rick Allen about his circumstances, whether personal or legal?

A I was not aware of any, no.

Q Have you never read or are you aware of the transcribed statement of inmate Lacy Patton, Jr.?

A Don't even know who he is.

Q So the answer is no?

A The answer is no.

Q Are you aware or have you been privy to the transcribed statement of inmate Jason Elliott?

A Not sure who he is either, sir, so the answer's no.

Q To the extent that those statements were provided or were given to law enforcement, you don't have any knowledge of it; is that accurate?

A That's true.

Q I read a statement from Lacy Patton that I've given to the Court previously, and in that statement, Mr. Patton admitted that he communicated with his child's mother and his family about Rick's confessions. Let's just, hypothetically, assume that that's true. Would that be an appropriate thing for an inmate companion to do?

A Assuming it's true, probably not, no, they're not supposed to have any communication.

Q Do you agree that that would be in violation of the inmate companion rules?

A Yes.

Q Same question with regard to Jason Elliott, he would have done the same?

A Correct.

Q Do you believe that that would be a violation of Rick's privacy rights within the prison under your policies?

A If a companion was talking to him?

Q Was talking to their family about what he was saying.

MS. DIENER: May I ask a qualifying question, Judge?

THE COURT: You may.

MS. DIENER: Warden Galipeau, does the prison or DOC as a whole have a confidentiality policy for prisoners?

A I'm unaware.

MS. DIENER: Thank you.

A I'm not sure, ma'am.

MS. DIENER: I'd object to the question.

THE COURT: Any response?

MR. ROZZI: I'm sorry, Judge?

THE COURT: Any response?

MR. ROZZI: No.

THE COURT: Okay. Sustained.

Q Are you aware that the inmate companion program has a set of rules?

A I'm not sure what the rules are. I would hope so.

Q So you don't even really know?

A No, sir.

Q Do you acknowledge that the inmate companions would fill out these log sheets – you called them bed boards I think was the phrase I remember – and then those would be secured in a location within the prison?

A Yes, sir.

Q I think you told me in some box or something, didn't you?

A I believe so, yeah, they were put in a box.

Q Okay. And where and what was the ultimate destination of those log sheets?

A They would go to Dr. Wala. They'd be filed in his medical record and probably case notes uploaded in the EMR.

Q I have received – we have received those, Mr. Allen, through the course of discovery from the State. Can you tell the Judge how it is that those log sheets got from your prison to law enforcement?

A I can't answer that, no.

Q Who at your prison could have given them that?

A I'm not sure. How they got to law enforcement? I couldn't answer that. Maybe through subpoena. Our process is we collect the suicide companion logs, which are different from the door sheets, they got in a secure box. Dr. Wala would pick them up, she would put them in Mr. Allen's medical record and upload it in the Emergency Record Service.

Q So if it turns out that the evidence suggests that those did land in the hands of law enforcement, would you agree that it wasn't at your command?

A Not at mine, no.

Q And it wasn't at your approval?

A Not at mine, no, sir.

Q Because if things like that are getting out of the prison, private information like that, you would be approving to that; right?

A I would hope so.

Q And you didn't in this case?

A Had no knowledge of it.

Q Did you ever request that Rick Allen permission, either written or verbal, to release any of those records to anyone outside of the prison?

A I released those records to the central office, that's the only people that we released them to.

Q Okay. Now, to make sure I understand this: You told me earlier you

released them to Dr. Wala.

A Dr. Wala collects them.

Q Okay.

A So if someone – if we got a request, those documents would be turned over to central office.

Q Okay. Did you get a request?

A Yes, but not from law enforcement, no.

Q Okay. From the central office?

A Correct.

Q And so you gave them to the central office?

A Correct.

Q Do you suspect that maybe – just opining here – that the central office might have given them to law enforcement?

A It's possible.

Q Did anybody ever tell you that, "Hey, the cops want these records. Would you get them to central office – central administration"?

A I just gave them to the central office as advised, I have no idea how they got into any law enforcement's hands.

Q Okay. But there was a trail of these records being processed from the doorstep of Rick's cell at least to the central office that you're familiar with?

A I'm not sure what records would be kept at central office.

Q Maybe I didn't ask a very good question.

A All right.

Q I'm sorry, I'm gonna withdraw the question. Do you agree that there is a chain of custody, we might call it, of the records that were created at the cell, at

Rick Allen's cell, by your companions or your guards, and those records ultimately made it to the central office?

A Sure. I'm not sure about the – if there's a chain of custody filled out –

Q Okay.

A -- but yeah.

Q Yeah, you don't really know where they were during this time, in the middle of that process; right?

A I mean when I turn them over to central office – I don't know if Internal Affairs turned them over central office, but there was a request made to gather those documents, and that's what we did.

Q Do you know if – who had access to those documents between the time they were created by the author and the time that they made it to central office?

A No.

Q Did you ever require anyone from law enforcement to get a court order to obtain any of these records?

A I did not.

Q Did you get any request from media representatives to get those records?

A I've never dealt with the media in this case.

Q When you released those records to central office, did you report any of that to Mr. Allen, like, "Hey, I'm just letting you know we released your records to another office or agency" or anything like that?

A No.

Q You didn't seek any kind of consents from him at any point while he was there to release those records?

A No. They stayed within our agency.

Q Let's talk about the guards that were on – assigned to Rick's cell; okay?
A Sure.
Q Do you recall us talking about your decision generally to assign those guards to the cell?
A I do.
Q And is it accurate to say that you did that when you believed that Mr. Allen was starting to engage in some – what I think you called bizarre behaviors?
A That is correct.
Q And that was in April of 2023?
A I'm not sure, but I do recall.
Q That sound about right?
A It could be. I'm not sure.
MR. ROZZI: One second, Your Honor.
Q When was it that you left the prison? Was it February of 2024?
A I believe so, yes.
Q I'm gonna just try to get acclimated to time and place. He was transported out December of 2023; correct? To Wabash Valley?
A I believe it was sometime in December. Not sure of the exact date, but yeah.
Q When you made this decision with regard to the guards, can you estimate about what timeframe that was during his stay at your prison?
A I made the decisions to put the guards on his cell the day after he received his legal mail, so whatever that date was I'm not sure, but that's the exact date.
Q Do you know what time of the year that was?
A What time of the year?

Q Yeah.
A I'm not sure when he got his legal mail. I don't recall.
Q And so is it fair to say that somebody informed you that he started making some incriminating statements?
A I'm not sure anyone informed me. I mean, I heard what he told me.
Q Finish that.
A I said I only heard what he told me.
Q Okay. And so you – based on those things and knowing that he was getting his legal mail, you decided to pull the companions and replace them with guards?
A I replaced them with guards based on his bizarre behavior.
Q Why? What's the difference?
A What's the difference of?
Q Why do you need guards, rather than companions?
A Because his behavior was bizarre, you know, for more protection. You know, he was covering himself with feces; he was, you know, washing his face in toilets.
Q Do you believe that guards are more credible than the companions when it comes to relaying information?
A I didn't want the companions to have access to his legal mail. I didn't want them to see the legal mail.
Q You didn't trust the companions?
A It's not that I didn't trust them, I wanted the heightened security, since he had his legal mail.
Q All right. And you were concerned that they might see that and communicate that someone else?

A Yes. I didn't want anyone to have access to it.
Q Do you believe you're gonna get a more accurate reporting of Rick Allen's conditions if you place the guards on that cell?
A I believe I'd get a more accurate, correct.
Q Do you believe – or did the guards fill out the same kind of door sheets or forms or bed boards, whatever you –
A They did.
Q Sorry, I'm getting sloppy again – log sheets.
A Log sheets, bed boards, suicide companion logs.
Q Okay. And those would have been five-minute observation logs?
A Depending on what he was on. If he was not on mental health, then they would be 15.
Q And those forms were preserved, as well; is that right?
A Correct.
Q And are those also some of the forms that you turned over to central administration?
A Yes, sir.
Q Let's talk about phone calls at the prison; okay?
A Sure.
Q So my understanding is that the inmates are subject to this phone system which is basically run by GTL I think is the name of the company.
A Correct.
Q Is that generally accurate?
A Yes.
Q So the service is subcontracted out to somebody else?

A Correct.

Q But the Indiana Department of Corrections has an arrangement, some kind of contractual arrangement, with GTL to do that; right?

A Yes.

Q Did you monitor – did you or your staff monitor any of the phone calls that would have been made through GTL lines?

A I did not monitor any phone calls made. I'm not sure if Ms. Mapps had access to it, but that would be a better question for her.

Q Okay. And this is where things get a little bit more complicated, but there's actually more than one phone at the – there's clearly more than one phone, let me withdraw that question. There are different services, phone services, that are used at the prison; right? You have the GTL system, but you have your own kind of internal system; is that accurate?

A Both phones are GTL. Yeah, there's phones in the rec yard and the tablets are GTL.

Q Okay. So the phones in the rec yard are not GTL based?

A I believe they are GTL, yes.

Q I'm trying to make sure I understand.

A Yeah.

Q And then, there's a phone that they move around to the cell door once or twice a week – right? – that's kind of a portable phone.

A Yes.

Q And is that not GTL?

A That's a DOC phone I believe, yes.

Q Okay. So there is – there are two different kinds?

A Okay. Yes.
Q There's the GTL set-up and there's a DOC set-up?
A Right.
Q Do you – does the prison have the ability to monitor the DOC phone?
A I believe so. Again, that would probably be a better question for Mapps, but I would assume so, yes.
Q And then, there's the tablet; right?
A Correct.
Q And is that a GTL-based product?
A It is.
Q And so there are communications that can be made by an inmate to other – or by – frankly (inaudible) – on that system; right?
A I mean, they gotta be approved, so what's – whoever is on his phone list would be approved.
Q Okay.
A So you just –
Q For phone calls?
A Right. I mean, you just –
Q But there's also e-communications; right?
A What's e-communications?
Q Like texts or e-mails and –
A I don't believe there's texts, no.
Q Okay. Are those – so those are GTL-based; in other words, GTL has access to that information?
A Correct.

Q Can the prison get access to that information when you need it?
A I believe Internal Affairs can, yes.
MR. ROZZI: One second, Your Honor.
Q Let me redirect you back to the conversation about his cell block; okay? He had a mattress in that block; is that accurate?
A Yes, sir.
Q And is it accurate to say that that mattress was, essentially, on the floor?
A It was on the bed frame.
Q Okay. But let's get to the heart of this, the bed frame is a metal slab; is it not?
A Yes, sir.
Q Okay. And the metal slab is really close to the floor, just within inches of it?
A Yes, sir.
Q The cells next door also have – the inmates that are next to him in the same block also have mattresses; correct?
A All 255 of them, sir.
Q And they also have beds; right?
A Correct.
Q Bed frames?
A Correct.
Q That are more traditional bed frames, aren't they?
A They're just about a foot higher.
Q They're elevated?
A Say that again, sir.

Q They're elevated?
A Correct.
Q And do you acknowledge that in his cell he had no tables to sit at?
A There's no tables in any cells.
Q Not in his; right?
A Not in any, sir.
Q Okay. But I'm talking about his.
A Okay. There's no tables.
Q All right. And he had no chair to sit on, did he?
A There's no chairs.
Q Okay. He had – he was given a cardboard box, that's what he was eating on; right?
A He was – I don't know if he was eating on it; but typically, the cardboard boxes people put TVs or personal items.
Q That was his amenity, a cardboard box; right?
A Sure.
Q Otherwise, concrete; right?
A Yes, sir.
Q Steel?
A Rebar.
Q The whole nine yards?
A Prison, sir.
Q Yeah. Toilet?
A Absolutely.
Q Steel?

A I'm assuming.
Q Mounted on the floor or the wall?
A It's mounted, yes.
Q A couple feet from his bed; right?
A Standard.
Q Basically, he goes to the bathroom pretty much where he lays his head and goes to sleep?
A I don't know if where he lays his head, but yes.
Q Couple feet?
A Sure.

MR. ROZZI: I don't have anything further.

THE COURT: Ms. Diener.

CROSS EXAMINATION OF WARDEN JOHN GALIPEAU

QUESTIONS BY MS. DIENER.

Q Warden Galipeau, do you have corrections experience prior to your position in supervision?
A In the Department of Corrections?
Q Or anywhere.
A Prior to the Department of Corrections, I was a corporal in the Marine Corps.
Q Okay. And then, were you a corrections officer before you moved up the ranks?
A I was.
Q And so when you gave us a number on your total experience at DOC, the 28 years, does that include your time as a corrections officer?

A Yes, ma'am.
Q As the warden for Westville, did you have any choice in whether Mr. Allen was assigned to your facility?
A I did not.
Q Did his placement come with instructions?
A Yes.
Q From where?
A Central office.
Q And what instructions were you given?
A Put him in a cell that has camera access, so a suicide cell, A1-107.
Q Did they actually assign him to A1-107?
A There's only four cells that have camera access, and A1-107 was one of them.
Q Okay.
A Yep.
Q But I guess I wondered, when he gets there then, do you have the choice of any –
A No; no, ma'am.
Q -- one of your four?
A No, ma'am.
Q They tell you exactly what cell he goes in?
A Yes, ma'am.
Q And do you know anything about Richard Allen before he gets there?
A Never heard of him.
Q With regard to the camera cell, A1-107, how many other camera cells are

in your facility?

A In WCU, there's four, there's one per pod, A pod, B pod, C pod, and D pod.

Q Okay. And you said there are 255 people in solitary confinement; is that describing A, B, C, and D?

A Correct, ma'am.

Q And of those 255, four of them, potentially, would be in a cell just like his – well, he plus three others?

A Correct.

Q You were asked if there was a camera installed. Is this camera part of the structure of the cell?

A It is.

Q So you didn't put one in there just because it was him?

A Correct.

Q And it has no audio?

A Correct.

Q So how is the camera used and for what purpose?

A The camera – those cells are normally designed for inmates that are on suicide watch so we can monitor behavior through physical presence and a secondary observation.

Q Through physical presence by someone –

A By a guard –

Q Guard.

A -- and secondary observation. So if someone's on suicide watch, typically that video would be put in the control pose so we can have a constant, without having a constant order.

Q So a person in a designated location can see what's going on in his cell 24/7?

A Only one person, the person that works in the control room.

Q Okay. So there's one person in the control room?

A Correct.

Q And this is for his safety; correct?

A Yes.

Q Did you receive other instructions regarding the safety of Richard Allen with regard to his placement?

A No.

Q When you talk about constant watch, was that part of the requirement?

A Constant – part of our requirement for –

Q When he's placed in a camera cell –

A Yes.

Q -- was that – does that, in addition to itself, require you to video him when he is out of his cell?

A The video out of his cell was a separate order. That was specifically designed for Mr. Allen.

Q Okay. And that order came at the same time or sometime after, if you remember?

A I believe a few months after.

Q Okay. And again, did you have any decision making in that process?

A No, ma'am.

Q Did that come from central office also?

A It did.

Q So by being required to have visual on him at all times, what steps did you have to take to put that into place?

A Just follow instructions, you know, any time he came out of his cell, it's being recorded.

Q And had you had to do that with other inmates before?

A Yes.

Q And so what does it involve with regard to personnel?

A It takes at least two staff to move any offender outside the cell and there's one more staff for the camera, so it'd take an additional resource of one staff person.

Q Okay. So two to actually do the movement?

A Correct.

Q And one to record the event?

A Yes, ma'am.

Q There was a question about his lights. Was his cell unique to the others in his pod or in the facility with regard to how the lighting works?

A His lighting was never interfered with. There's a light and he has a button in his cell where he can – basically a nightlight, and so he can dim it.

Q Okay. So if he doesn't dim the light, it's gonna be on?

A Yes. He's the only one that has access to dim it.

Q His window, was it the same as everyone else's window?

A Correct.

Q And when you say you had to replace it – or you were asked if you had to replace it, did you have to replace his window?

A It wasn't scratched up that bad, but the request came in to be replaced

and I'm assuming we replaced it, probably within two weeks.

Q And where did the request come from?

A I believe it came from Mr. Allen and Dr. Wala. I believe it came from Dr. Wala.

Q Okay. But you were under no requirement to change that window. It wasn't in violation of policy, was it?

A No.

Q Were you doing it to assist him with adjustment to his circumstances?

A Correct. I was doing it to assist Dr. Wala in her orders.

Q Okay. She came to you with other requests, did she not?

A I believe so.

Q What are the ones you remember?

A Specifically his tablet. When he broke his first tablet, Dr. Wala asked if he could get another tablet, I recall that. That was arranged –

Q And did you do so?

A Excuse me, ma'am?

Q Did you do that for him?

A We did.

Q And explain to us the process of a tablet. So when a person comes into the facility, are the rules different for a safekeeper or another inmate with regard to access to a tablet?

A All inmates are issued tablets. Again, this is the first safekeeper I had. So Mr. Allen was issued a tablet, the only thing different is when the general population or anybody else breaks their tablet, they won't get another tablet until they reimburse GTL the $250. He wasn't able to reimburse for the $250, so we

assigned him another tablet so he could have communication with his attorneys. We didn't want to interfere with any of the legal process.

Q Okay.

A So that was the decision that was made.

Q So you're making an extra effort to assist him?

A Yes.

Q When he'd gotten his first tablet, did he get it faster or with more expedited processing than maybe an inmate that came in next to him on the same day?

A Yes. There's probably a few hundred inmates still don't have tablets at Westville.

Q And they've been there a long time?

A Yes, ma'am.

Q Let's talk about the family visit. The family visit was an unusual circumstance, was it not?

A Very usual.

Q Another accommodation you made to assist –

A Correct.

Q -- Mr. Allen? Were there any conditions attached to that accommodation?

A To accommodate him, we had to cancel several other inmates' visitations, 'cause he has to have the visitation room all to himself. Typical visitation is one hour; I think we allotted two hours for him, so yeah, accommodations were made. There's no one – the other 254 inmates that are kept in that unit never have face-to-face visits, he was the only –

Q They all have to use their tablet and talk to their family on their tablet; correct?

A They don't even use their tablet. So if someone came to visit an inmate there, they would use the kiosk at the front gate and the inmate would go in a different holding area and he would use the kiosk. So no family members are permitted inside segregation. No contact visits are authorized inside segregation, except for Mr. Allen. He was the first one I had in my five years.

Q Okay. And is the segregation area also sometimes referred to as a restrictive housing unit?

A Sure.

Q Okay. Are those interchangeable or should I not interchange them?

A The acronym for it?

Q Well, is it a restrictive housing unit?

A Yes.

Q Okay.

A Where the visitation was?

Q No, no, no. Where he's housed.

A Yes, restrictive housing, yes.

Q Okay. And so he gets a family visit, you arrange for him. Did you tell him, "You have to confess to me in order to get a family visit"?

A I never asked him any questions.

Q Was Dr. Wala his advocate for requesting you to accommodate such?

A As far as the visits, I think that came from central office, 'cause the request was made I believe maybe from Mr. Rozzi if the family could come in and visit, and we honored that and made arrangements for that.

Q Okay. So you actually were asked to do it by central office, but it was up to you to figure out how to logistically make it happen?