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 18 of 22

Pages 1 to 250

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A That's correct.

Q You didn't drive straight home, did you? You went and worked on your ATM machines.

A That's not correct, no.

Q You told law enforcement officers around February 17th or February 18th, just two days later after the girls were murdered, that you went and worked on your ATM machines right after work before you went home.

A That's not correct. I dropped off a trailer.

Q You did that earlier in the day.

A Yes.

Q Okay. But after work, you went and worked on your ATMs –

MR. MCLELAND: Judge, objection: Asked and answered.

A That's not – no.

THE COURT: Stop.

MR. MCLELAND: Mr. Weber, hold on, just hold on.

THE COURT: Sustained.

MR. BALDWIN: Judge, I'm gonna hand him a subpoena, if that's okay.

THE COURT: That's fine. Mr. McLeland. Oh, I'm sorry, were you done?

MR. BALDWIN: I am. Thank you.

THE COURT: Okay.

MR. MCLELAND: Oh.

THE COURT: Mr. McLeland.

MR. MCLELAND: What was he handed, Judge? I'm sorry.

THE COURT: A subpoena.

MR. BALDWIN: A subpoena.

MR. MCLELAND: Oh, I'm sorry. Sorry, Judge. I didn't see that. I don't have any other questions, Judge.

THE COURT: Does anybody on the jury have any questions for Mr. Weber?

(No response or indication from any juror.)

THE COURT: All right. Thank you, Mr. Weber. You may step down. And, Mr. McLeland, I understand your next witness is rather lengthy with – rather lengthy.

MR. MCLELAND: Judge, yes. There's two hours at least of audio that we'd like to play for the jury and then there's gonna be direct and then cross examination, and so I do believe it's gonna take the better part of a morning or afternoon.

THE COURT: Okay. All right. Well, ladies and gentlemen, we'll go ahead then and recess for the evening. While you go on about your own business then, the rest of the afternoon and evening, please, remember what I've told you. I know that you will have access to your phones and electronic devices to communicate with family and work, so that will be under the supervision of the bailiff, so please, don't talk about the case amongst yourselves or with anyone else. Please have a safe and a peaceful evening and we'll see you all in the morning. Gentlemen.

THE BAILIFF: All rise.

(Jury out at 3:59 p.m.)

THE COURT: You may be seated. So is there anything that we

need to discuss outside the presence of the jury?

MR. MCLELAND: No, Judge.

MR. BALDWIN: No, Your Honor. Thank you.

THE COURT: Can we have a sidebar then, please.

(Sidebar conference conducted.)

THE COURT: Okay. So I understand this is, then, the State's final witness for tomorrow.

MR. MCLELAND: Yes, Your Honor.

THE COURT: So we'll be doing the morning; and then you'll be prepared to get started tomorrow afternoon?

MR. BALDWIN: Yes, ma'am.

THE COURT: Perfect. Great. Okay. The jury vans are outside and they've been told that there's no time to waste, it's just leave this building, go straight to the vans, and get out of here. We have had people on the vans and circling, so I don't know what that's all about.

MS. AUGER: And it's not law enforcement people?

THE COURT: Not law enforcement people, just weirdos. We've had weirdos circling the hotels, as well, so we've had – we've increased the security on hotels. Don't know who they are. We're getting their – police are taking photographs of plates and stuff and running them, making sure that (inaudible) coming in here. You haven't noticed anything around your homes or businesses or anything?

MR. ROZZI: I haven't been home. None around my business.

THE COURT: None around your businesses –

MR. ROZZI: A lot of cops.

THE COURT: -- or homes or anything like that.

MS. AUGER: No, not at all.

MR. ROZZI: No, and I've been –

THE COURT: Okay. Yeah, and I just –

MR. BALDWIN: We're fine.

THE COURT: Kind of keep your head on the swivel.

OFFICER DREW YODER: Hey, we're still on the record.

MR. ROZZI: Yeah, you tell them.

THE COURT: I don't know who that was. That might have – was it Scott?

MR. MCLELAND: No, it was Drew Yoder –

MR. ROZZI: Oh, yeah.

MR. MCLELAND: -- from the Carroll County Police Department.

THE COURT: Oh, okay. Yeah, they picked up on that. Okay. So anything –

MR. ROZZI: Thank you.

THE COURT: -- else that we need to –

MR. BALDWIN: We'll be moving to dismiss per the usual you have after the State has –

THE COURT: Oh, I assumed that you will.

MR. BALDWIN: -- rested.

THE COURT: Okay.

MR. BALDWIN: I'm kidding. I don't do that anymore. It's a waste of your time.

MS. DIENER: This is (inaudible) Friday.

MR. MCLELAND: He gave it to me.

MS. DIENER: Oh, you have it?

MR. BALDWIN: I'll send you that report, it's Adam Pohl, not Robert Pohl.

MR. MCLELAND: I had Steve pull it.

MR. BALDWIN: Oh, okay.

MR. MCLELAND: But if you have it handy, send it to me.

MR. LUTTRULL: Are you anticipating that list is Thursday and Friday or just Thursday?

MR. BALDWIN: Oh, we're gonna have to – I'll –

MS. AUGER: We'll email you tonight.

MR. MCLELAND: Do you want me to scrap that?

MR. BALDWIN: No, I wouldn't scrap it, it's pretty close, but I got to find out who we've called to –

MS. AUGER: (Inaudible)

THE COURT: Okay.

MR. BALDWIN: Okay.

THE COURT: All right. Very good.

MR. BALDWIN: We'll let you know by the end of the day.

MR. MCLELAND: Okay.

(Sidebar conference concluded.)

THE COURT: All right. Thank you, ladies and gentlemen. We are concluded for the day.

(Off record at 4:04 p.m.)

(On record October 31, 2024, at 9:01 a.m.)

THE COURT: All right. We are back on the record in *State of Indiana versus Richard Allen,* 08C01-2210-MR-1. Show the Defendant's here in person with counsel. The State's here by the prosecutor and his deputies. The jurors have reassembled. And are we ready to proceed?

MR. MCLELAND: Judge, there's some preliminary matters the State would like to address with the Court outside the presence of the jury, and it's the movement of admissions before the jury comes in.

THE COURT: Okay.

MR. MCLELAND: First – Judge, first, the State would move to admit what's been marked as State's Exhibit 312, and that's an affidavit from Dawn Stephens. We believe she's gonna testify tomorrow and so we'd move for that admission. The Defense has been provided a copy.

STATE'S EXHIBIT 312 OFFERED

MR. ROZZI: I'm gonna object. You know, I mean, the best evidence rule, she's not been called, and I'm not calling her, so I don't know what they're talking about in terms of her being called tomorrow.

MR. MCLELAND: Sorry, Judge, I misspoke.

MR. ROZZI: I said they were gonna rest at lunch.

MS. DIENER: Different –

MR. MCLELAND: Different witness, sorry, different name. I –

THE COURT: Oh.

MR. MCLELAND: -- don't know that she's gonna be called, but we believe it's admissible, Judge. It's an affidavit, it's an affidavit of business

records or the on-goings at the DOC, and so we'd move for its admission as a business record and an affidavit.

MR. ROZZI: Judge, I don't recall seeing this on the exhibit list. And I know that this is a document that we have seen before, I think it was at the hearings up in Fort Wayne at the end of July, so I acknowledge that I –

MR. BALDWIN: That was here.

THE COURT: That was here.

MR. ROZZI: Oh, I'm sorry, maybe it was here, excuse me for that. But, you know, I'm gonna object on the basis that it wasn't offered up as an exhibit on the trial exhibit list that I'm familiar with and the witness is not here.

THE COURT: Any response?

MR. MCLELAND: Judge, I don't recall if it's on our exhibit list or not. Like Mr. Rozzi said, it was admitted in the three-day hearing. The Defense has had it. I don't recall. Obviously, our exhibit list is several hundred exhibits long, I don't recall if it's specifically on that list or not, Judge.

THE COURT: Well, I guess I'm less concerned about whether it was or wasn't on the exhibit list. I mean, the Defense has clearly had this as an exhibit, potential; so you're familiar with the contents of it?

MR. ROZZI: I am. I've deposed her and I can call her, I'll call her as a witness, you know, just from a practical standpoint. She's available –

THE COURT: Okay.

MR. ROZZI: -- and so –

THE COURT: Then, I will show that 312 is not admitted based on the objection.

MR. MCLELAND: Thank you, Judge. When the Court's ready,

Judge, I'd like to move on to the State moved to admit State's Exhibits 306 through 309 yesterday, and I don't know if we got to it on the record, because we had a sidebar, and what those are are four pictures of Richard Allen taken from the extraction of Richard Allen's phone. We had a discussion about the State providing the date of those pictures to the Defense. We talked to Christopher Cecil who did the extraction, it's gonna take him a lengthy amount of time to be able to determine those dates, and so State was not able to provide that to the Defense. The State – the Defense objected on relevance. The State would move to admit those without the dates. And I was able to find a case, Judge, it's a civil case, *Menard, Inc. versus Terew,* T-E-R-E-W, and that's from 2023, 2010 N.E.3d 833, from the Indiana Court of Appeals, and it talks about admitting pictures; and in that case, the plaintiff had admitted pictures – it was a fall in a parking lot, and the plaintiff admitted pictures that were not taken on the day the fall occurred, were not indicative of the scene on the day that it occurred, and those were admitted as relevant for the jury to consider, and so I think this applies. Even though we don't have the dates, the State believes these are relevant to show what Richard Allen looked like before he was arrested for these offenses, and so the State is gonna move to admit those. I've got the case – a copy of the case for the Court, one for the Defense. And the State would move to admit those, without the dates, into evidence.

STATE'S EXHIBITS 306 THROUGH 319 OFFERED

THE COURT: Ms. Auger – well, I'll give you a minute to review the case.

MS. AUGER: Thank you, I appreciate it, Your Honor.

MR. MCLELAND: Judge, we can address it after lunch and give the

Defense time to read it, I don't have a problem with that. but I was only able to research the case or the matter last night and so I did not provide it to the Defense before right now.

MS. AUGER: Thank you.

MR. MCLELAND: But just before we rest, Judge, I would want to address it again, please.

THE COURT: Okay. And it was 305 – I'm sorry, 306 to 309?

MR. MCLELAND: Judge, why don't I just give the Court the exhibits, 'cause whether or not they're admitted or denied, I want the Court to have them for sequencing purposes, one, and just for the record in this case.

THE COURT: Okay.

MR. MCLELAND: I moved to admit them, so –

THE COURT: Okay. All right. So perhaps when we take our break –

MS. AUGER: Would it be possible to do it at the – towards the end of the lunch hour, so I can kind of –

THE COURT: Of course.

MS. AUGER: -- take a look at that? Thank you.

THE COURT: Yeah.

MS. AUGER: I'd appreciate it.

THE COURT: Sorry, I didn't finish my train of thought, which was –

MS. AUGER: Oh, I'm sorry.

THE COURT: -- perhaps we would do that at the end of – prior to the jury coming back in after lunch, to give you that opportunity.

MS. AUGER: I apologize. I didn't mean to interrupt you.

THE COURT: No, that's okay. That's fine. Okay.

MR. MCLELAND: Judge, I have one last matter, I'm trying to get through this quickly.

THE COURT: No, that's fine, take your time.

MR MCLELAND: The State's first witness is going to introduce the phone calls from the Department of Correction by Richard Allen to Kathy Allen and to Janis Allen. There's seven phone calls we plan to play. The parties have stipulated foundationally to the phone calls. The State believes the phone calls are relevant. I've provided those – the transcripts of those phone calls to the Defense. The State would like to move to admit those seven phone calls now, but on one zip drive. We'd like to move to admit those now into evidence, so that I can play them seamlessly to the jury. I've also printed out transcripts for the Court and for the jury, and I'm gonna move to admit the transcripts into evidence, then I'd like to publish those to the Court and to the jury as an aid to follow along as they listen to the phone calls.

STATE'S EXHIBIT 313 OFFERED

THE COURT: Okay. And what is the exhibit number on the phone calls?

MR. MCLELAND: 313.

THE COURT: Any objection to 313?

MR. ROZZI: Judge, yes, there is an objection. So it is true that there is a stipulation as to foundation, there's no objection in that regard, obviously.

THE COURT: Okay.

MR. ROZZI: The Court should be aware that there's actually a series of phone calls – so the State's offering up seven or eight phone calls. Of those seven or eight phone calls, three of those occurred on April 3rd, 2013 [sic]. The first of those phone calls was at 3:12 a.m., and that is a phone call from Richard Allen to Janis and Marvin Allen, his mother and stepfather. The second phone call is a phone call April 3rd, 2023, at 5:14 a.m., about two hours later, and that is a phone call from Mr. Allen to his wife, Kathy Allen. And the third phone call is on April 3rd, 2023, at 8:45 a.m., again about three hours after the second call, and that is a phone call from Richard Allen to his wife. The State has offered us up those transcripts before today, just yesterday – I mean, I've had them – we've had them for a long time, but yesterday they offered those up to let us know what they were putting in. And what the Court should be aware of is that they're not offering up the 3:12 a.m. phone call, they're only offering up parts 2 and 3 of that series of calls; and in the 3:12 phone call, first of all, there are no admissions of guilt or anything that's incriminating that's spoken by Mr. Allen, at least not directly, but what you will find in that call is that Mr. Allen is telling his mother and stepfather that he doesn't know how much longer he will remain lucid, he's telling them that he feels like they, being the system, have just about killed him, that they've about won here, that he's losing his mind. He specifically professes his innocence, he says, "They know I would never do something like I've been accused of." And he talks about his family possibly getting extorted. He says, "I think I've been mentally tortured." He says, "I think I'm in Guantanamo Bay." He acknowledges that he's on camera and he goes on and on in that respect. And my point is this, Rule of Evidence 106, which is the completeness doctrine, says this: If a party introduces all of a writing or recorded

statement, an adverse party will require the introduction at that time of any other part or any other writing or recorded statement that, in fairness, ought to be considered at the same time. And it's our contention that you cannot listen to phone call – the phone call at 5:14 and 8:45 without having the context of the first call at 3:12 a.m., and that the State intentionally omitting this 3:12 a.m. phone call is an attempt to represent facts to the jury that are outside of the context of the entirety of those series of calls. Obviously, it would be difficult for us, the Defense, to introduce phone calls of this nature, just simply based on the hearsay issues. There are gonna be some other creative ways to work through that, but up front, I think the Court's pretty familiar with the rules, that that would be somewhat challenging, and so what we're asking the Court to do is issue an order that if they're gonna put in phone calls 2 and 3, they gotta put in phone call number 1, as well, because they're all part of a series, they're all close in time, they're all related to the same – similar discussions, and so we believe that that phone call should be a part of the evidence that's offered up to the jury and published. Thank you.

THE COURT: Any response?

MR. MCLELAND: Judge, the phone calls that we're gonna play are complete within themselves. The phone calls start with him making the call, they end when the call was terminated, so they're not incomplete phone calls. If you go by Mr. Rozzi's theory, then every phone call he makes at DOC's gonna have to be played, and that's not the intent of the rule. We are playing the complete phone calls from these dates and times that we think are relevant. The Defense has the absolute right to call Mr. Allen to put in whatever phone calls they want, they are not barred from that. And so I ask the Court to admit the

phone calls, the seven we have. They are gonna be complete in the sense that they're made – or they're complete in the time he makes the call till the time he terminates the call.

MR. ROZZI: May I, Judge?

THE COURT: Sure.

MR. ROZZI: It is unfair for the State of Indiana to put Mr. Allen in a position where his Fifth Amendment right to maintain his silence is somehow pitted up against an evidentiary rule. And over the course of this trial, we have seen on a number of occasions where the jurors have been offered up information that doesn't quite tell the whole story. This is more of the same. I would be happy to offer up, and I am gonna offer up, if I may, a copy of the April 3rd 2023, 3:12 a.m. phone to the Court. May I?

THE COURT: Yeah. Have it marked as an exhibit.

MR. ROZZI: Thank you. Handing the Court what has been marked as RR. And may I just – just for the ease of reference, direct the Court to a few of the lines that I referenced earlier?

THE COURT: Sure, go ahead.

MR. ROZZI: Page 4, lines 6 and 7 is a reference to him not knowing how much longer he will remain lucid. Page 4, lines 13 and 14, references to how he's losing his mind and that he's succumbing to the detention circumstances that he's dealing with. Page 4, lines 19 and 20, Mr. Allen indicated he would never do something like he's been accused of. Page 5, lines 2 and 3, references to him being afraid that his family's being extorted. Page 5, lines 14, 15, 16, and 17, references to him being mentally tortured for the last five and a half, six months and that he feels like he's in Guantanamo Bay. And

page 5, line 19 – page 5, line 19, references to him knowing he's on camera. And there's some other references, page 6, lines 15 through 18, where he's concerned again about his family having to spend money on a lawyer. I think those are all pertinent and in the context of the April 3rd 5:14 and April 3rd 8:45 statements, which again, are just nothing more than a series of calls. And if you were to see those transcripts – and, you know, I can offer those up to the Court, as well. I don't – I guess the State hasn't technically put them in yet, so let me give you copies, just to make sure we get a clean record of the 5:14 and the 8:45. Ms. Williams, would you, please, offer up two more exhibit stickers.

MR. MCLELAND: Judge, and just for the record, I guess would you like me to through the phone calls I intend to offer up? 'Cause I think Mr. Rozzi's misquoting – we don't have three phone calls from – well, let me make sure. The only time we have additional phone calls from the same day it looks like is May 10th, there's two on May 10th.

THE COURT: I'm not sure what exhibits – what exhibits have you marked and what are the number – or the letters?

MR. ROZZI: May I have one second? Yes. I've marked Defendant's Exhibit SS as the April 3rd, 2023, 5:14 call. And then, Exhibit – I'm sorry.

THE COURT: Go ahead.

MR. ROZZI: Exhibit TT is the April 3rd, 8:45 a.m. call. May I continue?

THE COURT: Yes.

MR. ROZZI: It is true, I'm looking here at the pack – stack that Mr. McLeland handed me, and I do not see the April 3rd 8:45 call, I was mistaken in that regard, but it doesn't change the circumstances, because what you're gonna

see in those series of calls is that Mr. Allen references the previous calls as he's making them, so call 2 and 3, he's talking about 1, he's talking about call 2, and again, there's – it's almost like there's one long line of communication over the course of about five hours that morning and I think, for the jury to have a full understanding of the circumstances and the context surrounding those calls, which is exactly what Rule 106 is intended for, I would ask the Court to order those to be played, as well. Thank you.

DEFENDANT'S EXHIBITS RR, SS, AND TT OFFERED

THE COURT: Anything further, Mr. McLeland?

MR. MCLELAND: Judge, just for the record, the State intends to play a call from November 14th of – or would ask to play a call from November 14th of 2022; one from April 2nd of 2023; one from April 3rd of 2023; one from May 10th of 2023 – actually, two from May 10th of 2023; one from May 17th of 2023; one from June 5th of 2023; and one from June 11th of 2023. I didn't catch all the dates that Mr. Rozzi talked about, but I thought he talked about a date from May 14th – or a phone call from May 14th. We don't plan to play any calls from that day. And I didn't catch the other dates, Judge, but nothing in addition to that.

THE COURT: Okay. These are all April 3rd.

MR. ROZZI: If I said May 14th, I don't –

THE COURT: I think that was just a misstatement.

MR. ROZZI: Yeah, it was. I'm sorry.

THE COURT: Okay. Yeah, these are all April 3rd, 2023 –

MR. ROZZI: Yes.

THE COURT: -- at 3:12 a – 3:12, 5:14, and 8:45. And you are

offering – I just want to be sure that the record's clear, Mr. Rozzi: You are offering RR, SS, and TT to support your argument against State's Exhibit 313?

MR. ROZZI: Yes, Judge.

THE COURT: Okay.

MR. ROZZI: May I say one more thing?

THE COURT: Sure.

MR. ROZZI: I think it's one of those situations where you play them all or you play none, and I just think it's that, you know – because they're that intertwined. I guess if there was any kind of a compromise, that phone calls 1 and 2 – I'm referring to them, obviously, in chronological order – the 3 a.m. call and the 5 a.m. call would almost certainly have to be played together and maybe not the last one, but I really think, you know, that context is important. Thank you.

THE COURT: So the photographs we're gonna discuss after lunch. I'll show that argument has been held on State's Exhibit 313, seven phone calls. I'll incorporate the transcripts. And I've had a chance to kind of buzz through the transcripts here of the jail calls, the RR, SS, and TT. I think the doctrine of completeness applies to specific statements made by the Defendant. If the State was trying to introduce a phone call – an incomplete phone call, then I would – your argument would be well-taken, but they're trying to introduce completed phone calls from the beginning to the end. I understand the argument, but you can play those if you wish, you can provide the transcripts to the jury, if you wish; but I will show 313 then is admitted over objection.

STATE'S EXHIBIT 313 ADMITTED

THE COURT: Is there anything else?

MR. MCLELAND: No, Your Honor.

MR. ROZZI: May I ask for clarification, just 'cause I'm trying to understand? Are you suggesting that because they're – these are complete calls, that the doctrine doesn't apply?

THE COURT: I am indicating that the doctrine of completeness, as I understand it in my review of it, indicates that if the State wants to introduce evidence, an entire written statement or an entire phone call is admissible. If the State is trying to introduce a portion of a written statement, the doctrine of completeness would apply; if the State wishes to introduce a portion of a phone call, the doctrine of completeness would apply, but that's not what the State is doing. The State is attempting to introduce a phone call from beginning to end. And I understand the argument, it's quite a novel argument, actually, but I do understand the argument; but I don't think that the doctrine of completeness applies when the State is introducing completed phone calls, beginning to end.

MR. ROZZI: But the rule says "Any other writing or recorded statement", it's right in the rule, I mean, I – "that, in fairness, ought to be considered at the same time." So it clearly contemplates other non-related recordings or statements. It's – I mean, that is in the text of the rule.

THE COURT: I understand that, sir –

MR. BALDWIN: Judge –

THE COURT: -- and I'm looking at the case law.

MR. BALDWIN: Judge, I don't know that it – because you're kind of getting this stuff, you know, right now, there's – I think the other argument – there's kind of two arguments, the one that Mr. Rozzi focused on, and then the second one he kind of threw in there at the end is Rick references call number

1, and that's gonna be confusing to the jury as to what was call number 1, who did he call, why – did it really happen. And certainly, that would be unfair for the jury to not know the answer to that question by listening to the phone call, so I think that's a second argument that needs to be considered.

THE COURT: I've made my ruling. Thank you. Is there anything else, then?

MR. BALDWIN: Judge, I'm sorry, I wanted to clarify, too: When you said that we can bring it in, does that mean that you think that we can bring that call in without Mr. Allen testifying or that we can bring it in –

THE COURT: That's up to you.

MR. BALDWIN: Well, I'm asking if we can bring it in without him testifying. I didn't – I wanted to clarify what you said – what you meant.

THE COURT: That is entirely up to you, sir.

MR. BALDWIN: Okay.

THE COURT: Is there anything else from the State?

MR. MCLELAND: No, Your Honor. Thank you.

THE COURT: Is there anything else from the Defense?

MR. BALDWIN: No, Judge. Thank you.

THE COURT: Okay. I don't recall the date that the State offered 289, the Google search.

MR. MCLELAND: Yes, Your Honor.

THE COURT: Is there any additional argument on 289?

MR. MCLELAND: No, Your Honor.

MS. AUGER: Yes, Your Honor. Your Honor, first of all, the business record certification that was provided from Google does not contain any

information about the proposed document that the State is seeking to admit. The document the State is seeking to admit is a police report by Detective David Vido outlining certain Internet searches. State's 289, which is a business records affidavit from Google, contains no such searches; and so they still don't have what they need to authenticate what they're seeking to authenticate.

THE COURT: Okay.

MR. MCLELAND: I'll have to review that, Judge. I thought those were in there. I gotta admit, I don't have it in front of me at the moment, so I guess I would just ask for a recess on that issue until lunch and I'll look at it at our first break and verify that I gave them the right copy of the certification and whether or not it's in there.

THE COURT: Okay. So this after lunch, as well?

MR. MCLELAND: Please, Judge. Thank you.

MS. AUGER: I have other arguments. We can do them all after – at lunch, if you want.

THE COURT: Yep.

MS. AUGER: Okay.

THE COURT: Are we ready, then to bring the jury in?

MR. MCLELAND: Yes, Your Honor.

THE COURT: Are we ready to bring the jury in, Mr. Rozzi?

MR. ROZZI: Yes, ma'am.

THE COURT: Gentlemen.

THE BAILIFF: All rise.

(Jury in at 9:27 a.m.)

THE BAILIFF: Thank you. You may be seated.

THE COURT: I'll give you a chance to get all settled in over there, folks. I know you've got a lot of paperwork and folders and everything. All right. Well, welcome back, ladies and gentlemen. It's nice to see you back this morning. I hope you had a pleasant evening. The attorneys have indicated they are ready to proceed, and as we have parted company and you've had access to your electronic devices, I will again ask you a series of questions to ensure your continued compliance with the Court's directives. Ladies and gentlemen of the jury, have you read, seen or heard any media accounts concerning this case?

A (All jurors answer in the negative.)

THE COURT: Have you discussed this case with anyone?

A (All jurors response in the negative.)

THE COURT: Have you permitted anyone to discuss this case with you?

A (All jurors respond in the negative.)

THE COURT: Have you conducted any research into this case?

A (All jurors respond in the negative.)

THE COURT: And finally, has anybody persisted in attempting to discuss this case with you?

A (All jurors respond in the negative.)

THE COURT: Again, ladies and gentlemen, I appreciate your continued compliance with the Court's directives. Mr. McLeland, you may call your next witness.

MR. MCLELAND: Thank you, Your Honor. The State of Indiana would call Indiana State Police Master Trooper Brian Harshman, please.

(Witness sworn.)

MR. MCLELAND: Thank you, Judge.

DIRECT EXAMINATION OF MASTER TROOPER BRIAN HARSHMAN

QUESTIONS BY MR. MCLELAND.

Q Master Trooper, before we get started, I've been giving everybody I guess some advice I would call it, gonna need you to use your best outside voice. This microphone – don't pull the microphone closer to you. It does not amplify for the attorneys or for the Judge or for the jury, it's for recording purposes. It does amplify for the audience, but if you bring it closer or move it away, it causes problems for the court reporter. So just use your best outside voice so that everybody could hear you; fair enough?

A Yes, sir.

Q Okay. Little louder; all right? Little louder than that, 'cause it's – I'm hard of hearing. State your name, please.

A Brian Harshman.

Q And will you spell your last name for me, please.

A H-A-R-S-H-M-A-N.

Q And how are you employed?

A I'm employed with the Indiana State Police.

Q And how many years have you been employed with the Indiana State Police?

A I was hired in July of 1994, and I was appointed in – December 4th, 1994, so 30 years.

Q Were you in law enforcement prior to being employed by the Indiana State Police?

A I was not.

Q When you were hired on by the Indiana State Police, did you go through any kind of special schooling or training to become an Indiana State Police trooper?

A Yes.

Q Tell me about that.

A When you're hired, you go through the Indiana State Police academy, which is in Plainfield, Indiana. Again, it went from July to December of 1994. Upon your graduation, then you're sworn in and appointed an Indiana State Police trooper.

Q And at some point – well, let me back up. What's your current rank with the Indiana State Police?

A I am a master trooper.

Q So, Master Trooper Harshman, at some point, did you become involved in the investigation of the death of A.W. and L.G.?

A I did.

Q Do you know when you became involved?

A Approximately April of 2020.

Q And at some point during your involvement, your role became the phone guy; is that right?

A Yes.

Q Tell me about that.

A After Richard Allen was arrested and held awaiting trial, it was – became evident pretty quickly that there was a large volume of communications from him to his family and others, so law enforcement was monitoring those communications and, in an effort to streamline the extreme volume of

information that was coming in, I sort of anointed myself the person that was gonna keep track of Richard Allen's communications.

Q And when you say his communications, what do you mean? His communications from where?

A From the county jail where he was initially held to the DOC and then currently back to Cass County Jail, where he's currently at. Those communications involve telephone conversations, video chats, text messages back and forth.

Q I want to focus on the phone calls. How many hours of phone calls have you listened to?

A I'm approaching somewhere in the area of 700 total phone calls.

Q And how long are each one of those phone calls?

A The phone calls generally will not last longer than 30 minutes, the majority of them are probably that long. There are calls that maybe last five minutes. There's some that last in between five and 30, but I would say the majority of them probably last 30. During the course of this, I've listened to all 700. At one point, I went back and I relistened to them, and then I've gone back two to three to four more times on calls that were of special interest to me and re-listened to them four, five, six, seven, eight, nine different times. So the total number of hours that I've listened to calls is got to be – I mean, it would be insurmountable and I don't know how I would keep track of it and guess, but it would be hundreds upon hundreds upon hundreds of hours.

Q And these phone calls, who initiates all these phone calls?

A Richard Allen initiates the phone calls.

Q And for the majority of the phone calls, who is he calling?

A He either calls his wife or his mother.

Q And during some of these phone calls, does Richard Allen make statements that are pertinent to this investigation?

A Yes, he does.

Q During some of these phone calls, does he make statements against his interest?

A Yes, he does.

Q Does he make incriminating statements?

A Yes, he does.

Q I want to direct your attention to a phone call made on November 14th of 2022; are you familiar with that call?

A I am.

Q And do you recall who that call was to?

A That call was to his wife, Kathy Allen.

Q And does Richard Allen make statements pertaining to this investigation on that call?

A He does.

Q Do you recall what he says on that call?

A Without my notes, I can't quote it exactly, but something along the lines of, "If this becomes too much for you, call the detectives and I will talk to them and tell them whatever they want to know."

MR. MCLELAND: Judge, at this point, the State would move to play that call for the jury and would ask the Court an opportunity to publish a transcript of that call to the jury and to the Court, so that the Court and the jury can follow along as the State plays that call.

THE COURT: You may. And, ladies and gentlemen, as you're receiving the transcripts, this is not the evidence, the evidence is what you're going to be hearing in the call. So at the conclusion of the playing of the call – you can follow along with the transcript, but at the conclusion of that, the bailiffs will collect those transcripts from you. You may proceed.

MR. MCLELAND: Thank you, Judge.

STATE'S EXHIBIT 313 PUBLISHED IN PART BY PLAYING

MR. MCLELAND: And, Judge, I think your bailiff's been kind enough to collect those for me –

THE COURT: Yes.

MR MCLELAND: -- and then I'll collect all of them at the end.

THE COURT: Okay, that's fine. Just pass them down to the end, folks.

Q Master Trooper, I'd like to move on to the next phone call on April 2nd of 2023; are you familiar with that phone call?

A I am.

Q And is that another phone call made by Richard Allen?

A It is, to his mom, Janis.

Q Okay. And does he make statements pertaining to this investigation in that phone call?

A He does.

Q Maybe not pertaining to the investigation, but what statements do you recall that he makes within that phone call?

A Again, I don't have the exact quote, but he confesses to the killing of A.W. and L.G.

Q Well, I want to back up to the April 2nd, if he made phone calls about his religious beliefs, would that be a phone call you're familiar with?

A Oh, yes, it would.

Q And so this phone call, what kind of statements does he make within this phone call?

A In this phone call, he talks to his mother and tells her that he has found Jesus Christ and wants to let her know that he's found God.

MR. MCLELAND: And, Judge, I'd like to play that phone call at this point.

THE COURT: You may.

MR. MCLELAND: And again, Judge, I'd ask to publish the transcript, just for the jury to be able to follow along, and the Court, as well.

THE COURT: You may.

MR. MCLELAND: Thank you.

THE COURT: And again, we will collect these. This is not the evidence, it's what you are hearing on the actual recorded call.

MR. MCLELAND: And, Judge, permission to give the witness a copy, as well, so he can follow along.

THE COURT: That's fine.

STATE'S EXHIBIT 313 PUBLISHED IN PART BY PLAYING

Q Master Trooper Harshman, I want to move on to a call, a phone call from April 3rd of 2023; are you familiar with that call?

A Yes, sir, I am.

Q And that's the call you were referring to where he makes statements, incriminating statements; is that correct?

A That's correct.

Q And this is a call the next day after the previous call we just heard; is that correct?

A Correct.

MR. MCLELAND: Judge, I'd like to play the call and now do the same process, publish a transcript to the Court and also to the jury, please.

THE COURT: You may.

STATE'S EXHIBIT 313 PUBLISHED IN PART BY PLAYING

Q Master Trooper, I'd like to now move on to one of two phone calls from May 10th of 2023, the first being at 11:05 a.m.; are you familiar with that call?

A I am.

Q And again, it's a call from Richard Allen to Kathy Allen, his wife; is that correct?

A That's correct.

MR. MCLELAND: The State would now ask to play that call and to go through the same process of publishing the transcript with it as an aid for the jury to follow along.

THE COURT: You may.

STATE'S EXHIBIT 313 PUBLISHED IN PART BY PLAYING

Q Master Trooper, I'd like to move on now to another phone call on May 10th of 2023, at 11:15 a.m.; are you familiar with that phone call?

A I am.

Q Again, is it another phone call between Richard Allen and Kathy Allen?

A Is that number 4 or 5?

Q Number 5.

A I think that's Janis, isn't it? Or am I wrong?

Q My notes indicate that's between Richard and Kathy.

A Okay.

Q Would you have any reason to dispute that?

A No.

MR. MCLELAND: Judge, the State would move to play this phone call now and publish the same to the – a transcript of the same to the jury and to the Court as an aid for them to follow along.

THE COURT: You may.

MR. MCLELAND: Thank you, Judge.

STATE'S EXHIBIT 313 PUBLISHED IN PART BY PLAYING

Q Master Trooper, I'd like to move on to a phone call from May 17th of 2023; are you familiar with this phone call?

A I am.

Q And this is a phone call between I believe Richard Allen and Kathy Allen; is that correct?

A Correct.

MR. MCLELAND: I'd like to play that now for the Court, Judge.

THE COURT: You may.

MR. MCLELAND: And I'd ask to go through the same process I go – like to be able to publish a transcript to the Court and the jurors, so they can follow along for – to assist them in listening to this phone call.

THE COURT: You may. And again, ladies and gentlemen, the transcript is not the evidence, it's what you're hearing on the call.

Q And, Master Trooper Harshman, before I play it, I misspoke, I think this is

a phone call between Richard and Janis Allen. Is that your recollection?

A Yes, that's what I'm seeing –

Q Okay.

A -- sir.

Q Janis Allen is who?

A Richard Allen's mother.

STATE'S EXHIBIT 313 PUBLISHED IN PART BY PLAYING

MR. MCLELAND: Judge, I'm sorry, I think this is the wrong phone call. Judge, I'm gonna ask the Court to come back to that one. I'm gonna have to – apparently, the wrong phone call got recorded or put on the exhibit, and so I'm gonna move on to the next one, if that's okay with the Court.

THE COURT: The May 17th one?

MR. MCLELAND: Yeah. That's not the May 17th phone call though.

THE COURT: Okay.

MR. MCLELAND: The wrong phone call got put on the zip drive, and so I'm gonna have to look into that on our break and –

THE COURT: Okay.

MR. MCLELAND: -- get the correct phone call. And so what I'd like to do, Judge, is move on to the next phone call, that is the June 5th phone call.

THE COURT: Okay.

Q So, Master Trooper, I'd like to move on to the next phone call –

THE COURT: Okay. So we need to collect these transcripts.

MR. MCLELAND: Yes, collect those, Judge. I'm sorry.

THE COURT: I'm sorry, Mr. Rozzi?

MR. ROZZI: I was gonna ask if you'd have him collect those.

THE COURT: Yes, we'll collect those.

MR. ROZZI: Thank you.

Q Master Trooper, obviously it was the wrong phone call from May 17th, so I'll look into that, or the wrong one got put on the exhibit, but I'd like to move to the June 5th of 2023 phone call; are you familiar with that phone call?

A I am.

Q Is that a phone call between Richard Allen and Kathy Allen?

A That one would be, yes.

MR. MCLELAND: The State would move to play that phone call at this point and publish a transcript to the jury for them to be able to follow along.

THE COURT: You may. All right. You may proceed.

STATE'S EXHIBIT 313 PUBLISHED IN PART BY PLAYING

Q Master Trooper Harshman, finally I'd like to move on to the phone call from June 11th of 2023; are you familiar with that phone call?

A Yes, sir, I am.

Q This is a phone call, again, between Richard Allen and Kathy Allen; is that correct?

A Yes, sir.

MR. MCLELAND: Judge, the State would now move to play that for the jury and publish a transcript for the Court and the jury to follow along as an aid.

THE COURT: You may.

STATE'S EXHIBIT 313 PUBLISHED IN PART BY PLAYING

THE COURT: Thank you for collecting the transcripts.

MR. MCLELAND: Thank you, Judge.

Q Master Trooper Harshman, while listening to those hundreds and thousands of hours of phone calls from Richard Allen, have you gotten a sense of his behavior, and what I'm asking is have you gotten a sense of his rate of speech, the speech patterns that he uses, his demeanor?

A I have.

Q And you've listened to all those phone calls all the way back since October of 2022, I think you said; is that correct?

A That's correct.

Q And during the phone calls that you heard today with the incriminating statements, how would you describe his demeanor during those calls?

MR. ROZZI: Judge, may I ask a preliminary question?

THE COURT: You may.

MR. ROZZI: Trooper Harshman, is it accurate to say that you don't have any specific education in the field of psychology?

A Yes, sir, that'd be accurate.

MR. ROZZI: And you don't have any specific education in the field of speech patterns or pathology or anything like that, do you?

A That would be correct, too.

MR. ROZZI: Judge, I'm gonna object. He isn't – he's not qualified to render an opinion about speech patterns and context and behaviors.

MR. MCLELAND: Judge, he's testifying as to his opinion after he's listened to thousands of hours of phone call from Mr. Allen. I think he can testify as to his demeanor on the phone calls and also he can testify from his experience from listening to all those hours of phone calls, his rate of speech, whether he's calm or not, and those kind of things, and that's what the State's asking him to

testify about.

THE COURT: Overruled.

MR. ROZZI: Thank you.

Q And so, Master Trooper Harshman, how would you describe his demeanor during those phone calls that you heard today?

A Calm, subdued, solemn.

Q What about his rate of speech and his pattern of speech, is that – the phone calls you heard today, is that in line with other phone calls that you've heard from Richard Allen?

A Yes, sir. I believe it's consistent.

Q And so when he's making those admissions to his family, is he using the same tone, rate of speech, speech pattern as when he talks to his family about other matters?

A I would agree with that.

Q And he does talk to his family about other matters during phone calls; correct?

A That's correct.

Q During those phone calls you heard today, from your – from you listening to all those phone calls, did you notice or did you have any indication that he was under duress or stress when he made those admissions?

A I did not.

Q Were those phone calls that you heard today in line with other phone calls that – was his demeanor during those phone calls in line with other phone calls that he's made?

A Yes, it was.

Q Now, I want to take you – I want to jump forward to August of 2024. You were still involved in the investigation at that point; is that correct?

A That's correct.

Q And you were still listening to phone calls from the Department of Correction with Richard Allen; is that right?

A That's correct.

Q And I want to show you what's been marked as State's Exhibit – or a portion of State's Exhibit 303; are you familiar with this document?

A Yes, I am.

MR. ROZZI: What document's that? 303?

MR. MCLELAND: 303.

Q And do you recognize that exhibit, State's Exhibit 303, it's been admitted as a report from Dr. Wala?

A Yes, sir, I do.

Q And who was Dr. Wala?

A A mental health professional with the Department of Corrections.

Q And is she a mental health professional that was examining Richard Allen?

A Yes, sir.

Q And you had a chance to review this report; is that correct?

A I have.

Q And you're familiar with what's in the report?

A Yes, sir.

Q And so I want to talk about some statements made by Richard Allen in that report. What statements did he make in that report pertaining to the investigation, the death of A.W. and L.G.?

A Would you like me to read those out, sir?
Q I'd like you to testify as to what statements he made, from your recollection from that report or reviewing that report, what statements Richard Allen made that are in relation to the investigation of the death of A.W. and L.G.
A Richard Allen made statements to what – as to what he was doing on the day of the crime.
Q And what day of the crime is that or what is the date of the crime?
A February 13th, 2017.
Q And how does Mr. Allen state that he started that day?
A He was at – with his parents on the morning of the 13th.
Q And was he supposed to go to lunch with his parents?
A He was and –
Q And what did he do instead?
A Instead, he went and he bought a 6-pack.
Q And then, what did he do next?
A He advised that he drank three of the beers and said he finished the rest later.
Q And what did he do after that?
A He said that he bundled up.
Q And then what?
A And he went to the trail, and once at the trail, he stated that he laid in wait.
Q What happened after that?
A He said – he made a statement that that's where he thinks the bullet fell out.

Q Does he make a statement about that, that – about seeing – before that about seeing the girls?

A Oh, yes, sir, I'm sorry. I'm –

Q Okay. Can you tell me about that statement.

A He said that he saw the girls and followed them onto the bridge. He mentioned, at that point, that he was doing something with his gun and stated that that's when he thought the bullet fell out.

Q What did he say next?

A He stated that he ordered them down the hill.

Q And what were his intentions when he ordered them down the hill, according to his statement?

A According to his statement, he thought they were older than what their actual ages were and he was going to rape the girls.

Q And what happened next, according to his statement?

A I got a question, Mr. McLeland, if you don't mind; do you mind if I use – I'm having trouble with my glasses or the light or something, so it's hard to read, so I didn't know if I could, like, use like a light on my phone or – I don't want to keep missing lines, I just – I can't see very well.

MR. MCLELAND: Judge, I don't have a good solution for that.

THE COURT: Do you want to use the light on your phone?

THE WITNESS: Is that okay?

THE COURT: That's fine.

THE WITNESS: Okay. Thank you.

MR. MCLELAND: I don't have a good solution, Judge. I'm sorry.

Q Master Trooper Harshman, are you – do you have sufficient light at this

point to be able to review the document?

A Yes, sir. Thank you.

Q And so the last question we talked about, he ordered them down the hill, we talked about his intentions. After he spoke about his intentions, what did he speak about next?

A His intention was to rape the girls and he thought they were older than their biological ages, and then he said that he saw a van, which scared him and caused him not to follow through with the raping of the girls. He said that seeing that van cost – caused him to cross a creek and then cut their necks.

Q What did he say next?

A He indicated that he wanted to make sure they were dead, and he reported covering the bodies with tree branches.

Q And what did he do when he exited the trails?

A He said he exited the area by keeping off the trails, as not to be seen, and he returned to his vehicle, which was parked by a nearby building.

Q Master Trooper Harshman, you had an opportunity to review that report when it was disclosed to the State; is that correct?

A Yes, sir, I did.

Q And as you reviewed that report, what stuck out to you?

A It was the first report where I had seen him explain details of the crime that he alleged that he committed.

Q And one specific detail stuck out to you; is that correct?

A That's correct.

Q Tell me about that.

A The detail where he said he saw a van that scared him and forced him to

go across the creek stood out to me.

Q Prior to this, did you have any information that the person who killed A.W. and L.G. had seen any kind of vehicle?

A I had not.

Q What did you do once you got that information?

A Well, got ahold of the investigative group and the command, let them know, obviously, and – that I picked that out. I think maybe even Investigator Mullin may have seen it, too. But it occurred to me that if that indeed was true, that the only person that would have seen a van, if a van was there, would have been L.G., A.W., and the person that killed them.

Q Did you follow-up on that information?

A I did.

Q And what did you do to follow-up on that information?

A I knew that the area where the van would have been was 600 – was 625 West, I believe, it's a gravel drive that dead-ends at a residence that the Webers live at.

Q So at this point, you thought that there may be some information involving that drive or the vehicle may have been on that drive?

A That's correct.

Q And so – and that is the private drive that goes back to the Weber residence?

A Correct.

Q So what did you do to follow-up on that?

A I looked for reports that had been completed prior to me getting this information, located reports that –

Q Let me back you up. Did you look up to see who lived at that residence?
A I did. That's how I – that's kind of how I identified it, but yes, I looked to find out who lived there. I didn't have to look far, obviously. Investigator Mullin and a lot of the investigators knew that it was the residence of the Webers.
Q And when you say Webers, who do you mean?
A I can't remember the mother that – I want to say Kay Weber maybe, I'm not sure if that's right, but her son, Brad Weber, is also somebody that stayed there some.
Q Did you run a BMV check on Brad Weber to figure out what vehicles he owns?
A I did.
Q And did you find that he owned a van?
A I did.
Q Tell me about that; what kind of van was it?
A It was a 2000 Ford Econoline van.
Q If I show you a picture of State's Exhibit 311, is that the van Brad Weber owned?
A Yes, sir.
Q After you gathered that information, what did you do after that?
A As I said, in – went through old reports that had been completed by other officers early on in the investigation and got those reports that involved Brad Weber.
Q And were you able to review those reports?
A I was.
Q And did those reports include Brad Weber's work history?

A They did.
Q And what did you find out about Brad Weber on February 13th, 2017?
A According to his work history, he clocked in to work at 5:41 in the morning and clocked out at 2:02 p.m. on February 13th, 2017.
Q After reviewing that report, did you interview Brad Weber?
A Yes, I did.
Q And what did you learn from the interview with Brad Weber? Let me back up: Who was present at the interview of Brad Weber?
A Myself, Investigator Mullin, and Brad Weber.
Q And when you interviewed him, what information did you gather from that interview?

MR. ROZZI: I'm gonna object. May I ask a question, Judge, a preliminary question?

THE COURT: Yeah.

MR. ROZZI: Is the information that you gathered from the interview the things that Brad Weber told you?

A The interview?

MR. ROZZI: Yeah.

A Yeah.

MR. ROZZI: Okay. I object to hearsay.

THE COURT: Sustained.

Q Did you get an opportunity, through that interview, to – did you get an opportunity in that interview to confirm the information about his work history?
A Yes.
Q And did you confirm what vehicle – that he owned the Ford Econoline van?

A Yes, I did.

Q Now, the reports you reviewed before, before you went to interview Brad Weber, did they mention anything about the van he owned?

A They did not.

Q You reviewed the reports pertaining to February 13th of 2017; is that correct?

A Correct.

Q In any of those reports that you reviewed, did any of those reports indicate that Brad Weber drove a van on February 13th of 2017?

A Absolutely none of them.

Q Were any of the reports that you reviewed, to your knowledge, made public?

A I – no, I do not believe so.

Q Were any of the reports, to your knowledge, posted on any kind of social media?

A I do not believe so.

Q After you interviewed Brad Weber, what did you do next?

A I compiled a report of the interview and submitted it to the case management system for approval.

Q Did you make a report close in time to these actions that you took?

A I believe it was just within a few days.

Q And if I gave you your report, would that help refresh your recollection of the next step you took after you interviewed Brad Weber?

A Yes.

MR. MCLELAND: Judge, may I approach the witness?

THE COURT: You may.

Q Do you recognize this document as your report?

A I do.

Q And was it made close in time to the actions you took in August of 2024?

A This is not the copy that has when I turned it in, it just has when it was printed, so I'm not exactly sure of the date, but I believe I recall the interview taking place on the 8th and the report being turned in just a couple – within four or five days later.

Q Does that paperwork that I gave you accurately reflect what's in your report that you turned in?

A Yes, it is.

Q And would that help to refresh your memory or your recollection about what happened after you interviewed Brad Weber?

A Yes.

MR. MCLELAND: Judge, would ask permission of the Court for the witness to review that report to refresh his recollection about what happened after he interviewed Brad Weber.

THE COURT: You may.

Q Trooper, when you're done reading to yourself, just look up me so I know that you're done; fair enough?

A Yes, sir. Okay, sir.

Q I'm gonna take your report back. Did that report help refresh your recollection about what steps you took next?

A Yes.

Q And so after you interviewed Brad Weber, did you look at other information

in the investigation?

A I did.

Q Tell me about that; what did you do?

A I contacted First Sergeant Cecil.

Q And why did you contact First Sergeant Cecil?

A Because he had done the analysis of L.G.'s phone.

Q And what information were you trying to gain from contacting First Sergeant Cecil?

A I was trying to establish a timeline of when the video recording began, when the girls –

Q What video recording are you referring to?

A I'm sorry. The video that L.G. recorded on the Monon High Bridge that had A.W. and Bridge Guy on it.

Q And this is the video from L.G.'s phone?

A Correct.

Q And have you viewed that video before?

A I have.

Q Have you viewed that video in its original format?

A Yes, sir.

Q Have you reviewed that video in the enhanced format?

A I have.

Q And how would the enhanced format differ from the original?

A It's – it stabilizes the image versus the original, where it's – moves around quite a bit.

Q And you've had an opportunity to observe both the original and the

enhanced; is that correct?

A Yes, sir.

Q Have you observed both several times?

A Over the years, yes.

Q And you were contacting – again, tell me why you were – why were you contacting First Sergeant Cecil about that video?

A Because First Sergeant Cecil had done the analysis of the phone and had been able to develop a timeline as to the events as they occurred in relation to the phone.

Q Master Trooper Harshman, I'm gonna play what's been marked as State's Exhibits 246.

STATE'S EXHIBIT 246 PUBLISHED BY PLAYING

Q Is that the video that you've reviewed in the past?

A It is.

Q And is that the video you were contacting First Sergeant Cecil about?

A Correct.

Q And were you able to confirm the timestamp of when that video was taken?

A Yes.

Q And do you recall what that time was?

A I have it in my report, but I believe it was 1413.

Q Let's not use military time, because I don't –

A I'm sorry.

Q -- know military time.

A I'm sorry.

Q So what time is 1413?

A 2:13 p.m.

Q And you were also able to gain other information from the phone data; is that correct?

A Correct.

Q And do you recall what other information you were able to collect as you sit here today?

A Yes.

Q Can you tell me about what other information you were able to collect from the phone data?

A First Sergeant Cecil provided me with data, I think it's – forgive me, I'm technologically challenged, but metadata from the Apple Health app, which showed movement of the phone until its final rest.

Q And do you recall when the phone stopped moving?

A I would prefer to look at my report and tell you off of the report.

Q And it's the same report we referred to earlier?

A Correct.

MR. MCLELAND: Judge, may I let him take a look at the report to refresh his recollection?

THE COURT: You may.

Q Master Trooper, I'm gonna draw your attention to the same section –

A Yes.

Q -- of the report. And let me know when you've had an opportunity to review that.

A Okay, sir.

Q And so what time – from your information that you gathered, what time

did the phone stop moving?

A The phone stopped moving at 2:32:39.

Q And how does that fall in line with the information you got from Brad Weber?

A Mr. Weber said –

MR. ROZZI: Judge, I'm gonna object to hearsay.

MR. MCLELAND: You can't say what he said.

THE COURT: Sustained.

Q But the information you gathered – you've been gathering information about when he was at work; correct?

A Yes, sir. He was –

Q And you testified that he was at work until 2:02 p.m.

A Correct.

Q Did you – and where did he work?

A He worked at Subaru in Lafayette.

Q And did you gather information about how long it took him to get home from work?

A I did.

Q And how long was that –

MR. ROZZI: Judge, may I object and ask a preliminary question?

THE COURT: You may.

MR. ROZZI: Is the information that you gathered about how long it took him to get home from work information that you got from him?

A No.

MR. ROZZI: Okay. Did – did you talk to him?

A I did talk to him.

MR. ROZZI: Did he tell you how long it took him to get home from work?

A He did.

MR. ROZZI: Okay. I'm gonna object. It's based on hearsay. They can bring Brad Weber in.

MR. MCLELAND: I can rephrase the question, Judge.

THE COURT: Sustained.

Q How far away, if you know, is Lafayette to the trails?

A Well, what I utilized was Google Maps and Waze, and I found that the drive him from his house to work was – I did it on several different days, and it ranged anywhere from 20 to 25 minutes.

Q So he gets off work at 2:02. With the information you had, what time about would he be arriving home?

A In the afternoon, I would guess that it would be more towards the 25 minutes, so that would mean that that van was on that road somewhere in the area of 2:27 to 2:30.

Q Does that fall into place with the information you've received from the phone?

A Absolutely.

Q Now, you've had an opportunity to review this video that we played in court today; is that correct?

A Yes, sir.

Q And you've had an opportunity to listen to hundreds of thousands of hours of Richard Allen's phone calls; is that correct?

A That's correct.

MR. ROZZI: Judge, I'm gonna object. With all due respect, he didn't listen to hundreds of thousand of hours, that's not consistent with his testimony.

THE COURT: Sustained.

MR. ROZZI: There's a little bit of drama here.

Q You listened to many hours of his phone calls; correct?

A Many.

Q Over 700 phone calls?

A Correct.

Q You had an opportunity to review the video; correct?

A Correct.

Q Did you recognize the voice of the male individual on the video?

A Yes.

Q And who is that voice? Or who do you believe that voice is?

A The voice is Richard Allen.

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

THE COURT: Mr. Rozzi.

CROSS EXAMINATION OF MASTER TROOPER BRIAN HARSHMAN

QUESTIONS BY MR. ROZZI.

Q This law enforcement investigation went on for five years – didn't it? – before he was arrested.

A Correct.

Q And over the course of that five years, law enforcement received over 14,000 tips, didn't they?

A They received a lot, I don't know the number.

Q Well, if I told you that that's what the testimony was from the State witness earlier, would you believe that?

A I would believe you.

Q And would you agree that in those 14,000 tips, approximately 14,000 tips, there were many of those that identified that voice on the bridge as having been somebody other than Richard Allen?

A There were some. I don't know the number.

Q Lots of them, weren't there?

A I don't know.

Q But you're not that familiar with that part of the investigation; right?

A I did not deal with 14,000 tips, no.

Q All right. So you went and talked to Brad Weber; correct?

A I did.

Q And Brad Weber owns a white van?

A Yes.

Q And did you ever look at the discovery to see how many references to a van there is in the discovery in this case?

A No.

Q Would you suspect that there's probably many, dozens and dozens of –

MR. MCLELAND: I'm gonna object, Judge. It calls for speculation. He says he didn't review the discovery to see how many times it was mentioned.

THE COURT: Sustained.

Q Would you be surprised to find that there might be hundreds of references to vans in the discovery in this case?

A Don't know whether I'd be surprised or not, Mr. Rozzi, to tell you the truth.

Q And you believe what Brad Weber told you; right?

A I do.

Q And if you – if he gave you inaccurate information, then your theory on him being in the – in that van near that bridge at that time would be false; right?

A Had it not been for the eyewitness account of Richard Allen.

Q Had it not been for who?

A Had it not been for the eyewitness account of the van being there and causing Mr. Allen to go across the creek.

Q And you said you reviewed numerous reports that were prepared back in 2017, regarding Mr. – the investigation surrounding Mr. Weber; right?

A I did.

Q And did you review a report by Agent Pohl and Agent Gootee about this –

MR. MCLELAND: Judge, I'm gonna object at this point. Can we have a sidebar, please?

THE COURT: Sure. Yeah, come on up.

(Sidebar conference conducted.)

MR. MCLELAND: (Inaudible) doing a deposition (inaudible) –

MR. ROZZI: Judge, this is not a bargaining session. It's – that report is a stand –

MR. MCLELAND: Can I finish? (inaudible) officer.

MR. ROZZI: He asked him if had reviewed reports and I'm just asking him what reports they've reviewed and I think that's perfectly relevant.

THE COURT: That's not what you asked him. I mean, if –

MR. ROZZI: Yeah, that's was what I ask, if he reviewed reports and did he review a report from Agent Pohl and Agent Gootee.

THE COURT: And that's where we got into the sidebar. So now where are you going with this?

MR. ROZZI: I don't know what the objection is. I mean, I'm just cross examining the guy on – based on what he did. I'm not trying be – act too cavalier about this, I'm –

MR. MCLELAND: The question, "Did you review the other reports", I have no problem with that question. That's not where I thought he was going.

THE COURT Okay.

MR. MCLELAND: I thought he was gonna say, "What did his report say that Brad Weber told you" –

MR. ROZZI: No, I agree with that.

MR. MCLELAND: (Inaudible)

THE COURT: We're all on the same page. Yeah, we're good.

MR. ROZZI: That's a hearsay.

THE COURT: Yeah.

(Sidebar conference concluded.)

THE COURT: You may proceed, Mr. Rozzi.

MR. ROZZI: Thank you, Judge.

THE BAILIFF: Your Honor, we need to take a break.

THE COURT: Oh, all right. I'm sorry. We – the jury's indicated they need to take a break –

MR. ROZZI: Yeah, sure.

THE COURT: -- so we'll go ahead and do that. Ladies and gentlemen, while you're outside the courtroom, keep your minds open. Please don't form any opinions or conclusions about anything. You can discuss the

evidence, but please, don't deliberate. Gentlemen.

THE BAILIFF: All rise.

(Jury out at 11:13 a.m.)

THE COURT: All right. Let's take 15 minutes.

MR. MCLELAND: Judge, could Mr. Rozzi and I approach briefly?

THE COURT: Yes.

MR. MCLELAND: We can go off the record, I just want to take care a housekeeping matter I suppose, Judge.

(Off record at 11:14 a.m.)

(On record at 11:32 a.m.)

THE COURT: Okay. Are we ready now? Are we ready?

MR. MCLELAND: Yes, Your Honor.

THE COURT: Yes? Okay.

THE BAILIFF: All rise.

(Jury in at 11:34 a.m.)

THE BAILIFF: Thank you. You may be seated.

THE COURT: Thank you. All right. You may resume your cross, Mr. Rozzi.

MR. ROZZI: Thank you, Judge.

Q Officer Harshman – Trooper Harshman, earlier, before we broke, you testified that you reviewed many reports or several reports, I don't remember exactly what words you used, as it related to Brad Weber and his circumstances surrounding this case.

A Yes, sir.

Q And those reports were from back in the 2017 timeframe?

A Yes, sir.

Q And did any of those reports involve an agent by the name of Adam Pohl or Mr. Gootee?

A Yes, sir.

Q And if one of those reports contradicted what Brad Weber told you about his travels on that day, would you feel differently about your conclusion today?

A No.

Q Okay. So if one of those reports suggested that he actually wasn't there on that drive –

MR. MCLELAND: Objection: Asked and answered.

MR. ROZZI: I'm asking the question in a different form.

THE COURT: Overruled.

MR. ROZZI: Thank you, Judge.

Q If one of those reports suggested that he was not there at that time, between 2:13 and 2:32, on February 13th, 2017, you would still have the same opinion?

A I would.

MR. MCLELAND: I object to the question. It mischaracterizes what's in the report and it's asking this officer about what's in another officer's report.

THE COURT: Sustained.

Q If Brad Weber is not a credible human being, would your theory about the timeline change?

A No.

Q Okay. You acknowledge that for your theory of this timeline to work,

you've got to put that van there between 2:13 and 2:32, don't you?

A Approximately.

Q Okay. And you don't know – well, let me back up, you said I think – correct me if I'm wrong – that it's about a 19 to 20-minute drive from Weber's employment – place of employment to his home?

A I believe I said it was like a 20 to 25 – 24, 25-minute drive, depending on when I researched it during the day.

Q Okay. And that's assuming that you're not getting stuck in traffic; right?

A I would assume that would be correct.

Q Well, you did a Google search; right?

A Well, yeah. I mean, it gives you the up-to-date traffic and so that when I did it, it was in the afternoon, when he would have been leaving, and it was 24, 25 minutes –

Q Okay.

A -- so I'm assuming there were no accidents along the route at that time, so –

Q That also assumes that he went directly from the point where he clocked out straight to his car and started driving.

A Correct.

Q That doesn't take into consideration that he might have sat around the parking lot, does it?

A No.

Q Or that he might have looked on his phone –

A No.

Q -- when he was in his car?

A No.
Q Or that he might have talked to a co-worker on the way out?
A Correct.
Q Doesn't take into consideration that he might have stopped at a gas station on the way home?
A Correct.
Q A lot of other factors that could play into that timeline; right?
A Correct.
Q But you knew, when you saw this reference from Mr. Allen in the report, the van reference, that was a pretty important fact in your mind?
A Yes.
Q And so important that you followed-up on this all basically on your own; right?
A No.
Q Well, I'm assuming you want to talk to law – the rest of the team and then you did the groundwork I guess is what you're saying.
A Myself and Investigator Mullin.
Q Okay. And you are aware that there was a handgun seized from Mr. Weber in this case back in 2017 –

MR. MCLELAND: Judge, I'm gonna object. It's outside the scope of direct.

THE COURT: Sustained.

Q Are you aware Mr. Weber was a suspect in this case at one point in the past?

MR. MCLELAND: Judge, I'm gonna object. This is outside the scope

and it violates the motion in limine.

THE COURT: Sustained. It's outside the scope.

Q Did you believe that the interview you were doing with Mr. Weber was an important one in the course of this investigation?

A I did.

Q And did you ever consider the fact that he, Mr. Weber himself, might have been involved in this circumstance if you put his van there at that time?

A No.

Q Okay. Did you record that interview with Mr. Weber?

A I did.

Q Is it audio recorded?

A I believe it's audio and video.

Q And have you looked at any of those reports, the 2017 reports regarding Mr. Weber, in the past couple of days?

A I have.

Q Okay. Which ones – did you look at the one that was done by Agent Pohl and Mr. Gootee?

A I did.

Q Was that just yesterday?

A Was it yesterday that I looked at it?

Q Yeah.

A I have looked at it yesterday, yes.

Q Was that the first time you ever looked at it, yesterday?

A That's the first time I looked at it. I'd heard about it prior to that, but that's the first time I'd looked at it.

Q Yeah. It was brought to your attention yesterday that it existed; right?

A I had heard that it existed prior to yesterday.

Q But yesterday was the very first time you looked at it?

A Correct.

Q Now earlier, you were talking about – Mr. McLeland was asking you about your observations of Mr. Allen during the time he was in solitary confinement over the past two years; right? About his tone of voice and his pace of speech and those kinds of things; right?

A Yes.

Q And you believe that during this period of time, April, May, June of 2023, when he was making these incriminating statements, that his pace of voice and tone of voice – pace of speech and tone of voice were similar to what you had heard in the past; right?

A I believe I agreed to the calls themself.

Q Okay. If Mr. Allen would have had a Haldol injection on April 14th, 2023, might that have impacted the way he sounded during those April phone calls?

A I can't –

MR. MCLELAND: Judge, I have a few foundational questions.

THE COURT: You may.

MR. MCLELAND: Master Trooper Harshman, do you have a medical degree?

A I do not.

MR. MCLELAND: Do you know the effects of Haldol on an individual?

A I do not.

MR. MCLELAND: Have you prescribed Haldol to an individual?

A I have not.

MR. MCLELAND: Have you ever sat with an individual in a psychologist or psychiatrist role?

A No.

MR. MCLELAND: Are you licensed in any of those fields?

A I am not.

MR. MCLELAND: Judge, I'm gonna object to the question. It calls for speculation.

THE COURT: Sustained.

MR. ROZZI: I agree with that. Thank you, Judge.

Q So as it relates to Mr. Allen's mental state when he was at the DOC, his psychologist or anyone that - strike that – his psychologist would have – be in a better position to have an opinion about his mental state than you?

A Correct.

Q And any other psychologist that may have spent time with him while he was there and done any objective testing on him?

A I can't speak to any other, but more than me.

Q Okay. So if it was determined that he was psychotic or engaging in psychotic behaviors during the months of April, May, June, and maybe even into July, 2023, you don't have any reason to dispute that, 'cause you don't know.

A I have not heard that that was the case.

Q But you couldn't dispute it, because you're not an expert; right?

A Couldn't dispute it, 'cause I haven't heard it.

Q Okay. Have you heard that he had a Haldol injection on May 18th, 2023?

A No.

Q Okay. If you knew that, if that was the testimony in this courtroom, might that impact the way you feel –

MR. MCLELAND: Judge, I'm gonna object to same. This calls for speculation, 'cause he's not in a position to be able to answer the effects of a Haldol on an individual.

MR. ROZZI: It's a hypothetical question. I think it's permitted by the –

THE COURT: Sustained. It's – sustained.

Q Did you know that he had a Haldol injection on June 5th, 2023?

MR. MCLELAND: Asked and answered, Judge. He already said no.

MR. ROZZI: I asked him about –

THE COURT: It's a different date –

MR. MCLELAND: Okay.

THE COURT: -- he's talking about a different date.

MR. MCLELAND: Thank you, Judge.

Q Did you know he had a Haldol injection on June 25th, 2023?

A I did not.

Q Did you know that he was under any type of mind-altering drugs while he was in the DOC?

A I don't know what drugs are mind-altering that he would have had.

Q Okay. Did you ever check with the DOC staff to see what kind of drugs he was being prescribed?

A That was outside my lane.

Q All of those things could have an impact on the pace of his speech, the

tone of his voice; right?

A I don't know what those medications do to you.

Q So you were assigned to Mr. Allen back in – strike that, that's not actually accurate. Let me rephrase the question. Immediately after Mr. Allen was incarcerated in 2022, October of 2022, there was a team of individuals that were assigned to monitor his phone calls and this other kind of thing, there was a group of you; right?

A I would say there was a group of people that had access. Assigned? I don't think anybody was assigned to anything, that's why I took the initiative to keep things organized, because nothing had really been assigned, it was just multiple people monitoring and, in an effort to make sure that everything was handled and covered and nothing was missed, it was imperative that at least one person kept track of everything.

Q There was not a lot of continuity at the start, and so you tried to kind of take the bull by the horns and funnel this all to you; right?

A It wasn't a continuity issue, it was just a – an organizational issue.

Q Okay.

A It was –

Q So ultimately, your job is to keep track of his incoming tablet messages; right?

A Yes.

Q And his outgoing tablet messages?

A Correct.

Q His incoming phone calls?

A There are none.

Q His outgoing phone calls?
A Correct.
Q His in-cell video?
A Correct.
Q And all of the video of him when they're – I think maybe you refer to it as movement video or somebody did. I refer to it as camcorder video, but that video, as well?
A Correct. I monitored most all of it, yes.
Q You interviewed guards that were assigned to his cell?
A I did.
Q You interviewed inmates that were assigned to his cell?
A I did not.
Q You didn't interview any of the companions?
A I did not.
Q Did the greater law enforcement team here in this case do that?
A Somebody did, yes.
Q Okay. And you reviewed some of his medical records?
A More so the behavioral reports. I don't know if those are considered – I would guess those are medical records, and yes.
Q Okay. And you reviewed the door sheets that were created by some of these or authored by some of these inmates?
A I did.
Q And you reviewed the door sheets that were authored by some of the guards?
A I did.

Q You actually were receiving automated messages on your phone from a third-party vendor so that you knew when there were communications in and out of Mr. Allen's cell.

A Correct.

Q So that is to say that if you're at the ball diamond, your phone might go off, kind of like in the old days a pager might go off –

MR. MCLELAND: Judge, I'm gonna object. It's not relevant, for one. It's been asked and answered, he says he received these. It's not relevant to anything that was done on direct. He's answered the question at this point, Judge.

MR. ROZZI: He said he surveilled him and I'm – I think it is relevant to the extent that Mr. Allen did not have any privacy while he was in that –

THE COURT: Overruled.

MR. ROZZI: Thank you.

Q So you would, basically, be able to sit at a ball diamond, for example, and you would know whether or not there was a tablet message from Mr. Allen to some other third party; right?

A Currently, tablet message, yes. I don't – I'm trying to remember if the Viapath system, which is what the DOC was utilizing, notified me on text messages. It definitely notified me on telephone calls. I can't remember if it notified me on text messages or not.

Q When Rick Allen was locked up in solitary confinement in Westville, he lost every sense of privacy, didn't he?

A He was monitored 24 hours a day, the best I know.

Q And videoed?

A Well, the video is part of the monitoring, yes.
Q We haven't seen any of that video in the course of your presentation, have we?
A No.
Q It'd be helpful maybe to see some of that video to put some context to some of these statements, wouldn't it?
A I don't believe so, no.
Q Okay. You don't think it's important that, when somebody's saying something over the phone, that actually seeing their actions while they're doing that would be helpful to help understand more about what they're saying?
A Maybe it would be, but I don't think it takes away from the content of the call.
Q As you would acquire all of this information when you're conducting your surveillance, you would then generate summary reports time and time again; right?
A Correct.
Q And about how many of those reports did you tell me that you thought you generated over the course of this investigation?
A I don't remember what I told you exactly.
Q A couple hundred maybe?
A A couple hundred probably is what I think I told you.
Q Okay.
A Maybe – probably a little – maybe a little bit – 150, 200, something – somewhere in that area.
Q A pretty comprehensive system in place, wouldn't you agree, in terms of

communicating Mr. Allen's moves in that cell and his actions to law enforcement?

A Yes, it was documentation.

Q You've been a cop for a long time; right?

A Awful long time.

Q In the history of your entire career, is it accurate to say you've never been assigned to surveil a man like you have been him, in a prison setting like this?

A That'd be correct, yes.

Q You agree that, while incarcerated, Mr. Allen has said some things about this particular crime that are just not accurate?

A I don't know that I can agree to that.

Q Okay. Are you aware of him saying he shot those girls?

A I'm aware that that came through an inmate companion that – I'm not sure inmate companions are the most reliable people to trust on any – there was no recording or video of him saying that I don't believe.

Q Okay. Did you ever talk to that inmate companion?

A No, I did not.

Q So you wouldn't have any way to judge the credibility of that inmate?

A Well, I think somebody talked to him, but –

Q Took a formal statement; right?

A I don't know, I did not talk to him.

Q Did you ever read it?

A No. I did not talk to him.

Q And you earlier referenced this – these – this report by Dr. Wala, I think it was on April – May 3rd maybe, I'm sorry, I lost my track of days, but a report

from Dr. Wala that contains the information about this van comment; do you recall that report?

A I do.

Q And in that report, the chronology is, is that Mr. Allen said he was lying in wait; right?

A That's what he says, yes.

Q Well, you're familiar with Bridge Guy; right?

A I am.

Q The photo and the videos of Bridge Guy?

A Correct.

Q Okay. And in that video, Bridge Guy's walking across the bridge; right?

A Behind the girls, yes.

Q Okay. And in that video, the girls would be on the south end of the trail, the video's looking back to the north end; right?

A I'm gonna take your word for that. I – if you say that that's looking north, I can't – I think that's right.

Q Which is to say, then, that the girls were on the south end of the bridge presumably before Bridge Guy made it to the south end of the bridge.

A So – is there a question there? I'm sorry.

Q Well, is that accurate?

A That the girls were on the bridge before Bridge Guy?

Q That they made it to the other end of the bridge, the Weber end of the bridge, before Bridge Guy?

A Yeah, he was on the other – he was coming from the direction that they came from, yes.

Q From the trailhead?
A Yes, yes.
Q North side of the bridge. So just based on that video, there's no sense that he was lying in wait, is there?
A There's no sense that he wasn't.
Q Well, he's walking across the bridge; right?
A The girls walked past him, he could have been lying in wait and got behind them.
Q And then the chronology of Mr. Allen's statements, next is that the gun was cycled and that's where the bullet came out; right?
A That's what he said.
Q Which would have happened up on the bridge.
A Correct
Q If you believe his chronology –
A Yes.
Q -- right?
A I mean, yeah, you would – if you believe that, yes.
Q You've been up on that bridge?
A I have.
Q There's railroad ties; right?
A Correct.
Q And between those ties, there's big gaps; right?
A Correct.
Q And many of those gaps lead straight to the bottom many, many, many feet below, don't they?

A Correct.
Q Was there ever any kind of a cartridge or bullet or round recovered from that bridge?
A Not that I'm aware of, but that was way before I became involved in the investigation.
Q Well, and you've been pretty involved; right?
A All that took place before I was involved, but yes, I don't recall a bullet being found there.
Q So that's inconsistent with what he said; right?
A Don't know that I'd agree with that, sir. I think it could be explained away.
Q Okay. But there was a general reference to a van; right?
A Yes.
Q Nothing about the color of the van?
A No.
Q Nothing about the make or model of the van?
A No.
Q Nothing about the direction the van was headed?
A No.
Q It could be just coincidence, couldn't it?
A I don't believe it's coincidence.
Q But it could be an explanation, couldn't it?
A What's – I don't understand what you're trying to tell me, a coincidence that he saw another van?
Q Well, is that the only van in Carroll County, do you believe, at that time?
A Yeah, that was the only van on 625 at between 2:25 and 2:30, according

to the timeline with Mr. Weber.

Q Yeah. But is that the only van in all of Carroll County?

A No, of course not.

Q I mean, a van's a pretty general reference to a vehicle, isn't it?

A Well, yeah.

Q Now, let's talk about Rick's circumstances while he was incarcerated. You had a chance to observe him over the course of two years or more?

A Yes.

Q And you're still doing it, aren't you?

A Yeah, I have the ability to. Watching less and relying more on the jail staff to notify me of issues and things like that, but yeah, I mean, he's still a person that needs to be watched for his safety, I mean –

Q Well, it's also because you want to hear him say things and report those to the Prosecutor's Office; right?

A I don't wish for him to say anything; but when he does say something, I do document it and I do report it.

Q Okay. Fair enough. Have you been listening to his phone calls over the last three weeks?

A I have.

Q Since we've been in trial?

A I have.

Q And know that this circumstance might be a cause of additional stress on him; right?

A I would imagine it's stressful.

Q And it might be likely that he would say something?

A I don't know.

Q Now, there have been times both early in his detention circumstances and late in his detention circumstances where he has proclaimed his innocence; right?

A There have been times, yes.

Q I mean, that has also been a theme in this case, hasn't it?

A That?

Q That he's proclaimed his innocence.

A He has some.

Q Have you ever gone through and logged any of those comments in any formal way?

A I've documented. I take notes. I do know that – when they happen and, yeah, I mean, I've passed those on, so yes.

Q Okay. Did you ever see Rick Allen pose any real threat to anybody up at Westville?

A Yes.

Q You said he spit on a staff member one time; right?

A That would be a threat.

Q He passively disregarded some directions; right?

A Yes.

Q He didn't take his hands out of the cuff port one time; right?

A I believe that was the case.

Q But other than that, he's been pretty easy to handle up there, hasn't he?

A I mean, I would direct you to talk to them about that, 'cause I think they would have a different opinion.

Q Yeah, okay. Well, we've heard some of that. How many times do you think you went up to Westville during your investigation in this case?

A I think it was two or three.

Q You ever take the time to go back to A-1107, his cell, and just take a look at his cell?

A No. I wasn't allowed.

Q Well, I mean, you're a police officer, you can go to the prison; right?

A I don't get to go anywhere I want in the prison, trust me.

Q Well, did you ask them and they told you you couldn't go back there?

A No, I did not ask.

Q Okay. All right. Did you even ever ask to go back in the block and see what that was like?

A I did not.

Q A Pod? But you did take the time to go visit his cell down in Cass County, didn't you?

A Yes, just when he was moved.

Q And down there, brand-new facility; right?

A It is.

Q Just opened, what, six, eight months ago?

A Don't know.

Q Just very recently, wasn't it?

A I'll take your word for that, I don't know.

Q Okay. Right across the street from my office; right?

MR. MCLELAND: Judge, I'm gonna object at this point –

A I don't know.

MR. MCLELAND: -- this is well outside the scope, and I don't know how this is relevant, where it's located.

THE COURT: Sustained.

Q Did you get to see his cell down there?

MR. MCLELAND: Judge, I'm gonna object. It's outside the scope of direct.

MR. ROZZI: He talked about his supervision.

THE COURT: Overruled.

Q You go see his cell?

A I did.

Q It's got a table in there?

A In his cell, I believe there's a small table, yes.

Q Okay. And there's a TV out in the kind of the dayroom area?

A Correct.

Q It's actually like a two-part cell; right? There's a place where he sleeps and then there's another area where he can socialize or – not socialize, well, technically, he can socialize there.

A Yeah. It's a cell attached to a – what looks to be like a small common area that has a shower and probably I guess it's a kiosk for making calls.

Q Much more hospitable than the circumstances up at Westville; right?

A I would say same circumstances. If you want say it's painted nicer and it's cleaner, then maybe, but same circumstances.

Q You've seen some of the video of him eating his feces?

A I'm sorry?

Q Did you see some of the video of him eating his feces?

A Possibly. I think we discussed this before, the video is somewhat poor, so I – if you tell me that's what's happening, then I can't really dispute it, but possibly.

Q Well, it was reported by others that that's what –

A Correct, correct.

Q It's not normal behavior, is it?

A It's not normal for me.

Q But you said you thought he'd be doing those same things if he were in general population, didn't you?

A I think Richard Allen struggles to be alone and –

Q So being in solitary confinement would be much harder on a man like him than –

A Well –

Q -- somebody who didn't struggle to be alone?

A I think he struggles alone 'cause he's in constant need of attention and I believe that he does that stuff to try to attempt to attract attention to himself.

Q Okay. Not because he was psychotic?

A No. And I've heard him say it in the phone calls.

Q You've heard him say what?

A That he does things for attention and he gets upset when nobody pays attention to him.

Q Okay. But you also know that he was determined to be psychotic when he was up there?

A You keep saying that, but I've never heard anybody tell me that he was psychotic, no.

Q Okay. Did you ever talk to the medical or psychiatry staff up at the prison?

A No. It was outside what I was doing. It's not my portion of the investigation.

Q You're aware that he was self-harming when he was in that cell?

A I'm aware that he made a statement that he was banging his head on the wall because nobody would come talk to him and he was frustrated that, even by hurting himself, nobody would come talk to him; so yeah, it was intentional what he was doing.

Q Okay. So he was banging his head on the wall to the point where he was injured by that; right?

A Again, I think if you look at the reports of the people who were there, they were saying he wasn't doing it hard enough to injure himself, but only to try to make a mark.

Q Did you ever go look at the video yourself to see what he actually was doing?

A I think we talked about this before, but there's a – in his cell, there's – the door is inset a little bit, the angle of the camera, you can see him walk up to the door. I know it's the timeframe where he was allegedly banging his head on the door, but was he banging his head on the door at that point? Probably. I don't know, I can't verify it by the video.

Q Had you ever watched the videos of him rolling around in his feces?

A Rolling around in food and maybe feces, yes.

Q At any point in time when you were watching all this, did you ever think to yourself, "Hey, I need to talk to the medical staff or the physiatry staff or the warden to see if he's okay"?

A There's medical staff onsite. I'm a hundred and some odd miles away, so it's really out of my lane to try to interpret what they're seeing every day, so –

Q Right. He was up in Westville; right?

A He was, yes, at – yes.

Q And you were where?

A I live south of Indianapolis.

Q Okay. So the answer is you never talk – took the time to talk to anybody about his behaviors in that cell that you observed?

A My answer is, is that wasn't my responsibility during this whole thing to do that, so –

Q In fact, you told me that you thought he was right where he needed to be, didn't you?

A Based on the fact of how he was – needed 24-hour monitoring because he would constantly say that he was gonna kill himself, absolutely where he needed to be to prevent that from happening.

Q This isn't the first time we talked; right?

A No, sir.

Q And you had previously testified about a phone call – actually, it was a phone call I think we heard today on November 14th of 2022; is that right?

A I don't – you'd have to refresh my – I don't remember us talking about it, but I'm not saying that we didn't, but I just don't know.

Q Okay. Remember us talking about it, I think it was here in this court, maybe in July?

A If you have a transcript or –

Q I'm gonna hand it do you. Do you remember us being here in July?

A I do.

Q I had gone through the same with you?

A Similar.

Q And if I hand you a copy of the November 14th, 2022, transcript, would that help refresh your recollection?

A It would.

MR. ROZZI: May I approach, Your Honor?

THE COURT: You may.

Q Just let me know when you had a chance to take a look at that.

A Yeah, I think this is the one from – the first or second one from earlier today.

Q And when we were in court back in – on July 31st here in this courtroom, did you believe that that phone call, that November of 2022 phone call, had some significance in this case in terms of Mr. Allen's mental state?

A In terms of what?

Q Of his mental state, excuse me.

A I'm not so sure that it was so much about his mental state or just the fact that he said that – he told Kathy that if it becomes too much, to call the investigators and he'll tell them whatever they want.

Q Right. And what you said – did you say this, "If this becomes too much for you, just let me know, I'll talk to the detectives and tell them everything they want to know"? That's what you quoted him; right?

A That's – I mean, that's what he said, that's not what I did anything; right?

MR. ROZZI: May I approach?

Q Would it help to refresh your memory to look at this –

A It prob –

Q -- transcript from July?

A Probably.

MR. ROZZI: May I approach, Judge?

THE COURT: You may.

Q Take a look at that, if you would.

A Okay.

Q I can't see the line number – or the page number, I'm sorry. Volume 1, page 13, lines 17 – or 16 through 18.

A Okay.

Q Are those your words?

A I think that those would be my words, but I didn't have the benefit of having a transcript and I was, you know, trying to pull that out of 700 –

MR. MCLELAND: Judge, I'm sorry, what's the question?

THE COURT: I don't know. I don't know what the question is.

MR. ROZZI: I'm trying to clarify. I appreciate, you know –

THE COURT: He's trying to clarify.

MR. ROZZI: -- the reaction.

Q Did you testify that that phone call and what Mr. Allen said during that phone call was significant to you in terms of the way he was talking and thinking?

A It was significant in the fact that he said he would talk to investigators if this became too much for Kathy, that was the significant part.

Q And did you say, "If this becomes too much for you –

MR. MCLELAND: Judge, I'm gonna object to this. The jury's seen

the transcript and they've listened to the phone call. Mr. Rozzi's now asking Master Trooper Harshman about testimony he had back in I think July or early August. The document that we heard and their opportunity to look at the transcript, that speaks for themself to what Mr. Allen said on that phone call.

THE COURT: Are you trying to impeach him or –

MR. ROZZI: I'm trying to clarify Mr. Allen's words.

MR. MCLELAND: The clarification is in the transcript.

MR. ROZZI: They don't have the transcript.

THE COURT: But they had it, and they've heard it.

MR. ROZZI: May I approach?

THE COURT: Yes, you may.

Q This contains, this statement – November 14th, 2022, transcript contained what he said on that day; right?

A Correct.

Q Those are his words.

A Correct.

Q And what he said was, is that he would tell them, "Whatever it is they want me to say, I'll just say it." That's what he said; right?

A Yes.

Q And in fact, directing your attention to page 6, line 10 and 11 – lines 10 and 11 –

MR. MCLELAND: Judge, I'm gonna object. Are we – is he moving to admit the transcript into the – into evidence or is he just gonna have Mr. Harshman read from the transcript?

MR. ROZZI: It's already been – the audio's already been admitted

and –

MR. MCLELAND: And this has been already admitted to the jury, they've considered it, if that's the argument, Judge. It can speak for itself. It's been admitted, they've had an opportunity to listen to it, they could see it, and it speaks for itself.

THE COURT: Sustained.

MR. ROZZI: Thank you.

Q Those words suggest that he was willing to just do whatever the police wanted him to do to take the heat off of his wife, didn't it?

A That would be your interpretation.

Q Well, is that an unreasonable one?

A I would say I've got a different explanation, so –

Q But is mine unreasonable?

A It's not unreasonable.

Q Thank you. Now, Mr. McLeland offered up some phone calls earlier; right?

A Yes.

Q And one of those – you can set that down there to your right, if that's okay, Trooper, just up on the desk there. Thank you. And one of those phone calls was from April 3rd; is that correct?

A Correct.

Q And specifically, that was a 5:14 phone call, wasn't it?

A I believe so, yes.

Q Would it help to look at the transcript to refresh your recollection?

A That'd be fine. Thank you.

MR. ROZZI: May I, Judge?

THE COURT: You may.

A Yes, 5 –

Q Is that the phone call we heard earlier?

A Yes, 5:14, yes.

Q And during that phone call, Rick actually referenced a call that he had made earlier that day, didn't he?

A That I don't know.

Q To his father? Page 5, line 8.

A He says, "Did Dad tell you I called?"

Q Right. And you know that he made a phone call earlier that day to his mother and father, don't you?

A I can't speak to that here. I have – I would be able to find out, but I don't know.

Q Okay. Do you agree that there were three phone calls made on the 3rd – during the early morning hours of April 3rd, 2023?

A I – again, I can't speak to that without checking.

MR. ROZZI: May I approach the witness?

THE COURT: You may.

Q Would it help to look at the transcripts to refresh your recollection? I'm sorry, yes or – I didn't –

A Yeah. If you've got all three, yeah.

Q Okay. Yeah, I do. Give me a second here, let me get organized.

MR. ROZZI: One second, Your Honor. I've got it here.

Q I'll hand you a transcript of recorded telephone conversation April 3rd, 2023, at 3:12 a.m. Please take a quick look at that. And the simple question is:

Did Rick Allen make a phone call at 3:12 a.m., early morning hours of April 13th – April 3rd, 2023?

A Yes, I believe so.

Q And you've had a chance to review that call; right?

A I have – no, I have not.

Q You've never seen that?

A No, I did not say that. I just said –

Q I'm sorry.

A -- I have not reviewed it.

Q Okay. Ever or –

A No, I have reviewed it.

Q Just not here?

A Maybe in real time when it happened –

Q All right.

A -- but I don't believe that I've looked at it in preparation for any proceedings.

Q Okay.

A Do you want me to review it or –

Q I'm just asking you did you look at it.

A I glanced at it, yes.

Q Okay. So just to make sure everybody's clear: He made a call?

A He did.

Q To his mother and father on April 3rd, 2023, in the early morning hours; right?

A Correct.

Q Specifically what's the time on that call?

A 3:12.

Q And then earlier during your testimony, there was admitted into evidence a phone call from April 3rd, 2023, at 5:14. That's the one we heard; right?

A Correct.

Q Would you agree that there was also a third call made on April 3rd, 2023, at 8:45 a.m.? And would it help you to refresh your recollection to look at this transcript?

A Yeah, that'd be great.

Q And don't you think it would be – would those two phone calls provide some context, those two phone calls, the 3 a.m. phone call and the 8 a.m. phone call, provide some context for the phone call that we heard at 5 a.m.?

MR. MCLELAND: Judge, I'm gonna object to this line of questioning.

THE COURT: Sustained.

MR. ROZZI: Judge, forgive me, but I don't know what the legal objection is. The line of questioning?

MR. MCLELAND: He's making a legal argument to the witness, Judge, is what he's doing. So he's not in this – this witness is not in a position to answer a legal question that we've argued in front of the Court outside the presence of the jury already.

MR. ROZZI: Judge –

THE COURT: That's why I sustained it.

MR. ROZZI: Thank you.

THE COURT: You're welcome.

Q That phone call at five o'clock, 5:14, the one we heard earlier, is not the whole story about what was said on the morning of April 3rd, 2023, was it?

MR. MCLELAND: Judge, I'm gonna object to that question, as well, for the same –

THE COURT: Sustained.

MR. MCLELAND: -- objection.

Q Did you ever suggest to play those other two phone calls?

MR. MCLELAND: Judge, I'm gonna object to that question, as well. It's not – again, I think it's outside the scope of direct, one; but it's not the witness's decision of which phone calls the prosecutor puts into evidence.

MR. ROZZI: He's doing it through this witness.

THE COURT: Sustained.

Q Rick Allen's proclaim his innocence in that 3 a.m. phone call?

MR. MCLELAND: Judge, I'm gonna object. It calls for hearsay.

THE COURT: Sustained.

Q Rick Allen said he was broken down and felt like –

MR. MCLELAND: Judge, I'm gonna object.

Q -- he was at Guantanamo Bay?

THE COURT: Would counsel approach, please.

(Sidebar conference conducted.)

MR. ROZZI: It's being offered to show it's inconsistent –

THE COURT: I, apparently, did not make myself clear. His statement is hearsay. I don't know (inaudible). Your argument is – you can't go around that argument, but that's exactly what you're trying to say.

MR. ROZZI: I'm saying it's not hearsay.

THE COURT: It is hearsay.

MR. ROZZI: It's being offered to show –

THE COURT: It is –

MR. ROZZI: -- inconsistent with what he said in court.

THE COURT: It is hearsay, it is the Defendant's statement, and we've had this discussion, and I'd encourage you to read the hearsay rule and I trust that you've done that. I've sustained the objection.

MR. ROZZI: Thank you.

(Sidebar conference concluded.)

MR. ROZZI: May I approach the witness?

THE COURT: You may.

Q You said that earlier – strike that. Back in August, I took your deposition; right?

A Yes, sir.

Q And we talked about these confessions that we're talking about today; right?

A Yes, broadly, I think. I don't know –

Q Okay. And the bulk of them occurred in April, May, and June; isn't that right?

A Correct.

Q And that's also when he was engaging in the bulk of his bizarre behaviors, isn't it?

A Yes.

Q And a lot of these things that he's said while he's been incarcerated have been what I'd phrase as generic confessions, haven't they?

A We listened to the calls, but I don't – I would need your definition of a generic confession before I would agree to that.

Q Okay. Well, there's not a lot of detail in them in terms of unique facts; right?

A Is him saying, "I did it," to you a generic confession?

Q Well, I'm asking you.

A Well, if you're – I mean, I guess that I need some direction on what you'd consider a generic confession.

Q Okay. Well, I'm asking the questions today. Do you believe that it's generic or –

A Then, no.

Q Okay. The only thing that he said that's unique to you, in your opinion, is that there was a van; right?

A That's the only thing that was unique that was a detail of the crime that only the killer would know.

Q Okay. Two years in solitary confinement; right?

A Would not afford him the opportunity to have knowledge that only the killer would know.

Q Seven hundred phone calls that you heard; right?

A Approximately.

Q He's talked to various guards in that facility and facility down south, hasn't he?

A Yes.

Q Inmates?

A Apparently, yes.

Q Tablet messages in and out?

A Some.

Q One time talked about a van; right?

A That nobody else knew but the killer.

MR. ROZZI: I have nothing further.

THE COURT: Mr. McLeland.

MR. MCLELAND: Judge, do you want to – I do want to play – ask leave of the Court to play the additional phone call. Is this a good time to break for lunch, Judge? I'm not telling the Court to do, I just –

THE COURT: No –

MR. MCLELAND: The phone call's about – well, I'm not sure how long it is right off the top of my head.

THE COURT: Okay. We'll just go ahead and take our break. All right, ladies and gentlemen, we'll go ahead and break for lunch. It's about 12:20. While you're outside the courtroom, please, keep your minds open. Please don't form any opinions or conclusions about anything. Hey, folks, we're still working up here. Thank you. Please don't – you may discuss the case amongst yourselves, but please, only do that if all 15 of you are present in the jury room at the same time and then, please, don't deliberate. Gentlemen.

THE BAILIFF: All rise.

(Jury out at 12:19 p.m.)

THE COURT: You may be seated. Ladies and gentlemen out in the audience, I really don't appreciate your conduct. If you cannot conduct yourselves appropriately while we are on the record and still conducting court, I would ask you to leave. We'll be in recess till 1:30. Jodie, you may go off the

record.

MR. MCLELAND: Thank you, Judge.

MS. DIENER: Thank you.

(Off record at 12:20 p.m.)

(On record at 1:32 p.m.)

THE COURT: All right, we are back on the record. Are we ready to continue? I think we – when we broke, we were getting ready to do re-direct by the State of Master Trooper Harshman.

MR. MCLELAND: Yes, Your Honor.

MS. AUGER: Your Honor, can we approach for one quick housekeeping –

THE COURT: Sure.

MS. AUGER: -- matter? We might want to –

THE COURT: Oh, okay.

(Sidebar conference conducted.)

MS. AUGER: Sorry.

THE COURT: That's okay.

MS. AUGER: I need to reserve a hotel room for an expert. I figured she would probably stay in Lafayette. I don't want there to be any contact. If she stays at the Hilton in Lafayette, is that –

THE COURT: That should be fine.

MS. AUGER: Okay. That's all.

THE COURT: Okay.

MS. AUGER: Thank you.

(Sidebar conference concluded.)

THE COURT: Okay. All right. So we're ready to bring the jury in?

MR. MCLELAND: Yes, Your Honor.

MR. ROZZI: Yes.

THE COURT: Let's bring in the jury.

THE BAILIFF: All rise.

(Jury in at 1:35 p.m.)

THE BAILIFF: Thank you. You may be seated.

THE COURT: Thank you, gentlemen. All right. Mr. McLeland, you may begin your re-direct.

MR. MCLELAND: Thank you, Judge. And I owe an apology to the Court and to the jury, I really struggled with technology during this trial, and in my struggles, I put the wrong recording of the phone call from May 17th of 2023 on State's Exhibit 313. I have corrected that, and so before I start re-direct, I'd ask the Court to grant me leave to be able to play that phone call as part of direct. I've got that queued up, ready to go, if the Court grants that motion.

THE COURT: That's fine. That's May 17th?

MR. MCLELAND: May 17th of 2023. And, Judge, I would ask that I be allowed to publish a transcript of that phone call to the Court and to the jury, so that they may follow along to aid them in listening to that phone call.

THE COURT: You may.

MR. MCLELAND: Thank you.

THE COURT: And, ladies and gentlemen, again, the transcript isn't the evidence, the – what you're hearing is the evidence. And we'll collect those transcripts like we've been collecting all of the transcripts.

STATE'S EXHIBIT 313 PUBLISHED IN PART BY PLAYING

RE-DIRECT EXAMINATION OF MASTER TROOPER BRIAN HARSHMAN

QUESTIONS BY MR. MCLELAND.

Q Master Trooper Harshman, you've been involved in other investigations and arrests besides the one involving Richard Allen; is that correct?

A Yes, sir.

Q And have you been involved in other cases where someone who's under arrest is held in trial – or is held in jail before their trial?

A Yes.

Q And do you know, is it common for individuals that are in custody in a jail to be monitored?

A Yes.

Q And are they monitored by video on occasion?

A Yes.

Q What about their phone calls out of the jail, are those monitored?

A Yes, they are.

Q Are those typically recorded?

A Yes.

Q And do law enforcement – at least in your experience, do law enforcement typically listen to those phone calls?

A Sometimes, yes.

Q Mr. Rozzi asked you about Mr. Allen's demeanor while he's at Westville and whether he was – I think the phrase was calm or a problem for the facility; do you recall that?

A Yes.

Q You've had an opportunity to observe Mr. Allen, not only in Westville, but also in Wabash and then also in Cass County Jail; is that correct?

A More Cass County than Wabash, yes.

Q Okay. And have there been issues while he's been housed at Wabash or at Cass County?

A Yes, there have been.

Q And have there been issues where he's had to be restrained?

A There have been.

Q Have there been issues where he's been violent?

A There have been.

Q And one was recently; is that correct?

A Correct.

Q Over lunch, did you get an opportunity to view a video from the Cass County Jail?

A I did.

Q And what does that video display?

A It displays Mr. Allen screaming loudly, lots of profanity, extremely irate, pounding on the doors of his cell, telling the guards that he's gonna fucking kill them –

MR. ROZZI: Objection. Judge, I'm gonna object at this point. None of this has been discovered to us.

THE COURT: This has been provided in discovery?

MR. MCLELAND: I believe so, Judge. May we approach?

THE COURT: Yes.

(Sidebar conference conducted.)

MR. MCLELAND: Do you not have the video from the Cass County Jail from two weeks ago?

MR. ROZZI: I –

MR. MCLELAND: Where he does this on his neck and he blows up and just taken to the padded cell?

MR. ROZZI: I haven't it, if there is one. I mean, I'm not saying that – I'm not gonna – I haven't seen it.

THE COURT: It's been provided, you just haven't seen it?

MR. ROZZI: We're in the middle of a trial and I, you know –

THE COURT: Okay.

MR. MCLELAND: Well, we'd like to play it, so I want to make sure you've seen it before I move to admit it.

MR. ROZZI: Yeah, I think I'd like to see it.

MR. MCLELAND: Yeah. No, I don't disagree. So I don't know how you want to handle that, Judge, but he's talked about Cass County and when he was housed there. We've had an incident – two incidents, one last week and one two weeks ago, where he's gotten violent, he had to be restrained and taken to a padded cell. And he's made admissions in the one I'm gonna play, as well, and so we'd like to play it. It's about a half hour long.

MR. ROZZI: I don't really think it's relevant at this point. It doesn't have a tendency to prove that he committed these crimes, you know.

THE COURT: How is it relevant?

MR. MCLELAND: Well, Judge, I just – he brought up the issue of whether he's been calm or a problem since he's been at the jail, so it's a rebuttal to what he's brought up.

MR. ROZZI: I said when he's in Westville.

MR. MCLELAND: Well, you also said Cass County, and you implied that Cass County's the Hilton while Westville's the hole; and so he's had the same issues at Cass County that he's had at Westville, being a problem for them.

MR. ROZZI: Well, (inaudible) testify –

MR. MCLELAND: I wasn't gonna play it on direct, but I think it's rebuttal to what you –

THE COURT: Okay. Well –

MR. MCLELAND: And I don't have a problem letting them review it.

THE COURT: Well, he needs to, at least –

MR. MCLELAND: Yeah.

THE COURT: If we're gonna publish it to the jury, he needs to have the opportunity to review it.

MR. ROZZI: Discovery's coming in –

MR. MCLELAND: Well, it's for us, too. So I don't know how you want to handle it, Judge, but we're gonna rest after him, and so I don't know – it's unorthodox for us to open back up – evidence back up and put it in after he views it, but I'm not sure how else –

MR. ROZZI: How long was the video?

MR. MCLELAND: Half hour.

MR. ROZZI: Okay.

MR. MCLELAND: It's gonna take you a little bit to watch it. It's not two minutes.

THE COURT: Okay.

MR. ROZZI: I mean, I don't really have a problem with him just testifying about it. I'm not trying – I'm not negotiating, I said that about what we're doing –

THE COURT: Thank you.

MR. ROZZI: -- so I'm not gonna do that.

MR. MCLELAND: You know, really it's just not – the testimony's not as powerful as the video –

MR. ROZZI: Yeah.

MR. MCLELAND: -- you understand that, I mean, otherwise –

MR. ROZZI: That's a good point.

MR. MCLELAND: -- he'd be testifying about –

MR. ROZZI: We should keep that in mind, mark that phrase.

THE COURT: I heard it.

MR. MCLELAND: Yeah.

MR. ROZZI: The testimony's not as powerful as the video.

THE COURT: I heard it.

MR. MCLELAND: So I don't know how you want to handle that. Or how you want to handle that.

THE COURT: Well, I mean, clearly, you can't rest until that's played, so – I don't like opening things back up –

MR. MCLELAND: I agree.

THE COURT: -- unless it's unintentional and (inaudible) –

MR. ROZZI: Yeah, yeah.

THE COURT: So you want to maybe take a recess to give you the opportunity to review it?

MR. ROZZI: Yeah. I might –

MR. MCLELAND: I had to review it over lunch or I would have –

MR. ROZZI: Could I double-time it or double-speed it?

THE COURT: Yeah, you could –

MR. MCLELAND: Probably. I don't know.

MR. ROZZI: Yeah.

MR. MCLELAND: I watched it over lunch, 'cause I wanted to see what was on it for sure. I'd seen it before, but –

THE COURT: Okay.

MR. ROZZI: Okay.

THE COURT: All right. Then, we'll take a break so you can watch it.

MR. ROZZI: Yeah, we'll go play that real quick.

(Sidebar conference concluded.)

THE COURT: All right. Well, ladies and gentlemen, we're gonna take a quick break, give you an opportunity to get up and move around a little. While you're outside the courtroom, please, keep your minds open. Please don't form any opinions or conclusions about anything. Again, you may discuss the evidence that you've heard so far, but please, only do that if all 15 of you are present in the room at the same time and, please, don't deliberate. Gentlemen.

THE BAILIFF: All rise.

(Jury out at 1:51 p.m.)

THE COURT: You may be seated. All right. So it's your belief that this video – is it approximately 30 minutes long?

MR. MCLELAND: I think so, Judge. In all fairness, I was kind of

skipping through it during lunch to get through it –

THE COURT: Okay.

MR. MCLELAND: -- so I don't know the exact minute, but it took us about a half hour or so to get through it to make sure everything was clean on it in terms of nothing that wasn't allowed in evidence, and so I think it's about a half hour would be my guess, Judge.

MR. ROZZI: Is there audio?

MR. MCLELAND: Huh?

MR. ROZZI: Is there audio?

MR. MCLELAND: Yes.

MR. ROZZI: Okay.

MR. MCLELAND: Yep.

THE COURT: All right. So if we recess – reconvened at 2:30, you would have plenty of time to review it, discuss it with counsel –

MR. ROZZI: Oh, yeah.

THE COURT: I mean, maybe before 2:30?

MR. ROZZI: I'm gonna go over here and try to buzz through it. I –

THE COURT: All right.

MR. ROZZI: I kind of know what I'm looking at.

THE COURT: So maybe 2:15? Or is that too close?

MR. ROZZI: Yeah, just – 2:15's fine.

THE COURT: 2:15.

MR. ROZZI: If I need more time, I'll let your staff know.

THE COURT: All right.

MR. MCLELAND: Mr. Rozzi –

THE COURT: Then, we'll reconvene at 2:15.

MR. MCLELAND: Oh, sorry.

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

(Off record at 1:52 p.m.)

(On record at 2:33 p.m.)

THE COURT: Okay. We're back on the record. You've had the opportunity now, Mr. Rozzi, to review the – I don't even know what it – I don't think it's been marked as an exhibit, but it's a video that we talked about prior to the break.

MR. ROZZI: Yes. May we have a sidebar?

THE COURT: Certainly, of course.

(Sidebar conference conducted.)

MR. ROZZI: Okay. So here's what's going on, so I took the (inaudible)

THE COURT: Oh, yeah, sure.

MR. ROZZI: I wasn't gonna watch it in the hallway.

THE COURT: Yeah. Oh, no, that's not ideal.

MR. ROZZI: And so what's on there is this a video at the Cass County Jail, I think it's August 26th, and there's several cameras. And so we watched the first 15 minutes of the in-cell and then several cameras or whatever, but there's – apparently, there's another 15 to 20 minutes of video on there along with that, there are other things that I haven't watched, so I don't want you to think I'm saying that, but our position is it's not relevant. It doesn't have a tendency to prove the fact at issue. It's specifically that he was a good boy or a bad boy at Westville, which is what that conversation was about. It's also on re-

direct. They didn't put this in on direct. I think the scope is really limited. There's a 403 problem, 404. One, it's evidence of another act and there is no other way the jury is gonna be taking this other than it's being offered to prove actions in conformity with. That's the only way – and when you see this, that's the only practical purpose it has. And so because it's a 404 problem and also it's misleading, additionally, we don't think it's admissible and relevant. I'm not making any arguments about the disclosure. I don't actually know who viewed the Cass County video (inaudible)

THE COURT: Okay.

MR. ROZZI: But I think, Your Honor, we could – before you make your decision, I really think you need to watch that, because you just can't understand it until you sit and watch it, and it really has very little to do with the ultimate question and very little to do with this issue today of what was his behavior like in Westville, so that's our position today.

MR. MCLELAND: Judge, I agree that there are 403 issues, that's why we didn't introduce it, we didn't play it. But he's painting a Richard Allen that's – asked Master Trooper Harshman that Richard Allen is calm and that he wasn't a problem at Westville, and that Westville is this bad place, and that once he got to Cass County, everything was merry. And so he's opened the door, in our opinion, that we should be able to play this, and that's why we're asking you to play it. We think he's opened the door.

MR. ROZZI: I never said that about Cass County.

THE COURT: You brought up Cass County.

MR. ROZZI: I never said that he was calm and nice and a good guy at Cass County. All we talked about was the fact that he had watched a video

from Cass County.

THE COURT: I recall you asking him –

MR. ROZZI: I didn't say that.

THE COURT: -- about his behavior at Cass County versus Wabash versus Westville.

MR. ROZZI: I don't recall that.

MR. MCLELAND: You asked about the conditions in Cass County, whether he had a desk, a table –

MS. AUGER: Yeah, but that has nothing to do with his behavior.

MS. DIENER: Well, but you did ask about the behavior and Mr. Harshman said, "Well, I'm familiar with Westville and Cass. I didn't pay as much attention to Wabash Valley."

THE COURT: "I did watch much from Wabash." So that was his response to your question –

MR. ROZZI: Oh, thank you.

THE COURT: -- about his behavior at Cass County.

MR. ROZZI: And he has testified that he disagreed, so –

THE COURT: Yes.

MR. ROZZI: I mean, I'm not –

THE COURT: Oh, he clearly said – you brought it up, so the door's been opened, so now the issue is whether or not you make the State go through that door. So you're saying – I don't know – 404, that's prior bad acts.

MR. ROZZI: It's a prior –

MS. AUGER: It's other acts, it's not prior.

MR. MCLELAND: 404's prior bad act. There's no prior –

THE COURT: There's –

MR. MCLELAND: -- there's no additional crimes.

THE COURT: 404 is prior bad acts, but I know it applies, as well, to current acts, but it's behavior, it's not –

MR. LUTTRULL: Yeah, I would not – 404 didn't even occur to me. It seems to me to be a 403 issue that needs to be resolved.

THE COURT: So you want me to watch it before it goes to the jury?

MR. ROZZI: Yeah, I think before we –

THE COURT: Okay.

MS. DIENER: And I think that we should show it to her in the format we were gonna show it, because you're right, there's multiple views, but the view that we selected is of an overhead of the picture of the cell, so that you can see –

MR. MCLELAND: That's what we watched –

MS. DIENER: So sorry.

MR. MCLELAND: We watched the in-cell video, not the –

MR. ROZZI: Yeah, but there's a separate camera below, I think it's the intake desk or something –

MR. MCLELAND: Right.

MR. ROZZI: -- kind of running at the same time.

THE COURT: Okay.

MR. ROZZI: It's also – there's also a lot of distortion in it, because the sound is just – you know, it's not Bose-quality sound.

THE COURT: Well, yeah.

MR. ROZZI: And so it is a little distorted, it's tough to say – tell what

he's saying at the time. So I just think, because of the intensity of it, it screams 403, no pun intended, but you know, it just does.

MR. MCLELAND: And that's why we didn't use it in direct.

MR. ROZZI: And I don't disagree with you.

MR. MCLELAND: Well, I think you opened the door about his quality of life and about how he was treated in Cass. To me, you opened the door.

MR. LUTTRULL: How he handles that.

THE COURT: How he handles himself at Cass. And so to me, you've opened the door, which now allows us to put that in to show he's acting the same way or at least he's displaying some of the same behavior at Cass that he was at Westville.

THE COURT: Well, let's put it in there and play it.

MR. ROZZI: You're gonna watch it, Your Honor?

THE COURT: Yeah. Put it in and play it.

MR. ROZZI: No, not in front of the jury.

THE COURT: No, heavens no.

MR. ROZZI: Or not in front of this courtroom.

THE COURT: Well, what do you want me to do?

MR. ROZZI: Well, you might want to go – you might want to take it back and watch it on your computer or something before you make a ruling.

MR. MCLELAND: Do you want me to have my – do you guys mind if I have my investigator go back there and set it up for her to play?

MR. ROZZI: No, I don't mind.

MR. MCLELAND: Okay. Then, you can go back in chambers and

watch it and he can direct you through it.

THE COURT: I don't have a chambers.

MS. DIENER: You have a table.

MR. ROZZI: Well, we had to do it in the hallway, so –

MR. MCLELAND: (Inaudible)

THE COURT: Yeah, well, that's kind of the – they've kind of opened up, this little area for me, because all of their stuff is (inaudible), so it's easier for them not to have me and my people and everybody else on top of them, so we're in that little room.

MR. MCLELAND: Well, whatever we can do to help.

THE COURT: All right. So you want me to watch it. So I need to watch it and you all want to –

MR. ROZZI: I'm not – it is what it is. I'm not gonna (inaudible). I think we – it's not exactly just we put it up and play it in front of the courtroom.

THE COURT: Okay.

MR. ROZZI: It's just a bunch of screaming and yelling and chaos.

THE COURT: Okay.

MR. LUTRULL: (Inaudible)

MR. ROZZI: (Inaudible)

THE COURT: Well, yeah, which is why I'm really glad we've got a sequestered jury. I don't have any equipment to play it on.

MR. ROZZI: That's all you have?

THE COURT: Can we at least make the record that –

MR. ROZZI: Maybe we need to go back and listen to the record about what was said?

MR. MCLELAND: So if you want to make the record now and – I think the Judge is asking to make a record now that she's gonna go back and view it –

THE COURT: Prior to – it's being offered, you have objected, I need to review it prior to displaying it to the –

MS. AUGER: So you're showing it over like the –

THE COURT: Whatever image you intend to display to publish to the jury –

MR MCLELAND: Okay.

THE COURT: -- that's the image I should see.

MR. ROZZI: The in-cell stuff.

MS. AUGER: Over, like –

MR. MCLELAND: Yeah, when you say "over", I don't know what you – like from the corner?

MS. AUGER: Yeah, up in the corner.

MR. MCLELAND: Yeah.

MS. AUGER: Right?

MR. MCLELAND: Yeah.

(Sidebar conference concluded.)

THE COURT: All right. So the exhibit hasn't been marked, but the argument before we took off was you had viewed a video over the lunch hour from the Cass County Jail depicting some behavior from Mr. Allen while in confinement at Cass County. Defendant is objecting on the basis of relevance and 403 and has requested that the Court review that prior to it being admitted and/or published to the jury, and you've also asked that that be done in

chambers; correct, Mr. Rozzi?

MR. ROZZI: Yes, ma'am. Thank you.

THE COURT: Okay. So if you would set that up in chambers –

MR. MCLELAND: Judge, my invest –

THE COURT: -- for whatever view you anticipate – if I allow it to come in over a 403 objection, whatever view you intend to display to the jury needs to be set up in chambers, so that I'm viewing what the jury would be viewing if it's admitted.

MR. MCLELAND: Yes, Judge.

THE COURT: All right. Jason, just let the jury know that we've got about a half hour yet break for them. All right. Yeah, and could we mark that like as Exhibit 314; is that where we're up to? That way we – no, that's okay. That's all right. So it'd be State's Exhibit – all right. Well, Jodie, you can go off the record and we will go look at the video.

STATE'S EXHIBIT 314 OFFERED

(Off record at 2:44 p.m.)

(On record at 3:29 p.m.)

THE COURT: All right. We are back on the record. All right. Well, thank you. I've had the opportunity to review – sorry, I forgot the number already, I think it was 314 – State's Exhibit 314.

MR. ROZZI: May we, Judge?

THE COURT: Sure.

(Sidebar conference conducted.)

MR. ROZZI: Well, we had a chance to listen to the record and there was no conversation whatsoever about his behavior in Cass County. The only

comments that there were was whether or not he had a table in his –

MS. AUGER: With a TV –

MR. ROZZI: -- with a TV –

MS. AUGER: -- access.

MR. ROZZI: -- and Mr. Harshman – Trooper Harshman said that it was basically the same as Westville, just simply not as painted, and that was – that's it, that's all that's said.

THE COURT: And that he didn't actually get into the cell, I think he said that.

MR. ROZZI: And there's no other comments about it. So it's outside the scope.

THE COURT: Okay.

MR. MCLELAND: Judge, if the questions they asked don't apply, that he was mistreated at Westville, that's the cause of these false confessions, and so we still think it comes in, they opened the door, that we should have the opportunity to show his behavior at Cass County, so that's the State's thinking, Judge.

THE COURT: And I certainly understand the argument, but the Defense was pretty careful to keep the behavior issues limited, apparently, to Westville and Wabash Valley and stayed away from Cass County. So it's horrific, his conduct on that video is horrific, but I don't think it's – they haven't opened the door to it.

MR. MCLELAND: Okay.

THE COURT: So I will sustain the objection.

MR. MCLELAND: Okay.

(Sidebar conference concluded.)

THE COURT: All right. So I will show that State's Exhibit 314 has been offered, the Defendant has objected to that, and I will sustain the objection and not authorize 314 to be admitted. Is the State ready to continue its re-direct of Officer – I'm sorry, Master Trooper Harshman?

MR. MCLELAND: Yes, Your Honor.

THE COURT: Gentlemen.

THE BAILIFF: All rise.

(Jury in at 3:33 p.m.)

THE BAILIFF: Thank you. You may be seated.

THE COURT: Thank you, gentlemen. All right. You may proceed, Mr. McLeland.

MR. MCLELAND: Thank you, Your Honor.

RE-DIRECT EXAMINATION OF MASTER TROOPER BRIAN HARSHMAN

QUESTIONS BY MR. MCLELAND.

Q Master Trooper Harshman, before we went on break, we were talking about your experience with other arrests and other people that are in jail pre-trial. Do you recall that testimony?

A Yes, sir.

Q We talked about how other people who are held pre-trial are monitored by the jail.

A Yes, sir.

Q And the phone calls are monitored; is that correct?

A That's correct.

Q And is it your experience that, at times, officers monitor those phone calls, as well?

A That's correct.

Q What about phone calls to attorneys, are those monitored?

A They are not.

Q And so it's just phone calls to – well, is it phone calls to everybody else except attorneys?

A I believe so, yes.

Q Okay. And are there – and in your experience, are there cameras that monitor people who are held pre-trial while they're in the jail?

A Yes, sir.

Q And are there cameras in the cell?

A Sometimes, yes, sir.

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

THE COURT: Mr. Rozzi.

MR. ROZZI: No questions, Your Honor.

THE COURT: All right. Does anybody on the jury have any questions for Trooper Harshman? Would counsel approach.

(Sidebar conference conducted.)

MR. ROZZI: I was just thinking I might get one of those white-noise deals for my bedroom when my kids are around.

THE COURT: They work. "You stated that, in your experience, people are often held in jail until trial. Is this normally county jails or state prisons?"

MR. ROZZI: Okay with that.

THE COURT: "According to Exhibit 303, Mr. Allen was first offered this new prescription for oral Haldol May 2nd, 2023. Did you" – okay, so that's just like precursor stuff.

MR. ROZZI: Okay.

MR. MCLELAND: Okay.

THE COURT: "Did you listen to Richard Allen's phone conversations before May 2, '23, and heard his confessions?"

MR. ROZZI: I'm okay with it.

MR. MCLELAND: Yeah. I'm good. So what's the date? May –

MS. DIENER: May 2nd.

THE COURT: May 2nd, 2023.

MR. ROZZI: Before May 2nd, 2023.

THE COURT: Well, "Did you listen to –

MR. MCLELAND: The phone calls before May 2nd.

THE COURT: -- before May 2nd, 2023?"

MR. MCLELAND: Okay. Okay.

THE COURT: "Do you know how many vans travel down Brad Weber's drive?"

MR. MCLELAND: I'm okay with it.

MR. ROZZI: Yeah.

THE COURT: "Do you know how many vans travel down the road his drive is next to?"

MR. MCLELAND: I'm okay with that.

MR. ROZZI: Yes.

THE COURT: "Aren't there video cameras outside of the Hoosier Harvestore?" Huh?

MR. ROZZI: What? Maybe they mean like outside of the –

MS. DIENER: Oh.

MR. ROZZI: -- grounds or the property.

MR. LUTTRULL: Other than the Hoosier Harvestore –

MR. ROZZI: I don't think it's really relevant to any of this, is it?

MR. MCLELAND: Well, he can't answer that anyways, I don't think, so I would just –

THE COURT: Did that even come up?

MR. ROZZI: No, but I think when they were talking about the vans, the vans and the cars or –

MR. MCLELAND: They don't realize Weber's road doesn't go by the Hoosier Harvestore.

THE COURT: So no to this question?

MR. ROZZI: Yeah, we'd object.

MR. MCLELAND: Yes.

THE COURT: Thank you. Okay.

(Sidebar conference concluded.)

JUROR QUESTIONS OF MASTER TROOPER BRIAN HARSHMAN

QUESTIONS OF THE JURY, READ BY THE COURT.

Q Trooper, you stated that, in your experience, people may often be held in jail until trial. Is this normally county jails or state prisons?

A In my experience, it's mostly been county jails.

THE COURT: Any follow-up, Mr. McLeland?

MR. MCLELAND: No, Your Honor.

THE COURT: Mr. Rozzi?

MR. ROZZI: No, Your Honor.

Q Did you listen to Richard Allen's phone conversations before May 2nd, 2023, and hear his confessions?

A Yes.

THE COURT: Mr. McLeland?

MR. MCLELAND: Just a moment, Judge.

FOLLOW-UP EXAMINATION OF MASTER TROOPER BRIAN HARSHMAN

QUESTIONS BY MR. MCLELAND.

Q Mr. Harshman, were there confessions made before May 2nd of 2023?

A Yes.

Q And some of those were – some of those we heard in court today were in April of 2023; is that correct?

A That's correct.

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

THE COURT: Mr. Rozzi?

FOLLOW-UP EXAMINATION OF MASTER TROOPER BRIAN HARSHMAN

QUESTIONS BY MR. ROZZI.

Q April 3rd was the first phone call; right?

A Correct.

MR. ROZZI: Nothing further.

JUROR QUESTIONS OF MASTER TROOPER BRIAN HARSHMAN

QUESTIONS OF THE JURY, READ BY THE COURT.

Q Do you know how many vans travel down Brad Weber's drive?

A I do not specifically know. I know it's a private drive and Brad Weber, in his interview, stated that there's not much vehicle traffic that goes through there, so I – but I do not know how many.

THE COURT: Okay. Mr. McLeland.

FOLLOW-UP EXAMINATION OF MASTER TROOPER BRIAN HARSHMAN

QUESTIONS BY MR. MCLELAND.

Q Is Brad Weber's house the only residence – let me back up. It's a private drive; correct?

A Correct.

Q Is Brad Weber's residence the only house on that private drive?

A Correct.

Q Does the private drive go to any other residences?

A It ends at his house.

Q Okay. Do you know whether or not – have you seen a map of the area of Brad Weber's drive?

A I have.

Q And my understanding is it's 625, the road that leads into his private drive; is that your understanding?

A I've heard different stories, I've heard that 625 ends at the driveway and then I've heard that it actually con – people call it 625, it just continues, but the best I can tell, there's not county maintenance or it's not a county road, so –

Q Is there a gate at the end of his driveway?

A There is.

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

THE COURT: Mr. Rozzi?

FOLLOW-UP EXAMINATION OF MASTER TROOPER BRIAN HARSHMAN

QUESTIONS BY MR. ROZZI.

Q The gate's not closed, is it?

A Sometimes it is, yes.

Q Well, there's another house actually beyond the threshold of that private drive.

A There's a house at that gate, yes.

Q And there's a bunch of homes up that road that runs to the south?

A In front of the gate, yes.

Q And there's also homes – there's other homes around Brad Weber's home that are right in that area, within a city block of him or even less; right?

A But you don't access those from that road.

Q Right. But there are other homes back there?

A Yeah, but they're not affected by that drive or that gate.

Q There's another route into Brad Weber's home; right?

A A what?

Q Are you aware of a second route into his home?

A Yeah. He said he's got one where he drives like around a cornfield and it's not a road, it's a dirt trail.

MR. ROZZI: Okay. I have nothing else.

JUROR QUESTIONS OF MASTER TROOPER BRIAN HARSHMAN

QUESTIONS OF THE JURY, READ BY THE COURT.

Q Do you know how many vans travel down the road his drive connects to?

A I do not.

THE COURT: Mr. McLeland?

MR. MCLELAND: No questions, Judge.

THE COURT: Mr. Rozzi?

MR. ROZZI: None.

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

THE WITNESS: Thank you, Your Honor.

THE COURT: May counsel and I approach, please, for a discussion over here.

(Sidebar conference conducted.)

THE COURT: Okay. So we have State's Exhibit 289, the Google search. We have the photographs, 306 to 309.

MS. AUGER: Did you – I missed the first part of that. I emailed – I don't have the ability to print – the case to you, didn't I?

THE COURT: Yes.

MS. AUGER: Okay, good.

THE COURT: Yeah, I got it. So let's take up the (inaudible) Okay. Okay.

MR. MCLELAND: I'm satisfied that the Court use the case law that we cited –

THE COURT: Okay.

MR MCLELAND: -- regarding that.

MS. AUGER: I think the foundation is they have to show that they haven't been altered, and the case that they cited, Your Honor, was an premises liability case. There was a photograph – the woman fell in snow on like February – in February –

THE COURT: In that case, correct.

MS. AUGER: Yeah. And then, there was a photograph taken in March, but the Court said that the foundation was laid because the testimony was that that March photograph was a fair and accurate representation of the condition on the day that she fell. So what we're looking at here is what Rick Allen looked like on February 13th, 2017, and there's no testimony or anything that he looked – any of these pictures are what he looked like on February 13th, 2017. And to the extent that he may gave gained weight, his hair grew out, and he may – then maybe looked more like Bridge Guy, that is unfairly prejudicial, confusing, and misleading.

THE COURT: There's no dates on those; right?

MR. MCLELAND: There's no dates. Our position would be that's a phone extraction of Richard Allen's phone, that's why it's – that's the relevance. I think they're relevant to show the jury what Richard Allen looked like. I don't have a problem with letting the jury know we don't know what dates these are from and that's a part of our case to explain that, to look at the pictures and say, "Look, this is not from the date and the time." We're trying to admit them to show the jury what he looks like (inaudible).

MS. AUGER: Well, how's that relevant to anything?

THE COURT: You have to – I'm not gonna (Inaudible), so I'll sustain the objection. Then, we have the Google search.

MR. MCLELAND: Yeah, we've laid our hands on that, as well.

THE COURT: Okay.

MR. MCLELAND: I did give them some additional information, showed Ms. Auger, and I'm gonna show you, Judge, (inaudible) with the Court –

THE COURT: I'm a –

MR. MCLELAND: -- over the lunch break.

THE COURT: Okay.

MR. MCLELAND: Sorry.

THE COURT: No, that's fine. Tell me, if you can.

MR. MCLELAND: So, Judge, if you go to this page, it talks about what was given –

THE COURT: Um-hmm. (Affirmative response)

MR. MCLELAND: -- and specifically the foojack, and there's a list of hash marks, which are – this is the list of (inaudible), but foojack is the home (inaudible) and then I can't make it out.

THE COURT: Okay.

MR. MCLELAND: And then, I can't – oh, right there. So that's –

THE COURT: Yeah, it's on each one of them.

MR. MCLELAND: Yes. And so what we did, when they provided this to us, they gave it to us in hard copies of documents and I shared everything in file, whatever we got, stuff from the videos and the activity log and the searches –

THE COURT: And the list?

MR. MCLELAND: Yes – and that is copied and pasted from that file, so I showed her that after lunch.

THE COURT: Okay.

MR. MCLELAND: I move for (inaudible) certification –

MR. LUTTRULL: For that.

MR. MCLELAND: Yes.

MS. AUGER: So our other objection is really, again, 404, 403, to the extent that he – there was an Internet search – I didn't bring my materials up, Your Honor – about – a search for a movie about a man being held against his will, man held hostage by teen, I mean, to the extent that they're trying to show that, yeah, that he kidnapped them and then searched about – it's just very prejudicial and misleading and confusing. And again, they – I think that they still have to show that he was the only person with access to that account.

THE COURT: And I'm familiar with the case you cited –

MS. AUGER: Okay.

THE COURT: -- since I was the trial judge –

MS. AUGER: I was wondering, yeah, yeah.

THE COURT: -- and that was – I excluded it based on 412, Rape Shield. It had nothing to do with who had access or who didn't have access. And at this point, the only time – the only evidence before the Court is that the holder of the account is Richard Allen and he's the one who had access, so I'm gonna admit 289 over objection based on weight, not admissibility. And are we ready to continue?

MR. MCLELAND: Yes, Judge.

THE COURT: Do you want to publish this?

MR. MCLELAND: Yes, Judge. I'm sorry.

THE COURT: No, that's okay. So I'll – we'll do this one the record and then you can publish.

MR. ROZZI: So is it just admitted under the affidavit and his search?

MS. DIENER: Oh, the copies are downstairs.

MS. AUGER: Yeah, they've got the files –

THE COURT: Just the – we're just doing the search, this part?

MR. LUTTRULL: Yes, just that part. Not the whole thing.

THE COURT: This is the only thing that they're gonna publish.

(Sidebar conference concluded.)

THE COURT: All right. So just to the record is clear: Earlier, the State moved to admit 306, 307, 308, and 309, which are photographs of the Defendant. The Defendant has objected to those and, based on there's no timestamp, there's no authentication, I'm gonna sustain the Defendant's objection and will not admit 306 through 309. And Jodie will keep those with the other exhibits that have not been admitted. We then had the opportunity to discuss State's Exhibit 289, which was the Google search history for the account. The Defendant objected. Over the Defendant's objection, I'll admit State's Exhibit 289, and you may publish that.

STATE'S EXHIBIT 289 ADMITTED

MR. MCLELAND: Judge, I'm retrieving those from my office or –

THE COURT: Okay. So you have – you're gonna publish with copies?

MR. MCLELAND: Yes. We've made copies, I brought the –

THE COURT: Okay.

MR. MCLELAND: - unfortunately, I brought the photos up and not that, and so I –

THE COURT: Okay.

MR. MCLELAND: Gonna retrieve those and then I'll publish those to the jury, hopefully momentarily, Judge. Judge, I've retrieved those. May I

publish those to the jury?

THE COURT: You may.

MR. MCLELAND: Thank you.

STATE'S EXHIBIT 289 PUBLISHED

MR. MCLELAND: Just to verify, did everybody get the copies? Okay.

THE COURT: All right, Mr. McLeland, you may proceed.

MR. MCLELAND: Thank you, Judge. At this point, the State of Indiana would rest.

THE STATE OF INDIANA RESTS

THE COURT: Is the Defendant ready to proceed?

MR. ROZZI: Yes, Judge.

THE COURT: You may call your first witness.

MR. ROZZI: Call Cheyenne Mill. May I have a second, Your Honor?

(Witness sworn.)

MR. ROZZI: May I, Judge?

THE COURT: You may.

MR. ROZZI: Thank you.

DIRECT EXAMINATION OF CHEYENNE MILL

QUESTIONS BY MR. ROZZI.

Q What's your name?

A Cheyenne Mill.

Q Do you mind if I call you Cheyenne?

A Yes.

THE COURT: Ma'am, would you spell your name, please.

A C-H-E-Y-E-N-N-E, Mill, M-I-L-L.

THE COURT: You may proceed.

MR. ROZZI: Thank you.

Q And tell us generally where you live?

A I live in Winamac currently.

Q Okay. And how old are you?

A Excuse me? What'd you say?

Q How old are you?

A I'm 30.

Q Okay. And back in 2017, what was your last name?

A It was Ingles then.

Q All right. And did you have another name at some point, another last name?

A Yes. Ingles was my first married name, but Holguin is my maiden name, so I went by Holguin most of the time.

Q Okay.

A And then, Mill's my current married name.

Q Okay. Holguin like H-O-L-Q-U-I-N?

A G-U-I-N.

Q G-U-I-N, okay. Thank you for that. Ms. Mill or Cheyenne, do you remember the date of February 13th, 2017?

A Yes. I went hiking that day.

Q Okay. And where were you living – just to give the jury some context, where were you living at that time?

A At the time, I was living with my parents in Monticello.

Q Okay. And do you recall where you were that morning? I mean, after you got up, can you kind of tell us how your day started?

A Yes. I woke up, and my best friend and I planned on going to France Park that day, so we went –

THE COURT: Would counsel approach?

(Sidebar conference conducted.)

THE COURT: She appears to be reading testimony.

MR. ROZZI: Yeah. Okay. I'll –

THE COURT: I mean –

MR. MCLELAND: I couldn't – I didn't see that, Judge. Okay.

THE COURT: Well, she's reading – yeah, she's got a folder with her and she's got a bunch of paper in it and she appears to be reading from it.

MR. ROZZI: Just ask her to put her papers away, just tell her. I don't care.

THE COURT: Yeah, okay.

(Sidebar conference concluded.)

THE COURT: Ma'am, could you put your papers down –

THE WITNESS: Okay.

THE COURT: -- and just – I mean, turn –

THE WITNESS: Sorry. Yeah, I don't have a desk, I just –

THE COURT: Thank you.

Q You're fine.

A Okay.

MR. ROZZI: May I continue, Judge?

THE COURT: Yes.

MR. ROZZI: Thank you.

Q I think I was asking you about your morning. Just tell the jury kind of how you started your day on February 13th, 2017?

A My best friend and I went hiking at France Park, and then, after we did a loop around the lake, it was warm out that day, so we were like, "Let's go on another walk." And I asked her if she's ever been the High Bridge, and she said no, she has not, so we hit the High Bridge after leaving France Park.

Q Okay.

A We took the Hoosier Heartland and went out that way.

Q All right. For those of us that – jurors that may not be around – from around here, where is France Park?

A France Park would be east of Delphi and east of Monticello; I would say about a half hour from Monticello, about 15, 20 minutes from Delphi.

Q Okay. So it's kind of in that direction; right?

A Yeah.

Q Closer to Logansport?

A Yes.

Q All right. And so are there trails there, as well?

A Yes, there's trails all around the lake –

Q All right.

A -- pond.

Q And so after you finished hiking there, can you give the jury some idea of approximately what time you may have left there and where you went after that.

A I'm not for sure exactly what time that I left there, but I do know – I don't have my notes, so now I'm a little – I showed up to the trail about 2:50-ish, the

High – or Monon Trail.

Q Okay. And so we're talking about 2:50 in the afternoon; right?

A Correct, yes.

Q Okay. And do you know or can you tell the jury where you believe you parked that day?

A I parked in the grass. I'm not exactly for sure which way I was facing, but there used to be a trailhead marker and there was about two parking spots there, which were already taken, so I pulled up in the grass by the parking spot.

Q I'm just thinking I didn't have the map lined up on the TV. I'll tell you what, let's just see if we can proceed. I think the jury had a pretty good idea of the spatial situation. Was that the – was that a connector trail to the main trail, where you parked?

A Yes.

Q Okay. Was there a farmhouse across the street?

A Yes, across the street.

Q Do you –

A I believe it's called the Mears connector is what it's labeled.

Q Okay. And you said that you got there around 2:50?

A Yes.

Q Okay. Can you tell the jury what it is, if anything, that helped you make that determination.

A I received a phone call at 2:13 [sic], and at that point, I was already on the trail, so I was able to pinpoint back about the approximate time that I showed up.

Q What time did you say you received that phone call?

A It would have been – I said I showed up at 2:50, so it would have been 3:13 I think is what the police report said, too, as well.

Q Okay. Did you bring some notes today?

A Yeah. I have all my notes down, so I'm just a little scattered.

Q Would it help to look at your notes or would that –

A At least the top sheet, if that would be acceptable. It's just the – you can look at it, it's just the timeline of – for my own brain, 'cause I can't – this happened seven years ago, I can't remember my timelines.

Q Would it help to look at your notes to refresh your recollection?

A Absolutely, yes.

MR. ROZZI: Judge, may I hand her her notes?

THE COURT: That's fine, but I don't want her reading. That was the concern, that she was just reading testimony from notes, and that's improper.

MR. ROZZI: My intention is just to ask her about the time and that's it.

THE COURT: Okay.

Q You said 3:13, and I'm putting you to the test, looking at your notes, is that – was that when you received the phone call?

A I had the phone call at 3:12.

Q Okay. All right.

A Yeah.

Q All right. Fair enough. So can you tell the jury where – first of all, who was the phone call from, generally?

A My boyfriend at the time.

Q Okay. And how is it that you're sitting here today and you know that it was at 3:12 that you received that phone call?

A Well, after all that happened, I reported that I was on the trail that day, after we found out that the girls were missing, and I – the police officer asked what time I was there, so I had to find out what time, and I knew absolutely that I received that phone call, and so did my best friend that was with me, she heard me take that phone call, so I was able to pinpoint exactly when I was there on the trail.

Q Okay. So do you remember generally where you were located on the trail when you received that phone call?

A Yes. I would have just, basically, gotten out of my car and just barely on the trail. I wasn't to the bridge yet.

Q Okay. And so tell the jury which route you took in your mind when you got out of the car and onto the connector trail.

A When I got out of my car, we walked onto the connector trail, and when you get to the connector trail, you can either take the left to go to the High Bridge or you can take a right and go back towards the interstate, the Hoosier Heartland, and we chose to go left and head towards the Freedom Bridge.

Q Okay. And we being who?

A Shelby Duncan and I.

Q All right. And when you took that left and you started walking toward the bridge, did you come across anybody during that – those travels?

A I passed one man and then, when I reached the bridge, I came across a man and a woman.

Q Okay. And do you remember – tell the jury what you remember about this

man that you passed.

A I remember that he was overweight and I – Shelby and I both said hi to him and he did not respond to us, and we just kept walking. It was a short interaction, nothing special about it –

Q Okay.

A -- but he didn't respond back to us.

Q Okay. Do you have any recollection as far as a description of clothing or anything like that?

A My most accurate statement is what I would have gave to the police, but as of seven years later, I'm not going to say what I saw and what I didn't see.

Q Okay. Fair enough. And so did you continue on toward the Monon High Bridge?

A Correct, yes.

Q All right. And at some point, when you reached the bridge, did you also encounter these other two people that you mentioned?

A Yes, I did.

Q Okay. And tell the jury who it was that you encountered at the High Bridge.

A I walked to the bridge and I happened to look down and see, at the first platform, where you can sit and, like, hang off the bridge, it was my high school friend Shelby Hicks and a friend of hers at the time, Daniel. They were on the platform, and I didn't know she was gonna be there that day, but I said, "Oh, hi," you know, a little quick passing, and Shelby Duncan and I continued to walk across the bridge while they were sitting on the platform.

Q Okay. And do you remember generally where they were located on the

bridge?

A They were on the very first platform, so first platform to the right when you're staring at the bridge.

Q All right. And so the two of you continued on past them?

A Yes.

Q All right. And where did you go from that point?

A We went all the way across the bridge.

Q All right. What do you remember about the day? Can you just tell the jury what you recall about the conditions that day.

A It was very nice, unusually nice for February, I mean, that's why we chose to not go home after our first trail, we wanted to experience the weather a little bit more, so we wanted to try out another trail.

Q Okay. Were you in a hurry that day or were you kind of taking your time? Do you recall?

A I had nothing going on that day, so the only thing I had to do is pick up my son at 6 p.m., so I had all day.

Q All right. And as you continued across the bridge, tell the jury kind of where you went, you know, when did you – where did you ultimately go in terms of being on the bridge?

A When we crossed the bridge, it took a while to get across because that bridge is very dangerous, it's missing spots, it's missing wood, so it took us a while to get all the way across, in some spots hopping across. And at the end, we got off the bridge, because we both had to use the bathroom, so we both, you know, shared that moment right there at the end of the bridge, but we didn't – we only stepped right off the bridge, because there's a barrier that you can't go

past. It's like – it's somebody else's property, I'm assuming, on the other side. But we just hopped right off, we went to the bathroom, and we got right back on the bridge and started walking across.

Q Okay. Now, when you got to the back side of the bridge, the far side of the bridge, is that a fair way to describe it?

A That's what I would say, yeah, the end.

Q Okay. Were – did you or Shelby Duncan take any photos?

A We took photos while we were on the bridge on the way back.

Q Okay. And at some point, did you have to recover those because you were questioned about –

A Yes.

Q -- your being out there on that day?

A Correct.

MR. ROZZI: May I approach and hand the –

THE COURT: You may.

MR. ROZZI: -- Defendant's Exhibit VV?

Q Would you just take a look documents before we – you testify, just take a look at those and let me know – there are one, two, three, four, five, six pages in total. Take a look at those first, VV, then. Let me know when you had a chance to look at them.

A I've looked at them.

MR. ROZZI: May I continue?

THE COURT: Yes.

Q Do you recognize this photograph on the first page?

A Yes.

Q Okay. And just tell the jury what it is.
A This photo is a photo that I took myself with my personal Snapchat at the time of – that day and it's just stating that the timestamp for that individual picture was 3:49.
Q Okay.
A And I took it after I already made it to the end of the bridge and turned back around.
Q Okay. And so does this photograph truly and accurately depict the conditions that existed on the time – on the bridge at the time you were there?
A Yes.
Q Second page. Could you tell the jury what that photograph is –
A It's –
Q -- or what it represents.
A -- the exact same photo, just enlarged. It's just the photo without the timestamp.
Q Okay. Third page. Could you tell the jury what that photo represents.
A That photo's also a photo of the bridge on our way back. You can see the platforms, but it's an image that has the water in it underneath.
Q Okay. And does that photo truly and accurately reflect the conditions that existed that day?
A Yes.
Q And then the fourth image here, fourth page?
A This fourth image would have been a picture from Shelby's – Shelby Duncan's Snapchat, and it also has the Snapchat storage saved to her phone, so it has the exact time and date that it was also taken and saved to her phone.

Q So did you recover this from her as you were trying to kind of recreate –

A Correct.

Q -- your circumstances?

A Yes.

Q Okay. And then, the picture there, does that truly and accurate depict the conditions as they existed on that day when you were out there, to the best of your recollection?

A Yes.

Q And then, the fifth page. Same question, what does that reflect?

A That's her picture of the water, but it's the same thing, it's her photo screenshotting her storage of the picture of that – on that day at 3:53.

Q Okay. And is this, again, as the two of you are walking back and across the bridge –

A Correct.

Q -- toward where you originally came from?

A Correct, yes.

Q So back to the north side; is that right?

A Yes.

Q And then the last page, would you, please, tell the jury what that photo reflects.

A The last image is of Shelby Duncan's feet hanging over the platform that we were sitting on, which was the original platform that Shelby Hicks was sitting on when I first showed up. By the time we made it back, she was already gone, so we sat down there for a few minutes, and she took a picture at this point, at 3:55, of her legs hanging over the bridge.

Q And does this photo truly and accurately reflect the conditions as it existed at the time that you were on the bridge?

A Yes.

Q And so you, essentially, gathered all this documentation, these photos, to try and recreate a timeline back in 2017?

A These pictures were for the deposition, Shelby's pictures –

Q Oh.

A -- but the previous pictures, yes, they were from my own personal timeline.

MR. ROZZI: Okay. Move to admit VV, Your Honor.

DEFENDANT'S EXHIBIT VV OFFERED

MS. DIENER: No objection.

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

DEFENDANT'S EXHIBIT VV ADMITTED

MR. ROZZI: May I publish before I ask some more questions?

THE COURT: Yes.

DEFENDANT'S EXHIBIT VV PUBLISHED

THE COURT: You may proceed.

MR. ROZZI: Were there any extras of those? Oh, yeah, I thought maybe I had extras. Thank you, Judge.

Q All right. So just to make sure that the jury understands the – kind of the technical aspects of this, the first page, this – I'm directing your attention to the first page –

A Okay.

Q -- okay? – of Exhibit VV. Is this photo a photo from her Snapchat account?

A The photo is from my Snapchat, yes.

Q Okay.
A But the comment was a screenshot from Facebook.
Q Okay. So let me see if I can – see if I can understand this. Did you use your Snapchat account, essentially, to take a photo through that account, as opposed to doing it with your phone camera?
A Correct, yes.
Q I mean, it is your phone, but it's through the Snapchat app?
A Yes.
Q Okay. And so it automatically uploads that to your Snapchat account –
A Yes.
Q -- is that accurate?
A Yes.
Q All right. And so then, did you later take a shot of the Snapchat account and then post it –
A Correct.
Q -- onto social media?
A Correct.
Q And is that – was it Facebook?
A Correct, yes.
Q And that's what this whole image is; right?
A Yes.
Q So the comments at the top about the 3:49 timestamp, that's your Face – is that your Facebook comment?
A Correct, yes.
Q Okay. All right. Very good. And on this Snapchat photo, it's a little tough

to see, but there is a date and a timestamp on the top right corner?

A Yes.

Q And do you agree that – do you believe that that's 3:49 that you referenced?

A Yes.

Q Okay. Second page, pretty self-explanatory; right? That same picture, the first full picture?

A Um-hmm, correct.

Q Yes or no?

A Yes.

Q All right. And then the third page, that's you on the way back?

A Correct.

Q All right. And then, the fourth, fifth, and sixth pages are all similar. Could you explain to the jury what they're seeing here from a technical standpoint in terms of these timestamps?

A It was just when we finally were contacted by the police department there was no – it was two weeks later. They – we tried to contact them the day after, when we found out the girls have been missing and were found dead, and they treated us very disrespectfully and was very rude to us and didn't want to hear anything that we had to say so, basically, I had to say, "Please just take my phone number. This is my name." And so two weeks later, we received – a police officer wanted to finally find our timeline, so we went back and tried to find what we had, because, you know, we were 23 years old using Snapchat. At the time, we were just taking pictures of being out on the trail that day, not realizing a crime happened. And that evening, we uploaded our pictures to Facebook, just saying, you know, "This is what we did today. We went to two different trails."

And we had somebody comment later on, saying, "Hey" –

Q Okay. I mean, I don't want you talking about what other people said.

A Okay.

Q So did you then recover this digital information on these last two pages from your phone and Ms. Duncan's phone?

A Correct, yes.

Q And that's really what the – what this is for?

A Timelines, yes. That's what we needed.

Q Okay. So let's talk about – you can sit that down, maybe to your right there. So then, as you were headed back across the bridge, you said you sat down on the platform?

A Correct.

Q Tell the jury what you did next, kind of how long you were there, what you were doing.

A After we made it across the bridge, we went back and sat on the platform, which would have been the first platform when you arrive to the bridge, and we sat there for about ten or 15 minutes, and Shelby Duncan and I smoked about two cigarettes between each other and just sat there and enjoyed the weather at the time, because it was beautiful outside.

Q Okay. Do you remember if it was windy? Not windy? Do you have any recollection of that?

A I don't remember.

Q Okay. So as you were sitting there with – did anybody else – did you see anyone else at or near the bridge at the time you were sitting, smoking a cigarette?

A We were the only people on the bridge.

Q At any point in time, from the time you got to the bridge and encountered Ms. Hicks and Mr. Pearson, to the time that you got back to the same side, did you ever hear anything unusual or anything that caught your attention?

A No, I did not.

Q Any kind of noise, anything that you were like, "Hey, something doesn't seem right"?

A No, we didn't hear anything at all.

Q Okay. Did you ever see anybody else that maybe wasn't on the bridge but in the wooded area, lots, anything like that?

A No. Even when we jumped off the side to use the bathroom, there was nobody over there, because we made sure, we didn't want anybody to see us, and there was nobody around.

Q Okay. So when we – let's talk about that for a minute. So when you got to the far side of the bridge, you actually got off the bridge?

A Correct.

Q All right. And like how far off the bridge are we talking here?

A I would say only a few feet, because it's a pretty steep drop from that point, so we just wanted to stay near the bridge and not have a hard time climbing back up.

Q Okay. When you were on that side of the bridge, was there anything in terms of noise or activity that caught your attention?

A No.

Q You see any vehicles or anything like that?

A On the other side of the bridge?

Q Yeah.
A No. There's no – there's nothing over there that could even possibly put a car over there.
Q Okay. So as you then headed back and you smoked your cigarettes, tell the jury what you did after that.
A After that, we – after we smoked our cigarettes, we stood up and we began to – our trail back to the car. So on the way back, we would have taken – turning to the right, instead of going straight towards the highway, and then we parked over on that side. It used to be a parking spot, it is no longer.
Q Okay. And maybe I misunderstood you. So you went back the same way you came in?
A Correct, yes.
Q And so you went – walked down the trail, back toward the trailhead; right?
A Yes.
Q Which would be the Freedom Bridge.
A No, we didn't go that far, we – I'm just saying if we would have continued to go straight, that would have been the Freedom Bridge, but we chose to turn back towards our vehicle, which would have been to the right.
Q Which would have been the connector trail?
A Correct.
Q Okay. And so did you see anybody at the connector trail where you were parked?
A Yes. There was a lady on a moped and a man.
Q Okay. And do you recall anything in particular about – well, let me ask you this. Were those two people communicating or were they separate?

A They were together, they were communicating, and they were frantic.

Q Okay. And why do you say that?

A They were just talking amongst each other really fast. I didn't really know what was going on exactly, but they did not make any contact with us, so we just thought it was kind of suspicious at the time, 'cause we didn't know what was going on, and we left, we went on – we went home.

Q Okay. Do you have any estimation as to how long you were at the connector trial before you got back in your car and left?

A Not very long. It's not that long of a trail from the connector trail to the car.

Q Okay. And did you see anyone else other than those two people?

A I don't believe so.

Q All right. Do you remember if there were any other cars parked there?

A I did at the time and I put it in my statement, but to this day, I don't remember.

Q Okay. Are you saying that you believe there were cars parked there, you just don't remember what they looked like or –

A I know there was a moped and there was the car that that man was in, but I don't know what type of car it was, I don't – I know it wasn't the same car that was there when I first pulled up initially, but I do not recall the make or model or exactly the person.

Q Okay. Do you – did you see anybody walking on the county road?

A No.

Q Did you see – do you remember seeing any cars go by as you were sitting there on – getting into your vehicle?

A Not that I recall.
Q All right. And so then what did you do next? Where did you go?
A After that, I would have taken Shelby Duncan home, and she lived in Yeoman at the time, so that's like a 10, 15-minute drive from Delphi, and then I went back to my house in Monticello.
Q Do you have any recollection of which way you would have gone from the connector to get back home?
A I do know –
Q Or to take Ms. Duncan home I think, technically.
A To take Ms. Duncan home, I would have turned back around and went towards town, to Delphi, instead of – where I parked, I was facing headed towards the country roads, but I know I didn't go down that road, 'cause I don't know what's down there, so I know I either turned around or backed up to leave from where I was going and headed back through town, Delphi, and out, like, past the vet's office, back towards that way, towards Yeoman.
Q Okay.
A 39, I'm not for sure if that's the highway name.
Q All right. So from the time you got to the trail that day – you said around 2:50 you thought?
A Correct, yes.
Q -- to the time that you left, can you estimate for the jury approximately when it was that you would have sort of been back to the trailhead and in your car?
A I had the timestamp on one of these photos, so I mean –
Q Would that refresh your memory?

A Shelby's feet were dangling at 3:55 p.m. and that's when, on average, we would have just probably got there, since the previous photo was from 3:53, so if we sat there for 10 to 15 minutes, it would have been after 4 by time we left.

Q Okay. So the – during the entire time that you were out there, from the time you parked and walked out to the far end of the bridge and back, did you only see the one individual that you mentioned on the trail plus Mr. Pearson and Ms. Hicks at the bridge?

A Correct.

Q Nobody else other than the –

A Nobody else.

Q -- people at the connector; right?

A Correct, yes, at the end.

Q Okay. And so when was it that you first realized that there were – was a problem, you know – there had been a potential problem out at the trail?

A So as I mentioned previously, I posted our trail photos from the day from France Park and from the High Bridge on my Facebook and I tagged Shelby Duncan in it. Somebody that she was mutual friends with said, "Hey, I don't know if you guys know this, but there was two girls out there today and they're missing. Did you see anybody?" And we said no. And then it was the following day that everything broke out with the news and we realized that it was more than them just missing, but it was just some – I don't know who the lady was on Facebook, but it was somebody that Shelby Duncan was mutual friends with.

Q Okay. So at some point in time after February 13th, did you, yourself, try to reach out to law enforcement?

A Yes.

Q Okay. Just tell the jury approximately when that was.

A It would have been the very next morning. I saw everything on the news about them being found, so out of due diligence, I assumed it would be the best thing to call the police department to let them know, "Hey, my purple Chrysler 300 was parked there at the trailhead that day and I had, you know, Shelby Duncan with me. I also saw Shelby Hicks there and I saw Daniel Pearson there." So I just wanted to cover my bases and just say, you know, "If you need help, please, reach out to me." And the lady on the other line was – like I mentioned, she was rude and she said this was a very serious matter, and I took it with a grain of salt, because I know they probably had a million phone calls going on, but I just said, "Please take my information."

Q Okay. So did you give her your information?

A I gave her my name and phone number, yes.

Q And can you – did you give a – did law enforcement ultimately make contact with you after that day?

A Two weeks later.

Q Okay. And do you know generally where you were and was it a phone call? Was it in person?

A They first went to – or one person, I'm sorry, I don't know his name, he went to Shelby Duncan's work at the tobacco smoke shop place, and she gives me a phone call and says, "Hey, there's a police officer here that would like to speak with you. He wants to talk to you right now." And I said, "Okay. I can meet him."

Q Did you do that?

A Yes.

Q Okay. So this is a couple weeks after February 13th?
A Correct.
Q And so where did you meet that officer?
A I met that officer at Indiana Beach parking lot.
Q All right. Did you just make kind of mutual arrangements with the officer to do that?
A Yes.
Q All right. And was it just the two of you?
A My mother was in the car, but she didn't hear anything, she just drove me there to make sure.
Q Okay.
A We had – it was taco Tuesday that day, so we had everybody over at my mother's house, and it was just best to have privacy at just down the road.
Q And do you remember if that officer was a man or a female?
A It was a man.
Q I mean, as you sit here today, do you know who it was?
A No.
Q Okay. But it was a male police officer?
A Yes, a white male.
Q Okay. And so tell the jury kind of what happened, how much contact you had, what did you talk about and, other than what the officer said to you.
A When I – that meeting that –
Q Yeah.
A Okay. So when I first got there, he asked me what – basically what our involvement was. I told him my timeline and that I received a phone call from

my boyfriend, and I think he was more interested in that fact than what was really happening. And then we were talking, kind of going along that because, at that point, he was incarcerated, so he was just, I think, antagonizing me on that instead; but regardless, we started chatting and he asked about timelines. I showed him phone call logs, I showed him the Snapchat accounts, I opened up my Snapchat and I showed him how they had timestamps. This officer took down notes, he wrote down a few things. I was not aware of any body-cam or any sort of recording or anything along that lines, but he took all my information to best of my ability, you know, two weeks after the fact, so I gave him what I could remember and what – you know, Shelby gave what she could remember, as well.

Q So she was with you?

A No. She gave her interview right before me –

Q Okay.

A -- to him.

Q I thought you said you were there with your mom.

A Yeah, I was.

Q Okay. And so you're talking to the officer. Did the officer ask to see your phone, like actually inspect your phone, if you will?

A No.

Q Was there any attempt by the officer to take the – not Social Security, but the ID number off the back of the phone –

A No.

Q -- or anything like that? What about taking any images of the images that you had in your phone from that trail that day – or two weeks prior?

A He did not.

Q Okay. Do you know if that – did the officer tell you that that was audio recorded or do you have any idea?

A It was not audio recorded to my awareness or – and I did not see a body-cam either, 'cause I was assuming there would be.

Q All right. So this is two weeks – roughly two weeks after March – February 13th, 2017?

A Yeah.

Q Okay. When was the next time that you heard from – well, let me ask this: Did you hear again from law enforcement at any point after that time?

A Six months later, I heard from the FBI.

Q Okay. And again, without getting into all the things that they specifically said to you, just tell the jury where that – how that contact came about and what happened.

A I received a phone call from the FBI, they established themselves as such, and they were asking for my mother, and I already knew what the situation was about, and I let them know that, although the phone line is registered to my mother's name, this is my phone and this is my phone line. And then, they were like – they let me know what they were investigating, and I said, "Yes, I was there that day. This is my phone." And they just notified me that my phone did ping or my mother's phone pinged for that location on that day and that time, and I said, "No, that was me and I've already spoke with law enforcement." And they said, "Okay. Thank you." And it was less than a five-minute phone call.

Q Okay. And so you're – is it accurate to say that your phone was registered in your mom's name –

A Yes.
Q -- and that's what you believe prompted the call?
A Yes.
Q Okay.
A 'Cause they were asking for my mother specifically.
Q So now we're still in 2017?
A Yes.
Q Six months after the end of February, it sounds like; right?
A Yes.
Q So maybe in the fall sometime?
A Correct.
Q All right. Did you hear from law enforcement again in this case?
A Not until years later.
Q Okay. And at some point in time, did you take it upon yourself to actually try to reach out to law enforcement?
A Yes.
Q And tell the jury why you did that; what prompted you to do that?
A As many have seen, this case has been blown completely out of proportion online in chat rooms, in social media, in blog posts. And I happened to post myself being on the trail that day, which led to so many Facebook vigilantes, people who think they're just going to solve this case from their house, so I experienced doxing in this, which is where they're – where they release your public information, so people were releasing information about my children, my – where I live, my work. It's – I had to remove myself from the professional licensing agency, because I have so many people harassing me over this –

MS. DIENER: Judge, I would object to this line of questioning. I'm not sure it's relevant to Mr. Allen.

MR. ROZZI: Well, she said she reached out to law enforcement and she's explaining why she was prompted to do that.

MS. DIENER: Again, I'm not sure how that's relevant to the case of Mr. Allen.

MR. ROZZI: Well, it goes to the nature and extent of the investigation.

THE COURT: Well, I understand that, but it's him on trial, so it needs to be relevant to him. Sustained.

Q At some point, were you concerned that nobody was communicating with you from law enforcement –

A Correct.

Q -- about what you saw and heard?

A Yes.

Q Okay. So did you take it upon yourself to send them a letter, to let them know you were still alive –

A Yeah.

Q -- and you had information?

A And that I moved and that I'm married and that, you know, I'm not hiding, but I wanted to let them know that I'm still there if you need to talk to me, but I'm just staying offline.

Q Okay. Let me hand you what's been marked as Defendant's UU; would you take a look at that two-page document for me, please. Do you recognize that document?

A Yes.
Q All right. What's the first page?
A The first page is just the outside with my address and me writing to the courthouse.
Q Is it just basically a copy of the envelop that –
A Yes.
Q -- you directed to the courthouse here?
A Correct.
Q And would that address be 101 West Main Street, Delphi, Indiana, which is basically where we are today?
A Yes.
Q And then, the second page is what?
A It was just, "To whom it may concern," I was notifying that – my name change. At that time, I went back to Holguin, I was not yet married –

MS. DIENER: Judge, if I may, I'm gonna object to the admission of this document and she's reading all of it, so she's already identified it, but I haven't seen it. I think I know what it is.

THE COURT: Okay.

MS. DIENER: But the State objects to the admission of it.

Q Did you create this letter to send to the prosecutor?
A Yes.
Q And did you do that?
A Yes.
Q Okay. And what was the purpose for doing that?
A Just the – like I mentioned, just to let them know that I've been dealing

with such a mess online, and if they need me, to contact me, and I also, in this letter, reported how my reporting went the day after the girls went missing.

MR. ROZZI: Okay. Judge, I move to admit UU.

DEFENDANT'S EXHIBIT UU OFFERED

MS. DIENER: Judge, again, I would object to relevance and to him submitting a document that is a carbon copy of her testimony.

THE COURT: That's what?

MS. DIENER: It's what she's testifying to today, it's her timeline.

A That's not my timeline.

MS. DIENER: It's not relevant beyond her testimony, which she's already provided.

MR. ROZZI: Judge, this has a – this letter has a ten – it's relevant, because it has a tendency to prove that she was not on law enforcement's radar during the course of this investigation for at least a couple of years, so much so that she felt the need to reach out to them so that they knew that she had information to offer.

THE COURT: I think –

MR. ROZZI: It goes to the lack of investigation.

MS. DIENER: Judge, she was interviewed two weeks later, the date was February 28, 2017.

MR. ROZZI: Yeah, for ten minutes.

THE COURT: Well, I think it goes to the weight the jury would give it, rather than admissibility. I'll show it's admitted over objection.

DEFENDANT'S EXHIBIT UU ADMITTED

MR. ROZZI: Thank you.

MS. DIENER: Thank you, Judge.

Q So ultimately –

MR. ROZZI: May I publish, Judge?

THE COURT: You may.

DEFENDANT'S EXHIBIT UU PUBLISHED

Q So then, after you sent this letter on December –

THE COURT: Excuse me.

MR. ROZZI: Oh, I'm sorry?

THE COURT: You've asked that it be published, so the jury needs time to read what it is that you've –

MR. ROZZI: I understand. I just forgot. I'm sorry.

THE COURT: You may proceed, Mr. Rozzi.

MR. ROZZI: Thank you, Judge.

Q So after you sent this letter in December of 2022, did you hear from law enforcement again?

A I had one show up to my house.

Q Okay. Can you just estimate when that might have been?

A I had it on my list, but I wasn't –

Q Would it help to look at your notes to refresh your recollection?

A Can I, please, yes, for that one? I'm not exactly sure when they showed up to my house. I think it was 2023. I did not have a date for that, but it would have been, I'm assuming, 2023.

Q All right. And what was the nature of that contact?

A The officer showed up to my house with a picture of Shelby Duncan on the bridge that day, which I don't have, but somehow they had it and they thought

it was a different person. They asked if it was Cheryl Loeffler, which was my sister-in-law at the time, and I said no. And the officer was like, "Okay. So who is it?" And I said, "It is Shelby Duncan." And they – the man – he said, "So it's Shelby Hicks; correct?" I said, "No. It's Shelby Duncan." And I was leaving outside, I was – I already had my car started, I had my two-year old in my hand, and I was ready to leave, and he – one last time before he got in his car, he said, "Is this Shelby Hicks?" I said, "No. It's Shelby Duncan." And he said, "Okay. Thank you." And he got in his car and left.

Q And that was it?

A That was it.

Q So then, now we're into 2023, you think?

A Yes, when – about then when he showed up.

Q And did you hear from law enforcement again?

A No.

Q Did you hear from me, ultimately?

A Yes.

Q Okay. Approximately when was that, if you could estimate?

A Right before the deposition.

Q Okay.

A This spring.

Q All right. That's when you came in here and I took your statement in the back there?

A Correct.

Q All right. Now, let me direct your attention to this letter, just to make sure that we're all clear here. December – this is a letter marked as Exhibit – this is

the exhibit marked as UU and the letter that you sent to the prosecutor. Are you familiar with this?

A Yes.

Q Okay. About nine lines up from the bottom, there's a reference –

MR. ROZZI: May I approach, Judge?

THE COURT: You may.

Q There's a reference here to – you referencing that shortly after you passed Richard Allen; are you familiar with that reference?

A That's – yes. And that was when –

Q The question is: Are you familiar with it?

A Yes.

Q Okay. So tell – are those your words?

A Those are – I put that in the letter because I – as of – like I said, everything was posted on Facebook. There was leaks, there was fake stuff, there was stuff said that I said that I didn't say, and that's why it's saying – I put that because that was in one of the leaks, it said that I – Richard Allen and I saw each other, which I did not state that in my deposition. I never said I saw him. I said I saw one man and Shelby Hicks and Shelby Duncan. But the reason why I put this is, this whole letter is explaining, you know, I saw some crazy stuff online that said I said stuff that I didn't say, I want this fixed. You know, it was a call for help and I didn't receive it.

Q Okay. So you don't really – you don't know if you saw Richard Allen?

A No.

Q Either way, you don't know?

A Yeah, I don't know.

Q Okay. But the purpose of the letter was to try and get law enforcement's attention?

A Yeah, somebody to help me with what I was going through.

MR. ROZZI: Okay. I don't have anything further.

THE COURT: Ms. Diener.

CROSS EXAMINATION OF CHEYENNE MILL

QUESTIONS BY MS. DIENER.

Q Ms. Mill, when you wrote the letter and you make reference to Richard Allen, you're telling us today you're not saying that you passed Richard Allen, you're saying that you passed someone and you were being accused of passing Mr. Allen?

A Correct, yes.

Q And that was on social media; correct?

A Yes.

Q And so it wasn't law enforcement harassing you on social media, it was people in the public?

A Correct.

Q And do you remember your meeting with law enforcement in February of 2017, on the 28th?

A The one at Indiana Beach?

Q Yes.

A Yeah.

Q Okay. And so do you recall telling that officer that you passed a man that was taking pictures and had a camera around his neck?

A Yes.

Q Is that the person you were referring to in the letter that makes it look like you're talking about Richard Allen?
A That would be the only person, yes, the only male that I came in contact with.
Q Okay. Was someone take pictures?
A I don't know if he was taking pictures.
Q Did you see a camera around his neck?
A He had something around his neck. I told the officer at the time I assumed it was a camera.
Q Okay.
A But I also mentioned that when we were walking, it was only a quick glance as I was walking, because I stare at my feet when I'm hiking –
Q Sure.
A -- so I only passed that person within a matter of seconds.
Q Okay. So if he documented that he took a statement from you that it was an old man taking pictures and had a camera around his neck, do you think that that would be correct?
A I would say it was accurate. He was walking.
Q And that he – that this old man was walking toward the cars, meaning the area where you would have parked?
A He was walking past me. I don't know if he went straight to the bridge and I don't know if he turned left to go – or turned right to go to the cars, all I know is that it was right before the platform and we passed – you know, we passed each other in passing. I was headed to the bridge. He was passing behind me.
Q Okay. And so that's when you first get to the bridge, the High Bridge?

A Right before I got to the bridge, correct.

Q And you said that you received a call at 3:12 –

A Correct.

Q -- from your then-boyfriend. Was that in the area walking between the Mears entrance and the High Bridge?

A Yes.

Q And can you be certain as to where along that space you got that call?

A I can't be exactly certain, but it's not that long of a stretch from that to the parking trail, and I do remember answering the phone and saying, "I don't – I can't believe I have service." So I do know I wasn't that far out.

Q Okay. So you can be sure of the 3:12 phone call, because you could go back and look on your phone and tell the officer the exact time of the call; is that correct?

A Yes.

Q But as far as what time you pulled in and parked, that's a guess; would you agree?

A Correct, a guesstimate, yes.

Q Okay. Just like relating it back to when you –

A Yes.

Q -- would have parked? And then, when you take picture – the pictures you referred to in Defendant's Exhibit VV, the one from Facebook that was a Snapchat picture, you know that that one was at 3:49 p.m. on the 13th?

A Correct.

Q And at that point, you had gotten to the private-property end of the bridge; is that true?

A Yes.
Q And had you already stepped off to go to the bathroom?
A Yes.
Q And so would this picture reflect you being back on the bridge?
A Yes.
Q Not beyond the end of it; correct?
A No, I was not – I was on the bridge for all the pictures.
Q Okay. So 3:49, you're on your way back to the beginning of the High Bridge?
A Correct.
Q And before you get off of the High Bridge, you sit on the platform and smoke two cigarettes?
A Yes.
Q And so we know that 3:55 in the last picture of this exhibit, where Shelby Duncan's feet are seen hanging over the platform, you are still on the High Bridge?
A Correct.
Q But you're at the beginning –
A Yes.
Q -- end?
A The first platform.
Q The first platform. Thank you. So I think you indicated that you had taken that picture at 3:55 and then you would have sat there with your friend and had a couple of cigarettes; correct?
A Correct, yes.

Q And then, you would need the time that it takes to get back to your parking space before you would leave and go back toward the Heartland –

A Correct, yes.

Q -- to exit; correct?

A Yes.

Q Okay. When you stepped off the bridge to go to the bathroom –

A Um-hmm. (Affirmative response)

Q -- what side did you step off of at the end of the High Bridge?

A When I'm standing on the bridge, I would have stepped off to the right side.

Q Okay. And you said there was a steep hill?

A Correct.

Q And so were you still on the same level as the end of the bridge where you went to the bathroom?

A Yes.

MS. DIENER: No other questions.

THE COURT: Mr. Rozzi.

MR. ROZZI: Just a couple, Judge. Thank you.

RE-DIRECT EXAMINATION OF CHEYENNE MILL

QUESTIONS BY MR. ROZZI.

Q In terms of – you brought all these notes in here; is that accurate?

A Yes.

Q Are those notes, at least some of those notes, things that you prepared way back in time when you were dealing with these things we're talking about?

A No. Actually, none of them were prepared until two days prior to my deposition, and that was the first time that I ever heard from the prosecution.

Thankfully, Stacey called me and let me know that I was going to be talked to. So the first is the timeline of what I remember specifically and these timestamps. Other than that, the only other notes that I had was me going through my deposition that, once they gave me and once you gave me, I wanted to make sure that my timelines were accurate, and that's the only thing that I've wrote down.

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

THE COURT: Ms. Diener.

MS. DIENER: No other questions.

THE COURT: Does anybody on the jury have any questions for Ms. Mill? Yes? Could you not fold the exhibit, please.

THE WITNESS: I'm just trying to get it to not –

THE COURT: Thank you. Would counsel approach.

(Sidebar conference conducted.)

THE COURT: "Did you hear or see any vehicles on the road under the bridge?"

MS. DIENER: Okay.

MR. ROZZI: Okay.

THE COURT: "If 3:49 is the end of the bridge and 3:55 is back to the beginning of the bridge, did it only take you six minutes to go the full length?"

MS. DIENER: Good question.

MR. ROZZI: Yeah.

(Sidebar conference concluded.)

JUROR QUESTIONS OF CHEYENNE MILL

QUESTIONS OF THE JURY, READ BY THE COURT.

Q Ms. Mill, did you see or hear any vehicles on the road under the bridge?

A There's not a road under the bridge. It's a straight drop-off and just water.

THE COURT: Any follow-up, Mr. Rozzi?

MR. ROZZI: I'm sorry?

THE COURT: Any follow-up?

MR. ROZZI: No, ma'am. I'm sorry.

THE COURT: Ms. Diener?

MS. DIENER: No questions, Judge.

Q If 3:49 was the end of the bridge and 3:55 was back to the beginning of the bridge with your photos, did it take you six minutes to go the full length of the bridge?

A I would say that the last timestamped photo, we were up a little bit farther, we weren't quite all the way to the end, but it would take approximately about ten minutes or so, because that bridge is falling apart, it's just a very dangerous bridge at the time, it had holes in it, I mean, it was scary to be up there, so at least ten minutes.

THE COURT: Any follow-up, Mr. Rozzi?

MR. ROZZI: So – yeah. Thank you, Judge.

FOLLOW-UP EXAMINATION OF CHEYENNE MILL

QUESTIONS BY MR. ROZZI.

Q So on Exhibit VV, the first page, is this the photo that you just referenced that you're up farther, you're not at the end of the bridge?

A Yeah. We're not at the very end, but we started back.

Q Okay. So this photo that was timestamped 3:49 is actually part of the way back –

A Yes.

Q -- to the one side of the bridge where you came?
A Yes, correct.
MR. ROZZI: Okay. I have nothing further, Judge.
THE COURT: Ms. Diener.
MS. DIENER: No questions.
THE COURT: All right. Thank you, Ms. Mill. You may step down. And you may call your next witness.
MR. BALDWIN: Teresa Liebert.
(Witness sworn.)

DIRECT EXAMINATION OF TERESA LIEBERT

QUESTIONS BY MR. BALDWIN.
Q Teresa, I'm over here. Can you see me?
A Um-hmm. (Affirmative response)
Q Hi. State your name for the record and spell it, also.
A Excuse me?
Q State your name for the record and spell it.
A Teresa Liebert, T-E-R-E-S-A L-I-E-B-E-R-T.
Q And you kind of have a soft voice and that's okay. Can you speak up just a smidge.
A Excuse me?
Q Can you speak up a smidge.
A Oh, I'm sorry. Teresa, T-E-R-E-S-A, Liebert, L-I-E-B-E-R-T.
Q All right. And where do you reside?
A 2482 North 625 West, Delphi.
Q Okay. And did you say 625 West?

A Yes.
Q All right. We've been talking a little bit about 625 West. What is at the end of 625 West, can you tell the jury that?
A Our house is at the end of 625 West.
Q And then, what's the next thing on 625 West?
A It's a lane that goes down to an individual's house.
Q Who is that individual?
A Brad Weber.
Q All right. So as I'm driving down 625 West, would your house be on the right or on the left?
A Left.
Q Okay. So your house is the very last house on the left before you get to Brad Weber's driveway – is it a driveway? What would you call it? A lane?
A It's a lane.
Q A lane, okay. It's – part – quite a bit of it is ours, and then they have easement.
Q Oh, okay. And how long have you lived at your house there?
A Forty-eight years.
Q Did you say 48?
A Um-hmm. (Affirmative response)
Q Forty-eight years, okay. And do you know the Webers? Do you know the Weber family?
A Yes, yes.
Q And there's been talk about a gate somewhere there. Is there a gate there?
A There's a gate on our property, yes.

Q Okay. Is that on your property?
A Yes.
Q All right. And what's the purpose of the gate?
A To keep people from going down the hill.
Q All right.
A Trespassing.
Q Trespassing. Going onto the Weber property?
A Half of it's mine.
Q Half of it's yours, I'm sorry. All right. Can you describe for the jury kind of what else is around there? Oh, here – I don't – can you see that? Would you mind stepping down?

MR. BALDWIN: Judge, is that okay?

THE COURT: As long as she's by a microphone and we can hear her, yeah.

MR. BALDWIN: Okay.

Q Go ahead and step down. I just want the jury to kind of see where you're at.

MS. DIENER: Mr. Baldwin, that mic is not on. It has a button at the bottom. Other way.

MR. BALDWIN: What'd you say? This mic doesn't –

MS. DIENER: There's a button on the bottom you have to press to turn it on.

MR. ROZZI: There you go.

MS. DIENER: There you go.

Q Okay. That's fine. Do you recognize what that is right there?

A Oh, the High Bridge.

Q The High – okay. If that's the High Bridge –

THE COURT: The jury can't hear her, Mr. Baldwin.

MR. BALDWIN: Okay.

THE COURT: And she's blocking the view of the –

MR. BALDWIN: Thank you. I appreciate that, Judge. Thank you.

Q Here, come here, Teresa. I'm sorry. Would you stand right here. We need you to –

A Okay.

Q Is it okay if I position you? I'm sorry. All right. So there we go. And try to speak out so the jury can see you. So what is this right here, if you know? This road right here? This lane right here?

A Well, that would have to be the lane we're talking about. That would be my house right down there.

Q Okay. If I point to it, let me know. Is this what you're pointing to? (Indicates)

A Yeah.

Q So this is your house?

A I assume that's it.

Q Yeah, okay.

A Yeah, because that's the lane that goes – yeah.

Q And whereabouts here would that gate be that you're talking about?

A Be about right –

Q Right about here?

A It's on down a little.

Q Right about here? (Indicates)
A Right in there, yeah.
Q Okay. So when – how often does Mr. Weber – well, strike that. How many entrances are there to the – where is Mr. Weber's house? Let's do –
A I don't know, 'cause I can't –
Q If you go on this lane, there's the High Bridge.
A It must – yeah, it must be in there.
Q Is that it right there?
A I really don't know. I haven't been back –
Q Have you ever been to his house?
A Once, but I don't recognize any of this.
Q Okay. And that's fine. How many entrances are there to the Weber property over here?
A He made another entrance out because I wanted to keep that gate closed and, in the wintertime, it's not a safe thing to be on anyway, so he made another entrance out this way.
Q Okay. So he has another entrance out this way somewhere?
A Yeah.
Q All right. Let me see if there's anything else I want you to note.

MR. BALDWIN: Okay. Max, is it possible to move that up a little bit so that this – no, the other way, other way. Is that as far as it goes?

MR. MAX BAKER: Yes.

MR. BALDWIN: Okay. Go ahead and have a seat here. Thank you.

Q Are there other – oh, I'll wait. Sorry. This is why I'm – if you can speak to me over here, this'll help, I think, help out. What else – describe the property

outside – when you're driving on 625 North, before you get to your house, what are – are there other houses around there?

A Yeah. It would be on the left side, you'd pass – first place is Stoffer's place, he had a farm there. Then there was an open field at that time, which now has three houses on it, new houses, but it was an open field at that time. And then you get to an old house that belonged to a lady a long time ago, but it – they got people living there, too. And then, next to us, is another house and ours.

Q So on the left-hand side as you're driving down 625, before we get to your house, there's like – how many was that? – five houses.

A Three at that time.

Q Three.

A Yeah. Because –

Q Oh, in 2017?

A Yeah.

Q Thank you for distinguishing that.

A Yeah.

Q Then, what about on the – are there any houses or any additions or anything on the right side of the road as you're travelling down 625 toward Weber's?

A Before you get to our house, there's another lane that goes the other way, it goes way back there, and there's maybe three or four houses, new houses, built back there, and it's called 252.

Q And are there any mailboxes in that area?

A Those are the mailboxes that the man was standing at.

Q Okay. The mailboxes for the houses on the right are on 625, is that what

you're saying?
A Um-hmm. (Affirmative response)
Q Is that yes?
A Yes.
Q Okay.
A Yes.
Q I want to direct your attention to February the 13th of 2017; do you remember that day?
A Yes.
Q Okay. Again, I need you to speak up, just so the jury can hear you. I know, you're soft-voiced, and that's okay. Tell the jury what you remember about that day.
A We were coming back from town, we went to town at eight o'clock –
Q Who's we?
A My husband and I.
Q Okay.
A And 8:30, we were coming down the road, and as we're coming, I could –
Q 8:30 in the morning or –
A In the morning.
Q Okay.
A I could see somebody standing there at those mailboxes.
Q You saw somebody standing at the mailboxes?
A Yes, 8:30 in the morning.
Q Okay. And why did – why, if at all, did that catch your eye?
A Because nobody stands at their mailboxes. Because they live down that

long lane, they pick up – they put their mail in the box when they go to work, pick it up when they come home.

Q Okay.

A And it just seemed strange.

Q Okay.

A So we pulled in the drive and got out of the truck and I went and he was gone.

Q All right.

A And he wasn't down the lane.

Q Did that strike you as odd?

A Just curious. Where'd he go?

Q Okay. And did you even comment to your husband about that?

A Yes.

Q Okay. Why did you comment to your husband?

A Well, yeah, who's that? Where'd he go?

Q All right. Today, could you describe what this person look like?

A No. I didn't – as we're passing, I just kind of glanced and looked back, because it's not nice to stare.

Q Okay. All right. Now, if that person would have gone down your road, 625 West, and then passed that gate, where would they have ended up?

A Down at the High Bridge.

Q At the High Bridge? At some point in time, did you talk to law enforcement officers about what you saw?

A Yes.

Q And did you go in and describe who you saw as best that you could?

A Yes.
Q And why did you do that?
A Because they could – well, when the girls were missing is when that happened, you know, when –
Q Why did you think it was important to let the law enforcement know about this person that you saw?
A Because they asked us if there was anything strange.
Q How long of a walk would it be from your house to the High Bridge?
A Half a mile.
Q Okay. So if you had to walk it – you know, maybe not you and I walking it, but like a –
A I walk it.
Q -- younger person?
A It's a good walk.
Q Yeah?
A Yeah.
Q Okay. If you walked it?
A Yes, I've walked it several times.
Q Okay. Did it take five minutes? Ten minutes? Fifteen minutes?
A I don't know, because I'm goofing around. I never, you know –
Q Okay. It's not too far though, is it?
A No, no.

MR. BALDWIN: All right. I have no other questions.

THE COURT: Mr. Luttrull.

CROSS EXAMINATION OF TERESA LIEBERT

QUESTIONS BY MR. LUTTRULL.

Q Good afternoon, Mrs. Liebert. About – later that afternoon, around four o'clock or so, there were people knocking on doors, there were girls looking for somebody; right? Did they come to your house?

A No.

Q You don't recall that?

A No.

Q Okay. So you're telling us at about 8:30 in the morning on this day, you and your husband were coming home, about to pull in your drive, and you saw a man you hadn't seen before near the mailboxes?

A Um-hmm, yes.

Q And you've never seen him since?

A No.

Q And you've never seen a photo of him?

A No, not to my knowledge, no.

Q You didn't see his face?

A No.

Q And you just saw him out of your truck just from about right up here on him? (Indicates)

A Correct.

MR. LUTTRULL: Okay. Thank you for coming in today. I have no further questions.

THE COURT: Mr. Baldwin.

MR. BALDWIN: Thank you.

QUESTIONS BY MR. BALDWIN.

Q Teresa, did the person that you see, did you recognize that as a neighbor or anybody that you had ever seen before?

A No, no.

MR. BALDWIN: Thank you. That's all.

THE COURT: Mr. Luttrull.

MR. LUTTRULL: Nothing.

THE COURT: Does anybody on the jury have any questions for Mrs. Liebert? Would counsel approach.

(Sidebar conference conducted.)

THE COURT: "February 13th, there's no school that day. Could you possibly have seen a high school student by the mailbox?"

MR. BALDWIN: That's a good question.

MR. LUTTRULL: No objection.

(Sidebar conference concluded.)

JUROR QUESTIONS OF TERESA LIEBERT

QUESTIONS OF THE JURY, READ BY THE COURT.

Q February 13th, 2017, was – there was no school that day. Could you have possibly seen a high school student near the mailbox?

A No. It was an older person.

THE COURT: Older person. Any follow-up, Mr. Baldwin?

MR. BALDWIN: No, Judge. Thank you.

THE COURT: Mr. Luttrull?

MR. LUTTRULL: No.

THE COURT: All right. Thank you, ma'am. You may step down.

MR. BALDWIN: May we approach, Judge?

THE COURT: Yeah.

MR. BALDWIN: Thank you.

(Sidebar conference conducted.)

MR. BALDWIN: Because it's the afternoon (inaudible)

THE COURT: Oh, so we're out of witnesses?

MR. BALDWIN: Yes.

THE COURT: Okay. Okay.

(Sidebar conference concluded.)

THE COURT: All right. Well, ladies and gentlemen, that's the witnesses that we have available for you today, so we're gonna go ahead and call it a night. Again, while you go on about your own business the rest of the afternoon and into the evening, please, remember what I've told you about not talking about this case when you're outside of the courthouse. You will be under the supervision of the bailiffs, as well, so that is not permissible. So we will see you tomorrow morning at nine o'clock. Have a safe and a peaceful evening. Gentlemen.

THE BAILIFF: All rise.

(Jury out at 5:03 p.m.)

THE COURT: You may be seated. All right. So is there anything that we need to do outside the presence of the jury? Mr. Baldwin?

MR. BALDWIN: Judge, I know that I've filed a couple of motions related to the third-party suspect, and we're having a really hard time right now, 'cause we have some witnesses that have – we're having a hard time charting our course a little bit, and I think it would be – do we have an idea – do you have – I

know you've got a lot going on, and I understand and appreciate that, and probably work late, just like we do. Is there any – do you have any sense on when that would be ruled on or –

THE COURT: I just got the latest pleading – it hit my queue late yesterday afternoon, so I started reading it. I have not completed –

MR. BALDWIN: Okay.

THE COURT: -- the reading of that, and I don't know if the State intends to respond to either of the motions that you filed.

MR. BALDWIN: Okay. I mean –

THE COURT: I don't know, obviously –

MR. MCLELAND: Judge, I had not intended to respond in writing. I thought we would just address it orally with the Court –

THE COURT: Okay.

MR. MCLELAND: -- when it came to that. I can respond in writing, Judge, but –

THE COURT: No –

MR. MCLELAND: -- as Mr. Baldwin said, all our time is a little precious at this point, and so I was using it for other stuff.

THE COURT: Okay.

MR. BALDWIN: I appreciate it. I just wanted to – we're trying to assess where we're gonna be headed here in the near future. That could have an impact on that. And, yeah, just to let the Court know, we've had some witnesses that are under subpoena and they're – we're having a hard time gathering them, but we'll be ready to go tomorrow, and we're gonna let the State know who we're calling, so –

THE COURT: Okay. Good. Anything from the State?

MR. MCLELAND: Judge, I just saw on the table, we had State's Exhibit 314 that was not admitted. I'm gonna give it to the court reporter as, I guess, the objection was sustained by the Court, and so – but I want to have it for your records, so I'll give it to your court reporter.

THE COURT: Oh, okay. That was the flash drive?

MR. MCLELAND: That was the video with the flash drive, yes, Judge.

THE COURT: Okay.

MR. MCLELAND: Or flash drive with the video, sorry. Excuse me.

THE COURT: All right. Yeah, we'll just – we've been putting all the flash drives in individual envelopes so that we don't lose them. Okay. Anything else from the State?

MR. MCLELAND: No, Your Honor. Thank you.

THE COURT: Anything else from the Defense?

MR. BALDWIN: No, Your Honor. Thank you.

THE COURT: I know that the gentlemen will hold the audience until the jury has exited, so we can go off the record and, as soon as they let us know that we can open the doors, we will.

(Off record at 5:06 p.m.)

(On record November 1, 2024, at 9 a.m.)

THE COURT: All right. We are back on the record in *State of Indiana versus Richard Allen*, 08C01-2210-MR-1. I'll show the Defendant's here in person with counsel. The State's here by the prosecutor and his deputies. All

of the members of the jury have reassembled. Is the Defendant ready to proceed with his case?

MR. BALDWIN: We are, Judge.

THE COURT: Okay. Is the State ready?

MR. MCLELAND: Yes, Your Honor.

THE COURT: Okay. Anything we need to talk about before we get started?

MR. ROZZI: No, ma'am.

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

THE COURT: All right. Great. Thank you. Let's bring them in. While we're waiting for the jury, Mr. Rozzi, perhaps on our noon break we can – I know you have filed motions for transports, and I'm not sure which of those witnesses, so perhaps we could talk about that over the lunch hour, just so I know which orders you would like for me to sign.

MR. ROZZI: Very good. Thank you.

THE BAILIFF: All rise.

(Jury in at 9:04 a.m.)

THE BAILIFF: Thank you. You may be seated.

THE COURT: Thank you, gentlemen. All right. Well, good morning, ladies and gentlemen. It's nice to see you back this morning. I hope you had a pleasant enough evening. We are ready to continue, but as has been our practice over the last several days, I know that over the brief recess overnight you did have access to your electronic devices so that you could contact family and, potentially, check work emails and that type of thing. So in light of that, have

you read, seen or heard any media accounts concerning this case?

A (All jurors answer in the negative.)

THE COURT: Have you discussed this case with anyone?

A (All jurors response in the negative.)

THE COURT: Have you permitted anyone to discuss this case with you?

A (All jurors respond in the negative.)

THE COURT: Have you conducted any research into this case?

A (All jurors respond in the negative.)

THE COURT: And has anybody persisted in attempting to discuss this case with you?

A (All jurors respond in the negative.)

THE COURT: All right. Once again, ladies and gentlemen, the Court appreciates your continued compliance with its orders. Mr. Rozzi, you may call your next witness.

MS. AUGER: Your Honor, Mr. Allen calls Christopher Gootee.

(Witness sworn.)

MR. MCLELAND: Judge, before this witness testifies, can we have a sidebar, please?

THE COURT: Certainly.

(Sidebar conference conducted.)

MR. MCLELAND: Judge, I believe that he's going to be testifying about Brad Weber, so I don't know exactly what he's gonna say about that, but I think he's going to be used to impeach Brad Weber. The State's position is that that is improper to, first, I guess, talk about Brad Weber's statement, talk about

other statements he made. My position is that Brad Weber didn't give an inconsistent statement. (Inaudible) Brad Weber denied making that statement. (Inaudible) when I objected, the question stopped.

THE COURT: Um-hmm. (Affirmative response)

MR. MCLELAND: So he's given an opportunity to read the prior inconsistent statement, so I guess I wanted to make an offer of proof, ultimately the State's objection to have him testify to inconsistent statements of Brad Weber.

MS. AUGER: Well, Brad Weber previously testified that he went straight home after work, and he told these officers otherwise.

THE COURT: But you – by whom were those specific statements, "Did you say to so-and-so that you?" "I don't recall that."

MS. AUGER: And I believe we did, but I don't want to sit here and say something – well –

THE COURT: I mean, if that intent is to impeach Mr. Weber, then your impeachment needed to start with Mr. Weber.

MS. AUGER: And I think it did.

THE COURT: Well, you have to present him with the specific statement that you're gonna try to get out of this guy.

MS. AUGER: Right, but I believe we did. Let me go check. I don't want to sit here and –

THE COURT: Okay, go check.

MS. AUGER: Yeah. That's Mr. Baldwin's memory, that he asked him that. He said (inaudible).

MR. BALDWIN: That's my memory.

THE COURT: Who is this officer?

MR. BALDWIN: Gootee.

MS. AUGER: This is the other officer, they were together, Gootee and Pohl.

MR. MCLELAND: My recollection is that he started to re-read the report to him, he said, "That's wrong," and I objected to that on impeachment, and you stopped.

MR. BALDWIN: I think before that I said, "But you did talk to Officers Gootee and Pohl – law enforcement officers Gootee and Pohl?" Could be wrong, but –

MR. MCLELAND: I think you asked that.

MR. BALDWIN: -- and then he said – yeah, I don't remember what his answer was, but it's definitely out there, but –

THE COURT: I don't know that we got to the specific statement he gave to those officers.

MR. BALDWIN: I feel like I did, like, "Didn't you tell them what happened and didn't you tell them" – oh, yeah, "Didn't you say that you didn't go straight from work?" And that's when he got mad and said no. I think that's the way it went down.

MR. MCLELAND: That's when I objected, then I think he got mad and I think, at that point, from my recollection is –

THE COURT: So there was the beginning of the impeachment, but it was not artfully done. I'll let you finish the impeachment, but you need to tighten up impeachment.

MR. MCLELAND: Judge, this is gonna be another issue, I think

they're gonna show him the report that Adam Pohl wrote.

THE COURT: Okay.

MR. MCLELAND: So if they show him the report and say, "Does this refresh your recollection?" If he said no, I believe (inaudible) with what the report says.

MS. AUGER: No, I'm not gonna –

MR. MCLELAND: Okay. I just wanted to –

MR. BALDWIN: No. No, that's fine.

MR. MCLELAND: -- address that before it's out there.

MR. BALDWIN: Well, do you want to address the other –

MS. AUGER: Well –

MR. BALDWIN: -- enumerate it?

MS. AUGER: -- here's the other problem: The individual who drafted – who wrote the report is in Texas in charge of election security.

THE COURT: Um-hmm. (Affirmative response)

MS. AUGER: And so I have – I am unable to have him testify remotely, because it's gonna be ten minutes of testimony.

MR. BALDWIN: We'd prefer that he be here, but we're willing to –

MS. AUGER: Yeah, we would prefer that he come here, but I understand that there's a competing interest, the State objects to that.

MR. MCLELAND: I do object. I think the impeachment should go through the – I think this is improper impeachment, it's improper impeachment of Adam Pohl. That's my opinion. So I don't think that –

THE COURT: Then he should have been – was he subpoenaed?

MR. BALDWIN: I believe he was.

THE COURT: Well, not meaning that – (inaudible)

MR. MCLELAND: The other issue is –

MS. AUGER: Well, I can get him up here, I mean, it's just the federal government's not gonna be happy, but –

MR. MCLELAND: The other issue with Weber is, once they impeach him properly, I can talk with about other statements?

THE COURT: Yes.

MR. MCLELAND: There's been statements and a deposition on the other side that is a match, so that's the other issue. He gets to throw out there his statement, "Oh, you gave this inconsistent statement, didn't you?" And I objected. Weber yells, "That was wrong." And then we stopped.

MR. BALDWIN: I don't know if that's exactly the way it went down, but yeah. I mean –

MS. AUGER: Yeah. I –

MR. MCLELAND: That's not a proper way, that's the way that I look at it.

MR. BALDWIN: I mean, we – the report comes in as a recorded recollection, no matter what, I mean, 'cause –

MR. MCLELAND: But it's not his recorded recollection.

MR. BALDWIN: I know, but –

MS. AUGER: I know.

MR. BALDWIN: -- but through Pohl it will.

MR. MCLELAND: Yeah.

MR. BALDWIN: Yeah.

MS. AUGER: So they would like to know if they need to fly him up

here.

THE COURT: Is he under subpoena?

MR. MCLELAND: When are you gonna have Weber testify? You could (inaudible) I mean, you ought to call him, if you want him.

MS. AUGER: I doubt we'd get it in through Weber.

MR. BALDWIN: If you can – his subpoena's for Monday. I can – if we could get him here this afternoon, but I'd need some – I mean, he's at work. I don't know – I mean –

THE COURT: Oh, he's at work until what time?

MR. AUGER: We could get him –

MR. MCLELAND: He doesn't work on Saturday.

MR. BALDWIN: I –

THE COURT: So you would need –

MS. AUGER: Well, I mean –

THE COURT: (Inaudible) impeachment. I mean, (inaudible)

MR. MCLELAND: I mean, if it's gonna be used for impeachment, I'd like (inaudible) for impeachment (inaudible).

MS. AUGER: Weber –

MR. MCLELAND: Just a lot of objections in front of the jury.

MR. BALDWIN: I apologize, I think the impeachment was –

MS. AUGER: It was not –

MR. BALDWIN: -- it may be clunky, but I believe that I asked him – I don't need to show him the statement, I just need to say, "Did you talk to officers and say something that you didn't go straight?" And he said no –

MS. AUGER: Yeah.

MR. BALDWIN: -- and I think that's the impeachment. I think it's already' s been done is what I would say. Now, maybe we need to look at the record, but I think –

THE COURT: No, he denied making the statement. He didn't deny making it to this guy, it was some other guy.

MR. BALDWIN: I think I said both, but –

THE COURT: (Inaudible)

MR. BALDWIN: I believe impeachment has been concluded is my opinion. I don't want to be wrong, but I remember saying those words.

THE COURT: Did you recall (inaudible) and you gave him the subpoena.

MR. BALDWIN: Yeah.

MR. MCLELAND: And that's gonna be – I don't think – I just think doing it through Weber gets you (inaudible)

THE COURT: (Inaudible) objection would be overruled to give you the opportunity to complete the rehabilitation of him or whatever statements he's gonna (inaudible)

MS. AUGER: Do you want me to release him or – I mean, what – the only –

MR. BALDWIN: I think if it's – if he's – if I used him name, then I think he can be confronted with that.

THE COURT: Yeah, he can.

MS. AUGER: Okay.

MR. MCLELAND: But it's the only because of impeachment of Mr. Weber?

MS. AUGER: Yes.

MR. BALDWIN: Yes.

MR. MCLELAND: Okay. Then, that – (inaudible)

THE COURT: It's not substantive evidence.

MS. AUGER: Sure.

MR. BALDWIN: Yeah.

THE COURT: Do you want that back or do you want to wait until –

MS. AUGER: Well, I think we need to wait until we get into it.

THE COURT: Okay. When we get into it, you'll make your motion.

MR. MCLELAND: Okay.

(Sidebar conference concluded.)

THE COURT: You may proceed.

MS. AUGER: Thank you.

DIRECT EXAMINATION OF OFFICER CHRISTOPHER GOOTEE

QUESTIONS BY MS. AUGER.

Q Sir, can you tell us your full name, please.

A Yes. Christopher, my last name is Gootee, G-O-O-T-E-E.

Q E-E?

A Yes.

Q All right. And it's Gootee?

A Yes, ma'am.

Q All right. If I mispronounce that, I'm gonna apologize ahead of time, because for a while now I've been pronouncing it wrongly.

A That's okay.

Q Sir, where do you work?

A The Hammond Police Department.
Q And how long have you worked there?
A Since 2005.
Q And prior to going to work at Hammond Police Department, what was your educational and work experience?
A I went to high school, I attended some college, and I was a EMT.
Q I'm having a problem hearing you, will you speak up a little bit.
A Sure. I went to high school, I went to some college, and I was a EMT in – you know, where I live before I got hired as a police officer.
Q And when you went to work at the Hammond Police Department, did you receive any training in law enforcement?
A Yes. I went to the Indiana Law Enforcement Academy.
Q Tell the jury about that, please.
A The Indiana Law Enforcement Academy is – at the time, it was in a 18-week course in Gary on the campus of IUN, where we learned everything you need to learn to be a police officer.
Q Did you have training in interviewing witnesses and suspects?
A Yes.
Q And tell us about that.
A In the academy?
Q Yes.
A There's a brief portion of interviewing people. You can interview different people different ways, there's not really much to say about it.
Q Okay. Since the academy, have you had any training in interviewing witnesses and suspects?

A I've taken the Reid School.
Q What is the Reid School? Can you tell the jury about that?
A The Reid School is just a technique by a guy named Reid on how to – it's primarily for interviewing suspects.
Q And in terms of documentation of interviews, have you learned anything about that in your training as a law enforcement officer?
A Yes.
Q What have you learned?
A If you talk to somebody, you have to write a report.
Q And what do you include in that report?
A What they said.
Q Is it important that that report be accurate?
A Yes.
Q And those – are those reports relied upon in subsequent proceedings?
A Yes.
Q And is it important to include all the information?
A Yes.
Q Now, in your capacity as a law enforcement officer, were you ever assigned to a task force?
A Yes.
Q When?
A 2014.
Q And what task force?
A It's the FBI GRIT task force.
Q FBI what?

A GRIT.
Q GRIT?
A Yes.
Q What is that?
A It's the Gang Response Investigative Team.
Q And what is the GRIT task force, what do they do?
A We are imbedded with the FBI squad that investigates violent crimes, bank robberies, murder, things of that nature, kidnappings –
Q Pardon?
A Kidnappings.
Q And how long were you part of the GRIT task force?
A From 2014 until now.
Q Do you – what different agencies, if any, are involved in that?
A The Indiana State Police, Merrillville Police Department, the Gary Police Department, Lake County Sheriff, Crown Point Police –

THE COURT: Excuse me, I don't mean to interrupt, but could we clear the screen, please.

UNIDENTIFIED INDIVIDUAL: My apologies.

THE COURT: Thank you.

MS. AUGER: I could have done that. Sorry.

Q Is the FBI part of that group, that task force?
A Yeah, they lead the task force, yes.
Q Okay. And during your work with GRIT, did you ever work with Adam –
A Pohl.
Q Pohl. Thank you.

A Yes.
Q And in the course of that work, did you assist in the investigation of the murder of L.G. and A.W.?
A Yes.
Q And what did you do as part of that investigation?
A Interviewed or conducted canvass interviews.
Q What do you mean by a canvass interview?
A We briefly interviewed people as assigned when we got there.
Q When you got where?
A To here, to Delphi.
Q To Delphi? Okay. So did you go – was that through a Unified Command, are you familiar with that term?
A Yes.
Q Okay. What does Unified Command mean to you?
A Well, there was a command post where we – when we got to work for the day, they would give us assignments.
Q Were you teamed with anyone during that investigation?
A Yes. Adam Pohl.
Q And who does Adam Pohl work with?
A He's an FBI agent.
Q How many interviews do you believe you and Special Agent – is it Special Agent Pohl?
A Yes.
Q How many interviews do you believe that you and Special Agent Pohl conducted?

A I don't know.
Q More than ten?
A Probably.
Q Is that around that number maybe?
A I'm not sure.
Q How long were you assigned to work the murder of L.G. and A.W.?
A Initially, probably a couple weeks, and then as needed on a few days after that.
Q A couple weeks and a few days?
A Yes.
Q All right. Somewhere between 14 and 21 days?
A Sounds right.
Q Did you do anything other than conduct interviews?
A Like what?
Q I don't know what you were doing, sir. I'm asking you did you do anything to assist in the investigation of the death of L.G. and A.W. other than conduct interviews?
A Not that I remember.
Q Was that a full-time responsibility between February 14th or so until 14 to 21 days after that?
A Yes.
Q And in the course of that investigation, did you speak to Bradley Weber about his whereabouts after work on February 13th, 2017?
A Yes.
Q Do you recall that?

A Yes.

Q All right. And can you tell us, sir, what he told you about his whereabouts after work on February 13th, 2017?

MR. MCLELAND: Judge, I'm gonna object to hearsay.

MS. AUGER: Well, Your Honor, this is going – this'll be a prior inconsistent statement pursuant to Mr. Weber's statements during his testimony.

THE COURT: All right. It is hearsay, but it's being used for impeachment –

MS. AUGER: Yes.

THE COURT: -- and I would instruct the jury that this is not substantive evidence, it is merely used for purposes of a potential impeachment.

MS. AUGER: Thank you.

A I'm sorry, can you repeat the question.

Q Sure. What did he tell you about his whereabouts, where he went after work, on February 13th, 2017?

A Home.

Q He went home?

A Yes.

Q Did he go straight home?

A I don't recall.

Q Okay. If I – can you tell me what an FBI 302 is?

A Yes. That's a report.

Q Okay. And is it a report of investigations and including witness statements?

A Yes.
Q Okay. And if I showed you that FBI 302, the interview with Mr. Weber, would that refresh your recollection?
A Sure.
Q I'm gonna show you what I've marked as Exhibit WW. Does that refresh your recollection, sir?
A Yes.
Q When did you speak to Mr. Weber?

MR. MCLELAND: Judge, may I ask a few foundational questions on the refreshing the recollection?

THE COURT: You may.

MR. MCLELAND: Special Agent Gootee, is that a report that you wrote?

A No.

MR. MCLELAND: That was written by Special Agent Pohl; is that correct?

A Pohl, yes, sir.

MR. MCLELAND: Pohl, I'm sorry. And after reading that report, does that refresh your recollection of specific things that Mr. Weber told you?

A Yes.

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

THE COURT: You may proceed.

MS. AUGER: Thank you.

Q When did you speak with Mr. Weber?

A I believe it –

Q Do you need your report again? That was not fair. Sorry.

A Yes, the – February 19th –

Q And –

A -- 2017.

Q Thank you. Do you recall now what Mr. Weber told you about his whereabouts after work on February 13th, 2017?

A Going home.

Q And did he stop anywhere on his way home?

A I don't remember him saying that.

Q Okay. Did you just review this report?

A Yes, I did.

Q And that does not refresh your recollection about what he said?

A No.

Q Are reports by Agent Pohl generally accurate and reliable?

MR. MCLELAND: Judge, I'm gonna object that. That calls for speculation. He didn't write the report. She's used it to refresh his recollection, he's testified to the questions, so I'm gonna object to that question and this line of questioning, Judge.

MS. AUGER: He can say yes or no –

THE COURT: It's not his report.

MS. AUGER: -- he doesn't know.

THE COURT: Sustained.

MS. AUGER: Nothing further.

THE COURT: Mr. McLeland.

MR. MCLELAND: I don't have any questions, Judge. Thank you.

THE COURT: Does anybody on the jury have any questions for Mr. Gootee?

(No response or indication from any juror.)

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

THE WITNESS: Thank you, Your Honor.

THE COURT: You may call your next witness.

MR. ROZZI: Judge, the Defense would call Dr. Deanna Dwenger. I'm gonna step out in the hall and grab her really quick.

(Witness sworn.)

MR. ROZZI: May I?

THE COURT: Yes.

MR. ROZZI: Thank you, Judge.

DIRECT EXAMINATION OF DR. DEANNA DWENGER

QUESTIONS BY MR. ROZZI.

Q What's your name?

A Deanna Dwenger.

Q And Dr. Deanna Dwenger; is that right?

A Yes.

Q Okay. Is it okay if I just call you Doctor?

A That's fine.

Q Okay, Doctor. Would you tell the jury what your – generally, what your levels of education are.

A Sure. I have my doctorate in clinical psychology. I'm a psychologist by training and I am currently the executive director of Behavioral Health, so I

oversee the mental health and addiction treatment for the Indiana Department of Correction.

Q Okay. And how long have you been the director of Behavioral Health at the Department of Correction?

A Since January of '21.

Q Okay. And were you a – maybe I didn't hear this, were you a doctor before that?

A Yes. I got my doctorate in 2013.

Q Okay. A doctor of psychology; is that right?

A Correct.

Q All right. And where did you – from where did you get that degree?

A The Chicago School of Professional Psychology.

Q Okay. And so you currently work for the Department – Indiana Department of Corrections?

A Correct.

Q Okay. In terms of the kind of – the mental health side of the Department of Corrections, can you explain to the jury kind of this two-tiered structure that the DOC has so they can kind of understand, give them a little context in terms of how you operate?

A Two-tiered meaning like the vendor –

Q Yes.

A -- and us? Okay. So in Indiana, we privatize the medical services that are provided, so I work for the State, but I am just one of three Behavioral Health staff, and then we contract with a vendor – the current vendor's name is Centurion – and they actually are who are paid to employ all of the psychologists,

the mental health professionals, the addiction recovery medical staff. So I oversee that contract and the work that they do, but they're really in charge of the clinical care.

Q Okay. So are you familiar with Mr. Allen just generally?

A Generally.

Q And you know who Rick Allen is, Richard Allen; right?

A Yes.

Q Okay. And are you familiar with the fact that he was housed in the DOC starting in November of 2022?

A Yes.

Q Up until just recently; right?

A Yes.

Q Last couple months or so; right?

A Yes.

Q And so during the time he was housed in the DOC, would you have had a responsibility for him in terms of his care, not necessarily directly, but in the broader sense?

A Yes. I oversaw the contract that was providing his care.

Q Okay. We heard from Dr. Wala a few days ago, I've lost track of time, but it was a few days ago. Did she work for Centurion –

A Correct, yes.

Q -- the third-party vendor?

A Yes.

Q And is it accurate that you, basically, then kind of oversaw her and the things that she would be doing on a clinical basis –

A She –

Q -- on behalf of the DOC?

A Yeah, she has her own reporting structure, so Dr. Keris is her boss, and Dr. Keris and I work hand in hand; so if I were to ever have a concern, I could go to Dr. Keris, and she was their clinical supervisor, but when it comes to if they – if we discussed any kind of particular clinical care or if we had a multidisciplinary team, yes, I would participate in that as the State.

Q Okay. And do you recall specifically that Mr. Allen was housed at the WCU unit up in Westville?

A Yes.

Q And just generally speaking – I'm not sure how everybody's geographically oriented here, but is Westville about a hundred miles north of here roughly?

A Yes.

Q And it's kind of up in the northwest quadrant of the state, if you will, up near Valpo; right?

A Correct.

Q Okay. And at some point, then, was Mr. Allen transferred down to Wabash Valley?

A Correct.

Q And Wabash Valley, is it accurate that that's down in the Carlisle area?

A Yes.

Q A couple hundred miles south of here?

A Yes, southwest.

Q Kind of down in the southwest quadrant of the state; right?

A Correct.

Q Which would be down towards like Evansville, in that direction?
A Yeah. It's about an hour south of Terre Haute.
Q Okay. And during the time that he was incarcerated at Westville and in Wabash Valley, was he incarcerated in similar units; is that a fair way of putting it?
A Yes.
Q The WCU or the solitary unit up in Westville and the same down in Wabash Valley?
A Correct, yes.
Q And have you ever met Richard Allen?
A I have not.
Q Did you ever play a role in where Mr. Allen was being detained, in what facility he was being held?
A I was not.
Q Do you know who was making those decisions?
A I do not.
Q Did you play any role in the decision to move Mr. Allen from Westville three hours south down to Carlisle?
A I did not.
Q Which is Wabash Valley; right?
A Yes.
Q Do you know who made that decision?
A I do not.
Q All right. Are there designated mental health facilities in the DOC?
A Yes. We have three men and one female facility.

Q Tell the jury where those facilities are.

A So our most acute facility is in New Castle, it's called New Castle Psychiatric, so if you see or hear NCP; and then we have two step-down units from that, one is at Pendleton Correctional Facility, it's called IRT, and we have one at Wabash Valley called the SNU, Special Needs Unit, so those are our three men.

Q And so, obviously, Mr. Allen was never at New Castle, the acute unit, or at Pendleton in that unit; right?

A He was not.

Q But you mentioned Wabash Valley again. Was Mr. Allen housed in the mental health unit of Wabash Valley?

A He was not.

Q Okay. He was held in the solitary confinement unit two different places –

A Correct.

Q -- locations? All right. Getting back to Dr. Wala, was there a point in time when Dr. Wala informed you that she had a personal interest in Mr. Allen's case?

A Yes.

Q And was that before or after she was assigned to him?

A After.

Q And did you know that she was spending many, many hours taking the time to listen and participate in social media activities involving this case; did you have any idea of the scope of what she was doing?

A So she first contacted me early 2022, she was advocating for Mr. Allen to have a visit with his wife. She thought that it would be good for his mental health, so she had reached out to me to see if that was possible. At that point, I

honestly did not know anything about the Delphi murders, I didn't – you know, I didn't know Richard Allen, I didn't know anything about him, and she said, "Oh, there's a podcast." She alluded to that she is a true crime fan, she had – she gave me a brief, "This is what happened in Delphi," and so I knew at that point that she had interest, she had listened to podcasts and had – yeah, had essentially recommended, if I wanted to listen to something, this is what I could listen to. She sought supervision about that with Dr. Keris more so than with me.

Q Okay. You said that she first contacted you in early 2022; do you actually mean in 2023?

A '23, yes.

Q Okay.

A Sorry.

Q So this would have been after he was placed in Westville and she was treating him?

A Correct.

Q Consistent with what you said earlier?

A Correct.

Q And did you, at some point, become aware that she actually took the time to visit the crime scene in this case?

A Yes, I was aware that she did that.

Q Do you think, as a treating psychologist, that's a bit unusual?

A I think she did that prior to knowing that she would ever encounter someone related to the case. Much like other people in the DOC world, I think she's interested in true crime.

Q All right. She lived in the Chicago area, didn't she?

A Correct.

Q And so she, at some point, came down here to, at some point, visit the crime scene; right?

A Correct.

Q Did you tell me that you thought it was unusual though for a psychologist to be in that position?

A I think it's unusual to have been to a crime scene of a place of someone that you work with; however, she had done that prior to Mr. Allen.

Q But did she –

MS. DIENER: Judge, may I request a sidebar?

THE COURT: Yes.

(Sidebar conference conducted.)

MS. DIENER: I would like to make a request that Mr. Rozzi be specific about what he's referring to as crime scene, because we have a large area here. I don't want to interrupt his direct, but he's characterizing something as the crime scene to Dr. Dwenger without specificity, and so I think there's a lack of understanding about the (inaudible) of what she just did and what's actually a crime scene. I can do that on cross, but –

MR. ROZZI: Well, I mean –

MS. DIENER: -- it's a concern.

MR. ROZZI: I agree, the crime scene here is everything from the Monon High Bridge to the river bottom –

MS. DIENER: And I disagree.

MR. ROZZI: -- because, you know, that's where they – they're

claiming –

THE COURT: But we – I mean –

MR. ROZZI: Yeah.

THE COURT: -- the jury doesn't consider it as the crime scene.

MR. ROZZI: You know, that's what they tell me, so I'll educate her.

MS. DIENER: Well –

MR. ROZZI: I mean, it's not that big of a – I mean, not a big deal.

(Sidebar conference concluded.)

THE COURT: You may proceed.

MR. ROZZI: Thank you.

Q We were having a technical discussion about the phrase "crime scene"; okay? Did Ms. Wala, Dr. Wala, tell you that she had visited the Monon High Bridge at some point?

A Yes.

Q Okay. All right. Thank you. Do you know Dr. Martin?

A Yes.

Q Okay. And just tell the jury what relevance or what connection Dr. Martin has or had with Mr. Allen.

A Dr. Martin is a psychiatrist. So psychologists, think more therapy, diagnosing; psychiatrists, more symptom management, prescribing medication. So Dr. Martin is a psychiatrist with the IDOC and was covering Westville at the time that Mr. Allen was there, so would have seen him and treated him.

Q So if there were orders to administer, let's say for example, Haldol shots, would Dr. Martin most likely have been a part of that process?

A Absolutely.

Q Okay. Do you – how long had Dr. Martin worked for the DOC – do you now? – up until let's say 2022, when Mr. Allen came?

A A couple years.

Q Have you ever met him?

A Once, I think.

Q All right. Does he still work for the DOC?

A He does not.

Q Okay. And let's talk about Mr. Allen's classification. When he showed up at the DOC, is it accurate that he was classified as – from an administrative standpoint, as a safekeeper?

A Yes.

Q Does – is that a term of art in your business?

A Yes.

Q Okay. Is that an administrative classification?

A I don't know if it's administrative. It's a classification that I've heard and we receive those kind of patients.

Q Okay. Was he assessed down at RDC, Reception and Diagnostic in Indy, before he showed up at Westville?

A Yes. I believe he was there very, very briefly.

Q I think the testimony earlier might have been maybe a day or so.

A Yeah, sounds right.

Q Does that sound about right? And did he have a D code or was he identified as a D code at the time he was assessed?

A Yes.

Q And we went through this a little bit earlier, but would you just tell the

jury what the different codes are very quickly.

A Of course. A code, you're not on the mental health roster, you can still receive services, but you don't have an active treatment plan. B codes are those who are on medication that they might be on forever, like anti-anxiety, anti-depressant kind of medication. A C code is someone who may have a mental health diagnosis but is going to get treatment in a group setting, so in a group of their peers, think anger management, anxiety groups, depression groups, that kind of thing. D codes are those who we think would benefit more from individual therapy with a therapist. And then E codes are our mental health units.

Q Okay. So I think we talked about this before, but is it kind of least severe to most severe?

A Yes.

Q And E codes are kind of their own –

A The F codes are kind of their own designation, yeah.

Q All right. And is it rare for you – as a psychologist at the DOC, is it rare for the staff or the Centurion staff to treat somebody that doesn't have a criminal history? Is that kind of unusual?

A We have safekeepers regularly. Whether they have previous criminal history or not, I'm not sure, but I think last time I heard, we had nine safekeepers in DOC.

Q Okay. And is it accurate that a lot of those safekeepers, most of them are there for competency restoration?

A No, 'cause I think safekeeping is – they come to us because the jail can't manage them. A lot of them, maybe half of them, come to New Castle Psychiatric,

the facility that is our acute mental health care, because they do have some sort of mental health need; but we don't do competency restoration, so instead of them being at the jail and not getting the care that they need, they'll come to DOC, they'll come to New Castle Psychiatric potentially, get treatment, then when it's time for competency restoration, they go back out to the state hospital and FSSA is who is in charge of competency restoration.

Q So a lot of those safekeepers are those people in that classification?

A That are what classification?

Q In that New Castle situation where you're doing restoration?

A I'm not doing restoration.

Q Not you, I understand.

A But there are – yes, sometimes there are complicating factors that they're mentally ill.

Q All right. Had you ever worked with a safekeeper before in the WCU?

A I don't know if there's been safekeepers at WCU.

Q Have you ever worked with one?

A I have not, no.

Q Or any of your team that you're aware of?

A I don't know.

Q Do you know why he was placed at the WCU?

A I do not.

Q And so with regard to his detention circumstances, do you believe that Rick Allen was regularly being threatened by other offenders on his unit?

A I had heard that, yes.

Q And are you aware that he was – that there was an in-cell video in his

particular cell, A-1107?

A That he was on camera?

Q Yes.

A Yes.

Q At all times?

A Yes.

Q And are you aware that there were – there's also I guess you could call it movement video or camcorder video when he was moved around in the facility?

A Yes.

Q And was there a time when you had concerns about the impact of those – that video on his mental health?

A Yes.

Q Okay. And did you recommend at one point that those cameras be removed so that he could have some sense of privacy?

A I did.

Q And is – was that a decision you made because you thought it was better for his mental health?

A Yeah. We were concerned about his depression at the time and thinking just psychologically what that would be like to be monitored at all times, thought maybe that would be something that could alleviate some of his mental health symptoms.

Q And did that ever happen?

A Not to my knowledge.

Q All right. Did you ever watch any videos of him being shackled and moved around the facility, those movement videos we talked about?

A I did not.
Q What about the in-cell video, did you ever watch any of that?
A I did not.
Q Okay. Let's talk about solitary confinement; okay?
A Okay.
Q Is that kind of a phrase of art in your business, if you will?
A Art?
Q Or segregation?
A We call it restrictive housing, yeah.
Q Is it commonly understood in the field of psychology that confining someone in a solitary state can be damaging to their brain?
A Yes.
Q And do you generally agree, kind of on a common-sense level, that the longer someone is held in segregation or solitary confinement, the more damage that can occur?
A There's really a lot of mixed research on confinement. There's some research that says being in restrictive housing is no more damaging than just being in prison in and of itself is damaging. There's also research that, yeah, being isolated, social isolation, the lack of stimuli, sensory deprivation – that's the word I'm looking for – is also harmful to mental health. I don't know that I've read any research myself about the longevity of that, if it gets worse.
Q Well, would it be unreasonable to think that the longer you're in that situation, the more it might –
A No.
Q -- be harmful? Does the DOC have some fairly strict policies as it relates

to the time periods associated with solitary confinement?

A Yes.

Q And just in terms of – without getting into all the weeds on this, those policies basically recognize a 30-day period; is that kind of – is there a 30-day rule maybe is a better way to put it.

A When it comes to mental health. So there's kind of restrictive housing policies, there's short-term restrictive housing, long-term restrictive housing. The 30-day stipulation is something that we have in my mental health policies as it relates to be people who have serious mental illness.

Q Okay. So is it accurate to say that the maximum period of solitary confinement should be no more than 30 days, unless there are some exceptional circumstances?

A If they are seriously mentally ill, yes.

Q Okay. And do you agree that Mr. Allen was – fell within that class of offenders?

A I do.

Q And there's no doubt about that, is there?

A No.

Q Okay. And do you agree that the policy was generally created to avoid the long-term effects of solitary confinement on that offender's brain, whoever that offender is?

A Yes.

Q That's what drives the policy; right?

A Yes.

Q And – but Mr. Allen was designated as a safekeeper, is that accurate?

A Correct.

Q And so, because of his designation, does the DOC then kind of exempt him from that policy that we just referenced, the 30-day rule, if you will?

A To be honest, I wasn't sure. We had discussed that when his mental health started to decompensate, whether or not that would apply at the time and what if it did moving forward.

Q Okay. Is it accurate to say that someone being designated as a safekeeper doesn't necessarily mean that they wouldn't be harmed by solitary confinement; right?

A Correct.

Q It's still a brain problem?

A Yes.

Q It's basically a business designation?

A A business designation?

Q Well, being a safekeeper again is a –

A Oh, yeah.

Q Let's talk about the serious mental illness. You said that he identified as someone who was seriously mentally ill.

A Yes.

Q And did he also, at one point, meet the criteria for being gravely disabled?

A Yes.

Q And do you agree that the goal, the overriding goal, in the – on the behavioral health side of the DOC, is to prevent harm –

A Yeah.

Q -- on offenders?

A Yes.

Q From a mental health standpoint?

A Yes.

Q Does the segregation of offenders with serious mental illness like Mr. Allen tend to make their symptoms worse?

A Repeat that question.

Q Does the segregation of individuals like Mr. Allen in solitary confinement tend to make –

MS. DIENER: Objection, Judge. I know it – he's leading the witness and this is direct.

THE COURT: Sustained.

Q If Mr. Allen – well, strike that. Is it possible that someone's long-term segregation could lead to additional harm to their brain?

A Yes.

Q And is there a difference between mental health monitoring and mental health treatment?

A Yes.

Q Did we talk about that before?

A Yes.

Q And is mental health – tell the jury what the difference is.

A When I think of mental health monitoring, that is primarily in restrictive housing. Potentially if they're in restrictive housing too, maybe we know that they came to us with an anxiety disorder, we want to make sure that they don't deteriorate, so it's kind of just a check-in, a mental status exam, if you will, you know, are they eating, are they showering, are they taking care of themselves,

what's their current symptoms. It's more monitoring, so quick, little sessions, check-ins, versus a therapeutic intervention where you're gonna do more therapy-like behavior.

Q So is it an accurate statement to say that in places like the WCU that basically there's more assessing going on than there is really therapeutic – treatment? I'm sorry, I lost my –

A In our restrictive housing, unfortunately there is more monitoring because of just the physical plant, it's harder to get them out regularly with treatment, but it is both – when they are in restrictive housing, they are required to have both monitoring and out-of-cell therapeutic –

Q Okay.

A -- sessions.

Q So you acknowledge that the environment, the therapeutic environment, that's being offered up isn't really therapeutic, is it?

A It's not ideal.

Q It's not consistent with what a normal human would get in a normal therapeutic setting; right?

A Correct.

Q And in fact, they're building a new prison right now; right?

A They are.

Q I think you told me you were excited about that, generally.

A I'm very excited.

Q And is that because you're hoping that the conditions will be –

MS. DIENER: Objection, Judge. This is not relevant to Mr. Allen.

MR. ROZZI: Well, I think it has the tendency to prove that the

conditions that existed while he was there were not suitable –

MS. DIENER: May I ask some preliminary questions?

MR. ROZZI: May I finish?

THE COURT: Go ahead –

MS. DIENER: Oh, sorry.

THE COURT: -- finish. Go ahead and finish so that she can then ask her preliminary questions.

MR. ROZZI: I think it has a tendency to prove that the conditions – compare and contrast the conditions –

THE COURT: Okay.

MR. ROZZI: -- he was in.

THE COURT: Preliminary questions.

MS. DIENER: Dr. Dwenger –

A Yes.

MS. DIENER: -- with regard to Mr. Allen, were you aware of the frequency of his therapeutic visits?

A When he was on suicide watch, he should be visited every day.

MS. DIENER: And so was he on suicide watch from the time he entered WCU until Dr. Wala – well, let's just say until August of 2023?

A Yes.

MS. DIENER: Was he on suicide watch?

A Yes.

MS. DIENER: So he was getting daily visits from Dr. Wala then?

A Yes.

MS. DIENER: Thank you. My objection is that he was receiving

daily visits of therapy treatment, and not just monitoring, and his questions are about the quality of care at WCU as it pertains to her general opinion, but not with regard to Richard Allen specifically. And so we're going down a path of whether there's a new facility or not, and that's not really relevant to Mr. Allen because he was getting daily therapeutic visits.

MR. ROZZI: Judge, I think that's an issue of the weight of the evidence.

THE COURT: Well, let's limit it to this defendant.

Q You were, ultimately, on the MDT team that, essentially, met from time to time to discuss Mr. Allen's circumstances; right?

A Yes.

Q So you were in some – is it accurate to say that you were, in some ways, directly responsible for his care?

A I didn't provide any clinical care, but I did offer like a sounding board or asking questions, "Have you thought about this? Have we assessed this? Has he had a medical consult?" As kind of a supervisory role.

Q Do you agree that the segregation of mentally ill prisoners is toxic to their welfare?

A Yes. I don't love restrictive housing.

Q And that would apply in Mr. Allen's circumstance?

A Yes.

Q Does the DOC have a policy that reflects that inmates with serious mental illness would be placed in New Castle, Wabash Valley, or Pendleton?

A We have a policy on, if someone is in restrictive housing, they are designated as SMI, which is serious mental illness, then there are things that

need to happen, because we don't want them to just stay there and continue to decompensate or not do well, so there are kind of some provisions that happen, there's a thing that happens, but one of the options is, yes, they would go to a mental health unit to continue their treatment.

Q And did any of those things ever happen to Mr. Allen?

A No.

Q Has the DOC been involved in previous lawsuits regarding the excessive detention of inmates?

MS. DIENER: Objection, Judge. May we have a sidebar?

THE COURT: Yes.

(Sidebar conference conducted.)

MS. DIENER: Judge, I'm gonna object to reference to the IPAS. There's been reference to the ADA with Dr. Wala, and that didn't pertain to Mr. Allen by definition. And we could go really far into this before we ever get to that, since we've been down this road before. And so I think it should be excluded, as IPAS doesn't apply to Mr. Allen.

MR. ROZZI: I wasn't gonna mention IPAS, I haven't mentioned IPAS.

MS. DIENER: You just –

MR. ROZZI: My intention is to –

MS. DIENER: Sorry.

MR. ROZZI: My intention is to discuss with her the Court's order from Federal District Court that I have put into evidence at other hearings, which is where all these standards that we've talked about arose from, and I think it has a tend – it's relevant because it has a tendency got prove that they – that the

DOC was negligent previously as it relates to solitary confinement and there really hasn't been much improvement, which impacts this trial.

MS. DIENER: Judge –

MR. ROZZI: And if the Court doesn't want to admit that, I'll make an offer to prove.

THE COURT: Um-hmm, yeah.

MR. ROZZI: That's what I think.

THE COURT: I will sustain the objection. If you want to make an offer to prove, you may, but you've made some prior references –

MR. ROZZI: Yeah. I don't disagree with that, I just want to make sure –

THE COURT: You have preserved the record in this case.

MR. ROZZI: Very good.

(Sidebar conference concluded.)

THE COURT: I'll sustain your objection, Ms. Diener.

MR. ROZZI: Thank you. I have no further questions for this witness.

THE COURT: Ms. Diener.

MS. DIENER: Thank you, Judge.

CROSS EXAMINATION OF DR. DEANNA DWENGER

QUESTIONS BY MS. DIENER.

Q Dr. Dwenger, when Mr. Allen came into the DOC, are you familiar with the assessment that was performed at RDC?

A Yes, I've reviewed his intake.

Q And on intake, was he, by definition, seriously mentally ill?

A No. He was not until he had gotten to Westville and started to decompensate.

Q Okay. And were you involved with any MDTs or were there any MDTs for Mr. Allen from the time that he entered WCU until when you say he began to decompensate?

A The first contact I got about Mr. Allen was in April of '23, and that was from Dr. Wala, advocating for the visit, she told me a little bit about him. I think at that point is when I went in and reviewed his intake and then that – shortly after that is when the multidisciplinary team started, so April.

Q So if Mr. Allen came into RDC with prior diagnosis or treatment for depression and anxiety, would that have appeared in the assessment that you reviewed?

A Yes.

Q And so on that basis, he was not seriously mentally ill?

A No.

Q In April of 2023, who contacted you?

A It started with Dr. Wala contacting me.

Q And what was her concern?

A That he – that she thought that a visit with his wife would be good for his mental health.

Q And so she was advocating for that?

A Yes.

Q Did, at some point, it develop into these multidisciplinary team meetings?

A Yes. Dr. Wala, she couldn't – she was deciding, in talking to myself and Dr. Keris, which, like I said, was her supervisor, the three of us were talking and

she was kind of explaining – not kind of, she was explaining some of the symptoms that she was beginning to see and she was talking out loud about believing that he was feigning those symptoms, and so she was using us as a sounding board of whether he was feigning or if he was really starting to become psychotic, at which point, I asked for an MDT because I had never seen him. I was not driving up there to see him, I don't do clinical work at this point, so we had a multidisciplinary team that then included Dr. Martin, the psychiatrist, and I asked for him to go see Mr. Allen, so that we could have a second opinion about some of the symptoms he was having and whether it was genuine or more feigned.

Q Okay. And so, in layman terms, feigning means what?

A Faking.

Q Okay. Nicer clinical term?

A Yes.

Q Okay. And so was the terminology "grave disability" used or applicable at that particular time?

A Yes, at – at some point, it be – I don't know in the timeline of events, but when we asked Psychiatry to see him and we had the – it was ac – it was that first MDT, because I told Psychiatry to also assess if he met criteria for an involuntary medication at that point. He wasn't sleeping and his symptoms were getting worse and, knowing that no sleep, on top of already have some mental health, it was unlikely that he was gonna magically get any better, so we started talking very quickly about involuntary medication, because he was gravely disabled.

Q If I told you that the first document regarding an MDT was April 13th of

2023, would you agree with that?

A That sounds right.

Q And what does "grave disability" mean in your terms?

A Essentially, you no longer are taking care of yourself, so you're not showering, you're not eating, what we call ADLs are suffering, so maybe you're not working, you've kind of deteriorated in the sense of being able to care for yourself.

Q Okay. And so at that point then, if Dr. Wala was concerned about feigning, how did the MDT team approach the concern about faking behavior versus something that needed treatment?

A So at that point, the symptoms were severe enough, whether he was faking them or feigning them or they were genuine, it – again, it was unlikely to stop, given that now he was not eating, not sleeping – right? – those things that keep your body healthy and your mind healthy, he had stopped doing those. So whether he had chosen not to sleep or chosen not to eat, those behaviors were gonna impact his mental health; so at that point, we needed to intervene, because we knew that it would not get better on its own.

Q Okay. And you're not a professional that would prescribe medicine; is that correct?

A Correct.

Q But do you have personal knowledge of the use of Haldol with someone who might not be taking care of their ADLs?

A Yes. My first four years of my career was at New Castle Psychiatric, the most acute care facility.

Q And that was actually a mental health unit?

A Yes.

Q Okay. And so what was your position in that context?

A I was the lead psychologist.

Q So what effect does Haldol have on a person who's experiencing lack of attention to their ADLs?

A Again, not a psychiatrist, I am a psychologist, but Haldol is used very frequently with people who have psychosis and helps with the symptoms of psychosis, and grave disability is one of the symptoms of psychosis. So it's not necessarily targeting grave disability, but, for instance, if you are psychotic and you think, "I can't take a" – I've had patients who can't take a shower because they have these persecutory beliefs that the DOC is gonna send poison through the shower and, if they shower, they'll die. So the goal is the Haldol will target that symptom, that persecutory symptom that they are going to be harmed if they shower, therefore resulting in them improving their ADLs. Does that make sense?

Q Would it also help them sleep?

A In some cases, depending on if it's – in some cases.

Q Okay. Now, in these – in this consideration of how to help Mr. Allen with his mental health symptoms, you said you knew that he was a safekeeper; correct?

A Yes.

Q Would you agree that the primary goal was to keep him safe?

A Yes.

Q And so did that theme take precedence with regard to making sure he was in a safe environment for himself?

A Yes.

Q Were you still proving him treatment?

A Yes.

Q And was that treatment able to be provided at WCU?

A Yes.

Q And would that be the reason he was never moved?

A Yes.

MS. DIENER: No other questions.

MR. ROZZI: I object. She testified earlier that she doesn't know why he was moved.

THE COURT: Sustained.

MR. ROZZI: And that was a leading question.

MS. DIENER: It's cross.

THE COURT: Leading is allowed on cross.

MR. ROZZI: Thank you.

THE COURT: But I sustained your objection.

MS. DIENER: No other questions.

THE COURT: Mr. Rozzi.

MR. ROZZI: Oh, thank you.

RE-DIRECT EXAMINATION OF DR. DEANNA DWENGER

QUESTIONS BY MR. ROZZI.

Q Ms. Diener just asked you when Richard Allen was classified or when his circumstances would have classified him as seriously mentally ill; do you generally recall that?

A Yes.

Q And I think you said basically April of 2023.

A Yes.

Q Okay. There are – again, this serious mentally ill, SMI, designation is one of art in your business; right?

A Yes.

Q It has its own separate definition?

A Yes.

Q Would you agree that that definition stems from litigation from back in 2012?

A Yes.

MS. DIENER: Objection, Judge. We already discussed this.

THE COURT: Sustained.

MR. ROZZI: I think she's – may we have a sidebar?

(Sidebar conference conducted.)

THE COURT: Sorry. I just realized when I came down here, I didn't turn that on.

MR. ROZZI: Oh. So she has opened the door, because the court order identifies serious mental illness as including – SMI includes someone with major depressive disorder. That was also adopted by the IPAS agreement and it was also adopted by the DOC as part of their policy, which she told me in her deposition – at her deposition, she told me all three of these things, and so all I'm trying to do is identify for the jury or educate the jury that he had major depressive disorder, they've already heard that –

THE COURT: They've heard that.

MR. ROZZI: -- and it's part of the definition and it has been –

THE COURT: And they've heard that.

MR. ROZZI: Or –

MS. DIENER: And actually, Judge –

MR. ROZZI: No, but I'm saying –

MS. DIENER: -- the DOC policy –

MR. ROZZI: -- when he hit the doorstep, when he walked in there. She's saying it started in April, when he started to decompensate. That's what –

THE COURT: The grave disability started.

MS. DIENER: Started, not the SMI. She said he was SMI when he entered.

THE COURT: Grave disability, that's what she just testified to.

MR. ROZZI: Right, that's what I'm saying, and he was by definition.

MS. DIENER: Was not.

MR. ROZZI: No.

MS. DIENER: She said he was not.

MR. ROZZI: I'm saying that he was. I agree. I'm impeaching her with her own –

THE COURT: No.

MR. ROZZI: -- information.

THE COURT: No.

MS. DIENER: This is not her information.

THE COURT: It's not.

MS. DIENER: And if you –

MR. ROZZI: How is it that I cannot hold her to the standard of her own policy?

MS. DIENER: If you ask her whether SMI applies, "I'm gonna give you that definition and whether it applied to him," she would say no.

MR. ROZZI: But I'm saying that her policy says that it does, that major depressive –

MS. DIENER: The policy says –

THE COURT: I've sustained it.

MR. ROZZI: Well, but I have the right to ask her those questions if she –

THE COURT: No, you don't.

MS. DIENER: The policy (inaudible) her position.

THE COURT: We've already had this conversation, we've already had this discussion. You've made your record, it's been preserved if Mr. Allen is convicted. The higher courts of records will tell me if I made a mistake or not, but I am sustaining the objection.

MR. ROZZI: So am I not permitted to ask her at all about what the policy says now, even if I don't ask her about the court order?

THE COURT: You've asked her what it is, and she's testified what it is. We're not getting into the lawsuit, we're not getting into IPAS.

MR. ROZZI: I didn't ask her – I didn't – with respect, I did not ask her if Rick Allen met the definition of SMI under the policy.

THE COURT: No, you haven't, Mr. Rozzi, and you may ask her that, but you're not getting into the reasons for the policy, any lawsuit that led to the policy against the Department of Correction that had already been resolved, that policy had already been resolved before Mr. Allen –

MR. ROZZI: I think you're handcuffing me, with all due respect –

THE COURT: I appreciate that and –

MR. ROZZI: -- with information that she has already indicated in her deposition drove their policy. She even told me in her deposition that she created the policy.

THE COURT: You've made your record.

MS. DIENER: She wrote policy, but not the current policy.

MR. ROZZI: You're wrong.

MS. DIENER: You're wrong. I asked her.

(Sidebar conference concluded.)

THE COURT: All right. Your objection is sustained, Ms. Diener.

Q Was the disorder of major depressive disorder – strike that, I'm being – need to be more articulate. Is major depressive disorder part of the definition of SMI?

A No.

Q Okay. Was it ever in the past?

A No.

Q In any literature that you've seen associated with your employment?

MS. DIENER: Objection, Judge. Number one, it's not relevant unless it pertains to Mr. Allen in a DOC setting; and number two, it's asked and answered.

THE COURT: Sustained.

MR. ROZZI: I have nothing further.

THE COURT: Ms. Diener.

MS. DIENER: No questions, Judge.

THE COURT: Does anybody on the jury have any questions for Dr.

Dwenger? All right. Would counsel approach.

(Sidebar conference conducted.)

THE COURT: "Does the DOC ever place safekeepers in general population?"

MR. ROZZI: I'm okay with that.

THE COURT: "Could it be possible Mr. Allen is faking his symptoms so he wouldn't be moved to the populated areas because of his fear of being harmed?"

MS. DIENER: Good question.

THE COURT: "You stated that you heard – in quotes – heard about Mr. Allen being threatened by other inmates. Did you ever actually hear the threats with your own ears?"

MR. ROZZI: Fine.

MS. DIENER: Okay.

THE COURT: Do you want me to say that first part or just ask the question, "Did you ever actually" –

MS. DIENER: Just the second part, yeah.

THE COURT: "When faking or not faking mental health, could a person slip in truths into a confession?"

MR. ROZZI: Say that again. I'm sorry.

THE COURT: "When faking or not faking mental health, could a person slip in truths in a confession?"

MS. DIENER: I think it's a fair question.

MR. ROZZI: It's kind of a weird question, but –

THE COURT: It is a weird question.

MR. ROZZI: Yeah.

MS. DIENER: The way it's worded is a little weird.

MR. ROZZI: Yeah. I don't like it.

THE COURT: Huh?

MR. ROZZI: I don't think it's relevant.

MS. DIENER: I'm okay with it, so –

THE COURT: It is kind of an oddly worded question. If she doesn't understand it, I won't be able to explain it to her –

MR. ROZZI: Yeah.

THE COURT: -- and I'll just be, "I don't know." "What would the typical process for safekeepers that have severe mental illness on suicide watch be?"

MS. DIENER: What was the beginning of that?

THE COURT: "What would the typical process for safekeepers that have severe mental illness on suicide watch be?"

MS. DIENER: Oh, okay. That's a good question.

THE COURT: "Would that be different than a traditional safekeeper who has severe mental illness that isn't suicidal?"

MS. DIENER: Yes.

THE COURT: So these are kind of building on each other.

MR. ROZZI: Yeah, yeah.

THE COURT: "What is the primary obligation of DOC to a safekeeper on suicide watch with a severe mental illness?"

MS. DIENER: These are good questions.

MR. ROZZI: All right.

THE COURT: They are good.

MS. DIENER: Yeah.

MR. ROZZI: They're compound.

THE COURT: Kind of.

MR. ROZZI: Yeah.

THE COURT: Okay.

MR. ROZZI: Okay.

(Sidebar conference concluded.)

JUROR QUESTIONS OF DR. DEANNA DWENGER

QUESTIONS BY THE JURY, READ BY THE COURT.

Q Doctor, if you know, does the DOC ever place safekeepers in general population?

A Yes, they do.

THE COURT: Any follow-up, Mr. Rozzi?

MR. ROZZI: No, ma'am.

THE COURT: Ms. Diener?

FOLLOW-UP EXAMINATION OF DR. DEANNA DWENGER

QUESTIONS BY MS. DIENER.

Q If you know, what prevented Mr. Allen, as a safekeeper, from being put in general population?

MR. ROZZI: Judge, I'm gonna object at this point, because she testified she didn't have anything to do with the decisions on his placement.

THE COURT: Yeah, I would sustain that. Anything else, Ms. Diener?

MS. DIENER: No.

JUROR QUESTIONS OF DR. DEANNA DWENGER

QUESTIONS OF THE JURY, READ BY THE COURT.

Q Could it be possible that Mr. Allen was faking his symptoms so he wouldn't be moved to populated areas because of his fear of being harmed?

A Read it one more time.

Q Could it be possible that Mr. Allen was faking symptoms so he wouldn't be moved to populated areas because of his fear of being harmed?

A It is possible, I have seen that; but for me to speculate on what was going on or why he would have, I don't have any idea why he would have.

THE COURT: Mr. Rozzi?

FOLLOW-UP EXAMINATION OF DR. DEANNA DWENGER

QUESTIONS BY MR. ROZZI.

Q If Dr. Wala testified that she didn't have an opinion or didn't know, would you defer to her?

A Yes.

MR. ROZZI: Oh, no further questions, sorry.

THE COURT: Mr. – Ms. Diener?

MS. DIENER: No other questions.

JUROR QUESTIONS OF DR. DEANNA DWENGER

QUESTIONS OF THE JURY, READ BY THE COURT.

Q Did you ever – you stated you heard Mr. Allen was being threatened by other inmates. Did you ever actually hear the threats with your own ears?

A No. I have never even laid eyes on Mr. Allen until just today and did not go to Westville while he was there or Wabash Valley.

THE COURT: Mr. Rozzi?

MR. ROZZI: No questions.

THE COURT: Ms. Diener?

MS. DIENER: No.

Q When faking or not faking mental health concerns, could a person slip in truths of a confession?

A Do you mind reading it one more time?

Q Sure. When facing – I'm sorry, when faking or feigning or not faking mental health, could a person slip in truths in a confession?

A That's a really good question, whoever asked that. It's hard to tell, because I have seen it both ways, where someone gets psychotic and they confess to things that they really have done, but I've seen people get psychotic and confess to things that they have not done. If he was faking, 'cause it said something about if he was faking – read the – do you mind reading it again? I'm so sorry.

Q No, that's okay. If he was faking mental health problems, could he slip in truths of a confession?

A If he's faking mental health symptoms, could he slip in truths of a confession? Yes, yes.

THE COURT: Mr. Rozzi?

MR. ROZZI: No questions.

THE COURT: Ms. Diener?

FOLLOW-UP EXAMINATION OF DR. DEANNA DWENGER

QUESTIONS BY MS. DIENER.

Q If a person makes a statement during a period of mental health symptoms, what would you look for in that statement to indicate whether it was generated by a mental health issue or by reality?

A The type of conversation is different. A brief psychotic episode is complicated and it's one of the lesser-researched diagnoses, so that complicates the factor, but when speaking with someone during a psychotic episode, it's – they're detached from reality, so they're not linear, they're not goal directed, it's kind of like – I had a psychologist friend once tell me that one of the best ways to know if someone is feigning or not is to listen to your body language as a psychologist. So if someone is saying, "Oh, yeah, I'm psychotic and I hear things and I see things," and you're just kind of like nodding along and it's just like a story, that – most likely, they are feigning. If, however, someone is saying, you know, "I hear things and they tell me to go to the grocery store. Then I went to the grocery store and I got a Reese's, oh, and a person working there, she looked like my mom and she's so nice and like," and you're kind of like, "Woah, woah, woah," like, "What?" Like you're trying to follow, but it's kind of like all over the place, those are the kind of things that I listen for, is it related – is the organization of what they're saying there or not, is it goal directed or not, because when you're psychotic, you really lose the ability to be goal directed in most cases. Does that answer the question? Does that make sense?

Q So if it's organized and it's goal directed, would that also include if it can logically be followed?

A Yes.

Q Okay. What about if it's chronological?

A Yes. Another thing you'll see is it's related to – what they're saying, the confession, for instance, would be related to the delusional content. So there's kind of themes in psychosis and delusions that you see, I think there's five major ones. There's persecutory, you know, "The CIA is following me, there's poison in

the ceiling, they're poisoning my food." There's hypersexuality, "Everybody loves me," this grandiosity, "I'm gonna have sex with everyone, I'm gonna have a million babies." There's hyper-religiosity, "I'm Jesus, I'm God, he tells me what to do and I'm, you know, his servant." Another one is jealousy and the other one is like command hallucinations, "So the TV is talking to me. That news reporter who's reporting about the news is actually telling me specifically because he wants me to go out and save the world." So there's kind of these themes. So when someone is in a psychotic state, what they're talking about can be not psychotic; right? 'Cause you don't – you're not necessarily psychotic 24 hours a day, so you could be not psychotic and having a linear conversation, but if, all of a sudden, I start asking you about showers and that's related to that psychotic – it kind of like pings; right? – and you're – and then they kind of lose association, and one of those five themes – I mean, that's not the only possibility, those five themes, but those are like the major that I'm listening for, is that conversation related in one of those like delusional disordered thinking.

Q So just to parse that out, 'cause we went back and forth a little bit –

A Sorry.

Q -- so the kind of statements that would be related to psychosis are those five areas where the statements by the person are related to these fears or concerns that are not logical?

A The delusion disorder – so delusions are things that you think and like are not reality-based, so those five that I just said are kind of the most common delusions, and when speaking with someone and they're on those five, it had something to do with that, like "God told me to" or you know, "I'm St. Michael and that's why I had to do it," or "Everybody loves me and so I had to have a

thousand children, so I had to sleep with everybody," like if it's related to those things, I am more likely to believe that it is rooted in psychosis versus if what the person is saying to me is logical and linear and I can follow it and it's goal directed and it's chronological, I'm not likely to believe that that is rooted in psychosis.

MS. DIENER: Okay. Thank you very much.

MR. ROZZI: Judge, can I ask a follow-up question? I mean, she's pretty broad –

THE COURT: Sure.

MR. ROZZI: Thank you.

FOLLOW-UP EXAMINATION OF DR. DEANNA DWENGER

QUESTIONS BY MR. ROZZI.

Q Is delirium one of the symptoms that you might see in a psychotic state?

A Delirium is when you get psychotic because of a medical disease or a medical illness. So you see this in elderly people when they have a TBI and it's not treated. They actually show up to the hospital and they present as psychotic. We did have Mr. Allen assessed for delirium to make sure that there was no medical things going on.

Q When you mean assessed, just asking him questions or –

A Medical did an evaluation.

Q Oh, okay. And so you didn't observe Mr. Allen with regard to any of these things that you've talked about?

A No.

Q So you would have to defer to Dr. Wala in terms of a conclusion about these things?

A Yes.

Q Okay.

A Yeah, I'm speaking in –

MR. ROZZI: I have nothing further. Thank you for letting me –

A -- generalities.

THE COURT: Nothing, Ms. –

MS. DIENER: I have one.

THE COURT: Okay.

FOLLOW-UP EXAMINATION OF DR. DEANNA DWENGER

QUESTIONS BY MS. DIENER.

Q So when you say he was assessed for delirium, was that discussed in MDT?

A Yes. So Ms. Bridegroom was the HSA, and we asked her to have Medical see Mr. Allen to make sure that there wasn't something medical causing his deterioration in functioning.

Q And was the outcome that he did not?

A Correct.

MS. DIENER: Thank you.

JUROR QUESTIONS OF DR. DEANNA DWENGER

QUESTIONS OF THE JURY, READ BY THE COURT.

Q Would the typical process for safekeepers that have severe mental illness on – I'm sorry, what would the typical process for safekeepers that have severe mental illness on suicide watch be?

A The same as a general – anyone else who had been post-adjudication.

THE COURT: Okay. Mr. Rozzi?

MR. ROZZI: No questions.

THE COURT: Ms. Diener?

MS. DIENER: No question.

Q What is the primary obligation of the Department of Correction to a safekeeper on suicide watch with severe mental illness?

A The same as it would be to anyone else who is post-adjudication.

MR. ROZZI: What? I didn't hear what you said at the end.

A The same as what it would be anyone who I was treating post-adjudication, to keep them safe.

FOLLOW-UP EXAMINATION OF DR. DEANNA DWENGER

QUESTIONS BY MR. ROZZI.

Q Is that post-adjudication, meaning people that are found guilty of crimes?

A Correct.

Q Mr. Allen was not one of those people?

A Right, but he'd be treated the same –

Q Okay.

A -- as anyone else.

Q I understand that. You're treating him just like everybody else that's in prison?

A Correct.

MR. ROZZI: All right. Nothing further.

THE COURT: Ms. Diener?

MS. DIENER: No other questions.

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

THE WITNESS: Thank you.

THE COURT: Do you want to take a break? This might be a good opportunity for us to take our morning recess. While you're outside the courtroom, please, keep your minds open. Please don't form any opinions or conclusions about anything. If you discuss the evidence, please, only do that if all 15 of you are present in the jury room at the same time and, please, don't deliberate. Gentlemen.

THE BAILIFF: All rise.

(Jury out at 10:22 a.m.)

THE COURT: You may be seated. Let's go ahead and take 15 minutes. Gentlemen, you can take Mr. Allen. Jodie, you can go off the record.

(Off record at 10:23 a.m.)

(On record at 10:40 a.m.)

MS. AUGER: Your Honor –

THE COURT: We're back on the record.

MS. AUGER: -- could we have a sidebar?

THE COURT: Sure.

MS. AUGER: I'm sorry.

(Sidebar conference conducted.)

MS. AUGER: Mr. Irvin, from the US Attorneys Office, just informed me that he's in the FBI's office, I need to immediately file a motion for – I won't immediately file, I will promptly file a motion for witness to appear remotely. The Indiana Administrative Rules allow for remote appearance with good cause shown. Special Agent Pohl is the supervising special agent in charge of election security in Texas. I'm anticipating his testimony will be very short, but necessary, and so I think good cause is shown. He's in Texas. It's – they are

rallying, trying to figure out what to do. I am fine – we would like for him to be able to appear remotely. It seems inefficient and impossible for him to be here in person for a short amount of time.

MR. MCLELAND: I think another concern that I just want to point out in his report, they weren't talking about the same day as the girls went missing, it's not clear, so we have concerns about him testifying about what Weber said the day the girls went missing, that's the first issue. The second issue is are you set up to do remote?

THE COURT: I don't think I am.

MR. MCLELAND: I don't think you are, because we changed out. I don't know that. That would be a question for –

THE COURT: I would have to find out who –

MS. AUGER: Okay.

MR. MCLELAND: We've never done remote testimony in here.

THE COURT: Okay. So even – is it – physically you can't do it?

MS. AUGER: That's – sure. Can I – if I try to figure this out, is that something we can consider?

THE COURT: Well, let's cross one bridge at a time. Let's figure out if we can.

MS. AUGER: Sure.

THE COURT: I think that –

MS. AUGER: Sure.

THE COURT: I think that conversation needs to be had (inaudible) get him here.

MS. AUGER: Okay.

THE COURT: So –

MR. MCLELAND: It sounds like they may have issue with him testifying, according to the AG.

MS. AUGER: They have not – I have had – I've been talking to them and they have not said a word about that to me.

THE COURT: And maybe that's something we need to explore, because maybe we're getting mixed signals from –

MR. MCLELAND: I just want to show, though, that we're not clear on what day, so I don't know if it's a concern of his, I don't know if they just don't want him to come up here (inaudible)

MS. AUGER: No.

THE COURT: Okay. So we're ready to go? Is your next witness out there?

MS. AUGER: Yeah. Is there anything you want me to facilitate or you can do that or –

THE COURT: No, no, I'll –

MS. AUGER: Okay.

THE COURT: -- find out.

(Sidebar conference concluded.)

THE COURT: All right. You may call your next witness.

MR. ROZZI: Are we gonna call the jury in?

THE COURT: Oh, yeah, we need to have the jury. That would help. Sorry, you guys caught me off guard with the sidebar. Thank you. Jason, Jeremy, let's get our jury.

THE BAILIFF: All rise.

(Jury in at 10:46 a.m.)

THE BAILIFF: Thank you. You may be seated.

THE COURT: All right. You may call your next witness, Mr. Rozzi.

MR. ROZZI: The Defense would call Max Baker, Your Honor.

(Witness sworn.)

MR. ROZZI: May I?

THE COURT: Yes.

MR. ROZZI: Thank you, Judge.

DIRECT EXAMINATION OF MAX BAKER

QUESTIONS BY MR. ROZZI.

Q What's your name?

A My name is Max Baker, spelled M-A-X B-A-K-E-R.

Q All right, Max, tell the jury what your level of education is.

A This year, I graduated with a bachelor's degree from Indiana University in law and public policy.

Q Okay. And are you employed right now?

A I am.

Q Okay. And who do you work for?

A You.

Q All right. And just tell the jury generally how long you've worked for me.

A About two years.

Q And could you give the jury some context in terms of what you've done for me over the last two years at work.

A Well, it's basically just been a legal internship. I've worked on a variety of cases doing stuff like serving subpoenas, generating documents, kind of clerical

work that an intern does, and yeah.

Q Okay. And is – has one of your primary responsibilities kind of evolved into this case?

A Yeah, absolutely.

Q Okay. And how long have you been working on this case?

A Since November of 2022, basically.

Q Okay. And did you hear the testimony of Trooper Harshman yesterday?

A Yes.

Q Trooper Harshman testified that he had reviewed over 700 phone calls I think generally and then I don't know what he said, probably hundreds of hours of video, tablet messages, those kinds of things; did you hear all that?

A Yes.

Q Okay. Have you been doing similar things kind of for the Defense, so to speak, in this case?

A Yes.

Q Are you familiar with most of those – of the video from Westville?

A Yes.

Q Okay. And are you familiar with most of the phone calls from Westville?

A Yes.

Q And so is it – has it – have you become aware during the course of this case that Rick Allen's mental state has been kind of an issue –

MR. MCLELAND: Judge, I'm gonna object: It's a leading question.

THE COURT: Sustained.

Q Did you become aware during the course of this case that Mr. Allen's mental state was in question?

MR. MCLELAND: Objection, Judge: Leading question.

THE COURT: Sustained.

Q Did I ask you to compile some video from Westville to assist the jury in understanding the environmental conditions that Mr. Allen was enduring while he was there?

MR. MCLELAND: Judge, objection: Leading question.

MR. ROZZI: I'm just asking him –

THE COURT: Overruled. That one's not leading.

Q Did I ask you to do that?

A Yes, you did.

Q Okay. And just explain to the jury, if you would – I'm just trying to get into context again how it was that we acquired the information that you reviewed, the Westville video.

A It was served to us in the discovery for this case.

Q Okay. We got it from the State?

A Yeah.

Q Okay. And in terms of the video that you've compiled, explain to the jury kind of how that – how you've compiled it. What format is the video in?

A Okay. So yeah, there's two main video formats, the first is what I refer to as the camcorder footage, this is the footage of Richard being taken from his cell, being taken to, like, to shower and medical and stuff along those lines. So when he's outside of the presence of the security camera in his cell, they – basically, one of the guards will hold a camcorder and kind of follow him around and record everything else that's going on. And then, the other part of it is that security camera footage from inside the cell.

Q Okay. So with the movement video or what we call the camcorder video, does that have both video and audio?

A Yes.

Q Okay. And then, is the – what we call the in-cell video, you call it the security video, is that different?

A Yeah. That does not have any audio.

Q Okay. Now, was it given to us without audio?

A Yes, yeah.

Q In other words, we didn't take the audio out, that's just the way it was created?

A Yeah, no, I did not do that.

Q Okay. And is there any dispute about whether or not it was intentionally removed or do you just believe there just was no audio?

A My best guess is that there's – that security camera does not pick up audio to begin with.

Q Okay. All right. We're not accusing anybody of tampering with it or anything?

A Oh, yeah, no, not at all.

Q Okay. And did you compile – let's talk about the movement video. Did you compile a set of videos in this case and basically put them on this thumb drive for me?

A Yes, I did.

Q All right. Can you just tell the jury, number 1, generally what timeframe you believe most of these videos would have occurred.

A So the videos – we did not receive them with any specific timestamp for

any of the camcorder videos, we got ranges in the discovery. They would be included in folders that said, like, "April, 2023" or something like that, and so I can guess and kind of pick – piece them together, also based off of kind of the stuff that's going on in Richard's cell and whatnot, like you can piece that together from reports that I've read, as well. And, I mean, I can only say with certainty that they're between the times he was at Westville, which is, you know, from November/early December to 13 months later.

Q Okay. So November of '22 to December of '23 are the bookends?

A Yeah, yeah.

Q So, with certainty, you can only say it's between those times; right?

A Yes.

Q Is the video that's on here – are there – can you look at the files and see when the files were at least modified or somebody had accessed the file?

A Yes, yeah.

Q Okay. And is that kind of helpful also in maybe determining more closely when the videos were created?

A Yeah. It puts at least like an endpoint, you know. A video can't be modified before it was made, so you know that, at least, came after.

Q Okay. And so then there's a second set of videos, which is an in-cell video; right?

A Yes.

Q And are those also on this thumb drive?

A Yes, they are.

Q And just to give the jury some context, how is the video generally – that's on this thumb drive, how is it generally – what's on here from a chronological

standpoint?

A From a chronological standpoint, there are videos detailing – I'm fairly certain it's 8 a.m. to 2 p.m. of the 15th of every day of every month Richard Allen was at Westville that we received in-cell security video for. The idea with that was to be consistent and pick one day that we have available for each month and just kind of show one selection of time from that day, on that day each month, so you can kind of see a progression of Rick's mental state, and then I also gathered video from April, May, June, July, that, you know, kind of coincides with what I would describe as the climax of Rick's mental state.

Q So the April, May, June, and July video, is that more consistent with like the things that Dr. Wala was reporting in the exhibits the State put in? That timeframe?

A Yeah, it's based off of those.

Q Okay.

A Yeah.

Q So we've got kind of a nice chunk chronologically from the time he was admitted to maybe end of July, and then there's some more detailed dates when some of these behaviors that were described earlier were exhibited in the cell?

A Yes, yeah.

MR. ROZZI: All right. May I approach, Judge?

THE COURT: You may.

Q I don't really need to approach with a thumb drive, I guess, but this thumb drive marked as XX, is this the thumb drive that has those two sets of videos on it?

A Yes.

MR. ROZZI: I move to admit XX, Judge. And I have a couple of master sheets that I – I say I, I don't want to take credit for it – that Max has prepared, Exhibit YY, let me – may I approach the witness with these two exhibits, Your Honor?

THE COURT: You may.

MR. ROZZI: -- before I ask for permission with XX?

Q Max, tell the jury what Exhibit YY and ZZ is.

A So just for – you know, to be detailed and to make sure this is all, you know, understandable, I made a sheet that details what each video is entitled and the file name that we received from the State, the date that file was modified, so, you know, the only kind of information I have available about when it could have been made, and the length of the video in time, basically.

Q Okay. And so that is YY; right?

A Yes.

Q And just to be clear: YY only pertains to the movement or the camcorder video, which is out of cell?

A Yes, yeah.

Q And then, what is ZZ?

A Yeah. ZZ is the same concept, but for the in-cell video. In this one, it would have the date, 'cause I actually have the dates for the in-cell security footage, and then it would have the selection of time in what I refer to as real time, which is the time that is occurring in the day in the cell, so there's – when you get these files in their native format, there's a slider at the bottom that tells you kind of when this is all occurring in a day. And, you know, to make these videos digestible, we decided to kind of condense them and speed up the video,

so you're not just watching, you know, hours upon hours upon hour upon hours of videos, and so next to the real time, which this one on – I'm referencing the first one here on this list – is 10 a.m. to 2 p.m. real time, which is four hours, but it's only 29 minutes and 26 seconds of video. They're also – I forgot to mention this, the camera only records movement in the cell, so sometimes if, you know, there's no one in the cell or Rick was completely still, there'd be nothing being recorded. It only starts recording as soon as he starts moving.

Q So do you believe that these two exhibits would be helpful for the jury in kind of following along as we play the video over the next few days or the next week or so?

A Yeah, yeah.

Q Was that the intention of creating them?

A Yes, that was.

Q And to give the Court a guide to also assist?

A Yes.

MR. ROZZI: I move to admit XX, YY, and ZZ.

DEFENDANT'S EXHIBITS XX, YY, AND *ZZ* OFFERED

MR. MCLELAND: Judge, can we have a sidebar, please?

THE COURT: Sure.

(Sidebar conference conducted.)

MR. MCLELAND: Judge, I'll object on relevance.

MR. ROZZI: Judge, first of all, obviously, Mr. Harshman himself came in here and provided opinion testimony that was based on his review of 700 phone calls, I think he said, hundreds of hours of video, he may have said more, forgive me I forget the raw number, tablet messages, all of the things that

Rick Allen has done while he's been at Westville and Wabash Valley. He generated opinions about his mental state based on all of those things. The State hasn't offered any of this up to corroborate any of these claims. I think that is significant. The video, as you know, the standard in Indiana is a two-pronged standard, one is that you are the determiner of whether or not the statements were voluntary; and number two, to the extent you make that determination, which you did here, the jury is the judge of the credibility of those statements. Clearly, the environmental conditions that existed at the time would impact his mental health, which would impact the credibility of the statements. So we believe they're relevant. And I believe, beyond that, that to not show them at this point would be misleading to the jury, and Mr. Allen has a Sixth Amendment right to present a defense, and the confessions are integral to this case, the State has put them forward and, with that in mind, Mr. Allen should have an opportunity to rebut that, all of which he believes can be done, at least in part, through these videos. I just want to make it clear that, with regard to the in-cell video, it – there is no audio, it's just the – I think we talked about this before, but it's just video, it's not that we removed it or anything, I mean Max just talked about that. It's just – that's why I think it's relevant.

MR. MCLELAND: And so the only thing (inaudible)?

MR. ROZZI: Max's testimony is, is that, number 1, the video itself, there's no timestamps on it, but he testified that he believes that these generally occurred in this April, May, June, and July period; and if you look at the dates modified on the master list, you can see that those are in those timeframes, but it's also relevant – any video at any time that he was at Westville is relevant because he began to endure those conditions in November of 2022, and the

impact of those conditions on him would be reflected in the video from day 1 to the last day, so I don't know that the timeframe matters, at least in the Defense's mind. My intention – just so the Court knows, mechanically, my intention today is just to show some of the movement video. I'm not gonna sit here and play the video on for five hours. I'll probably show an hour of the movement video and then stop it and we'll put a little bit more on later, so we're not getting into days of –

THE COURT: So the timeframe for all of these was April, June – April, May, June, and July, that's the extent of the camcording?

MR. ROZZI: Well –

THE COURT: Or you don't know the timeframe?

MR. ROZZI: -- I believe it's near those timeframes, again, because you can't – there's no timestamps on them, so, you know, we're working with the information we have. You can see when they were modified by either the DOC or the State, and I don't have my – I didn't bring –

THE COURT: What do you mean by modified?

MR. ROZZI: You know, like when they're pulling them off their system.

MR. MCLELAND: (Inaudible)

MR. ROZZI: We've also stipulated to the foundation.

MR. MCLELAND: I'm not – I can handle foundation, but (inaudible) testified that – implied we don't know when that was. I know that we had trouble (inaudible). The same thing we had with the pictures, they can't establish a time that the conditions that are being entered, I don't even know. I also have concerns about the other statements and their relevance. I haven't not viewed

that, I didn't see that.

MR. ROZZI: I offered these up to the State weeks ago, I delivered all this to him, and again, the – this is our case in chief, not a rebuttal issue.

THE COURT: No, I understand.

MR. ROZZI: And so I think his environment from November of '22, all the way to the end, is pertinent. I don't know that – we know that it's within the bookend periods, 'cause he's at Westville.

THE COURT: And I understand the point that you advance and that you want to make to this jury is that the conditions were (Inaudible) so the conditions could lead or the conditions led to untrue confessions, so I don't have any problem with you using the video as long as you can link it to the timeframes that relevant to the statements he made.

MR. ROZZI: Well, but we're saying that this – the environmental conditions that he endured from the beginning –

THE COURT: So you want to start in November until now?

MR. ROZZI: Well, that's the period of relevancy, I believe. But we have tried to pluck out only the ones from April, May, June, and July. There's a lot of them really, I mean, but they are from – we tried to plunk those out.

THE COURT: So how many hours of video are we talking about in this XX video offering?

MR. ROZZI: There's about – raw video, there's about two hours. I think there's about 20 clips. I have the numbers over there.

THE COURT: So you'd be showing the jury two hours of silent video?

MR. ROZZI: No, we're talking about the camcorder video.

THE COURT: I asked you about –

MR. ROZZI: Oh, I'm sorry.

THE COURT: -- video, not the audio, but the video that shows him in his cell.

MR. ROZZI: Oh, in-cell video. Can I go get my notes?

THE COURT: Yeah.

MR. ROZZI: Judge, so this is the master list for the in-cell video, and I did add this up at one point. I'm just gonna give you some general thoughts. I think, when I added it up, it was about 20 hours of total video between November of 2022 and December of 2023, and what our intentions were was to take from that video just the first like five or ten minutes of some of those clips, just – because it's pretty mundane; right? I think we had this conversation the other day. We don't want to show them five hours of him sitting in his cell.

THE COURT: And you've adjusted 20 hours down to?

MR. ROZZI: I need to do the math, I'm sorry. I guess I wasn't really planning on showing those today.

THE COURT: Oh, so you're not gonna publish these today?

MR. ROZZI: Well, just the camcorder was all I was gonna play.

THE COURT: Publish the camcorder. And I'm concerned with that, because I don't know if there's sound with those camcorders, anything he's saying would – and that's the other objection, a hearsay objection. That's why I was asking if there's speech between – if it was silent versus if there's audio.

MR. ROZZI: Well, but it's being offered up to show his state of mind, not being offered up to show the proof of the matter – or the truth of the matter –

THE COURT: I understand that.

MR. ROZZI: -- it's a state of mind issue.

THE COURT: It's still his statements.

MR. ROZZI: Yeah, but it's not – it's excepted from the hearsay rule because it's state of mind.

THE COURT: Not when it's offered by you. You are not the party opponent, they are the party opponent. The objection's hearsay, so –

MR. ROZZI: Well, they were also used –

THE COURT: -- you can show –

MR. ROZZI: -- for the purpose of medical diagnoses, the doctor said that she –

THE COURT: You can show – well, but there's an exception for – your stipulation, I saw something in there about medical – statements for a medical diagnosis, but you stipulated to that.

MS. DIENER: Correct. You said with exception to statements made for medical diagnosis.

THE COURT: You can use the video, but the audio you cannot play that, that is the concern. So if you want to just do the video, you can (inaudible) later for the audio (inaudible) but the video, I'll (inaudible)

MR. ROZZI: We just have to turn the volume down or something. I mean, I can't extract the audio from the video, we can just simply turn the volume down, which seems pretty practical. Why don't –

MR. MCLELAND: I would like to mention, too, Judge, that this long of a video, that what they're showing on these videos, that they show something different. Do they show the same thing over and over?

THE COURT: I don't know.

MR. MCLELAND: I guess least that's my objection.

MR. ROZZI: Well, they could have filed a motion in limine. I gave this stuff to them two, three weeks ago at least.

THE COURT: Okay. I mean, at that point, when the video has been played, if the objection is we're getting cumulative, that's the opportunity to do that.

MR. MCLELAND: So he's not gonna be able to play – I guess is the reason you're gonna play it to show his state of mind?

MR. ROZZI: My explanation is, is that the credibility of Mr. Allen's statements are clearly in question, and the environmental conditions that he was dealing with impact his mental health, which impacts his credibility.

MR. MCLELAND: So it's like you're telling me the entire time he's coerced?

MR. ROZZI: No, I didn't say that. Don't try to bait me into a bunch of other stuff. I said when he was at Westville.

MR. MCLELAND: Only to Westville. (Inaudible)

THE COURT: Well, potentially, but –

MR. MCLELAND: It's gonna be –

THE COURT: -- the issue right now is I will allow you to play the video, but just the video at this point, no audio, because it's a statement that's given by a Defendant offered by the same.

MR. ROZZI: Well, I think if that's the case, then I would ask for a – if we recess or pause maybe – I'm not sure what we have going on with other witnesses – 'cause I want to – I have it – I want to look at it and see what it looks

like without the audio.

THE COURT: Okay.

MR. ROZZI: I just – I don't want to –

THE COURT: So you don't want to play anything today? Or not quite sure?

MR. ROZZI: Yeah, I mean, I would – I'll withdraw – I'm not withdrawing it, but we'll re-call him.

THE COURT: Okay. So you've made a motion to admit XX, YY, and ZZ, and the objection to all of it is relevance, which you know the ruling. The other objection is to hearsay, which I'm sustaining on the camcorder video.

MR. ROZZI: Okay. And we may revisit it.

THE COURT: So that would be YY. Oh, that's the sheet.

MR. ROZZI: Yeah. So the video, the thumb drive itself is XX, and it has all of the videos.

THE COURT: It has every video, okay. So and as it relates to all the other, I'll sustain the objection.

MR. ROZZI: Very good. So what do we want to – I mean, I'm not sure, do we have any witnesses out here?

MS. AUGER: No.

MR. ROZZI: We don't have anybody? We're gonna take an early lunch. We can, obviously – well, we could probably get Mr. Heath here more quickly than what we'd asked.

MS. AUGER: Yeah.

MR. ROZZI: Around 11:10 probably, by –

THE COURT: 'Cause I don't have food for the jury until 12, and it's

10 after 11.

MS. AUGER: Okay. Could you give us maybe just five minutes to figure this out?

THE COURT: Yes.

MS. AUGER: Thank you. I'm sorry.

(Sidebar conference concluded.)

THE COURT: Ladies and gentlemen, we're gonna take a quick recess, rather than have you continue to sit over there waiting. While you're outside the courtroom, please, keep your minds open. Please don't form any opinions or conclusions about anything. And you may discuss the evidence, but please, only do that if all 15 of you are present and don't deliberate. Gentlemen.

THE BAILIFF: All rise.

(Jury out at 11:10 a.m.)

THE COURT: You may be seated. So I'm gonna – I'll show that you've made the offer on XX, which is the combined video/audio of the camcorder and the in-cell; and then the master sheets, YY and ZZ. The State has objected on relevance, which I've overruled. The State has then objected on hearsay, which I have sustained. So the audio portion is prohibited, but the video for the timeframes that we've discussed, from April to July, would be admissible. And then, I know you've got some witness concerns, so you've got about 15 minutes to figure out where we're at. You may step down.

THE WITNESS: Thank you, Your Honor.

THE COURT: You can go off the record, Jodie. Be back in 15 minutes.

(Off record at 11:12 a.m.)

(On record at 11:30 a.m.)

THE COURT: Okay. We are back on the record. Are we ready to proceed, Mr. Rozzi?

MR. ROZZI: Judge, yes. May we speak over here at the sidebar, please?

THE COURT: Certainly.

MR. ROZZI: Thank you.

(Sidebar conference conducted.)

MR. ROZZI: Judge, I think after talking, I think we believe that we have the right to offer up the audio, but we're willing to concede that you've kind of made your ruling on that already.

THE COURT: Um-hmm. (Affirmative response)

MR. ROZZI: The – you know, the video, to the extent that it's pertinent, our intention is to offer it up to demonstrate the environmental conditions that existed in Mr. Allen's atmosphere at Westville Correctional Facility, which again, between November of '22, December of '23, and specifically we have confined most of that, certainly with the camcorder video, to April, May, June. There are a couple references on this master list to some video that had been modified in the more-recent past, for example there's – like this one shows it's modified 9/9 of '24, camcorder video. I clearly know that that's not Westville – I mean, it's Westville video, but I clearly know that it was created well before this, it's just that it was file stamped as modified because somebody tinkered with it; do you understand what I mean? Likely somebody moved it –

THE COURT: Tinkered with it?

MR. ROZZI: Well, yeah, I mean in non-technical terms, somebody

took the video and clicked it and probably pasted it, and so it creates a new modified stamp on it. My point is, is that I'm willing to withdraw these that are outside of the April, May, June timeframe, and so we have a chance to go look at them and just make sure, although I know that they're most likely, 'cause I've looked at them a million times, but – so that way, we're within the scope.

THE COURT: Of April, May, June, and July?

MR. ROZZI: Well, really of November and into December –

THE COURT: November of '22 to December of '23?

MR. ROZZI: As it relates to the environmental conditions. But I would appreciate the Court – you know, we're trying to run afoul of opening the door –

MS. AUGER: Trying not to.

MR. ROZZI: Trying not to? Thank you.

MS. AUGER: We're trying not to.

MR. ROZZI: Trying not to run afoul of opening the door on all this other stuff, we're being cognizant of that, and yesterday, when we were arguing about, you know, whether or not – when we were debating whether or not we opened the door, the issue was whether or not was he confined to Westville or were we talking about Cass County. And I want to make sure the Court's willing to offer up a preliminary ruling so that we know that we're not, you know, gonna open the door for something that's not – you know, if we don't play the audio, we're not gonna open the door for something that's Cass County related, and so, you know, I just – I think that it's – that's a fair request on the Court, as long as we stay confined, which is consistent with your words from yesterday.

THE COURT: So this is Westville? We're not talking about Cass

County?

MR. ROZZI: No. I mean, there's no Cass County video on there, I'm just telling you that – because these dates are more recent, it just looks like it, but they're not.

MR. MCLELAND: Why are his environmental conditions relevant to this matter?

MR. ROZZI: Well, I've described that in great detail earlier, that, you know, certainly the conditions that a man is dealing with has an impact on his mental health, which in turn –

THE COURT: I've – I don't mean to cut you off, but I've already overruled on all these objections and I think it goes to the weight that the jury's gonna give these confessions, rather than the admissibility of the actual video itself, so they're gonna weigh that and they're gonna weigh in the conditions that are seeing as they listen – as they –

MR. LUTTRULL: Watch them.

THE COURT: -- listened previously to the statements.

MR. MCLELAND: These times are relevant to those things. The Cass County (inaudible)

MR. ROZZI: Because it's a prior act – what'd you say?

MS. AUGER: Other act.

MR. ROZZI: Other act. They're just putting in another act that has no –

THE COURT: Well, I understand, and I understand what you're saying, and certainly, if we start getting into anything – you know, the statements that he made are confined to this April through June of '23, so I if you get outside

of this video from June of '23, then you're talking about things that – particularly post-June '23, but nothing's –

MR. ROZZI: Yeah, I don't really dispute that, and frankly, I don't think we really have anything from post-June –

THE COURT: -- 'cause if you go post-June '23, then –

MR. ROZZI: Yeah, I don't –

THE COURT: -- you are opening the door to the State to say, "Okay. Well, then we would like to get into," whatever goes on that video.

MR. ROZZI: Yeah. I don't think that there – I'm pretty confident in the in-cell, we stopped in July.

THE COURT: The time is the issue.

MR. LUTRULL: I agree, Your Honor, that the time, but there's another issue, they talk about environmental conditions, having them talk about them, when the jury sees selective images of certain time periods that they've chosen to present –

THE COURT: Um-hmm. (Affirmative response)

MR. LUTTRULL: -- the environmental condition, that makes the environmental conditions at issue. We have the other video to show that it's not Westville, that it's happening – that the environmental conditions aren't the driving force of his behavior. That is part of our (inaudible)

THE COURT: That's a really fine line and a very fine point with regard to the issue and I don't know that we're there yet. And we may get there, I don't know, but we – we don't know that yet. (Inaudible)

MR. ROZZI: Yeah.

THE COURT: But remember the questions about (inaudible) that

you have all been presenting to them, so –

MR. LUTTRULL: We're –

MR. ROZZI: Well – oh, I'm sorry.

MR. LUTTRULL: Okay. And we're also concerned about the – what kind of argument could be made to the jury, arguments about what you're seeing and what you saw, and your emotions, and that's only one picture and those are accurate images, they're very selective images, and that open the door to other images that show a different side of Richard Allen.

THE COURT: Um-hmm. (Affirmative response) And if you call it that, then that – and you (inaudible)

MR. ROZZI: Yeah.

THE COURT: They're being presented to show their side of this. You have the video, as well, if you want to present your side of it, but I think we need to stay away from Cass County –

MS. AUGER: Yeah.

MR. ROZZI: We're just –

THE COURT: It's the timeframe that you've all agreed is not the most relevant to his statements.

MR. ROZZI: Yeah. I'm just – I'm – I appreciate that. I'm just – one of my concerns is, again, that the only times that we can – we can't say definitively that something's happened, you know, on April 9th of 2023. We – because the videos aren't timestamped.

THE COURT: But you have time – you have video from April the 20th –

MR. ROZZI: Yes.