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 14 of 22

Pages 1 to 250

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to the park another way?" You asked him that.

A If that's what you read accurately from the record, yes.

Q And reason you asked him that question was because he had told you earlier, as we just established, that he had headed eastbound on 300 North –

MR. MCLELAND: Well, I'm gonna object again, Judge. He's imputing facts into the question that are just not true.

THE COURT: Sustained.

MR. BALDWIN: He testified to that under oath just a second ago, Judge.

THE COURT: Your question is what he's objecting to, which is what I've sustained.

Q And then you asked Mr. Allen a second time – page 36, lines 19 through 25, you attempted a second time to find out from Richard Allen that he rode west.

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

THE COURT: Overruled.

A Page 36?

Q Yes, 19 through 25.

A Yes, I did. Should I ask – I should ask the question again – what was the question?

Q There wasn't. You attempted a second time to ask Rick whether he rode west, if he took another route of travel on February 13th?

A Yes, I did.

Q And ultimately, he told you that if he were going to the park, to the Monon High Bridge park, he would go through town; isn't that right? Page 37, line 18.

A That's not how I interpret what he's saying.

Q Well, you cut him off very quickly there, did you not? Richard Allen said, "If we were going there, we would go through town" and –

MR. MCLELAND: Judge, again, I object to the form of the question. He's reading the transcript into the record and I'm not sure that that's a proper way to use a transcript.

THE COURT: Sustained.

Q Words matter; would you agree?

A Yes.

Q Words in a report –

A Yes.

Q -- matter? Words on the stand matter; would you agree?

A Yes.

Q And especially when those words impact the timeline in a case like this.

A Is that a question?

Q Can words impact the way that a timeline is detailed or described in a case like this?

A Yes.

Q You told me – well, strike that. Richard took the scenic route when he was travelling that way. Is that true? Did you say – tell me that he took the scenic route when he travelled that way?

A That was my interpretation of what he said, yes.

Q Do you think if I asked you to look at your – that transcript of your test – of your October 13th, 2017, interrogation of Richard Allen that it would show that he said that?

MR. MCLELAND: Judge, I'm gonna object to the form of the question. He's – I'm gonna object to the form of the question, Judge.

THE COURT: Sustained.

Q Richard Allen also told you that he could have been driving his grey car on that day, didn't he?

A He did at the beginning, yes.

Q Did he change his mind by the end?

A I believe he did.

Q You believe – is that an interpretation or is that –

A Interpretation, yes.

Q You didn't tell the jury that on your direct examination, that, "Oh, Richard Allen also told me he might be driving his grey car", did you?

A I did not.

Q You also told the jury – and you looked at them as you did – it was weird that Richard Allen said, "If there's a picture taken with the girls' phone, it's not me." Remember testifying to that?

A I do.

Q But what you failed to tell the jury is that he was responding to your question, "Is that you?" Right?

A I think I mentioned that.

Q For your theory to work, Richard Allen's car had to be at the CPS lot between 1:30 p.m. and 4 p.m.; is that correct?

A I'm not sure if I understand the question, sir.

Q Your theory is that Richard Allen's car was at the CPS lot between 1:30 p.m. and 4 p.m.; right?

A That is what we believe, yes.

Q Was there anything in your investigation that contradicts that Rick's car was at the CPS lot between 1:30 and 4 p.m.?

A Not that I'm aware of.

Q You ever heard of a lady named Betsy Blair?

A Yes.

Q Does this look like a 1965 Mercury Comet to you?

A No.

MR. MCLELAND: Judge, I'm gonna object. He's asking him questions about evidence that has not been put into the record at this point.

THE COURT: Has it been introduced?

MR. BALDWIN: This – yes. This is – I'm sorry, this exhibit, we either marked it as 244 or 245.

MS. DIENER: Can we –

MR. MCLELAND: Judge, may we approach?

THE COURT: Yeah, come on up.

(Sidebar conference conducted.)

MR. MCLELAND: She was (inaudible) they'll just re-call Betsy Blair. (Inaudible)

THE COURT: Okay.

MR. BALDWIN: I'm not asking –

MR. MCLELAND: So that's my problem, Judge.

MR. BALDWIN: I'm not asking if Betsy Blair said that, I'm asking if that looks like it.

THE COURT: Well, you're implying, 'cause you said "Is this" – "Have

you heard of Betsy Blair?" And now you're introducing evidence. Whatever she's gonna testify to is not yet in evidence.

MR. BALDWIN: Well, Judge, I could also ask if it looks like a Corvette? I mean, I could ask a ton of questions. I'm asking if this – I'm asking if it looks like this. It's a yes or no.

MR. MCLELAND: I don't know (Inaudible)

THE COURT: Assuming facts not in evidence.

MR. MCLELAND: That's my problem. Once Betsy Blair testifies to that (inaudible). We don't know what she's gonna say at this point and what she testifies to.

THE COURT: Sustained.

(Sidebar conference concluded.)

Q Were you the law enforcement officer that was in charge of the evidence that was lost back in February of 2017?

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

THE COURT: Sustained.

MR. BALDWIN: No other questions.

THE COURT: Mr. McLeland.

RE-DIRECT EXAMINATION OF STEPHEN MULLIN

QUESTIONS BY MR. MCLELAND.

Q Investigator Mullin, when you were testifying on direct and I would ask you questions, were you giving me direct quotes from Richard Allen?

A Not necessarily.

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

THE COURT: Mr. Baldwin.

MR. BALDWIN: No, Judge. Thank you.

THE COURT: Does anybody on the jury have any questions for Investigator Mullin? Gentlemen.

(Sidebar conference conducted.)

MR. MCLELAND: I'm sorry.

THE COURT: No, you're fine. I think I said this before, I think jurors are reading our lips as we talk over here.

MR. BALDWIN: Oh, yeah.

THE COURT: "Did you investigate how many black Ford Focus 2016 vehicles were registered to anyone in the Carroll County zip codes?"

MR. MCLELAND: Good.

MR. BALDWIN: That's fine.

THE COURT: "Were you in an interview with Mr. Allen when he stated he didn't remember which way he took to the trails?"

MR. MCLELAND: Okay.

MR. BALDWIN: Yeah.

THE COURT: One more, one more, one more.

MR. BALDWIN: Oh, sorry.

THE COURT: That's okay. "Did you run registrations for other 2016 black Ford Focuses in Carroll County at the time of the homicide to find out who else might be" – is that kind of the same thing?

MR. MCLELAND: Kind of, yeah.

THE COURT: Yeah, it is exactly the same thing. This one is a follow-up: "If so, were there any?"

MR. MCLELAND: I'm okay if you want to ask that as a follow-up to the first one –

THE COURT: Yeah, yeah.

MR. MCLELAND: -- instead of waiting till the end.

THE COURT: "And if there was, did you contact those people in regard to their whereabouts on 2/13/17?"

MR. BALDWIN: Yeah.

THE COURT: Okay. "Did you look to see if his other car was on the" – what is an HH?

MR. MCLELAND: Hoosier Harvestore.

MR. BALDWIN: Hoosier Harvestore.

THE COURT: -- Hoosier Harvest [sic] video on 2/13?"

MR. BALDWIN: Yeah.

MR. MCLELAND: I'm good with that.

THE COURT: Okay.

MR. BALDWIN: Is that it?

THE COURT: Yep.

(Sidebar conference concluded.)

JUROR QUESTIONS OF STEPHEN MULLIN

QUESTIONS OF THE JURY, READ BY THE COURT.

Q Sir, were you in an interview with Mr. Allen when he stated he didn't remember which way he took to the trail?

A I was in the interview, the – could you repeat the question, please.

Q Were you in an interview with Mr. Allen when he stated he didn't remember which way he took to the trail?

A Yes. He did say that once.

THE COURT: Mr. McLeland?

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

THE COURT: Mr. Baldwin?

FOLLOW-UP EXAMINATION OF STEPHEN MULLIN

QUESTIONS BY MR. BALDWIN.

Q Would the videotaped interview show that, what you just said, that he said he didn't remember?

A It would show that, yes.

MR. BALDWIN: No other questions.

JURY QUESTIONS OF STEPHEN MULLINS

QUESTIONS OF THE JURY, READ BY THE COURT.

Q Did you investigate how many black Ford Focus 2016 vehicles were registered to anyone in the Carroll County zip codes?

A I did not.

THE COURT: Any follow-up, Mr. McLeland?

MR. MCLELAND: No, Your Honor.

THE COURT: Mr. Baldwin?

MR. BALDWIN: No.

Q Did you look to see if his other car was on the Hoosier Harvest [sic] video on 2/13/17?

A Yes; yes, we did.

THE COURT: Mr. McLeland?

FOLLOW-UP EXAMINATION OF STEPHEN MULLIN

QUESTIONS BY MR. MCLELAND.

Q Did you see it on the Hoosier Harvestore video on February 13th of 2017, his other vehicle?

A No.

Q Did you see any other vehicles on the Hoosier Harvestore video on February 13th, 2017, matching the description of a 2016 black Ford Focus?

A I did not.

Q Meaning you didn't see any vehicles in addition to the one you testified about at 1:27 p.m. –

A Correct.

Q -- correct?

A Correct.

MR. MCLELAND: No other questions, Judge.

THE COURT: Mr. Baldwin?

MR. BALDWIN: No, thank you.

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

THE WITNESS: Thank you.

THE COURT: And you may call your next witness.

MR. MCLELAND: Your Honor, the State of Indiana would call Sheriff Tony Liggett, please.

(Witness sworn.)

DIRECT EXAMINATION OF SHERIFF TONY LIGGETT

QUESTIONS BY MR. MCLELAND.

Q Will you state your name, please.

A Tony Liggett.

Q And will you spell your name for the record, please.

A T-O-N-Y L-I-G-G-E-T-T.
Q And how are you employed?
A I'm the Carroll County Sheriff.
Q And how long have you been employ – or how long have you been employed as a law enforcement officer in total?
A Twenty-three years.
Q And do you have to go through special education or training to be a law enforcement officer?
A You do.
Q Can you tell me a little bit about that.
A I've been at the Indiana Law Enforcement Academy, all law enforcement officers in Indiana are required so many hours minimum of training. I've done numerous investigation trainings, basic firearm trainings, things like that.
Q Do you continue on with training on a yearly basis?
A Yes.
Q I want to take you back to 2017; at that time, were you employed with the Carroll County Sheriff's Department?
A I was.
Q And what was your role during that time?
A I was a detective.
Q And were you involved in an investigation into the murder of A.W. and L.G.?
A Yes.
Q And did you participate in that investigation?
A I did.

Q I want to fast forward to September of 2022; what happened during that time?

A Kathy Shank brought me a tip lead, a narrative from Lieutenant Dan Dulin, for me to review.

Q I'm gonna show you what have been marked as State's Exhibit 232; is this a tip lead that Ms. Shank gave you?

A Yes.

Q And you recognize that tip lead; is that correct?

A Yes.

Q And once you had an opportunity to review that tip lead from Ms. Shank, why did that stick out in your mind?

A It really stuck out in my mind. I didn't – I wasn't aware that anyone had seen Railly Voorhies, Breann Wilber. We'd been looking to talk to that person that had passed them on the trails that day.

Q And why was it important for you to talk to that person that passed those three girls on the trail that day?

A We believed that was the Bridge Guy.

Q So, Sheriff Liggett, you were a part of the investigation when it began back in 2017; is that correct?

A Yes.

Q And you were familiar with the evidence and information that had been gathered during that investigation; correct?

A Yes.

Q And so you mentioned some names, Railly Voorhies, Breanna [sic] Wilber; you were familiar with those two individuals?

A Yes.

Q And what information from the investigation did you have about those two individuals?

A I'm sorry, say that one more time, I'm sorry.

Q What information, from your participation in the investigation, did you have about Breanna [sic] Wilber and Railly Voorhies?

A We knew that they were out on the trails, we generally knew the – what time they were out on the trails, and that they had passed a male, as they were leaving the trails, they had passed a guy coming in.

Q And were you familiar with pictures that'd be – that had been taken by one of those three girls?

A Yes.

Q I'm gonna show you what's been marked as State's Exhibits – on State's Exhibit 211; are you familiar with those pictures in that exhibit?

A Yes.

Q And have you seen those pictures as part of the investigation?

A I have.

Q And were you familiar with the timestamps on those pictures?

A Yes.

Q And the last picture, what is the timestamp?

A 1:26 p.m.

Q And why is that information important?

A Shortly after that picture was taken, that is when the girls passed the guy walking into the trails.

Q And through your investigation, do you know where on the trails the girls

passed the individual that they ran into?

A I do.

Q Can you tell me where?

A There's a bench close to – closer to the Freedom Bridge, the blue bridge, and it was – the picture was taken at that bench.

Q And if you would, could you approach the map and show us on the map where you're talking about. And this looks to be perhaps State's Exhibit 6, I believe. Can you show where, on that map, the girls ran into the male individual that they described.

A It'd be right in this area. (Indicates)

Q Okay.

A Right in that area. (Indicates)

Q Okay. Go ahead and have a seat back at the witness stand, please. And you're aware – or were you aware – well, let me back up. You also are familiar with an interview with Betsy Blair; is that correct?

A Yes.

Q And what information – I'm gonna show you what's been marked as State's Exhibit 212; are you familiar with that?

A Yes.

Q And what is that?

A It is Fitbit information from Betsy Blair's Fitbit that showed when she was out there walking.

Q And was she out on the trail that day?

A Yes.

Q And what time was she out on the trail?

A Based on the Fitbit and we also had Hoosier Harvestore video, she was on the video at 1:46 going to walk and then she was leaving at 2:14.

Q And did she see anybody on the trail?

A She saw one male.

Q And where was that male?

A On the first platform of the Monon High Bridge.

Q You're also familiar with the evidence collected from Sarah Carbaugh; is that correct?

A Yes.

Q And you're familiar that she also saw a male on that day?

A Yes.

Q And can you describe that.

A Sarah, at 3:56, she's on the Hoosier Harvestore video going east, going away from Delphi, and there's a Mears residence, a parking area that some people use to park. She was just past that, then there's a cemetery, and the male was walking towards Delphi, west, on the north side of the road.

Q And you're also familiar, through the investigation, of evidence that was collected at the crime scene, and what I mean by crime scene is where the two bodies – where the bodies of the two girls were found; correct?

A Correct.

Q And specifically, are you familiar with a bullet that was found there?

A Yes.

Q Can you tell me about that bullet.

A It was a .40-caliber Winchester bullet.

Q Are you also familiar with L.G.'s cell phone?

A Yes.
Q And where was it found?
A Underneath A.W.
Q And what information were you able to gather, at least in part, from the cell phone?
A I watched the video.
Q And what did the video depict?
A A man in a – what appeared to be like a blue jacket and blue jeans walking behind A.W.
Q And the man walking behind A.W., what did you commonly refer to him as?
A Bridge Guy.
Q Now, you've seen the original video from the cell phone; is that correct?
A Correct.
Q You've also examined – well, have you examined that video in other formats?
A Yes.
Q Can you tell me about that.
A There are enhanced formats of that, there's enhanced audio, there's enhanced video. One of the ones that I've watched, it stabilizes the video and keeps everything upright, so as the phone's moving this – the way they enhanced it was they kept everything upright, as if the phone didn't necessarily move.
Q What else is particular about that enhanced video that you watched?
A At one point, it pauses and it zooms in on Bridge Guy and then it pulls back.

Q And is that a video you've watched several times?
A Yes.
Q And is it video – and does that video contain the same information as the original video?
A Yes.
Q And again, you said it's enhanced in terms of – what was that? – it's stabilized?
A Yeah, stabilized.
Q And it keeps things upright?
A Correct.
Q You were able to examine that video before court today; is that correct?
A Yes.
Q And you saw that I put it on a thumb drive; is that correct?
A Yes.
Q And the video that's on this thumb drive is the video you're referring to; is that correct?
A Correct.

MR. MCLELAND: Judge, the State would move to admit what's been marked as State's Exhibit 246.

STATE'S EXHIBIT 246 OFFERED

MR. ROZZI: No objection.

THE COURT: All right. Without objection, 246 is admitted.

STATE'S EXHIBIT 246 ADMITTED

MR. MCLELAND: Judge, this may take a second, but I'd ask to be able to play this for the jury.

THE COURT: You may.

STATE'S EXHIBIT 246 PUBLISHED BY PLAYING

Q And that is the video you viewed; is that correct?

A Correct.

Q How many times do you think you viewed that video?

A Hundreds of times.

Q Have you viewed it on different devices?

A I have. I've listened to it on my laptop, I've listened to it with external speakers. The best way that I listened to it is with the headphones on.

Q And why is that the best way to listen to it?

A It cuts out all the noise, anything – just ambient noise around you, as well, so you can hear things better.

Q And when you've listened to this video and viewed this video, have you formed an opinion about what is said in the video?

A Yes.

Q And after listening to the video and forming that opinion, can you tell the jury what you hear in the video?

A So it – when the video starts, the first words that I hear A.W. say as she's walking across the bridge is she says, "Is he right there – is he right here?" Next, A.W. says, "Don't leave me up here." And then L.G. starts talking about, "See, this is the path." And then her tone of voice changes and she says – kind of whispers, "That be a gun." And then she goes on to say that, "There's no path here, we have to go down this way." And then you hear a male's voice say, "Guys." They respond with, "Hi." You hear a gun rack –

MR. ROZZI: Judge, I'm gonna object. He's inserting facts that are

not in the evidence. I think that's mischaracterizing the evidence.

THE COURT: Sustained.

Q Once you hear –

MR. ROZZI: Move to strike that comment from the record. Sorry, Mr. McLeland.

MR. MCLELAND: It's okay.

THE COURT: Strike it.

MR. MCLELAND: Just to make sure I'm correct, Mr. Rozzi, just the statement about the gun?

MR. ROZZI: Yes.

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

Q After you hear the male in the video say, "Guys," what do you hear next from the male?

A "Down the hill."

Q And you had all this information as of September in 2022; is that correct?

A Correct.

Q And then this new piece of information is brought to you by Ms. Shank that involved a male on the trail; is that correct?

A Correct.

Q Okay. After you looked at that lead sheet, what did you do next?

A I called the prosecutor investigator, Steve Mullin, and told him what we had located.

Q Did you attempt to do any research on Richard Allen?

A Yes, we did research on Richard Allen.

Q And what did you find?

A One of the things we were looking for was whether or not he owned any – what vehicles belonged to him.

Q And what vehicles did you find that were registered to Richard Allen?

A A 2016 Ford Focus and a 2006 Ford 500.

Q Did you find any information about where he was employed?

A Yeah, we learned he was employed at CVS in Delphi.

Q So with that vehicle information and his place of employment, what did you do next?

A I went to CVS and found the vehicle and took a picture of it.

Q I'm gonna show you what has been marked as State's Exhibit 244 and 245; are those the pictures – two of the pictures that you took at CVS?

A Yes.

Q In those pictures, the vehicle, is it pulled straight into the parking space or is it backed in?

A Backed in.

Q The fact that it's backed in, did that spike your interest?

A Just that the people that saw the vehicle at the old CPS building said that it was backed in to the parking place in an area that people didn't normally park.

Q After you had that information, what did you do next?

A Again, just more investigation on who Richard Allen was, what he did. We learned he had a lifetime handgun permit.

Q Did you review video from the Hoosier Harvestore?

A We did. We did.

Q And did you compare the pictures that you took at CVS to vehicles you saw passing on the video of the Hoosier Harvestore?

A Yes, we did.

Q And were you ever able to find on that video a vehicle that matched the description of Richard Allen's vehicle?

A Yes, we did.

Q What key aspects did you look at in that video that led you to believe it matched the description of Richard Allen's vehicle?

A Just this – the general outline of the vehicle on the video. You could see daylight through the wheels, the type of wheels that it had on it. You could see through Richard Allen's vehicle, as well.

Q After you did that, did you make contact with Richard Allen?

A We did.

Q And did you interview him?

A We did.

Q He – we went to his house and asked him to come over and do an interview with us about this case.

Q And what did he say during the interview?

A He admitted that he was on the trails on February 13th, 2017. He changed his time. He had told Lieutenant Dan Dulin that he was there from 1:30 to 3:30. When we interviewed him, he changed his time to 12 noon to 1:30 p.m. He described that he had went home and got a jacket, he owned a blue or a black Carhartt jacket, and went back out to the trails. We asked him about any kind of head covering that he had, and he said that he kept a skull cap in the pocket of his jacket.

Q Did he inform you where he parked when he went to the trails that day?

A He was kind of wishy washy about where he parked, but he said he did

not park at Mears farm, so across from that farm on 300 North. Eventually, he basically said he probably had parked at the old CPS building, they had parked there before.

Q And did he tell you which route of travel he took once he was on the trails?

A He went towards Monon High Bridge.

Q Did he tell you that he ran into anybody while he was on the trail?

A Yeah. He talked about seeing three girls on the trails that he had passed close to the Freedom Bridge.

Q Did he describe those three girls?

A I don't remember if he described them in that interview, but he did to Dan Dulin.

Q Did he tell you which way the girls – which direction on the trail the girls were traveling?

A They were going towards Freedom Bridge, so leaving High Bridge trail.

Q That would be in the opposite direction he was traveling?

A Correct.

Q Did he inform you if he saw anybody else on the trail?

A He said that he saw nobody else on the trail.

Q Did he inform you what vehicle he was driving that day?

A He said that normally, when he went out of town – so like he explained that he went to – if he was gonna go to Lafayette, he would drive that vehicle, as the 2006 Ford 500 wasn't as reliable as this newer vehicle. He had went to see his mom that morning in Peru/Mexico, Indiana, so it was possible that he drove that car.

Q When you say "that car", which car do you mean?

A The Ford Focus, the 2016 Ford Focus.

Q Okay. And did he state whether or not he went out on the High Bridge that day?

A He did.

Q And what was his statement?

A He stated that he went out on the first platform to look at fish.

Q Did you ask him if he owned any firearms?

A I don't think we asked him there, but when we were at his house and invited him to come and speak with us, we were in his garage and he told a story, a recent story, about there was someone in his yard and he took his gun and went outside to confront them or see what they were doing, something along that lines, and it turned out it was a police officer, so we knew that he had a gun.

Q After the interview was over, what did you do next?

A We applied to get a search warrant.

Q And did you search Richard Allen's home?

A We did.

Q Did you participate in that search?

A Yes, I did.

Q You found several items in that search of the home; is that correct?

A Correct.

Q There was one significant – or there was one item in particular – what item do you want to draw the jury's attention to?

A It was a Sig Sauer handgun, .40 caliber.

Q And why is that important?

A The lab had told us –

Q I don't want you telling me what the lab told you, but why is it important that it's a .40-caliber Sig Sauer gun?
A That was the same caliber of the bullet that we found at the scene.
Q When you mean at the scene, what do you mean?
A Between the girls.
Q Between the bodies of A.W. and L.G.?
A Correct.
Q You also participated in a search of the master bedroom in the home; is that correct?
A Correct.
Q And you found other ammunition; is that correct?
A Correct.
Q Can you tell me about that.
A We found another .40-caliber Winchester round in a keepsake box, hope box, it was a box that I saw there was some pictures, there appeared to be a letter, a keepsake box.
Q Where was this box located?
A I believe it was on his dresser.
Q And was there only one round of ammunition in that box?
A Correct.
Q And it was a .40-caliber Winchester; is that right?
A Correct.
Q Was that the same brand as what was found at the crime scene?
A Yes.
Q Was there other .40-caliber ammunition found in the home?

A There was.
Q Tell me about that.
A It was the brand name Blazer, so it wasn't Winchester, but it was Blazer .40-caliber.
Q Did you find any other .40-caliber Winchester ammunition in the home besides the one round in the hope box?
A No.
Q Did you find clothing in the home?
A We did.
Q Did you find any clothing that is significant to this investigation?
A Yeah. We found a blue Carhartt jacket.
Q And where was that found?
A I believe it was in his – in the main entry closet.
Q The items that you found in the home, did you send those to the lab?
A We did.
Q And why did you do that?
A They were – they could compare the bullet that they had that we found at the scene to the gun that we found in Richard Allen's house.
Q And so the gun that you found was sent to the lab; is that correct?
A Correct.
Q I want to back up just a little bit, 'cause I forgot to ask you an omitted question. Where did you find the .40-caliber Sig Sauer gun?
A It was in like a nightstand right beside the bed.
Q Was there any indication – this may be an unfair question. Is there any indication whose side of the bed it was found on?

A There was clothing on the floor on that side of the bed that belonged to Richard.

Q Was it male clothing?

A Yes.

Q How did you know that?

A Well, it was like CVS clothing I believe.

Q Okay. After you completed the search of the house, did you run the information through the – for the gun through any kind of database?

A Yeah, we did an ATF trace on the gun.

Q And when you do an ATF trace, what information do you get back?

A The owner information, where it was purchased, who it's registered to, things like that.

Q And did you run the information for the .40-caliber Sig Sauer gun that you found in the nightstand?

A I did.

Q And who did that gun return to?

A Richard Allen.

Q Did it also give you information on who owned the gun prior?

A It showed he was the only owner of the gun.

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

THE COURT: Mr. Rozzi.

MR. ROZZI: Thank you, Judge.

CROSS EXAMINATION OF SHERIFF TONY LIGGETT

QUESTIONS BY MR. ROZZI.

Q So, Mr. Liggett – Sheriff Liggett, you were the – in October of 2022, when you were interviewing – started interviewing Mr. Allen, you were a detective; is that right?

A Correct.

Q Or were you the chief deputy?

A Yes, I was the chief deputy at that time.

Q Second in charge?

A Correct.

Q And you were in an active election at that time, weren't you?

A Yes.

Q And, in fact, you had survived a primary election in May; right?

A Correct.

Q But you were still in a contested race in November?

A Correct.

Q And this – these interviews took place in October?

A Correct.

Q And you were working on this case as part of the Unified Command; is that right?

A Correct.

Q And so you had been working on this case during the time, I presume, that you decided you were gonna run for sheriff?

A Correct.

Q And there's a pretty big raise from the deputy's position up to the sheriff's position, isn't there?

MR. MCLELAND: Judge, I guess I would object about the relevance

about what the pay scale is between the two.

THE COURT: How's it relevant?

MR. ROZZI: The relevance is, is that it has a tendency to prove that he would have benefitted from an arrest in this case right before the election.

MR. MCLELAND: Judge, is – I guess is the implication that the Defense is making that he made an arrest to better his position in the election? Based on what evidence?

MR. ROZZI: Based – I'm sorry.

THE COURT: Based on what evidence is the question.

MR. ROZZI: The implication is, is that he was going to benefit from an arrest in this case in that election.

THE COURT: Overruled.

A Could you ask the question again.

Q How much more do you make as a sheriff than you do when you're a chief deputy?

A Probably about $50000.

Q Double, basically?

A Yeah.

Q Did you ever, for a minute, think about how an arrest of a suspect prior to that election would impact your chances of winning, ever for one minute?

A It wasn't – it had nothing to do with me, it was about two little girls that were murdered.

Q Did you ever think for one minute about how that arrest might have impacted –

MR. MCLELAND: Objection: Asked and answered.

MR. ROZZI: He didn't answer my question.

THE COURT: He did. Sustained.

MR. ROZZI: May I continue?

THE COURT: Yes.

MR. ROZZI: Thank you.

Q So we've talked about search parties. You know what search parties are; right?

A Yes.

Q And you agree that they're – on the afternoon of February the 13th, 2017, that there was a search party that was, essentially – there were search parties that were, essentially, sent out to the High Bridge area?

A Correct.

Q And that included many areas around the bridge; right?

A Correct.

Q And that involved some laypeople; correct?

A Laypeople, is that what –

Q Yes.

A Yes, correct.

Q Some of the local town residents; right?

A Correct.

Q And some law enforcement officers?

A Correct.

Q And other mutual aid providers; right?

A Yes.

Q And that started I think, from what we heard, maybe around five o'clock;

does that sound about right?

A I think it was a little bit after, but yes.

Q And that search was expanded that afternoon or that evening, wasn't it?

A Yes.

Q And at some point, there were dozens and dozens of people out there assisting, weren't there?

A There were a lot, yes.

Q The fire department was deployed; is that right?

A Correct.

Q Mr. Sterrett I think and his team?

A Correct.

Q And these teams were dispatched in all areas around that bridge, weren't they?

A Yeah, as far as I know, yes.

Q There was actually a command post set up on the south side of the bridge on that private lane, wasn't there?

A No.

Q Well, yeah, I'm probably using the wrong words, that means something to you. Do you agree that they set up some of the emergency units down there on the Weber lane, on the south side of the bridge?

A No.

Q Lighting and things like that?

A No.

Q You weren't familiar with that?

A No.

Q Okay. And that went on until at least midnight; is that right?
A Yeah, something right around that area, yes.
Q And there's a man in town named Carl Abbott; right?
A Correct.
Q He owns the funeral home down the street?
A Yes.
Q And at the time, back in 2017, he lived on the – whatever 300 North would be running east, he lived down that road; right?
A Correct.
Q That road, 300 North, curves to the south just a bit when you get past the cemetery; is that correct?
A Correct.
Q And is it still 300 North?
A Yes.
Q Okay. And does Mr. Abbott live in that area somewhere?
A I don't know if he still does, but he did, yes.
Q Right. And the search in this case, on the 13th, actually extended as far down as behind his house, didn't it?
A I don't know.
Q Are you aware that there were people searching in the field behind his house?
A I'm not clear on that, no.
Q Now, let's talk about this crime scene, we've talked about this a little bit, but you're aware of the phrase "crime scene integrity"; right?
A Yes.

Q And do you acknowledge that, early on in this case, there were some breaches of integrity at that crime scene?
A No.
Q Some of the photos got out; right?
A When are we talking about?
Q 2017, very early in the investigation.
A Nothing's coming to mind.
Q Okay. Are you aware that there have been various leaks in the communication about this investigation?
A Yeah, there was some information that got out, yes.
Q And at one point, I asked you if you had directed other law enforcement officers not to talk about the facts of this case while the investigation was going on, and you told me you never issued any kind of a gag order, did you?
A No, I don't think so.
Q It's a small town; right?
A It wouldn't have been my place to issue a gag order, so to speak.
Q You were the – were you a detective back in '17 or were you the chief deputy?
A I had just become a detective in 2016.
Q How many other detectives are there in the department?
A One.
Q Anybody else on the department, that you're aware of, tell the rest of the officers, "Don't talk about this case"?
A Not to my knowledge.
Q And at that crime scene, we talked about the sticks that were on the girls;

is that right?

A Yes.

Q And you thought maybe they were used for concealment, that was your explanation for them; right?

A Correct.

Q But you would agree with me that whoever did that did a pretty poor job of concealing them, didn't he?

A Nobody saw them.

Q Well, the sticks weren't covering their bodies, were they?

A But nobody saw them.

Q But the sticks weren't covering their bodies.

MR. MCLELAND: Objection: Asked and answered.

THE COURT: Sustained.

Q Now, Sheriff, let's talk about Betsy Blair; are you familiar with her?

A Yes.

Q Actually, you mentioned earlier that – Mr. McLeland asked you about the fact that you were aware of other various aspects of this investigation; right?

A Correct.

Q And one of those is, is that you were aware of what Ms. Blair had said and what she saw that day?

A Correct.

Q And Ms. Carbaugh I think you mentioned earlier; is that right?

A Correct.

Q And Bre Wilber?

A Correct.

Q And Railly Voorhies?
A Correct.
Q And at some point in September or October of 2022, you decided you were gonna seek a search warrant for Mr. Allen's residence; right?
A Correct.
Q Whiteman Drive, 1967 I think.
A I believe you're correct, yes.
Q And that search warrant's something you do on occasion as a law enforcement officer; right?
A Yes.
Q And that search warrant basically, for those on the jury that aren't really educated about this, is, essentially, kind of like an affidavit, where you swear to certain facts and you offer that up to a judge; right?
A Correct.
Q And you did that in this case?
A Yes.
Q And that search warrant, those facts, are what the judge would rely on to determine whether or not the warrant should be issued and you could go into somebody's home, like in this case; right?
A Correct.
Q And in this particular case, part of your search warrant was focused on – well, the biggest part of your search warrant was focused on the timeline that we've been talking about; right?
A Correct.
Q And in your timeline, you have articulated facts about what each of these

witnesses saw based on their statements on the dates in question; right?

A Correct.

Q When's the last time you looked at the affidavit for the search warrant?

A Within a week.

Q A week ago or so?

A Within this week, yeah.

Q Okay. And would you agree with me that one of those witnesses that you discussed in your search warrant was Bre Wilber?

A Correct.

Q And isn't it accurate to say that you never offered up any information about a man being tall and muscular, as Bre Wilber described?

A I don't specifically remember what I put in there from Bre Wilber.

Q Would it help me to hand you your probable cause affidavit?

A Yes, sir.

MR. ROZZI: May I approach, Judge?

THE COURT: You may.

Q Let me direct your attention, if you would – it's kind of informally labelled down here, Sheriff – page 3 of 8.

A Page 3?

Q Yeah. They're marked on the left side. They're kind of cut off. The top of that page – I'm gonna let you read this first, before I ask a question, but the top of that page, you'd agree with me, that actually the first letters are R.W.; right?

A B.W.

Q Or B.W.

MR. MCLELAND: Judge, while he's doing that, may we approach?

THE COURT: Yeah.

(Sidebar conference conducted.)

MR. MCLELAND: Judge, I'm not sure what's developing, I'm not real sure where he's going, I'm trying not to stop him prematurely. I think he's gonna try to challenge the validity of the search warrant. This has already been addressed by the Court.

THE COURT: Um-hmm. (Affirmative response)

MR. MCLELAND: That's my concern.

MR. ROZZI: Credibility of the witness is always in question, obviously, and he's sworn to facts that supported a search warrant or anything involved in this case, and I'm able to impeach him on those statements.

MR. MCLELAND: I disagree. He's trying to say that this backs up the search warrant – that the search warrant's not valid, he's trying to impeach him. For this search warrant to be found invalid, you have to – he's trying to impeach him. He's trying to imply he lied on the search warrant, "We know you lied." For the information to impeach – the search warrant was found to be valid by this Court.

MR. ROZZI: Judge, the purpose of the cross examination in this regard is to prove that the witness statements are also inconsistent. If you've got he reporting one thing and the witnesses are reporting another, then it goes to the credibility of the witnesses, as well. I already know that you – the warrants, we've already challenged that, that's –

THE COURT: Yeah.

MR. ROZZI: -- done. This is about impeachment, this is about credibility, and it – it's not only about his credibility, but the credibility of those

other witnesses.

THE COURT: Did you challenge the other witnesses with that?

MR. ROZZI: Well, I'm challenging them through this witness.

MR. MCLELAND: I disagree with that, Judge. I don't think challenging inconsistently (inaudible)

MR. ROZZI: It's his sworn statement, it's just like an affidavit, it's what it is.

THE COURT: I understand, but you kept asking about the statements that are contained within that, not about (inaudible) complete that. Or are you trying to impeach the witness?

MR. ROZZI: I'm not arguing with that.

THE COURT: Well, then what are you arguing?

MR. ROZZI: I told you, I'm using this to impeach the other witnesses.

THE COURT: You're using this to impeach –

MR. ROZZI: Yes.

THE COURT: -- other witnesses –

MR. ROZZI: The lack of –

THE COURT: -- through him?

MR. ROZZI: Yeah.

THE COURT: That's improper impeachment. You can impeach those witnesses, not him through this.

MR. ROZZI: I think I can point out the discrepancies that's relevant. The –

THE COURT: But you're trying to impeach him, when those aren't

his statements, you're trying to impeach the evidence. You didn't confront them with this statement. That's proper impeachment, not –

MR. ROZZI: You mean with this warrant?

THE COURT: Yeah.

MR. ROZZI: Well, you wouldn't allow me to.

THE COURT: You didn't try.

MR. ROZZI: All right. Okay.

(Sidebar conference concluded.)

THE COURT: I'll sustain your objection.

MR. ROZZI: Thank you, Judge.

Q Sheriff Liggett, did you report to the judge in this case that Bre Wilber described the man as being muscular?

MR. MCLELAND: Judge, I'm gonna object, same objection as we did up at the sidebar.

THE COURT: Sustained.

MR. ROZZI: I will continue.

Q Sheriff Liggett, let's talk about this Hoosier Harvestore video.

A Okay.

Q You're aware that there was a video camera at the Hoosier Harvestore?

A Yes.

Q And you're aware of the general location of that camera?

A Yes.

Q And that camera was facing 300 North; is that correct?

A Correct.

Q And you're aware that Ms. Carbaugh described –

MR. ROZZI: Max, would you put that map up, please.

Q You're aware that Ms. Carbaugh described –

MR. ROZZI: May I approach, Judge?

THE COURT: Yes.

Q -- that Ms. Carbaugh described that she saw a muddy guy and a bloody guy walking east on – west on 300 North; is that right?

A Correct.

Q And I'm gonna let them pull this up here. Sorry, I'm not a techie guy, I'm sorry.

MR. ROZZI: Thank you, Max.

Q And so – and if I could assist – can you see the map from here?

A Yes.

Q You're aware that Ms. Carbaugh indicated that she saw this person walking west on 300 North; correct?

A Correct.

Q Somewhere between the cemetery and the Mears connector; correct?

A Correct.

Q And there's only one video camera out there that you're aware of; right?

A Correct.

Q Did you ever look to see if there was any security cameras on the back of the Hoosier Harvestore? Did you ever ask Mr. (inaudible)?

A I did not, no.

Q Okay. Because this camera we're talking about here, it's up there on the front, kind of the southwest corner; right?

A Correct.

Q Of this structure here, there's several storage units that extend northward; right?

A Yes.

Q I mean, just to give the jury an idea – 'cause you've been out there, I'm assuming; right?

A Yes.

Q I mean, what do you – the distance from the front of this Hoosier Harvestore to the back, what, a hundred yards or so maybe?

A I think that's fair.

Q Like a football field or so?

A Sure.

Q And then, there's some other – there's some area back here were there's some storage stuff, property behind the Harvestore? Like another lot?

A That I don't know about.

Q You see it here on the image?

A I see it, yes.

Q All right. So this individual that was – she described as walking west on 300 North should have been seen on that security camera if that individual would have continued toward the CPS lot, a pretty simple conclusion to draw; right?

A Correct.

Q There's no individual on the CPS video; is that right?

A There's no individual on a CPS –

Q I'm sorry, CPS. On the Hoosier Harvestore video.

A Correct.

Q So in other words, you just don't see anybody walking by?
A Correct.
Q So there's only really two options at that point, maybe three; right?
A Correct.
Q That individual would have had to either reroute south, back into the woods; correct?
A Correct.
Q Or maybe we can get – maybe southwest kind of towards the Mears connector or the back of the Mears connector; right?
A Correct.
Q What we would call the junction here where the trail and the Mears connector meet?
A Correct.
Q Or that individual could have gone north through this open field; right?
A Correct.
Q Or north through this farm property?
A Correct.
Q There were people living at the Mears farm at the time, weren't there?
A No.
Q These was nobody living in that home at the time?
A No.
Q Was this an active farm?
A I believe it was an active farm, but I don't believe there was anybody living there.
Q They were using it, using that farm?

A It was an – I know there was a farm, they kept some of their farm stuff there. How active? I don't know, but –

Q Okay. And so, basically, then whoever that person was, let's just say they took this option here, which is the southwest option down towards the Mears connector to the trail, there were actually people at the Mears connector when Carbaugh went by; right?

A Correct.

Q So there's a pretty good chance they might have seen somebody?

A Correct.

Q And having been out there, would you agree with me that, especially in February, when the visibility's good, you'd be able to see, at least in part, along this strip between 300 and the trail? It's not a big, wide space there, is it?

A It's pretty thick.

Q In February, the visibility was really good, wasn't it?

A I don't know that I would say it was very good. It's still a pretty thick portion of woods.

Q Okay. Did you ever send any search party out to search this area between 300 and the Monon High Bridge trail moving west for any kind of discarded clothing items?

A I did not, no.

Q Are you aware if that was ever done?

A I don't know.

Q Are you aware of any search that was done, either onto or up north around the Mears property in this open cornfield for any items?

A I don't know about the open cornfield part, no.

Q Okay. And then, moving westward, either the Hoosier Harvestore property or something north of there, wherever these searches that were done up in that area?

A I had no decision making of sending anybody out there, no.

Q But are you aware of any searches that were done?

A No.

Q I mean, you were on the Unified Command; right?

A Correct.

Q One of the kind of the head guys in this investigation for a couple years, at least?

A Yeah. I was the number two for our department, yes.

Q And there's – if you – if this individual would have gone northward, there's at least – is this a fence line here behind the Mears property?

A I don't know.

Q You see the field line, the divider there?

A It could just be a separate – I don't know if it's a fence line, if there's a fence there or not, it could just be a strip between the two fields.

Q Well, after Sarah Carbaugh came in and provided her information to the police, are you aware of anybody that went out and maybe looked in that area?

A I'm not aware, no.

Q I mean, you scoured this investigation and those documents over and over for the last five, six, seven years, haven't you?

A Correct.

Q And that just – information just doesn't exist to the best of your knowledge; right?

A I have not seen it.
Q Okay. Same question about the Hoosier Harvestore: There's a fence line here; right?
A I don't know.
Q Can you see the line there?
A I see a line. I don't know if there's a fence.
Q This look consistent with what it might have looked like back in 2017?
A Could be.
Q And then moving westward, before you get to the CPS lot, there's another wooded area; right?
A Correct.
Q And that wooded area has some railroad tracks along it?
A Correct.
Q And there was a lot of growth in there, too; right?
A Correct.
Q And that was private property, as well?
A Yes.
Q I assume – I'm taking a guess – the Anderson family?
A I believe that was the Andersons, correct.
Q Are you aware of anybody that ever searched in that area for any evidence in this case?
A I'm not aware.
Q In terms of that particular area, is it possible that whoever this was could have rerouted themselves down back toward the crime scene?
A Possible.

Q Okay. Could have went the other direction at some point; right?
A Possible.
Q And we know there was some people here at the connector; right?
A Correct.
Q They didn't see anything?
A No.
Q You're aware that Sarah Carbaugh has provided some – I'll say it politely – some inconsistent statements about what she saw?
A You'd have to describe what you mean by inconsistent.
Q We can get into this muddy/bloody thing, but you're aware that during her early interviews, she used one of those terms, and during her later interviews, she used another; right?
A She used muddy in the very first interview and then, days later, she used muddy and bloody, correct.
Q Days later, she used bloody, and then they were combined later; right?
A That's not my understanding of it, no.
Q Okay. Is it possible that your understanding of it is wrong?
A If you could show me that it was wrong, I would agree.
Q We heard from Sarah Carbaugh the other day.
A Okay.
Q So they can make up their own decisions, but is it possible you're just wrong?
A Is it possible that I'm wrong?
Q Yeah.
A I don't – I haven't seen what you're saying, no.

Q That you may have conflated those two things together?
A I may have conflated them together, is that what you said?
Q Yeah. Is that possible?
A No. I read it in a report.
Q Okay. You reported that she told you muddy and bloody; right?
A No, I said that she said muddy and bloody.
Q Okay. Is it possible that Sarah Carbaugh didn't see anybody that day? Is that possible?
A No. I don't believe –
Q She spent three weeks panicking over this, did you know that?
A No.
Q Do you think it's odd that it took her three weeks to call to provide some basic information about seeing somebody on a trail?
A No.
Q As a law enforcement officer, when – did you learn that at some point, that it was a three-week delay in her reporting that she saw this muddy, bloody, muddy or bloody, however you want to look at it, person that road? Did you know that?
A That there was a three-week?
Q Yes. There was.
A No.
Q Okay. You never realized that?
A No.
Q Okay. She ever tell you that she was panicking during that whole time?
A No.

Q If you knew somebody was panicking about something like this, would that cause some concerns in a law enforcement officer about that witness's ability to perceive an event?

A No. Two girls were killed, I can understand panic if you think you saw the person that killed them.

Q But the impact of that panic on her brain, do you think that that would impact what she recited that she saw –

MR. MCLELAND: Judge, I'm gonna object. It's –

Q -- impact her memory?

MR. MCLELAND: It's been asked and answered. It's speculative. I'm gonna object, Judge.

THE COURT: Sustained.

MR. ROZZI: Judge, he's a law enforcement officer, he interviews witnesses all the time, I think it's relevant that a witness' perception would be impacted by their mental state. It has a tendency to prove that she's less credible.

THE COURT: The objection was speculation.

MR. ROZZI: Thank you very much.

Q You talked about identifying this Ford Focus; right? That you went and got on the computer and determined that Rick Allen owned a Ford Focus; right?

A Correct.

Q And would you agree with me, I mean, a Ford automobile is not that rare – right? – just in and of itself.

A A Ford, sure, there's lots of Fords.

Q And there's lots of Ford Focuses, too, aren't there?

A Sure.
Q And there's lots of dark-colored Ford Focuses?
A Sure.
Q So just that, in and of itself, is not entirely unique, is it?
A No. The fact that he said he was there at 1:30 and that vehicle's on there at 1:27 –
Q Okay. We're gonna talk about that in a minute.
A Okay.
Q And do you think that this car is the only car that had – the only Ford Focus that had those kind of rims, if that's what it was?
A I don't know how many had those kind of rims.
Q Okay. You never checked that; right?
A I believe there may be information on that, yes.
Q I mean, what – we – I hate to quibble about this, but they probably made thousands of those kinds of cars, didn't they?
A I don't know. I don't know.
Q Would you be surprised to find that Ford mass produced these things?
A No.
Q The FBI assisted you in this case, in this investigation, at a time; is that right?
A Yes.
Q And that occurred early on this case; right?
A Yes.
Q And in fact, we heard earlier that, as the investigation kind of progressed or evolved, that there became kind of a more of a cohesive approach to the

investigation; does that sound kind of accurate in terms of the totality of the investigation and who was handling it?

A I guess I don't understand your – I don't understand what you're saying.

Q Do you agree with me that, early on in this investigation, that there were a lot of moving parts –

A Yes.

Q -- and personnel?

A Correct.

Q And in terms of the way the computer systems were used, case-management systems, all those kinds of things?

A Correct.

Q And do you agree with me that there was some general disorganization in that process, it took time to get that worked out?

A In – yeah, in the very – first few days, yes.

Q Well, and do you agree with me that part of that disorganization involved the FBI?

A No. They helped.

Q Okay. They assisted you; right?

A Correct.

Q And do you agree with me that there were tensions –

MR. MCLELAND: Judge, I'm gonna object to the form of the question. I've let it slide a few times, but I'm gonna object to the form of the question.

MR. ROZZI: I'll clean that up.

THE COURT: Sustained.

MR. ROZZI: Thank you. I'm sorry.

Q Do you agree that there became tensions between the local law enforcement community and the FBI?

A No.

Q Okay. Do you acknowledge that, at one point in this case, in 2019, essentially the FBI was relieved of their responsibilities in this case by Superintendent Carter?

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

THE COURT: Sustained.

Q Was there a time in this investigation when the FBI was no longer involved?

A Yes. Well, no. Even after year 2019, if I still needed something from the FBI, I called them.

Q But they were told not to – that they weren't participating?

A I don't know.

Q You didn't know that?

A No.

Q Would you be surprised to find that out?

A I'm surprised as I sit here.

Q Okay. Now, the first interview with Rick Allen was in October of 2017; is that right?

A I'm sorry, one more time.

Q The first interview that the law enforcement team did with Rick Allen, October of 2017; right? Strike that, let me ask a better question. Officer Dulin obviously interviewed him in February of '17; right?

A Correct.
Q And then, in October of 2022, he was interviewed more formally by your team; right?
A Correct.
Q And so five years later; correct?
A Yes.
Q And he was not considered a suspect at any point in time in this investigation between 2017 and 2022, was he?
A No. Got lost in the cracks.
Q And there were many other suspects considered, weren't there?
A Correct.
Q And the ORION tip sheet in this case showed that he was cleared from the very beginning, didn't it? That's what the tip sheet said.
A Someone put "lead cleared", yes.
Q Well, someone on your team; right?
A What do you mean by my team?
Q Well, somebody working for the police.
A Evidentially, yeah. Yeah, I would agree with that. I believe it was a dispatcher.
Q So the processing of the information involving that initial interview with Mr. Dulin is the primary reason for the long delay in focusing on him; is that right?
A One more time, please.
Q The processing or lack of processing with that initial tip from Mr. Dulin is the reason for the delay; is that your position at this point?

A The rea – I'm saying that it kind of fell in the cracks. Someone cleared that lead and it shouldn't have been.

Q Okay. So we agree there was a delay; right?

A Yes.

Q And you would agree, as an investigator, that puts you in a situation where you have to try to go back and, essentially, recreate something that happened, in this case, five years prior; right?

A Correct.

Q And one of the – that's difficult to do, isn't it? Causes some difficulties, doesn't it?

A In what way?

Q Well, it's a lot harder to investigate than something that's fresh, isn't it?

A Yeah, it would have been helpful to have these interviews and talks right then, yes.

Q Right. For example, one of the things that's challenging is, is that now you're asking Rick Allen, five years later, to try and accurately recall everything he said in 2017; right?

A Correct.

Q So for him to not be perfect about a date or a time would not be unreasonable – would it? – with a five-year delay.

A Correct.

Q Same thing for his wife; right? Asking her to recall what happened in 2017 is challenging for somebody, isn't it?

A Can be, yes.

Q And the same thing for the witnesses involved in this case; right?

A Yes.

Q So as it pertains to some of those witnesses, it's arguable that what they reported to the police in this case would have been more accurate back at the time it was reported; right?

A Correct.

Q So asking them what they remember now comes with the passage of time?

A Correct.

Q And all the taint from all of this outside information that people are taking in; right?

A Okay.

Q Do you agree with that?

A I don't know what outside information they're taking in, but –

Q Everything that's on social media; how's that for a start?

A I don't get on social media, so –

Q Are you aware that this case has been covered on social media?

A Oh, very much so.

Q Do you think some of the witnesses have watched some of that stuff?

A I don't know.

Q You're also trying to seek out physical evidence that would have existed five years ago; right?

A Correct.

Q Now seven. That's challenging, isn't it?

A Yes.

Q And one of those examples would be the firearm that you recovered from Mr. Allen's home; right?

A What about it?
Q Well, it – you had to seek out that evidence in this case; right?
A Correct.
Q Sig Sauer P226?
A Correct.
Q And you acknowledge that that gun existed back in 2017, it was on planet Earth?
A Correct.
Q And it was actually – it actually existed from several years prior to that; right?
A Correct.
Q And do you agree with me that you don't know what the condition of that gun was back in 2017, do you?
A That's not my field of expertise, I don't know what it was like the day we got it, I didn't look at it.
Q So when you collected it in October of 2022, would you agree with me – did you look at it then?
A I saw it, yes.
Q Okay. There's no way to determine what the condition of that gun was like back in 2017; right?
A I assume. I don't know.
Q If it had been fired multiple times between 2017 and 2022, could have changed the condition of the gun; right?
A Not my area of expertise.
Q You carry a gun?

A I do.
Q On a regular basis?
A I absolutely do.
Q Do you have any qualifications as it relates to carrying that gun?
A Yeah, I qualify. I know how to shoot it.
Q That gun's made up of intricate parts inside; right?
A Correct.
Q And when you fire the gun, those parts – those tools function; right?
A Correct.
Q They're – they work; right?
A Correct.
Q And do you agree that the more that happens, the more those tools get older, they wear, they change?
A I mean –

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

THE COURT: Sustained.

Q The gun that you collected in 2022 may be in a different condition than it was in '17?

MR. MCLELAND: Objection, Judge. He's asked and answered that, he's – it's not his class of expertise.

THE COURT: Sustained.

MR. ROZZI: It's a – I'm asking for his opinion. I'm not asking for some expert –

THE COURT: And he's given you his opinion, that he's not answering that.

MR. ROZZI: Thank you.

Q But this delay can make investigations like this much more challenging; right?

A Yes.

Q Do you believe that Richard Allen acted alone in this case?

A Yes.

Q Have you always believed this?

A Yes.

Q Did you ever tell your former boss, Sheriff Leazenby, that you believed multiple people were involved in this crime?

A I may have told him it's possible back in the day, yes.

Q So you haven't always believed that.

A We're talking about prior to Richard Allen; correct?

Q Just talking about at any time.

A Okay. Prior to Richard Allen, I was open to anything. That's part of being a good investigator.

Q Your opinion's changed; right?

A Yes.

Q That video we watched earlier, you can't actually see that person's mouth moving in the video, Bridge Guy, can you?

A No. I mean –

Q There is some amount of speculation in the fact that the sound is actually coming from Bridge Guy's mouth; right?

A Say that again.

Q There's some amount of speculation that the sound is actually coming

from his mouth, 'cause you can't actually see his mouth; right?

A Well, I think that's a stretch, but –

Q Well, maybe so, but there could be somebody standing right next to the girls saying the same thing, couldn't there?

A I'm pretty sure that she would have got that person on video, as well?

Q Could there have been somebody standing right next to the girls that could have said the same thing?

A I don't believe that.

Q That's not humanly possible; right?

A I don't believe that's what happened in this case. That guy walked off the bridge –

Q No question. Thank you. In the course this investigation, you and your team collected lots of samples; right? From the bodies, from the crime scene, various locations around this community?

A Yes.

Q And those samples were collected for the purpose of trying to recover some DNA or something like that?

A Are you talking about like buccal swabs of testing people?

Q Thanks for clarifying.

A Yes.

Q You agree with that?

A Yes.

Q And that's one of the kind of struggles in a case where there's a five, six, seven-year delay is that you've got the spoiling of that kind of evidence; right?

A I don't know anything about the evidence spoiling or anything, no.

Q Okay. A lot of those items were sent off to laboratories; is that right?
A Correct.
Q And is it fair to say that there were samples even collected in 2022, when you served the warrant on Mr. Allen's home?
A Yes, I believe that's correct.
Q And all that stuff's been examined; right?
A Yes.
Q And there's not one iota of DNA evidence connecting him and the crime scene, is there?
A None.
Q None. Lots of digital information collected in this case?
A Yes.
Q Cell towers?
A Yes.
Q Cell phones?
A Yes.
Q Tablets?
A Yes.
Q Pings?
A Yes.
Q Thousands upon thousands of documents that we've sorted through, haven't we?
A Yes.
Q Maybe even fair to say tens of thousands, maybe even hundreds of thousands?

A Yes.

Q And that is one of the most common ways in the modern age of law enforcement investigation to solve crimes, isn't it?

MR. MCLELAND: Objection: Form of the question.

THE COURT: Sustained.

Q You're an investigator; right? You've investigated crimes?

A Yes.

Q Do you use cell phones all the time when you solve crimes?

A Yes.

Q There's no digital evidence in this case that connects Richard Allen to the crime scene, is there?

A No, but that's what's interesting is he said he was on his phone while he was on the trail, but there's no evidence of that, either.

Q Yeah. There isn't.

A No.

Q Stock ticker; right?

A Stock ticker.

Q You also don't know the time of death of those girls, do you?

A No.

Q You gotta lean on the pathologist when it comes to those kinds of decisions.

MR. MCLELAND: Objection, Judge. It calls for speculation, and the form of the question.

THE COURT: Overruled.

A You gotta what?

Q You gotta rely on the pathologist to come to those kind of judgment calls; right?

A They're the – he's the expert, so to speak, for that.

Q There were clothes missing from that scene?

A Yes.

Q Some of the clothes that you believe that either A.W. or L.G. was wearing on that day before they went out to the trail?

A Correct.

Q Those clothes have never been recovered; right?

A No.

Q Not down there at the crime scene?

A No.

Q Not at Richard Allen's house?

A No.

Q That man right there held himself out to law enforcement just a few days after this crime, didn't he?

A A few days after, yes.

Q So there's nothing unreasonable about that, was there?

A How do you mean?

Q Well, you started asking for help, asking the public for help, a couple – a day or two after the girls were found; right?

A I don't know his motive, why he came forward.

Q I'm not asking you to say why he did this. The law enforcement community started asking the public for help –

A Yes.

Q -- shortly after the girls were found.
A Correct.
Q And so him reporting this, that he was out there a couple days later, would be at least consistent with that timing; right?
A Yeah.
Q And you're not aware of any evidence that exists in this case that Mr. Allen engaged in any kind of behaviors in the days before February 13th, premeditated behaviors, that suggested he had an interest in killing those girls?
A That I'm aware of, no.
Q And then after this happened, you're not aware of any information that suggests that he fled this community, are you?
A After the – say that one more time, please.
Q After you found the girls – thank you.
A Okay.
Q It was a poor question, I'll withdraw it. Would you agree with me that after you found the girls there's no information that suggests that he fled the community?
A Correct.
Q He stayed right here, didn't he?
A Correct.
Q In fact, he worked right down the road at CVS.
A Hiding in plain sight.
Q I appreciate that. Those aren't your words, are they?
A No.
Q So you're adopting somebody else's thoughts now; right?

A Yes.
Q Mr. Carter?
A Yes.
Q And you testified earlier that you thought it was interesting that he backed his car into the CVS parking spot; right?
A Yes.
Q There's really two ways to park a car; right?
A Correct.
Q Okay. One of them is, is that you pull into a parking spot in a forward direction; right?
A Correct.
Q And the other one is that you back into a parking spot?
A Correct.
Q Maybe there's a third, parallel parking; right?
A Okay.
Q So there's a 50 percent change he was gonna back into that lot; right? He had to do one or the other.
A At CVS?
Q Yes.
A Correct.
Q So seven years later, you believe that it's pertinent that he backed into his parking spot at the CVS?
A I didn't say it was pertinent. I noted it.
Q But you testified about it; right?
A Right.

Q Now, you're aware that Mr. Allen, early on this case – well, strike that. When Mr. Allen was arrested in October of 2022, he was immediately detained right here across the street and in your jail, wasn't he?

A Yes.

Q And pretty small jail; right?

A Yes.

Q In comparison. I mean, how many people do you have in there? Twenty, 30 inmates? Thirty-four?

A We can hold 34, and we consistently have over 50.

Q You ever held anybody in there that's been accused of a violent crime?

MR. MCLELAND: Judge, can we approach?

THE COURT: Yes.

(Sidebar conference conducted.)

MR. MCLELAND: I'm just trying to be a little proactive, 'cause once the jury hears it (inaudible), but Mr. Rozzi's now moving on to the safekeeping and him being on to the DOC and that's outside the scope of direct.

MR. ROZZI: He said he's – he said he was familiar with the facts and circumstances surrounding this investigation. A big part of the investigation has been them babysitting him up at the prison and recording everything that he says.

THE COURT: But the issue is it's beyond the scope of his direct, that's what he's saying.

MR. ROZZI: But in his direct, twice he said he was familiar with all the facts and circumstances involving the investigation. He asked him that.

THE COURT: Well, I know he did. He didn't get into that, though.

Is that where you're going with this?

MR. ROZZI: Yeah, that's where I'm going.

THE COURT: Okay.

MR. ROZZI: I mean –

THE COURT: Specific –

MS. MCLELAND: There's an objection, it's outside the scope. I understand you want to get into the safekeeping or whatever you call it, and you can do that, but you – but that's beyond the scope of where we are at this time –

MR. ROZZI: I think he opened –

MR. MCLELAND: -- with direct.

MR. ROZZI: My point I'm making is I think he opened the door to do that now. Of course I'm gonna re-call him later.

THE COURT: Okay. You can do it then.

MR. ROZZI: You know, I'm just saying, I don't want to sit here and have a tizzy about it all over –

THE COURT: Okay.

MR. ROZZI: I think, when he asked him that broad question, you guys opened the door.

THE COURT: Well, it's beyond the scope specifically now, so I sustain your objection.

MR. MCLELAND: Thank you, Your Honor.

(Sidebar conference concluded.)

Q We'll return to that conversation.

MR. ROZZI: One second, Your Honor.

Q I asked you about this earlier, 'cause we kind of touched on this – well, actually, strike that. You testified earlier that there was one .40-caliber round recovered from Mr. Allen's home; right?

A Correct.

Q There was actually several .40-caliber rounds recovered from his home, wasn't there?

A Right. The other was Blazer, correct.

Q Yeah. So there was a Smith and a Wesson that was recovered from his closet; right?

A A Winchester, correct.

Q Winchester Smith and Wesson; right?

A Correct.

Q Pretty common round in terms of ammunition talk; right?

A I'm not a big gun guy, I don't know, I can't answer that.

Q Have you ever heard of Smith and Wesson?

A Yeah, sure.

Q It's one of the most popular brands in the firearm business?

A Absolutely.

Q And Winchester is also; right?

A Yes.

Q There was a second round recovered from that closet, was there not?

A Are we talking about closet or the keepsake box?

Q Closet, 'cause both them were recovered from the closet, Winchester round, Blazer round.

A No. I don't know about the closet.

Q Okay. Fair enough. Were there two rounds that were solo, free-floating rounds?

A I know of the one, I don't know of the others. There were a lot of things taken. I don't know – if there was another one, I don't know of that.

Q There were also a number of Blazer rounds taken from some magazines that were in the house; right?

A Correct.

Q And those were also all .40-caliber rounds?

A Correct.

Q Sent to the lab for testing?

A They were sent to the lab. I'm not sure what testing they did with them.

Q And let's talk about the bullet that was recovered from the crime scene; okay?

A Okay.

Q Do you agree with me – have you seen the photos of that bullet?

A Yes.

Q And how many photos do you think you've seen – in your mind, how many do you think you've seen, different photos, if you had to estimate?

A The photos that I've seen are from the lab.

Q You haven't even seen the ones from the crime scene?

A I don't think I've seen the pictures from the crime scene, no.

Q I mean, it's that bullet that, ultimately, led to your arrest of Mr. Allen; right?

A That was a part of it, yes.

Q Yeah. When you got the result back from the lab, that's when you decided,

"We're arresting this guy."

A I think that's kind of what put us over the hump, yes.

Q Yeah. But for that bullet, he probably wouldn't be in jail; right?

A Not true.

Q Well, he wouldn't have been in jail in October of 2022; correct?

A I can't say that.

Q You wouldn't have arrested him on that day if you didn't have that bullet.

A I can't say that.

Q What other information would have supported his arrest at that point?

A The fact that three girls saw him walking in; that he was on the Hoosier Harvestore video at 1:27; they pass him after 1:26; Betsy Blair sees him on the bridge; Sarah Carbaugh sees him on 300 North; and we have a bullet.

Q Betsy Blair saw a man who was boyish.

A To her.

Q Remember that?

A Yeah.

Q How old was he at the time?

A In his 40s.

Q Betsy Blair saw a man that was youthful.

A To her.

Q She saw a man with brown, poufy hair; right?

A Witnesses – all the witnesses described it a little bit different. Even the three girls that were together, their story was a little bit different.

Q She saw a man with brown, poufy hair, didn't she?

A I believe that's what she said.

Q In his 20s or 30s?
A Yes.
Q Is there anything wrong with just believing what she had to say about the identity of that person? Is that – is it proper to just believe she saw what she saw?
A Is it proper to believe what – I believe what –
Q Withdraw the question.
A I believe what she saw.
Q You think she's a credible person?
A Yes.
Q Okay. And her description does not fit the description of Mr. Allen, does it?
A But again, neither does the three girls that saw him at the same time.
Q Right, exactly right; right?
A Right.
Q Let's talk about that. This –

MR. ROZZI: One second, Your Honor. Nick, do you have the exhibit that was taken from the bench?

MR. MCLELAND: No, I do not.

MR. ROZZI: Do you think it's up here? 'Cause I'm not seeing it. I know you used it earlier. Oh, here it is. I apologize.

Q You said earlier – Mr. McLeland asked you about the significance of that photograph that was taken by one of those girls on the bench at the trail; right?
A Correct.
Q And that photograph is very significant in your timeline, you said that

earlier, didn't you?

A Correct.

Q And you said that because your belief that those girls saw Bridge Guy on that trail shortly after that photograph was taken?

A Correct.

Q That photograph was taken at 1:26 in the afternoon, wasn't it?

A Correct.

Q What time was that black car on the Hoosier Harvestore video?

A 1:27.

Q A minute later?

A Correct.

Q Headed west?

A Correct.

Q So it's very plausible that whoever was in that black car was not seen on that trail after those girls got off that bench; right?

A No.

Q The car was out on the roadway a minute after they took that picture.

A Correct.

Q Going in the opposite direction; right?

A They passed him between leaving the bench and the Freedom Bridge. Betsy Blair sees the same three girls. She's on video at 1:46 returning. So if you count in two minutes of Betsy Blair seeing them when they're walking on the trail near the Freedom Bridge, maybe they left at 1:44.

Q But that's you making up all those times in the middle.

A It's absolutely not making it up. It is absolutely –

Q But that's your version of this evidence.
A No. It's on video.
Q One second, please. Rick Allen said he saw three girls on the trail?
A Correct.
Q That's not even right, is it?
A No. There were four.
Q Betsy Blair said she saw three girls on the trail?
A No. She saw four.
Q You testified earlier that you listened to that 43-second video a number of times; right?
A Correct.
Q And you drew some conclusions about what was said on the video?
A Correct.
Q You got 14,000 tips in this case; right? Or more?
A Correct.
Q And there were people with all different kinds of opinions about what was said on that video; right?
A Sure. I don't remember specifically, but yeah.
Q Lots of interpretations; right?
A Correct.
Q People hear things differently?
A Correct.
Q Depends on where you're situated in your life, your life experiences, things like that; right?
A Correct.

Q For example, if someone were thinking somebody was creepy, they might be – describe them as being dressed in all black; right?

A Correct.

Q That might not be true?

A I'm sorry?

Q But that might not be true?

A That they're creepy because they're dressed in all black? Correct.

Q You know, from investigating cases and learning about how to investigate cases, that a witness – witnesses can be unreliable. They teach you that – don't they? – when you go to training.

A That witnesses are unrel – say that again. I guess I don't understand.

Q Eyewitness testimony could be unreliable.

A I don't know that I would say, oh, it's – just because it's different, it's unreliable.

Q I believe I've got one other – earlier, do you recall Mr. McLeland asking you some questions about collecting that gun at Rick Allen's house?

A Correct.

Q And you were getting ready to tell him that the lab suggested if you bring a Sig Sauer to them, they'll match it to that gun, that bullet.

A I don't know that those were the exact words I would have used, but okay, yeah.

Q They were already looking for a Sig Sauer before you even collected one, weren't they?

A They told us if we had a Sig Sauer or a Smith and Wesson, they believed that's what the extractions were from.

Q They could match that bullet with that gun?

A Correct.

MR. ROZZI: I have nothing further.

THE COURT: Mr. McLeland.

MR. MCLELAND: Thank you, Judge.

RE-DIRECT EXAMINATION OF SHERIFF TONY LIGGETT

QUESTIONS BY MR. MCLELAND.

Q Sheriff Liggett, I got a little confused, and so I want to make sure I'm on the – I've got the information right. When you searched the home of Richard Allen, was there a bullet found in a hope box in his room?

A Correct.

Q What kind of bullet was in that hope box?

A A .40-caliber Winchester.

Q Was there other .40-caliber ammunition found in the house?

A I know of Blazer, there was Blazer. It –

Q Where was that amm – sorry, I'm sorry. Go ahead.

A That was in the magazines. I don't know of any other that I was – that I know of.

Q Okay. So let me make sure I clarify that. We've got the bullet in the hope box. There was also .40-caliber ammunition found in the firearm?

A Correct.

Q The firearm that you found; correct?

A Correct.

Q The .40-caliber Sig Sauer firearm?

A Correct.

Q Make sure we're talking about the right firearm. The ammunition in that firearm was what kind?

A Blazer.

Q I think you testified, but this is where I'm unclear, were there also magazines with that firearm?

A I knew of the one that was in it.

Q What's a magazine?

A I believe they – so that's what holds the bullets that goes into the butt – the handle of the gun.

Q You refer to it as magazines? Maybe I'm using the wrong terminology.

A Mags – yes.

Q Okay. There was one in the gun.

A Correct.

Q Were there others with the gun?

A I believe there was one other.

Q And the ammunition that was in those magazines, what kind of ammunition was it?

MR. ROZZI: (Inaudible)

THE COURT: I'm sorry, what was your –

MR. ROZZI: I'll withdraw. Thank you.

MR. MCLELAND: Sorry, didn't hear it, Judge.

Q The ammunition that was in the magazines, what kind – what brand of ammunition was that?

A I believe it was Blazer.

Q Okay. So you – did you find any other .40-caliber ammunition that was

Smith and Wesson Winchester brand in the house besides what was in the hope box?

A Not to my knowledge, no.

Q Okay. All right. Next, Mr. Rozzi has asked you a series of questions and it seemed to imply that someone's memory closer in time to the action or the incident would be better than five years later; you remember that line of questioning?

A Yes.

Q And do you agree with that, that somebody's memory close in time to an incident is better than recalling what happened five years later?

A I do.

Q And so going with that reasoning, would it be fair to assume that Mr. Allen's memory – I'll rephrase the question. In your opinion, is Mr. Allen's memory better closer in time to the incident or five years later?

A Yes. And he believes that too, he said that in the interview in October of '22, he said the same thing.

Q And his memory closer in time to the incident, he was on the trail at what time?

A 1:30 to 3:30.

Q And then he changed that, five years later, to what time?

A Noon to 1:30.

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

THE COURT: Mr. Rozzi.

RE-CROSS EXAMINATION OF SHERIFF TONY LIGGETT

QUESTIONS BY MR. ROZZI.

Q So what Betsy Blair saw and some of the description of that man on that bridge that day would be the best evidence of what that man looked like; right?

A Correct.

Q A 20 to 30-year old man?

A Correct.

Q Almost twice the age of Rick Allen; right?

A From her perspective, yes.

Q Well, she's entitled to a perspective, isn't she?

A Absolutely, but –

Q She was closer than anybody else –

A -- her perspective is –

Q -- right?

A Her perspective is – no, that's not true. Sarah Carbaugh was closer than anybody else.

Q Well, we'll let them decide what they think about her perspective.

A You asked, I just –

Q You talked about those – Mr. McLeland asked you about those other rounds in that house; right?

A Right.

Q Do you agree with me that there was never a determination by your firearms examiner that suggested that there were any – there was any sufficient agreement between the marks on any of those rounds and the one found at the crime scene?

MR. MCLELAND: I'm gonna object, Judge. He's not in a position to be able to answer that question.

MR. ROZZI: He –

THE COURT: Sustained.

MR. ROZZI: How does he know? He's the witness.

THE COURT: There's an expert; correct?

MR. MCLELAND: Correct, Your Honor.

THE COURT: Sustained.

Q Did you read the report?

A Read what report?

Q Ms. Oberg's report.

A I read the lab report, yes.

Q The 14-page report?

A I don't remember how many pages it was.

MR. ROZZI: May I ask that question again, now that he's read the report?

THE COURT: If he can recall.

MR. ROZZI: I'm sorry?

THE COURT: If he recalls. But again, we have an expert that will testify to that; correct?

MR. MCLELAND: Correct, Judge, and I – the State's position is the expert's in the best position to answer those questions.

MR. ROZZI: Yeah, she is. You're right. We'll do that tomorrow. I withdraw it. Thank you.

THE COURT: Any other questions?

Q You mentioned this hope box earlier; right?

A Hope box, keepsake box, something like that.

Q Those are your words, keepsake box?

A Correct.

Q What does it look like?

A It was a wooden box.

Q Okay.

A And it had things like a wristband – it just seemed like something that people kept important things to them.

Q Okay. And are you aware of any connection between the marks on that round in that box and the firearm that was recovered from Mr. Allen's home?

A I'm not, no.

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

THE COURT: Does anybody on the jury have any questions for Sheriff Liggett?

(No response or indication from any juror.)

THE COURT: No? All right. Thank you, Sheriff. You may step down.

THE WITNESS: Thank you.

THE COURT: Do we want to take a break?

MR. MCLELAND: Yes, Judge.

THE COURT: All right. Ladies and gentlemen, this is an appropriate time for us to take our afternoon recess. While you're outside the courtroom, please, keep your minds open. Please don't form any opinions or conclusions about anything. You may discuss the evidence that you've heard so far, but please, only do that if all 16 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 3:31 p.m.)

THE COURT: All right. Let's take 15 minutes. Jodie, you can go off the record.

(Off record at 3:32 p.m.)

(On record at 3:50 p.m.)

THE COURT: Are we ready, gentlemen?

MR. MCLELAND: Yes, Your Honor.

MR. BALDWIN: Judge, I don't know how – there's – if – is Mr. Holeman going today, later?

MR. MCLELAND: Yes.

MR. BALDWIN: There's questions that I think I should be able to ask, but – to Mr. Holeman when he testifies and I think they're appropriate, but I do not want to run afoul of anything the Court finds inappropriate, and I didn't know if you wanted – want to do that – take care of that now or – because then – before the jury comes in or have the jury leave after Mr. Vido's testimony.

THE COURT: Who's testifying next?

MR. MCLELAND: Dave Vido.

THE COURT: Oh, okay. And how long will he take?

MR. MCLELAND: I don't think very long. We have pictures from the search warrant that we're gonna attempt to introduce through him, and I think there's about 30 pictures, and go through those. I don't think it'll take long, Judge, but depends on cross, I suppose, too.

THE COURT: Right.

MR. MCLELAND: But we're gonna go through the pictures quickly,

I don't think it'll take long.

THE COURT: So what specifically about – you can sit down. What specifically about Trooper Holeman are you inquiring about?

MR. MCLELAND: Judge, would it help if I clarified that the intent on calling Mr. Holeman today would only be to talk about his participation or his presence at the search warrant and statements made by Richard Allen while – during the search of the house?

THE COURT: Okay.

MR. MCLELAND: We plan on calling Mr. Holeman or – sorry, Lieutenant Holeman, again after the lab tech about a second interview with Richard Allen.

THE COURT: Okay. Does that help, Mr. –

MR. BALDWIN: Yes. I mean, we'll have to have those conversations at a later time, but yeah. Thank you.

MS. AUGER: Judge, may we approach?

THE COURT: Sure.

(Sidebar conference conducted.)

MS. AUGER: You're gonna ask him about these today?

MR. MCLELAND: Yes.

MS. AUGER: I mean, these are from authenticated hearsay documents.

MR. MCLELAND: This is from information he took from the – that was downloaded from Google.

MS. AUGER: That's from here.

MR. MCLELAND: Google.

MS. AUGER: They're not authenticated.

MR. MCLELAND: I don't think they have to be for him to testify about them.

THE COURT: What are you talking about?

MR. MCLELAND: Judge –

MS. AUGER: Maybe we should go over here. So, Judge, the State believes that the Defense has opened the door at this point to talk about other digital evidence that they found of Mr. Allen that connects Richard Allen. We made that point pretty clear with the questioning today with Steve Mullin. Dave Vido, he executed the search warrant for – based off of (inaudible) that we found –

THE BAILIFF: You know this doesn't open the door for you guys to talk? Thank you.

MR. MCLELAND: Google returned the warrant with this information and search history from Google. Dave Vido examined that return and the report based off of the return.

THE COURT: Okay.

MR. MCLELAND: There were websites that were searched including – may I look at the list?

MS. AUGER: Yeah.

MR. MCLELAND: (Inaudible) that tie him to the kidnapping.

MS. AUGER: Right. These are unauthenticated hearsay records from Google, and to allow him to testify to that without the proper authentic –

THE COURT: Is there a keeper of the record?

MR. MCLELAND: Is not – or there is. I don't have it with me.

THE COURT: Oh. There is a keeper of the record?

MR. MCLELAND: I believe so. I think there's a – when we got the information back from Google, I think –

THE COURT: Well, usually –

MR. MCLELAND: Yes.

THE COURT: -- they're not signed as "Google".

MR. MCLELAND: I don't have that today, and so I can print off all that and provide that to them.

MS. AUGER: Are you saying that this was something that he searched?

MR. MCLELAND: It's in here, this. He's searching these –

MS. AUGER: This is from after he was arrested.

MR. MCLELAND: No.

MS. AUGER: Yeah, it is. 1/1/23.

MR. MCLELAND: It's on here. He went to the websites, connected with those searches.

MS. AUGER: You can't connect this to that.

MR. MCLELAND: Okay.

MS. AUGER: I mean, this is – unless he's –

MR. MCLELAND: "65 best kidnapping", he searched it on October 5th of 2022.

MS. AUGER: Okay, but this isn't that. This is something from –

MR. MCLELAND: Okay.

MS. AUGER: -- 1/1/2023, when he was in Westville –

MR. MCLELAND: That's when the officer –

MS. AUGER: -- unless he's doing –

MR. MCLELAND: -- went to the website and just pulled the cover sheet.

THE COURT: So it'll come up later?

MR. MCLELAND: We will talk about this later.

MS. AUGER: Okay. Thank you.

(Sidebar conference concluded.)

THE COURT: All right. Are we ready to bring the jury back in, then?

MR. MCLELAND: Yes, Your Honor.

THE COURT: Okay. Let's bring them in.

THE BAILIFF: All rise.

(Jury in at 3:57 p.m.)

THE BAILIFF: Thank you. You may be seated.

THE COURT: Thank you, gentlemen. Mr. McLeland, you may call your next witness.

MR. MCLELAND: Your Honor, the State of Indiana would call Indiana State Police Trooper Dave Vido, please.

(Witness sworn.)

DIRECT EXAMINATION OF DETECTIVE DAVID VIDO

QUESTIONS BY MR. MCLELAND.

Q Mr. Vido, the microphone that you have in front of you, it doesn't amplify for the Defense or for the jury or for the State, it only amplifies for the audience, so I'm gonna ask you to speak up as best you can so that everybody at my table, everybody at the Defense table, and the jury can hear you; fair enough?

A Yes, sir.
Q Will you state your name, please.
A David R. Vido.
Q And will you spell that, please.
A V-I-D-O.
Q And how are you employed?
A As a detective with the Indiana State Police assigned to the Lafayette post.
Q And how long have you been a law enforcement officer with the Indiana State Police?
A Over ten years.
Q And do you go through special education, training – or training to become an Indiana State Police officer?
A I did. I graduated the Indiana State Police Law Enforcement Academy after the six-month academy and have taken, since then, numerous trainings every year, law enforcement trainings every year, including IMPD's Homicide Investigation School and Reid Interviewing.
Q I want to take you back to October 13th of 2022; were you on duty that day?
A Yes, I was.
Q And did you assist in the execution of a search warrant for the home of Richard Allen?
A I did.
Q And how were you involved in that search?
A I witnessed pictures being taken and helped search for items in the residence.

Q You assisted in the search of the home?
A Yes, sir.
Q What areas did you search in the home, if you know?
A Mainly, I searched the master bedroom, the master closet, the garage, kitchen, and the office, and spare bedroom.
Q And while you searched the residence, when you would find an item that you collected from the search, would someone be there to photograph that item?
A Yes. Troop –
Q And would – go ahead.
A Trooper Matthew Clemons.
Q And were you present when Trooper Matthew Clemons photographed the items?
A Yes, sir.
Q I'm gonna show you what's been marked as State's Exhibits 247 through 275; can you go through those photos, please.
A Yes, sir, these were photographs taken during the search warrant.
Q And those aren't all the photos taken; correct?
A That's correct. These are –
Q But they're some of the photos taken?
A That's correct.
Q And you recognize those as photos that were taken, again, during the search warrant of Richard Allen's home?
A Yes, sir.

MR. MCLELAND: Judge, the State would move to admit what's been marked as State's Exhibits 247 through 275.

STATE'S EXHIBITS 247 THROUGH 275 OFFERED

MS. AUGER: No objection.

THE COURT: All right. Without objection, 247 to 275 inclusive are admitted.

STATE'S EXHIBITS 247 THROUGH 275 ADMITTED

MR. MCLELAND: And, Judge, would ask permission to publish those to the jury.

THE COURT: You may.

STATE'S EXHIBITS 247 THROUGH 275 PUBLISHED

Q Trooper –

MR. MCLELAND: Judge, is it okay if proceed?

THE COURT: Yeah, yeah, you can proceed.

MR. MCLELAND: Okay. Thank you, Judge.

Q Trooper Vido, I'd like to direct your attention to the TV here in the courtroom and I'd like to go through these photos and just briefly describe each photo.

A Yes, sir.

Q We're gonna start with State's Exhibit 247; can you explain to the jury what that is.

A Yes. This is a picture of the outside of Richard Allen's residence located in Delphi, Indiana.

Q State's Exhibit 248?

A This is a different angle of Richard Allen's residence where you could see his vehicle parked in the garage.

Q And State's Exhibit 249?

A This is Richard Allen's 2016 Ford Focus. That was the vehicle he drove to the trails on February 13th, 2017.

MS. AUGER: Objection, Your Honor: Calls for speculation for the officer.

MR. MCLELAND: Fine, Judge. I'll move on to a different question.

Q Was this vehicle in the home that you searched on October 13th, 2022?

A Yes, sir. It was in the garage.

Q Okay. State's Exhibit 250.

A This is another picture of his vehicle with different lighting and a different angle.

Q And I want to draw your attention to the wheels in this picture. Are you able to see light projecting through the wheels on the vehicle?

A Yes, sir.

Q State's Exhibit 251.

A This picture is taken inside of the garage still. It is the – the doorway there is the entry into the house that would go into the laundry room. Next to the doorway, there's a storage rack and boots that were stored outside the entryway.

Q State's Exhibit 252, what is this a picture of?

A So this is still inside of the garage. This workbench would have been on the other side of the car, that the car was blocking, and we located numerous knives on the workbench and, in the drawers, a couple boxcutters.

Q State's Exhibit 253.

A There are the knives that were located in the garage out of the sheathes.

Q These are the knives in the previous picture, State's 2 – State's Exhibit 252, just out of the holder or the sheath for the knife?

A Yes, sir.

Q Okay. State's Exhibit 254. Where are we now in the house?

A This picture moves into the kitchen of the house. This is in between the refrigerator and the stove with a little basket that contained what you would carry like every day, like sunglasses, keys, Richard Allen's name badge, a boxcutter, and two knives.

Q Were the knives and the boxcutter – when you searched the home, where were those?

A I believe they were either in the basket or right next to it.

Q And in the basket is a nametag with Rick's name on it?

A That is correct.

Q State's Exhibit 255.

A This picture was taken in the office. It is of a plastic bag that had a bunch of cell phone chargers and other device chargers, electronic device charging cables.

Q State's Exhibit 256.

A These were all of the phones that were located in the office, including the pagers and the older flip phones. There was also phones located in his – Richard Allen's closet in the master bedroom. The only phone that we were not able to recover was the one from February 13th, 2017.

MS. AUGER: Objection, Your Honor: Calls for speculation. He has no idea what other phones they may have had that may not have been there.

THE COURT: Overruled.

Q Go ahead, Trooper.

A Like I said, these were the phones that they had kept in the office and,

when we looked at the phone information that we had that he did have from February 13th, we were not able to find that phone in those collections.

Q You also found phones in the bedroom?

A That's correct.

Q Is there a picture of those phones?

A I do – there is a picture of them. It's not included with these pictures, but I believe it was of two other flip phones and two walkie-talkies.

Q Okay. State's Exhibit 257.

A These were knives that were found inside the home, I believe inside the master bedroom.

Q State's 258.

A These are the knives from the previous picture, but out of the sheaths.

Q I want to move to State's Exhibit 259.

A This picture is in the master bedroom. This would have been Richard Allen's closet in the master bedroom.

Q State's Exhibit 260.

A Still inside Richard Allen's closet with the gun cases and shoes.

Q State's 261.

A Still inside of the closet with the boots and the shoes underneath the clothes.

Q State's Exhibit 262.

A This picture moves into the foyer of the home. This was in the coat closet located in the foyer and a picture of a jacket that was similar to what he described he was wearing on February 13th.

Q State's 263.

A That's just a picture of the back of the jacket.
Q Move on to State's Exhibit 264.
A This is a picture back in the master bedroom. This was the Sig .40-caliber firearm that Detective Liggett located in Richard Allen's nightstand next to the bed.
Q And were there two magazines found with that firearm?
A I believe so, yes.
Q And were those loaded?
A I do not recall if they were loaded.
Q Are they loaded in the picture?
A Yes, sir.
Q State's Exhibit 265.
A It is the picture of the serial number of the Sig firearm.
Q State's Exhibit 266.
A It is another picture, different angle, of the firearm.
Q State's Exhibit 267.
A That is another picture of the firearm and the ammo that was in the magazines.
Q And State's Exhibit 268.
A That is the .40-caliber Blazer round that was in the magazines of that firearm.
Q Now, I believe, when I read the top of that, it says Blazer and it looks like it has an S&W on it; can you explain that?
A That's .40-caliber Smith and Wesson.
Q And what is Blazer? What does that identify?

A That would be the name of the ammunition.
Q State's Exhibit 269.
A This is of – a picture of a memory box or a keepsake box that was located in the master bedroom.
Q State's Exhibit 270.
A This is a picture of the inside of the box that contained numerous items from Richard Allen's previous employment, graduation cards, a note from his mother, and there was also a .40-caliber hollow-point Winchester round located on the left – lower left side of the box that was similar to the round found at the crime scene.
Q State's Exhibit 271.
A Another picture of the box with different items located in it.
Q State's Exhibit 272.
A That is a closer-up image of the round that was located in that box.
Q Then, State's Exhibit 273.
A That is a picture of the back, the Winchester .40-caliber Smith and Wesson round.
Q Now, both this round and the rounds that were in the gun have Smith and Wesson on them.
A That is correct.
Q Can you explain why they both – and are they of the same brand?
A Different manufacturers I believe, one being Blazer, one being the Winchester. One was a hollow-point, the other was full metal jacket, but same caliber of round.
Q Why do both have Smith and Wesson on – or S&W on them? Do you know?

A I believe it's just the same caliber of the – that the round is.

Q Okay. But the brand – you're saying Winchester and Blazer are different brands?

A I believe so, yes.

Q Okay. State's Exhibit 274.

A This is a picture that I took in the spare bedroom. It is of a photo album that was stored in that room of different pictures of the Monon High Bridge and the trails. It appeared that Richard Allen and his family had gone out to the trails multiple times a year and they documented the photos in these photo albums. The earliest I believe that I was able to find was from 2008.

Q Then, finally, State's Exhibit 275.

A These are other pictures from the photo album. Going from our right to left, the caption is a little bit cut off, but that picture is from February of 2016, and I believe the caption says, "Ricky posing by a tree." The middle picture is from March of 2016, of Richard Allen fishing in Deer Creek. And then, the one all the way on the left is a picture of Richard Allen from April of 2016, looking down off of the Monon trail.

Q After you concluded the search warrant at the house, were there – the items that you collected, were they sent to the various Indiana State Police labs to be tested?

A That is correct. First, myself and Trooper Clemons transported them to the State Police Post and secured them.

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

THE COURT: Ms. Auger.

MS. AUGER: Thank you, Your Honor.

CROSS EXAMINATION OF DETECTIVE DAVID VIDO

QUESTIONS BY MS. AUGER.

Q Trooper – how do I address you?

A Trooper is fine.

Q Okay. Trooper Vido, I want to show you pictures 270, 271, 272, and 273.

A Yes, ma'am.

Q Now, it's important – you can keep those. It's important to conduct a search in a professional way. Yes?

A Are you ask –

Q Yes.

A Yes, ma'am.

Q Okay. And especially when you're dealing with the murder of two young girls.

A Yes, ma'am.

Q And you were supervising the photography.

A I would say that's incorrect.

Q All right. Were you there and pointing things out to the photographer?

A Multiple detectives were there, and when we would find an item that we were gonna collect, they would take a photograph of it before we would take it.

Q And what about those photographs? Did you supervise those photographs?

A I was present when they were taken.

Q And you would want to make sure that those photographs were taken in a very professional way.

A Yes, ma'am.
Q Okay. And you made sure that someone photographed the bullet end of the cartridge; is that correct?
A I don't believe I made sure that they did that, but they did take a picture of that.
Q Okay. So we have the bullet end in a copper color; right?
A Yes, ma'am.
Q And then we also made sure we got the other end of the bullet; correct?
A Yes. Trooper Clemons did take a picture of that.
Q Okay. And what do you call the – I'm not a – never touched a gun. What do you call that end?
A I'm not too sure. That would be where the – I can't think of the exact term.
Q How about the non-bullet end?
A The opposite end, correct.
Q The opposite end, all right. So you've got both ends of the bullet; right?
A Correct.
Q And someone's holding the bullet?
A That's correct.
Q And this is a bullet that you seized?
A That is correct.
Q And you sent it to the crime lab?
A I'm unaware if that was sent to there.
Q All right. But you wouldn't want to change it or damage it in any way by photographing it; right?
A I don't understand your question. I'm sorry.

Q Well, by photographing it, is it possible you may change it in any way?
A Not to my knowledge.
Q Okay. And there's a picture of someone's hand in the picture.
A That is correct.
Q Is that unprofessional?
A I don't know how they would have taken a picture of that without having to move that from the box –
Q Okay.
A -- from how it was sitting in the box.
Q So it wouldn't be unusual to have a photograph of someone's hand holding a piece of evidence in order to properly document it/
A Can you repeat the question, I'm sorry.
Q Probably not. Let me try. It's not unprofessional for someone to hold a piece of evidence to properly photograph it.
A I don't believe so.
Q Okay. Items 274. Okay? Photographs of the Monon High Bridge?
A That is correct.
Q All right. You have no idea who took these.
A I do not.
Q It's not uncommon at all for people in Delphi, Carroll County, even Tippecanoe County to go out to the Monon High Bridge trail.

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

THE COURT: Yes.

MR. MCLELAND: Are you familiar with what families do in Carroll County and Tippecanoe County?

A I am not.

MR. MCLELAND: Are you familiar with what pictures families in Carroll County and Tippecanoe County take?

A I am not.

MR. MCLELAND: Are you familiar with what families in Tippecanoe County and Carroll County visit the High – or the trails and the Monon High Bridge?

A I am not, other than who I've interviewed.

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

THE COURT: Sustained.

Q You know Betsy Blair frequently went to the Monon High Bridge Trail.

A Yes, ma'am.

Q She's from Tippecanoe County.

A I was unaware she was from Tippecanoe County.

Q All right. And you know that Railly Voorhies went out to the Monon High Bridge trail.

A Yes, ma'am.

Q Frequently.

A I don't know frequently.

Q You don't know that? Okay. And you know Bre Wilber goes out to the trail; right?

A Yes, ma'am, I know she did.

Q Right. You know David McCain goes out to the trail.

A I believe so, yes.

Q All right. The – in fact, the trail has been improved; is that correct?
A From what I've heard, yes, ma'am.
Q All right. And it is – have you ever passed by the Carroll – or the Delphi signs, town signs?
A Which signs, ma'am?
Q Any of the signs that say kind of "Welcome to Delphi".
A I believe so, entering town, yes.
Q All right. And Delphi kind of advertises these trails; right?
A I'm not too sure about that. I've interviewed people that have lived there – here their whole life and they didn't know the bridge or the trails existed, and I've interviewed people that have went out there.
Q Fair. Now, I'm gonna show you picture 275.
A Yes, ma'am.
Q Are those photographs of Richard Allen?
A Yes, ma'am.
Q Less than a year before A.W. and L.G. disappeared?
A I believed so from what was written on the captions on the sides of them.
Q Okay. Obviously, Richard Allen didn't take those pictures.
A It doesn't look like it.
Q Or he's a gifted selfie taker. Okay. Describe his hair for me.
A On the one image that was all the way on the right, he's wearing a hat. On the image in the middle, it looks to be short. And then, on the image that was all the way to the left, I'm unable to see exactly what his hair was.
Q Okay. Kind of your length?
A Possibly.

Q His hair's not curly, is it?
A I can't tell from the two pictures.
Q Were you present during any interviews of Richard Allen?
A I was present viewing them; not in the room, but viewing them, yes.
Q You were present in another room, watching it by video?
A That is correct.
Q All right. What was the length of his hair?
A I do not recall at that time.
Q Okay. Now, you took a picture of a bunch of knives; right?
A Trooper Clemons took the pictures.
Q I'm sorry. There were pictures taken of a bunch of knives; right?
A That is correct.
Q And Richard Allen, are you aware that he has a fishing license?
A I was not aware of that.
Q All right. Not unusual for hunters or fishermen or even people who live in the country to have a lot of knives?
A I couldn't say. Just depends, I suppose.
Q Okay. I'm not a fisherperson either, fisherwoman, but I think people use knives to do that; right?
A To fish?
Q Yes.
A I don't know how they'd use a knife to – spearfishing possibly.
Q All right. Well, you cut lines; right?
A That maybe get tangled.
Q Okay.

A Scissors or something.
Q All right. And I think you filet fish.
A That's correct.
Q All right. So that wouldn't be uncommon for a fisherman to have knives like that.
A Sure, filet knives, sure.
Q All right. Not uncommon for people to have boxcutters.
A Sure.
Q All right. And you – the phones. People frequently recycle phones; right?
A Depends on the person, if they save them or recycle them.
Q All right. And you have no idea what phones Richard Allen kept and what phones they may have recycled or disposed of or traded in?
A From the – from what we saw at the residence, it appeared that they had kept a majority of their phones.
Q All right. There are a lot of pagers.
A And pagers.
Q I mean, people haven't carried pagers for a long time; would you agree?
A I would agree.
Q All right. So all of these go back years and years and years; right?
A That's correct.
Q All right. And you don't know if, at some point, maybe they changed their habits in terms of recycling or turning in phones?
A Correct, I do not know.
Q And again, blue Carhartt jackets, lots of people have blue Carhartt jackets; right?

A I couldn't tell you.
Q All right.
A I don't know.
Q Not unusual for people to have a Sig Sauer gun.
A I'm sorry?
Q Not unusual for people to have a Sig Sauer gun?
A I couldn't say.
Q All right. In fact, you collected other people's Sig Sauer guns in the course of your investigation.
A I don't believe I collected any.
Q Are you aware that other Sig Sauer guns were collected in the course of this investigation?
A I'm unsure which ones were.
Q All right. What is your role in the investigation?
A I was assigned in April of 2019, full-time in a temporary-duty assignment to assist in the investigation.
Q And you don't know what evidence was collected?
A I was not present during the entire investigation from 2017.
Q Was it important to kind of get yourself caught up?
A I did. I went through the evidence the best that I could, the large binders, to see what we had in evidence.
Q Now, the blue Carhartt jacket you collected, you sent it off to the lab?
A I believe it was sent.
Q Okay. Anything – it was tested?
A I believe it was tested.

Q Anything linking Richard Allen to the murder of A.W. from the coat?
A From the coat, I was not aware of anything that they found at the lab.
Q Okay. Anything tested from the coat that links Richard Allen to L.G.?
A Nothing that I was aware of.
Q You seized his car, his 2016 Ford Focus?
A Yes, ma'am.
Q Okay. Anything in the car linked Richard Allen to the murder of L.G.?
A That the vehicle was on the camera at the Hoosier Harvestore.
Q Richard Allen's 2016 Ford Focus is on the Hoosier Harvestore?
A I believe so.
Q You can prove that?
A I believe so, yes.
Q Okay. And you proved it by a license plate number?
A By the description, the look of the vehicle, and the time that we were provided by Mr. Allen and the time on the video.
Q Okay. Lots of black Ford Focus vehicles in the country; right?
A I don't know.
Q All right. Anything that you tested inside of Richard Allen's 2016 Ford Focus vehicle, can that be linked to the murder of L.G.?
A I do not believe so.
Q All right. And anything tested inside Richard Allen's 2016 Ford Focus vehicle, can that be linked to the murder of A.W.?
A I do not believe so.
Q All right. All the knives, did you find a single knife that you can link to the murder of L.G.?

A That were located at the residence?
Q Yes.
A No.
Q Okay. What about A.W.?
A No.
Q Okay. Now, there were – there was clothing missing from the crime scene; correct?
A I believe so, yes.
Q All right. There was a girls sock?
A Yes.
Q And a girls pair of underwear?
A I believe that's accurate.
Q All right. And you did everything you could to search everywhere in Richard Allen's house; right?
A Yes, ma'am.
Q And his car?
A Yes, ma'am.
Q I think people even were digging in his yard; is that right?
A I believe that they were using a metal detector.
Q Did they try to dig up some things?
A I believe so.
Q All right. You ever find the girls pair of panties?
A No, ma'am.
Q Okay. Did you ever find the girls sock?
A No, ma'am.

Q Now, Sarah Carbaugh gave a description of a man walking on 300 North; recall that?

A I was – I don't believe I was involved at the investigation at that point.

Q Okay. Well, that's a pretty important piece of evidence, because that establishes the endpoint of your timeline; right?

A I'm sorry, can you repeat the question.

Q I mean, Sarah Carbaugh's statement is very important because it establishes the end of your timeline when you believe these murders occurred; right?

A It was a witness – a statement from a witness that we took into account, yes.

Q And that helps to establish your timeline.

A Possibly, yes.

Q Possibly? All right. And are you aware that Sarah Carbaugh gave a description of an individual covered in blood?

A I believe so, yes.

Q All right. And blood transfers to different fabrics.

A I believe so, yes.

Q Right. And someone covered in blood who got in their car, you can test for that blood years later; right?

A If the blood were to transfer, yes.

Q Yes. And there was a lot of blood at that crime scene; right?

A How it was explained to me was that the blood could have dried to that point, that it could have been dried to that point and it –

Q Who explained that to you?

A Just during the course of the investigation, talking to different law enforcement entities.

Q Okay.

A I don't recall exactly who.

Q Are you telling us that dried blood can't transfer?

A I'm not sure.

Q All right. So whoever murdered L.G. and A.W. probably had a significant amount of blood on their clothing; right?

MR. MCLELAND: I'm gonna object to the form of the question, Judge, and not to mention it's outside the scope of direct at this point.

THE COURT: Sustained.

MS. AUGER: Nothing further.

THE COURT: Mr. McLeland.

MR. MCLELAND: No other questions, Judge. Thank you.

THE COURT: Does anybody on the jury have any questions for Detective Vido?

(No response or indication from any juror.)

THE COURT: All right. Thank you, Detective. You may step down. You may call your next witness.

MR. MCLELAND: Judge, the State of Indiana would call Indiana State Police Lieutenant Jerry Holeman, please.

(Witness sworn.)

DIRECT EXAMINATION OF LIEUTENANT JERRY HOLEMAN

QUESTIONS BY MR. MCLELAND.

Q Will you state your name, please.

A Jerry Holeman, H-O-L-E-M-A-N.
Q How are you employed?
A With the Indiana State Police.
Q And how long have you been employed with the Indiana State Police?
A Twenty-three years – 23 and a half years.
Q And did you go through special training or schooling to become a law enforcement officer?
A Yes, I did.
Q And what are your current duties?
A My current duties is I'm a – my rank is lieutenant and I'm assigned as the area investigative commander, I oversee all criminal investigations over Area 1, which includes Lafayette post, Peru post, and the Lowell post.
Q I want to take you back to October 13th of 2022; at that time, do you assist in the execution of a search warrant at the home of Richard Allen?
A Yes, I did.
Q And you were assigned to assist?
A Yes, supervise.
Q Supervise? What was your role in that supervisorial capacity – sorry – at that search warrant on October 13th of 2022?
A Initially, I did a walk-through with the crime scene investigator to make sure that the property – he took photos of how the property was, just in case we damaged something, cut carpet out, cut drywall out, and I did the walk-through. And then, after that, I was sitting outside, watching –
Q Let me slow you down a little bit; okay?
A Sorry.

Q You did the initial walk-through –

A Initial walk-through.

Q -- and photographed the house.

A Yes.

Q Did you then talk to Richard Allen?

A Yes, I did.

Q What did you tell Richard Allen?

A I told him that if we damaged his property, there was a form that he could fill out, and that we were gonna do our best not to damage it, and if there was a locked box or something like that, we would come to him to get keys.

Q What was his response?

A He said, "It doesn't matter. It's over."

Q After that, what did you do?

A After that, I sat outside the house, back where the garage was, and I observed, make sure nobody came in the house while the team of detectives were searching the house.

Q Did anyone sit in the car with you?

A Yes.

Q Who?

A Mr. Allen.

Q And did Richard Allen say anything to you while you were sitting in the car?

A Yes. For the most part, he was really quiet. He got out a couple times to smoke cigarettes. He was sitting in my car 'cause his wife needed to use the restroom and she went to her place of employment, and he asked me if we

detained his wife and I said no.

Q At some point, did you offer to drive him to his wife?

A Yes. I said, "If you're concerned about her, I can drive you to the place of employment if you want me to."

Q And what was his response?

A He said, "It doesn't matter. It's over."

Q After you were complete – or after detectives were completed with the search, was Richard Allen free to go?

A Yes, he was.

Q After the search was done, what happened next?

A I did another walk-through with – to make sure that we didn't damage any property, and then I spoke to Mr. Allen and told him again if he finds any property damage, there's a form that he can fill out and that we'd reimburse to get it taken care of.

Q After the items were collected from the home, were you able to view some of those items that were collected?

A Yes, I did.

Q And specifically, were you able to view the .40-caliber firearm that was collected?

A Yes.

Q And do you have that here with you today in court?

A Yes, I do.

MR. MCLELAND: Your Honor, with your permission, I would ask the Lieutenant to be able to retrieve that item and display that to the jury.

THE COURT: You may. And it's – has it been marked as an exhibit

yet?

MR. MCLELAND: Not yet. I will – wasn't sure how exactly to mark that, Judge. The box?

THE COURT: Just mark the box.

MR. MCLELAND: Okay.

Q Trooper, would you remove the box the firearm is in from the other box. And, Trooper, can you tell the identification number on that box.

A The State police number is 17ISPC001748. The item number is 314.

Q And do you know that to be the gun that was collected from Richard Allen's house?

A Yes, sir.

MR. MCLELAND: Your Honor, the State would move to admit what's been marked as State's Exhibit 276.

STATE'S EXHIBIT 276 OFFERED

MR. BALDWIN: No objection.

THE COURT: All right. Without objection, 276 is admitted.

STATE'S EXHIBIT 276 ADMITTED

Q Lieutenant, I'm gonna ask you to open the box. Trooper Holeman, before you open the box completely, is the box sealed?

A Yes.

Q And is it marked with some identification of who sealed the box?

A Yes.

Q And who sealed the box?

A Well, it's been sealed a couple times.

Q Each time the box is opened, is it resealed?

A Yes.

Q And each time it's resealed, the trooper or law enforcement officer who opened or seals it, do they sign the seal?

A Yes.

Q And why do they –

A Initials.

Q I'm sorry?

A Initials.

Q Initial the seal, thank you. And why do they do that?

A Just to show that the person that opened it resealed it, then they log it on the log it on a PR&R.

Q To have a good chain of custody?

A Yes.

Q And are you cutting the tape from the last time that you sealed it?

A Yes.

Q And are your initials on that seal from the last time you sealed it?

A Yes, they are, JDH, I put the date and then – sometimes I put the date, at least one time, and then JDH on all the seals.

Q You may continue. Trooper, I'm gonna ask you to open the box. And, Trooper, before you display the firearm to the jury, can you ensure that it's cleared for safety purposes.

A Yes.

Q Will you now display it to the jury, please.

STATE'S EXHIBIT 276 PUBLISHED

Q Thank you, Lieutenant.

MR. MCLELAND: No other questions, Judge.

THE COURT: Mr. Baldwin.

MR. BALDWIN: Thank you, Judge.

CROSS EXAMINATION OF LIEUTENANT JERRY HOLEMAN

QUESTIONS BY MR. BALDWIN.

Q So by the time you rolled into Richard Allen's house, it was a few hours after his October 13th, 2022, videotaped interview; correct?

A Yes.

Q And he was a suspect at that time?

A Yes.

Q And, obviously, because he was a suspect, you would have on a tape recorder at all times so that when it came back later on, maybe a couple years later, you'd be able to play for that jury the words that you said that Richard Allen spoke to you in your vehicle; correct?

A No.

Q You didn't?

A No. I wasn't interviewing him. He made comments to me voluntarily.

Q He was a suspect?

A There was a lot of suspects. Yes, he was.

Q You had one of these on you?

A I did.

Q Tape recorder on that?

A There is.

Q You chose not to tape record it?

A Yes.

Q And he had asserted his innocence a few hours earlier at that videotaped interview; correct?

A Yes, I believe so, yes.

Q And now you guys roll in with a bunch of police cars, block off the street; correct?

A I don't think the street was completely blocked off, but we were impeding the flow of traffic I would say.

Q At that time, Richard Allen, he knows he's – because in this videotaped interview, he's been accused of killing these girls?

A Yes.

Q And he's aware of that?

A I believe so, yes.

Q It's a couple hours later; right? And his demeanor at the videotaped interview did not look like one that was somebody that had killed anybody; right? Do you agree?

A During the interview?

Q Yeah, the videotaped interview.

A I would say demeanor changes, but I – you know, I wouldn't be able to judge that unless I went back and looked at it, but yeah –

Q Yeah, that – looking at the videotaped interview would be a great resource for figuring out what his body language was and whether it was to reflect a person that might have killed somebody; correct?

A That is correct.

Q He lived in a neighborhood; right?

A Yes.

Q So everybody in that neighborhood would have seen this grouping of police officers coming into Richard Allen's house and conducting the search –

MR. MCLELAND: Objection: Calls for speculation, Judge.

THE COURT: Sustained.

Q How many times has that box been opened that has the gun in it, do you know?

A Without looking at the property record receipt, it'd be hard for me to tell, but I would say it's been opened more than – I've opened it twice, that's the second time I've opened it, and I know it's been opened one other time to do the analysis, so at least three times.

Q So this doesn't tell you – whatever is in this box, on this box, written on this box, doesn't tell you how many times it's been opened, does it?

A I mean, it does, but it's hard to read. It's hard to explain.

Q I see one signature on here, chain of possession, I see one signature.

A Yeah, we don't use that –

MR. MCLELAND: Judge, may we approach?

THE COURT: Yes.

(Sidebar conference conducted.)

MR. MCLELAND: Judge, we've stipulated to the chain of custody for the firearm.

THE COURT: Why are we doing this? There's a stipulation, it is an agreement of the parties.

MR. MCLELAND: Why did we get to –

MR. BALDWIN: We –

MR. MCLELAND: -- into the –

MR. BALDWIN: We are – we did stipulate to the chain of custody, but we are allowed to talk about, on closing argument, whether or not somebody could have opened it. We can stipulate to the – there's two different concepts there.

THE COURT: No, you're not – when you stipulate to chain of custody, you're stipulating that there is an unbroken, appropriate, real chain of custody. And now claiming that it isn't is not a stipulation.

MR. BALDWIN: All right.

MR. MCLELAND: Judge, I would ask the Court to at least admonish the jury that the parties have stipulated as to the chain of custody.

THE COURT: I will.

MR. MCLELAND: Thank you, Judge.

(Sidebar conference concluded.)

THE COURT: Ladies and gentlemen, I would advise you, as members of the jury, that the parties have stipulated to the proper chain of custody of this evidence. You may proceed.

MR. BALDWIN: Thank you, Judge.

Q Betsy Blair a credible witness?

A I believe so, yeah.

Q Sarah Carbaugh a credible witness?

A I believe all the witnesses are credible.

Q Saw two different people though, described two different people?

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

THE COURT: Sustained.

Q Bullet in the photograph with somebody's hand this way, there's nothing wrong with that, is there?

A No.

Q In fact, when there's an important piece of evidence is a bullet, you would expect it to be photographed in many different ways once it's picked up from wherever it –

MR. MCLELAND: I'm gonna object to the form of the question, Judge.

THE COURT: Sustained.

Q Is there anything wrong with a photographer taking a photograph of a bullet in multiple positions?

A Depends.

Q Can a bullet be damaged from photography?

A It could be damaged by handling it and moving it. Dirt would fall off, skin cells would fall off. So if it's something that you believe may have DNA, you should probably limit the amount of time that you move it would be my –

Q But you do have to move the bullet at some point in time.

A You do, but sometimes you can limit that movement by just putting it into the – a secured location, seal it, take it back, let the professionals or the experts, laboratory, do it.

Q So we should expect the lab, in this case, to have the full bullet, both front end, back end, and side?

A I would say so, yes.

MR. BALDWIN: Okay. Thank you. No other questions.

THE COURT: Mr. McLeland.

MR. MCLELAND: No re-direct, Judge. Thank you.

THE COURT: Does anybody on the jury have any questions for Lieutenant Holeman?

(No response or indication from any juror.)

THE COURT: No? All right. Thank you, Lieutenant. You may step down. And refresh my memory, ladies and gentlemen, that was the last witness of the day?

MR. MCLELAND: Judge, yes. The –

THE COURT: Okay.

MR. MCLELAND: -- State would ask for a recess until tomorrow.

THE COURT: Okay. All right. I just want to make sure, 'cause I knew the six of us talked about that, I just wanted to make sure.

MR. MCLELAND: Yes, Judge.

THE COURT: All right. So, ladies and gentlemen, you've heard the evidence that we have prepared for you for the day, so we're gonna take a little bit of an early evening. Again, while you're outside of the courtroom, please, keep your minds open. Please don't form any opinions or conclusions about anything, since you will be in the company of the bailiffs, all three of the bailiffs, for the rest of the day and over in the evening. You can't discuss the case, so please, don't do that. 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 4:45 p.m.)

THE COURT: And you may be seated until we can get the jury out of the building. Is there anything that we need to do outside the presence of the

jury, Mr. McLeland?

MR. MCLELAND: No, Your Honor.

THE COURT: Mr. Rozzi?

MR. BALDWIN: I don't think so, Judge. Thank you.

THE COURT: Thank you. As soon as we get word from the bailiffs that we can let everybody out, we'll let everybody out, and we'll make the evidence available to the media.

MR. MCLELAND: Thank you, Judge.

MS. AUGUR: Thank you.

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

(Off record at 4:46 p.m.)

(On record October 25, 2024, at 9:02 a.m.)

THE COURT: All right. Well, good morning, ladies and gentlemen. 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. State's here by the prosecutor and his deputies. We are in the courtroom outside the presence of the jury, who has assembled. Is the State ready to proceed?

MR. MCLELAND: Yes, Your Honor.

THE COURT: And is the Defense ready?

MR. ROZZI: Yes.

MR. LUTTRULL: Your Honor, if I may just make a –

THE COURT: Yes.

MR. LUTTRULL: I don't think this will be long –

THE COURT: Okay.

MR. LUTTRULL: -- I just wanted to let the Court know I will be asking the firearms examiner to remove the pistol from the box –

THE COURT: Okay.

MR. LUTTRULL: -- and cycle it, making sure, first, that it's empty and so forth.

THE COURT: Right. That's fine. That's fine.

THE BAILIFF: All rise.

(Jury in at 9:04 a.m.)

THE BAILIFF: Thank you. You may be seated.

THE COURT: Well, good morning, ladies and gentlemen. It's nice to see you back this morning. I hope you had a pleasant evening. Again, as you have had access to your phones for purposes of contacting your family and checking work email, always under the supervision, however, of all three of our bailiffs, I'm gonna go through the questions that you are going to be reciting back to me by the end of the trial. Ladies and gentlemen, 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 matter with you?

A (All jurors respond in the negative.)

THE COURT: All right. Again, thank you kindly, ladies and gentlemen, for continuing to follow the Court's directives. Mr. Luttrull, you may call your next witness.

MR. LUTTRULL: Thank you, Your Honor. Good morning.

THE COURT: Good morning.

MR. LUTTRULL: We would ask Melissa Oberg take the stand.

(Witness sworn.)

DIRECT EXAMINATION OF MELISSA OBERG

QUESTIONS BY MR. LUTTRULL.

Q Please state your name for the record and spell your last name for me.

A My name is Melissa Oberg. The last name is spelled O-B-E-R-G.

Q And we've been reminding every witness – I think that was probably a good level – but just keeping your voice up, so the people all the way back and counsel can hear, we would appreciate that.

A Thank you.

Q Where are you employed?

A I am currently employed through a outside place, it's not through the Indiana State Police currently. I'm employed through a clinical asset management company that manages healthcare items.

Q And what do you do there?

A I'm an operations data analyst.

Q What was your previous employment?

A I was employed by the Indiana State Police at the Indianapolis Laboratory.

Q And you resigned from the State Police when?
A In April of 2023.
Q The – when employed with the Indiana State Police, what was your role?
A My role at the Indiana State Police was as a forensic firearms examiner.
Q How many years did you have with the Indiana State Police?
A Just over 17 years.
Q And when you began with the State Police, what was your assignment?
A I was a forensic drug chemist.
Q And how long you were – were you a drug chemist?
A I was in that unit for approximately 11 months total.
Q And then you transitioned where?
A I then interviewed for the firearms position and I transferred into the Firearms Unit at that time.
Q How long were you in the Firearms Unit at the Indiana State Police?
A I was in the Firearms Unit for – from that 2006, November, timeframe until the point in which I left in April of 2023.
Q And what are your – what were your duties when you were a firearms examiner?
A As a firearms examiner, my primary duties were to examine ammunition components, such as bullets and cartridge cases, as well as cartridges, it could be shotgun ammunition, as well, and I assess them for their class characteristics, as well as doing comparisons to each other or to a firearm if one is submitted. I also did function exams of firearms to see if they functioned as designed by the manufacturer. I also did tool mark examinations, which a tool mark examination could consist of bolt cutters, prybars, anything that you could

think of to be used as a tool in any type of manner to gain leverage to either break into something or be used in a crime, so I did tool mark examination, as well. I also did serial number restoration, I did distance determination, and also entry into the Integrated Ballistics Identification System.

Q What is your educational background?

A I have a bachelor of science in chemistry from St. Joseph's College, which I obtained in 2005, and I also have a master of science in applied data analytics from the University of Indianapolis, which I obtained in May of 2023.

Q As you were completing your studies for your masters and coming to the end of that ordeal, did you – is that when you transitioned – resigned from the Indiana State Police to your present employer?

A Yes.

Q Did you leave the Indiana State Police voluntarily and on good terms?

A Yes, I did.

Q Have you remained involved in firearm examination – the firearm examination community and work?

A Yes, I have.

Q Would you explain that to the jurors, please.

A I still currently sit on the Organization for Scientific Area Committees as an affiliate. That is sponsored by the National Institute of Standards and Technology. I remained as affiliate, because, as a private person that works in industry, that they thought my knowledge would be good to be obtained for the firearms sections there, so I still sit on there. I'm a non-voting member currently, but used to be a voting member. I also am a distinguished member of AFTE, which is the Association of Firearm and Tool Mark Examiners, and I still reside

on some committees where I will help create documents and best practices for both of those committees that I sit on.

Q What is AFTE?

A AFTE is the Association of Firearm and Tool Mark Examiners, they are responsible for presenting research and developing examiners and setting best practices that examiners should follow.

Q In fact, AFTE is the premier organization for firearms examiners in this country; is that correct?

A That's correct.

Q And you've served on their leadership or served on committees and so forth?

A Yes. I sat on the board of directors for approximately six years as the treasurer and I have served on various committees such as the research and development committee and other committees associated with the treasurer.

Q When you transitioned to your present employment and left the Indiana State Police, did you – were you asked to retain or to re – stay with the two different committees or organizations that you serve on currently?

A Yes, I have been. I've also been asked by the current president to be added to another committee that she has for this year.

Q So are you a member of any professional organizations?

A Yes. I'm currently still a member of AFTE, the Association of Firearm and Tool Mark Examiners, and I'm also still a member of OSAC as an affiliate, which OSAC, again, is the Organization for Scientific Area Committees.

Q Is the Indiana State Police Firearms and Tool Mark Unit, is it accredited?

A The Indiana State Police Laboratory as a whole is accredited, so they are

accredited by the American National Standards Institute National Accreditation Board.

Q Up until your resignation and moving on to a new area of work, were you certified as a tool – firearms and tool mark examiner?

A So up until I left, I was certified as a firearms examiner through the Association of Firearm and Tool Mark Examiners and I was also certified as a fellow through the American Board of Criminalistics.

Q And have you testified in court as a firearms and tool mark examiner?

A Yes, I have.

Q Can you tell the jury how many times?

A This is my 112th time.

Q And have you done so in both state and federal jurisdictions?

A Yes, I have.

Q Have you continued to testify, since May of 2023, on work that you did prior to your departure from the Indiana State Police?

A Yes, I have.

Q As recently as when?

A August would have been the last time that I testified as a firearms examiner.

Q And you have the potential for continuing to be subpoenaed into court to testify on cases of yours?

A Yes, it could continue indefinitely.

Q Where was that August testimony?

A It was in Marion County.

Q I'm gonna hand you what's been marked as State's Exhibit 277; you

recognize that?

A Yes, I do.

Q What is it?

A This is a curriculum vitae that was prepared by me that has my qualifications, my education, and training that I have been exposed to while I was working at the Indiana State Police.

MR. LUTTRULL: Your Honor, I would move the admission of State's Exhibit 277.

STATE'S EXHIBIT 277 OFFERED

MR. ROZZI: No objection.

THE COURT: All right. Without objection, 277 is admitted.

STATE'S EXHIBIT 277 ADMITTED

MR. LUTTRULL: I would ask leave, Your Honor, to publish it to the jury.

THE COURT: You may.

STATE'S EXHIBIT 277 PUBLISHED

THE COURT: You may proceed, Mr. Luttrull.

MR. LUTTRULL: Thank you, Your Honor.

Q Does ISP Firearms Unit take proficiency tests?

A Yes, they do.

Q Would you explain that to the jury, please; what is a proficiency test?

A A proficiency test is an exam that an analyst will take on a yearly basis, it's provided by an outside vendor, so it's not casework, not submitted by a law enforcement agency, it's actually submitted by an external private vendor, and that private vendor submits that to – we actually purchase them, they are

submitted to our laboratory, and then an analyst will take them. That proficiency test is to basically check is the analyst still proficient and able to work in the field. It tests their – basically their abilities and skills on an annual basis. That is basically what a proficiency test does.

Q Were you – as a member of that team, were you subject to proficiency tests while you were on the Indiana State Police?

A Yes, I was.

Q And did you pass those tests?

A Yes, I did.

Q Can you tell the jury, if you're aware, of generally an examiner's performance in the field of firearms examination.

A Yes. So examiners can be performance checked to see how do examiners perform on tests that are created outside of the criminal justice system. Typically, they're referred to as what are called black box studies. These black box studies are aimed to assess examiner performance, and what they're doing is they're testing different things that an examiner may come across, such as subclass characteristics, consecutively manufactured firearms, longevity as far as like tests in between shots, could be length of time, and so different black box studies are created somewhat differently, but they are supposed to be created in a sense that it would be the hardest of what an examiner would come across in casework. So examiners can be tested on that, and they have developed examiner error rates based on those studies. And the reason these studies are done is because an examiner in real casework, in real life things that are submitted through the criminal justice system, an examiner does not know the error because they don't know the ground truth of the case; but black box

studies, we can test examiners because we know the ground truth, because it's developed by somebody, they know the answers, and they're checking to see are the answers correct.

Q Have you participated in any of those studies?

A Yes, I have.

Q Is there anything more you can tell us about the results of those studies or anything else?

A So the analyst does not get the information back about how they performed on those tests, because they are –

MR. ROZZI: Your Honor, I'm gonna object at this point, as well. I'm not sure that her – her testimony doesn't sound like it's connected to this circumstance in this case.

THE COURT: Mr. Luttrull.

MR. LUTTRULL: In fact, Your Honor, it's – I believe it's an ethical responsibility she has to explain the area of the field and the examiner performance generally in her profession.

THE COURT: Overruled.

MR. LUTTRULL: Thank you.

THE COURT: You may answer.

THE WITNESS: May answer? Okay.

A So examiners' performance on these tests, they are not a hundred percent applicable to real-life casework, they are basically applicable to what the examiner did in that testing scenario. And so the upper bound of what a false positive would be in one of these studies, which means an examiner would come to an incorrect conclusion if – so a false positive is an incorrect conclusion that

it should have been excluded versus identified. So the error rates in those studies are typically, worst-case scenario, is about 2.2 percent of the time that an examiner would come to a false positive. A false negative, on the other hand, is when an examiner would exclude something that actually should have been included, and the error rate on that side of the equation is around 2.87 percent.

Q Thank you. You had prepared some images and some slides to help the jury understand your work and what you did in this particular case; is that correct?

A That is correct.

Q I'm gonna ask you to go ahead and move now, and you'll want your binder with you; will that be of assistance?

A Yes, please.

Q If we could ask you to move towards the screen. So we want to begin with very basics of examining what is it that you do; would you explain this to the jury, please.

A Yes. So at its core, firearms identification or the examination of firearms or tool mark is basically a science that is used to determine whether a particular tool is used to create a tool mark, and this is an empirical-based science, where it's through observation.

Q What is a tool and how are they made?

A So in our discipline, we're not only concerned with the tools that we may receive, but we're also concerned with tools that make the tools that we receive. But first, to describe what a tool actually is, is a tool is something that is a harder object that comes in contact with a softer objection. If you like to think of your hand and running in through sand, your hand is the harder object and you're

making a mark through sand. So same thing here with tools, you can have – as I've described before, as a tool-mark examiner, I can examine bolt cutters, I can examine pliers, and also the subset tool here of a firearm. And the firearm, inside it, has small tools that can come into contact with an ammunition component such as a bullet, a cartridge, a cartridge case, or anything that might happen to go down there. But as an examiner, I'm not only interested in this, but I also need to know or want to know what makes these tools, so that's of interest and of value to us, because again, those tools are gonna be harder, and they're going to make marks on these tools.

Q Those tools, meaning the tools that make these tools, are going to be harder than these tools?

A Correct.

Q What is a tool mark?

A So a tool mark, basically, there are a couple different features of a tool mark, it can be either impressed or striated. If we go back to the sand and my hand example, if you take your hand through the sand, that's actually a striated mark, but if I took my hand and I patted it on the sand, that's an impressed mark. In our discipline, you can have both impressed and striated at the same time. If you take a look at the lower-left picture there, you'll actually see an impressed firing pin, and when the barrel dips in the firearm, it actually creates a straited drag mark here, so an examiner can assess both impressed and striated and it can happen with the same tool during a process. So they're not necessarily mutually exclusive, they can happen together, so they can happen – you can have both striated and impressed. Typically with bullets, you're mostly gonna see impressed marks, but with cartridges and cartridge cases you can get

a number of different actions going on depending on how that cartridge or cartridge case gets outside of the firearm.

Q And you do have a – if you wish to use it, you do have a pointer there that –

A Okay.

Q -- might be of some assistance.

A Thank you.

Q Parts of a cartridge?

A So what you're seeing here, just to give you some familiarity with what an examiner works with and some terminology that I'll be using throughout this presentation is first we're gonna look at what a cartridge is. Not only do I have it up here, but I also have a live model here that you can see. Basically, a cartridge is a single unit of ammunition. It's –

Q If I may interrupt you, would you mind walking – keeping your voice up and walk a little bit closer, so the jury – to the jury so they're able to see this model.

A Yes. So basically, a cartridge is a single unit of ammunition. It is designed to go in a firearm and be fired. This unit of ammunition will have what's called a cartridge case, which is this area right here. (Indicates) This cartridge case has a primer here. (Indicates) This primer here can be either nickel or brass, there are some copper primers, too. This area right here is where the firing pin inside the firearm comes in contact to it – with it when it's fired. It's a little bit softer in this area than the actual head, so this head area's a little bit harder than that softer primer area. And then also, when this is fired, you're gonna see the projectile go outside the firearm, and then you'll be left with a cartridge case

when it's fired. So you have a cartridge case when it's separated, and you have a bullet here, but together, it's called a cartridge, so that's basic terminology here just kind of keep you guys on track with what we are observing.

Q Thank you. So if there's a reference to a bullet, technically, the bullet is the end of that item that projects – that is the projectile outside of the firearm?

A Correct, yes. So often, people will confuse or use different slang terminology and I may correct somebody here today, but I'm not trying to be mean, it's just I want to make sure everybody is on the same page with the same terminology so we can all understand it.

Q Let's talk about one of the tools that you mentioned and its tools within it or its parts. What do we have here?

A So this is a picture of what is called a semiautomatic pistol. A semiautomatic pistol is designed to be fired with a magazine inserted into the bottom of it, and it is designed to be fired by pulling the trigger and then you would pull the trigger again to fire it, so it's gonna fire one round at a time. Just to go through some of the parts and terminology about what actually a firearm can consist of for a semiautomatic pistol, I'm just gonna show you on here what they are. So up here, you're gonna have the slide up here, this slide part, and you're gonna see the serrated portions here. (Indicates) This allows a person to grip up top and move that slide to the rear. That's how you would load ammunition from a magazine. You'll see the magazine right here. (Indicates) That magazine gets inserted into the magazine well. There's also the grip area, that would be where you want to put your hand there. This magazine release here is what allows you to take the magazine out, if you would like to. (Indicates) You also have the trigger guard and then the trigger in here. (Indicates) And

this, this whole thing right here is considered the frame. Back here, there is an external hammer. You won't always have an external hammer on every firearm, but this particular one does. Sometimes, they're internal and you won't be able to see them.

Q Looking down at the top, towards the inside of the firearm, what do we see here?

A So when you pull that slide to the rear, which I talked about using those serrated edges to pull back, you're gonna see the magazine inserted in here. And as you look inside the firearm, there are different tools that a cartridge, cartridge case, or bullet could come into contact with. There are what are called magazine lips right here from the magazine. (Indicates) Here is the ejector. (Indicates) Here is the extractor. (Indicates) And here is the breech face. (Indicates) The ejector and the extractor work in a firearm by the ejector pushing a cartridge or a cartridge case out and the extractor pulls it; so as one's pushing, one's pulling, and that's how a cartridge or a cartridge case would be moved outside of a firearm. To the side of here, this is just, instead of looking on top, you're looking at the side view here where you can see the ejector again, as well as the extractor and the breech face.

Q And on that image to the left, just make sure we're oriented, where is the barrel on that?

A So the barrel would be right down this way and this would be – if you were holding a firearm, that would be towards you. So this is the back portion and this would be whatever you wanted to point it at.

Q That extractor and ejector that you're talking about are examples of two internal tools inside the pistol; is that correct?

A That is correct.

Q What do we see here?

A Here you're actually seeing the opposite end. You're seeing the barrel as you see going forward. You're also seeing a cartridge coming from a magazine that would go up this feed ramp right here, it's basically like a little elevator into the chamber area of the firearm. This area's your chamber face. (Indicates) This is the slide part up here. (Indicates) And so as you pull the slide to the rear, that cartridge is gonna load right up to that elevator or this area right here – (indicates) – and into the chamber.

Q So which is harder, the tools in the firearm or the cartridge?

A Typically, the tools in the firearm are going to be harder than what is coming into contact with it, whether it be a bullet, a cartridge case, or a cartridge.

Q That chamber face, Ms. Oberg, how is it shaped?

A This one has a U-shape to it right here. What you'll see if you actually directly look down on it, you'll see that and there'll be a little recessed portion behind it connected to the barrel.

Q What do we have here?

A So here you're gonna see the cycling of a cartridge, and this is the first step as to when a cartridge is cycled. So here you see a cartridge in the magazine and you see that the ejector is on top of this, that's because it has not been cycled and loaded up into the chamber yet; so this is basically in the magazine, ready to be pulled fully to the rear. Since this slide isn't pulled fully to the rear, that's why this ejector can sit on top of there for right now. Once the analyst moves it all the way to the rear, it'll pop up into that place with the elevator and into the chamber, so this is right before it's cycled into the chamber of the

firearm.

Q What do we see in this image?

A In this image, you're gonna see the after portion. So it has loaded up into the chamber area and then you're actually seeing the extractor and the ejector cycle the cartridge out. So right here, the extractor, like I talked about before, it pulls, just like a little claw, and then the ejector over here is coming into contact with the other side of the cartridge head over here. And so at that point, once you pull it fully to the rear, the cartridge will exit the side of the firearm.

Q By the extractor and ejector working in tandem in a sense to eject that?

A Correct, and also the motion of pulling the slide to the rear.

Q So what just happened there?

A So in that video, that's the – like the first picture I had spoke about, you are pulling the slide to the rear and the cartridge is chambering into the barrel of the firearm.

Q This next cycling video, what does it display?

A This is just like the second part of the picture that you saw, this would be somebody retracting the slide to the rear and the extractor and ejector moving the cartridge to the side of a firearm.

Q So the cartridge in this image is already up where? Located where?

A It'll be in the chamber at this point.

Q You were prepared to demonstrate for the jury yourself, which would include them able to see a physical – you physically doing this cycling process, along with the sound of the cycling; correct?

A Yes.

Q I'm going to hand you what's been admitted into evidence State's Exhibit

276, and ask if you would remove it from its packaging – before I do so, ask do you recognize this box?

A Yes. So the outside of this box has the Indiana State Police Laboratory label on it, it also has my identifiers marked in red here with my initials, the item number, and the case number, as well as the seals here.

Q If you would, please, I'd like to ask you to take the – I'll just move it here to this table and give you a surface. Take Exhibit 276, if you would, insert the magazine – and what type of cartridges do we have here?

A These are dummy cartridges, they're .40 Smith and Wesson caliber dummy cartridges.

Q And we have scissors and gloves there.

A For members of this courtroom, I'm gonna check to make sure this firearm is unloaded and look down the barrel, to make sure it's empty. I'm also able to stick my finger in here, this is nothing in here right now. So this firearm is considered safe and unloaded right now. I'm gonna take this magazine that has dummy cartridges in it, I'm gonna insert it into the magazine that we talked about earlier, and I'm gonna go ahead and cycle one round in here. Now, this – there's a couple different ways that a person can cycle a firearm. The first way I'm gonna do it is how I typically do it, which I'm gonna go ahead and I'm going to close the slide here. I'm going to insert the magazine into here and I'm going to go ahead and pull the slide to the rear and let it go forward and then cycle a round out. (Demonstrates) So that loaded one and then it extracted and ejected one. There is another way that someone can do this. If I were to take the round out that's in the chamber and go ahead and cycle it, another way that you can do this as actually pull the slide to the rear, you can insert the magazine, and

then you can drop the slide like that and then cycle it again. (Demonstrates) And then with the last round, when there's no more in the magazine, it'll lock to the rear.

Q What does it mean when we say a – there's no – there's a cartridge – there's no cartridge in the chamber? What does that mean?

A When there's no cartridge in the chamber, it can potentially mean that someone has loaded the magazine and they have not cycled a cartridge into the chamber yet, so the chamber can be empty and, if you pull the trigger, nothing would happen. You would have to cycle that first round in there. Now, you can have a fully loaded magazine, go ahead and insert one into the chamber, and then you'd be ready to go and not have to cycle the firearm.

Q If there's no cartridge in the chamber, then that process that you just did with the slide would then lift a cartridge to the chamber?

A Correct. Yeah, as long as you pull fully to the rear.

Q But then, the next time that action's done, there would be an ejection of the cartridge?

A Correct, yes.

Q When you do your examinations of cartridges and bullets and cartridge cases, you were looking for various characteristics; is that correct?

A Yes, I am.

Q What are those characteristics?

A Characteristics can be class characteristics, subclass characteristics, and individual characteristics.

Q So this slide, what does this help you explain to the jury?

A So the first step in any process when an examiner starts to do their work-

up of looking at the items that they receive, they'll be interested in class characteristics. Class characteristics do not allow an examiner to individualize, they only allow an examiner to narrow the pool of candidates down. Class characteristics are basically measurable features that are pre-designed by the manufacturer, so they would be in blueprints and so forth, and the manufacturer already knows what's gonna happen. Class characteristics can consist, in firearms, of things like number of lands and grooves in the barrel. Lands and grooves in the barrel of the firearm are hills and valleys and they impart spin to a bullet when it exits the end of the barrel, just like a football player throwing a football. There can be a certain number of these lands and grooves, you can have anywhere from about 2 to 18, so certain manufacturers will manufacture differently and they'll have certain numbers. You can also have what's called a right or a left twist. So you might have a right twist, a six right, which would be six lands and grooves with a right twist in a particular firearm manufacturer or a certain subset of manufacturers could manufacture their firearms that way. So you won't be able to exclude based on class characteristics, but you could narrow the potential pool. If you'd like to think of class characteristics in your real life every day to day operations in what you do, think of going to a car manufacturing parking lot and you're gonna go buy a car. You may show up to buy that car and you know specifically that you're looking for a sedan. So if you go to that lot, you can already eliminate anything that's an SUV, anything that's a truck, because you know specifically that you are looking for a sedan, so that's a way to narrow it down. It's predesigned by the manufacturer what a truck's gonna look like, what an SUV is gonna look like, and what a sedan's gonna look like. So again, cross characteristics narrow it down, but they don't allow you to

ID. As far as cartridges and cartridge cases go, there are different shapes and sizes of ejectors, extractors, as well as firing pins, and also different shapes and sizes to potentially breech face marks.

Q What are subclass characteristics?

A So class characteristics help you narrow it down. Subclass characteristics are those characteristics that are not predesigned by the manufacturer. They actually occur during – typically during the manufacturing process. They can occur just due to wear of things, but they can typically occur during the manufacturing process. They lower the pool of candidates that can happen from that, so they are not – they don't give you the ability to identify, but they do happen typically during a lot or a run of what a manufacturer may run on a particular day. So they would be more restricted than class, but not as restricted as individual characteristics.

Q What do you mean by lot?

A A lot could be whatever that manufacturer manufactures on that day. So different manufacturers consider lots different ways, but it could be the time that that machine is run on that day and that's what's considered a lot.

Q In your work as an analyst, have you studied and visited any manufacturing – firearms manufacturing places?

A Yes. I've been to several out on the east coast, as well as in Illinois and Ohio. If we can actually just go back to the last picture, sorry. Just to talk about these two pictures that are here that you see at the bottom of the screen, these are how an analyst can actually recognize subclass characteristics. Typically, subclass characteristics can be recognized because they typically have long lines and they usually extend the depth of the area that is seen on a tool mark. That's

not always, but it is typical, it's a way an analyst can start to recognize subclass characteristics, even if they don't have a firearm. In this picture – these two pictures, what I'm showing you here is, is that on the breech face here, these long lines here will actually extend all the way to this side, as well. An analyst can look on a scope and they can see that these match up to this side, meaning that these marks cannot be used for identification purposes, but they do help narrow down the pool of candidates. Same thing here, in an ejector, you can see these marks run the entire length. Now, there are marks in between these long lines that an examiner can boost up the microscope to look for individual characteristics, so you can look at subclass, it doesn't mean that you don't have individual or other characteristics going on at that time.

Q We'll get to this in a little bit, but the – there's a line down the middle – the image on the right, there's a line down the middle you can see. Explain to the jury what that would mean up there.

A This line that you're actually seeing right here is called a hairline, so it's when an examiner would look through a comparison microscope. These are actually two different objects being compared together, so it'd be like if you had cartridge case 1 and cartridge case 2, you're putting it on the scope, so you'll see that line in the middle. It's also represented over here.

Q Now we have individual characteristics, explain that to the jury.

A So individual characteristics are those characteristics that allow an examiner to identify back to a particular firearm or a particular tool, if one is submitted. Individual characteristics can arise from different manufacturing processes, they can also arise from the way that a projectile or a cartridge or a cartridge case interacts with the inside of the firearm. So there are different

things that can occur, there's lots of edges inside of firearms that can create striated marks. Here what you're looking at is you're looking at these two pictures here, this is actually ejector sheer right here – (indicates) – this is the coming together of two different areas here, and this ejector sheer is individual in nature because it's coming to a point and it's being sheered across to get to that information. Here is also sheer created from the firing pin aperture hole to the breech face, and so that this is giving us individual marks there. This picture right here was actually on the last slide. You saw the subclass here that agreed, but the individual over here and the sheer actually doesn't agree. So examiners can see subclass that may agree, but if the individual over here does not agree, it means that it could have been produced on the same day, but it's not individual back to that particular firearm.

Q I think you explained this, but where do subclass characteristics – what produces them?

A It's typically during the manufacturing process, so it's the way – whatever type of manufacturing process has occurred, it can leave that behind on the surfaces, so it would be the – as I talked about it before, you have yourself as the tool, but say you have a parent, that parent that manufactures the tool itself is what leaves behind those marks.

Q So on a particular lot, you're gonna have likely – it would be unusual to have subclass characteristics shared by those cartridges?

A That's correct.

Q But within those subclass or in between those characteristics, you can see – on occasion, you can find individual characteristics?

A There is the potential, yes.

Q Potential. How are individual characteristics create – how do they come to be?

A Individual characteristics are also throughout the manufacturing process, they are those tools that also make this. So it's not as though it's just subclass or individual, they can be made within the same tool. Typically, it occurs during the finishing processes of the tools that come into contact and make the tools that are inside the firearm. So those individual characteristics can occur during the manufacturing process, but they can also occur during the use and abuse of a firearm. Think of the car example that I gave to you before about looking for class characteristics. Say you drive your new, nice, shiny car off the lot and you take it to Walmart or whatever and somebody opens their door on it, and now you have this nice red ding on the side of your pretty white car. That would be an individual characteristic. So it's something that happened throughout the use and abuse over the life of that type of object, but in firearms it can also happen during the manufacturing process, as well as throughout the life of the firearm.

Q You may prefer to cover this a little bit later, you can let me know, but have you been – are you researched and studied and aware of studies on consecutively made tools, firearms, ammunition, or other tools; have you studied that?

A There are research articles that have been out there, published about consecutively made objects, and the reason that we are so interested in that is because that anything made at the same time during the same manufacturing process we, as a community, want to know can an examiner tell the difference from those consecutively made items. So it is of interest to us as examiners,

because that is the hardest, most-difficult thing that an examiner would come across is something that is consecutively made. So there is research devoted to this. I've also taken tests that are consecutively made to see if examiners can decipher the differences.

Q And what did you learn? Were you able to decipher the differences of tools that were made one right after another on the machine?

A I took the 10-barrel test, which is a popular test in our field that is not a black box study, but it is a test that does look at consecutiveness, and I did pass that test. I have also taken black box studies that have consecutiveness in them. Unfortunately, on those studies, since we're anonymous, we're not allowed to get our answers back, so I don't know what my answers are, but I can tell you what the overall stats of those are.

Q What are those?

A The overall stats of one of the studies is about 1.5 percent for false positives and it's about 2.87 for false negatives.

Q Okay. 1.5 percent as a false positive on consecutive – discerning consecutive-made barrels?

A In the black box study, it would have consisted of things more than just consecutively made, but there were consecutively made stuff in those black box studies, so that one was not purely consecutively made, but there were parts that were consecutively made in it.

Q I want to talk to you, Ms. Oberg, about the keys to being able to perform these examinations and come – and determine class characteristics, subclass, and individual. I believe this is a – this bullet point, could you use this to explain to the jury what allows you to make these determinations.

A Yes. So on the slide, what you're seeing is numerous things that an examiner learns and is trained throughout their years of experience, as well as in their initial training program. So at the Indiana State Police and our training program, we have a whole section dedicated to looking at subclass marks and being able to identify them and look at them through the use of – an examiner has to build their own library of different types of manufacturing processes and looking at videos of what those manufacturing processes are like. Also, an examiner, before they are released to do casework at the Indiana State Police, has to complete the 10-barrel test in order to perform casework, so they are exposed to consecutiveness on multiple occasions; so it's not only training by reading and looking at videos, but it's also the application of it. There's also research that an analyst can read about and look at pictures that have been taken by other examiners to show what they should be aware of and what things can look like. So the research that they can read is usually, typically, in the AFTE journal, but it can also be published in other journals, as well, such as the *Journal of Forensic Sciences*. The other thing is, is during those processes that I just mentioned, one will learn the manufacturing process of firearms. A lot of that is done – you can either do it through videos, but you can also take tours of firearms manufactures. So as I stated earlier that I have toured various firearms manufacturers and I can learn the processes that they use during the time of manufacturing, so I am able to understand how a firearm is manufactured. During the examination process, there is what's called – you could do direct observation or indirect observation. Direct observation would be where the examiner looks at the tool that is coming into contact with the actual item that is being marked. There's two parts here to this direct observation, the first is

looking at the tool, if you have it. If you don't have it, such as in any proficiency or any black box study you don't receive the tool, you only receive test fires that are provided by the manufacturer –

Q So in firearms primarily, you're talking about the tool would be the actual firearm?

A Correct, yes.

Q And sometimes you are asked to do an examination or you're asked to do – participate in a study, a test, essentially, where you don't have the firearm to use to compare?

A Correct. So any proficiency test that I receive or any black box study I receive, I do not receive the firearm. So an analyst is able to directly observe on the ammunition that they receive and, because they have had other training and research, they are able to deduce, most of the time, what might have marked that area and what areas to be aware of not to use. The indirect observation part comes from looking at the firearm using what is called Mikrosil casting material. You could use a different type of casting material, but typically, at the Indiana State Police, we use Mikrosil, where you would actually inject the casting material into the firearm and you would take it out. You can use this to look at what is – the tool looks like at a finer level, potentially. You could use that on a comparison microscope and compare it to your test fires. You could compare it to any evidence that is received. The next portion would be scope magnification. As I talked about early on, when you have subclass characteristics or even the potential or any examination that you're doing, you want to go up in magnification level so that you're not just looking at superficial agreement, you want to look for the fine detail in between the superficial agreement. The last

part is more than one area. So if an examiner suspects that there might be potential subclass or, just in general, it's a good habit to – if you're going to make an identification or any type of comparison, even if it isn't an identification, you want to look at more than one area. So as I showed you before, I showed you the breech face marks that were subclass, the flowback area, the sheered area was a different area. So looking at different areas allows an examiner to look at different types of tools that may have come into contact with the object.

Q And the different tools would be like the extractor, the ejector, the chamber area –

A Correct.

Q -- and so forth? Explain the process that you follow for various levels of examination.

A The first step on the examination process with getting the evidence starts with a level 1 analysis. A level 1 analysis is basically assessing the condition of any type of evidence that I receive, from the outside packaging all the way through the inside, taking descriptive notes and so forth. So the first part is, is there anything missing? Is there anything broken? Is there any type of biological material? Is there anything adhering to it? So that's the first initial; any time I open a package of evidence, I'm looking at that type of stuff. So the next part of this level 1 analysis is actually assessing for class characteristics. So if I receive a firearm, I'm gonna want to know what type of class characteristics it has, such as caliber, number of lands and grooves, areas and locations of extractor and ejector, shape of firing pin, and so forth. So basically, I'm looking at all the class characteristics, shapes, potential widths of lands and grooves, the direction of the twist, the weight of the bullet, so all those class characteristics that we talked

about before is in this level 1 analysis and that is either applied to the firearm, if one is received, and any type of ammunition component if one is received.

Q What is level 2?

A So the level 2 analysis starts with the second part of this process and, essentially, if a firearm is submitted, the firearm, at that time, will be test fired. It will not only be test fired, but it'll undergo a function exam to see if there's anything wrong with the firearm and it'll be test fired multiples times. These test fires are basically what create a visual image of what the inside of the firearm looks like. These test fires can be cycled or they can be actually fired, so that can occur at that time during the testing process. The next step of that is to use what is called a comparison microscope. A comparison microscope is two microscopes hooked together with an optical bridge. It allows the viewer to view two objects simultaneously. It also allows the viewer to manipulate the lighting, it allows the viewer to view it at different magnification levels. So basically, you're gonna have object 1, object 2, and you're doing a manual comparison of each object that you're looking at. You're not only assessing for the class characteristics, but at this time is the point when you start assessing also, as well, for subclass and individual marks. So that is the first part of level 2 analysis.

Q How essential is the comparison microscope to the work you do?

A It is basically the prime thing that allows an examiner to make the conclusions that they can make. So it is the essential part of learning how to move it, manipulate it, and the lighting aspect of it. It also is what takes pictures for us.

Q How unlike looking at a photo like the ones you've already shown us from

a comparison microscope – how much unlike a photo is what you see through the comparison microscope?

A Looking through a comparison microscope is like watching a movie; so from start to finish, you're looking at everything that's involved. So if you were to watch the movie *E.T.*, you would see the whole thing, the start, the plot, the finish. The unfortunate part is, is that our recording of this does not – it does not occur through the entire movie, we can only take pictures at certain points. So when you see a picture, it'd be like if I gave you a picture of a boy riding a bike and E.T., you only see that part of it, so you don't see everything that has elapsed and been done during the examination process. This process is basically for the examiner, to remind them of what they came across during their examination process, but the pictures themselves do not, in any way, represent everything that was seen at the time of the examination process.

Q What is the – continue with what this references on the remainder of level 2.

A So the finishing part of a level 2 analysis is that one will do comparisons to items received and they'll also do comparisons to tests that they have created themselves. During this process, an examiner can render conclusions at the end of this process that I talked about like the movie, looking at it through the comparison microscope. So at the end of it, an examiner can render three different conclusions, those conclusions can be identification, inconclusive, or exclusion. An identification would be the agreement – sufficient agreement of quantity and quality of marks, as well as sufficient quantity and quality of individual marks, as well as the agreement of class characteristics. The inconclusive part would be if the examiner can't make a decision at that time for

some reason or another. They may have agreement of class characteristics, but there just isn't enough information to tell either way. They may not have a lot of marks to go on, and so maybe those class characteristics don't necessarily go together, but they're not fully ready to exclude, so that would be the inconclusive range. And then, the last part is the exclusion. A person can make an exclusion with actually not using a comparison microscope. So if you had a bullet that had six lands and grooves with a right twist and you had a gun that had five lands and grooves with a right twist, you could actually full outright exclude it. It's not necessary to go through all the steps here, you could actually, in your level 1 analysis, be able to exclude it. The other process of exclusion is that you can exclude based off of individual characteristics. So the class characteristics may agree, but there's sufficient disagreement of individual characteristics that would allow you to exclude it.

Q Thank you. Excuse me, I'll step through here. I want to hand you, Ms. Oberg, Exhibit 148; can you look at that, please, and tell the jury if you recognize it.

A Yes. So this has the Indiana State Police bar code on it, it has my initials, the item number, the case number, and again, it has my initials down here on the tape seal.

Q I'm gonna hand you State's Exhibit 278, will you tell the jury what that is.

A Yeah. So State's Exhibit 278 are pictures that were taken at the time of my examination process. It has the outside packaging, as well as what was contained in the inside packaging, which was a Winchester .40 Smith and Wesson caliber cartridge.

MR. LUTTRULL: I would move the admission of State's Exhibit 248.

STATE'S EXHIBIT 278 OFFERED

MR. ROZZI: No objection.

THE COURT: All right. Without objection, 278 is admitted.

STATE'S EXHIBIT 278 ADMITTED

MR. LUTTRULL: May I ask to publish it to the jury, please?

MR. ROZZI: I thought you said 270, I might have misheard you. 248; is that right?

THE COURT: It's 278.

MR. LUTTRULL: 278.

MR. ROZZI: Oh, I'm sorry –

MR. LUTTRULL: 248 is –

MR. ROZZI: -- I thought he said 248.

THE COURT: He did.

MR. LUTTRULL: I did?

THE COURT: He said 248, but it's 278.

MR. ROZZI: 278.

THE COURT: Correct, sir.

MS. AUGER: Thank you.

MR. LUTTRULL: It's confusing. My apologies.

THE COURT: That's all right.

MR. LUTTRULL: We have a lot of numbers here, we don't need any confusion.

THE COURT: And yes, you may be publish.

STATE'S EXHIBIT 278 PUBLISHED

Q So, Ms. Oberg, is the photograph on the top of that I think four-page

packet, is that simply a photograph of this object right here?

A Yes, it is.

Q And State's 148, can you tell us how it came to the laboratory and how it came to you.

A Yes. Hold on one second. When I'm referencing right here is a chain of custody of this particular item. It originated from – come into the laboratory from Brian Olehy, and then it was given to Stacy Bozinovski, and then I received it from Stacy Bozinovski.

Q And do you know who Stacy Bozinovski is?

A Yes. She's a DNA analyst at the Indiana State Police.

Q So the cartridge that's been photographed and contained within the packaging of State's Exhibit 148 went to DNA before it went to firearms?

A Yes, it did.

Q Is that unusual?

A No, it's not.

Q And why is that?

A I am a DNA and fingerprint destroyer. So anything that comes to me has the ability to potentially get destroyed, and the reason is, is because of the way things are handled, so it's always best that it goes through DNA and fingerprints first, and that's because of what I have to do, whether it be manipulating on a scope or the examination process. Our surfaces are not built like DNA and the fact that they're working in a sterile environment. So if I were to notice something and it hadn't gone to DNA or fingerprints, I'm gonna stop my exam immediately and it's gonna go back to them. The processes that happen in firearms, it just does not render the ability to maintain that stuff. It's not that we don't try, it's

just that we involve a lot of surfaces. We use gloves as much as possible, but gloves tear, especially when you're working with firearms and so forth like that, so we try to preserve, but the process is, is that it should go there first.

Q When 148 was received by you and you opened it –

A Correct.

Q -- and was it – was there anything inside this container besides a cartridge?

A There was a folded piece of white bench coat paper.

Q And is that a type of paper that you're accustomed to seeing in the laboratory?

A Yes, I am.

Q And you don't know the origin or you have no information directly on the origin of that particular object?

A Typically, it comes from our DNA analyst and their examination process, it's something that they use. So they'll open the item on a particular surface, they'll fold it up and put it back in there for retention. We don't mess with that in the Firearms Section, it's just maintained with the integrity of the item.

Q And how would you describe the – how did you – when you observed the cartridge inside of 148, describe for the jury its appearance.

A When I received it, there – I did not observe any biological material or anything miscellaneous attached to it, no fibers or anything. It looked to be in good condition. I didn't observe any corrosive substances or anything happening at that time, so basically, it was nonremarkable to me.

Q Here's a curveball question for you, if you're ready: How many cartridges and cartridges cases have you examined in your 17 years with the Indiana State

Police?

A I don't have a particular number, I can – all's I can say is a lot.

Q Could be thousands?

A Yes.

Q And do you see them in all different kinds of conditions when they come to you? I'm not talking about the bullet and bullet fragments, that part, but I'm just talking about the cartridges and cartridge cases.

A Yes.

Q And you're accustomed, in those thousands of experiences, to see cartridges and cartridge cases in a variety of conditions?

A Correct.

Q Did this particular item, 148, did it appear to be weathered or in any way affected by the outside environment?

A I did not observe anything, I can't tell you if it was outside or inside or how it was recovered or what conditions, all I can say is that when it came to me, I did not observe anything that would make me think that it had been in a state where it was in contact with corrosive either substance or outside.

Q When this was received by you, did you examine it?

A Yes, I did.

Q Describe that for the jury and describe to the jury what we're looking at.

A So the first submission that I received, initially I received the cartridge, which was item – my item 16, and I looked at it for class characteristics. I noticed that it was a Winchester .40 Smith and Wesson caliber cartridge. It consisted of a jacketed, hollow-point bullet that was loaded into it. It had a brass primer, a nickel cartridge case. It also had what appeared to be three ejector marks on

the head and at least three extractor marks underneath the rim, and some miscellaneous marks on the head, as well as some marks on the side of the cartridge case walls.

Q Do you still have your model with you, the cartridge model?

A Yes, I do.

Q Would you mind getting that? When you say you saw three what might be extractor marks, where did you observe those?

A Extractor or ejectors?

Q Ejectors.

A So the ejectors are actually on the head and there appeared to be one in one location and then a grouping of two closer together.

Q And are you looking this – at this through the naked eye or are you using any assistance?

A So one can observe them either with the naked eye, but most analysts, when they start looking at class characteristics and so forth or doing any measurements, they're using a stereoscope. So a stereoscope is just a lower-powered magnification scope, it's not as powerful as a comparison scope. It sits at your bench and you're able to pull it over any object directly and enhance the magnification to see what's present.

Q And what – there are other objects here; what else did you receive while you were examining the cartridge?

A So initially, I only received the cartridge, but during the examination process, I was also made aware that there was a firearm that was recovered and that was – I hadn't closed out my notes or written a report yet, so I added this item that I received, which was a Glock Model 22 .40 Smith and Wesson caliber

pistol and, with that, I received a magazine and 15 cartridges. Those 15 cartridges were Federal .40 Smith and Wesson caliber cartridges.

Q Can you give us the date that you received item – your item 16, our evidence 148, Exhibit 148?

A The initial date that I received item 16 was February 17th, 2017, at approximately 1:37 p.m.

Q And when did you receive this Glock Model 22 .40 Smith and Wesson caliber pistol?

A I received this item at first February 17th, and this one I received at 1:06 p.m.

Q Are all the items that you received – at the Indiana State Police Laboratory, are there sealing protocol of any packages received?

A Yes, there are.

Q And so a package cannot be received by the lab unless it's in a sealed condition?

A Correct.

Q What are we seeing in this image?

A This is an image taken with a comparison microscope. The comparison microscope here, I'm looking at the class characteristics that I saw that were present on the cartridge as received. So initially what I saw were three ejector marks, the ejector marks are circled in red here. There's miscellaneous marks on the primer. I don't know what those marks are from, but they're there. There's also miscellaneous particles inside what I would call the primer crevice, so in this area. (Indicates) I don't know what those are, but that was observed.

MR. ROZZI: Judge, may we approach?

THE COURT: Yeah.

(Sidebar conference conducted.)

MR. ROZZI: I'm gonna object, but I don't think he's admitted the exhibit just yet.

THE COURT: He hasn't.

MR. ROZZI: So I'm gonna object, he needs to lay a foundation.

MR. LUTTRULL: 148's been admitted. It was admitted yesterday.

MR. ROZZI: Not the photos though.

THE COURT: The photos haven't, unless they're in that (inaudible)

MR. LUTTRULL: These photos?

MR. ROZZI: Yeah.

MR. LUTTRULL: Okay. I mean, I'll –

MR. ROZZI: (Inaudible)

THE COURT: Are they contained in that, in 278?

MR. LUTTRULL: This is an enlargement of the photo with the microscope of 278, so I believe it's been admitted.

MR. ROZZI: Well, I think if he's gonna use that as a demonstrative exhibit, he's got to lay a foundation for it.

MR. LUTTRULL: She's already identified it for a demonstrative exhibit for (inaudible).

THE COURT: Yeah, let's go over there – so –

MR. ROZZI: I don't really have a problem with it, but –

THE COURT: No, no, no, I know –

MR. ROZZI: -- I'm just trying to make sure I know –

THE COURT: -- but this is 278, this is what I've admitted in 278.

MR. ROZZI: These are the magnified images of that.

MR. LUTTRULL: Right.

THE COURT: So we don't have any that is magnified.

MR. LUTTRULL: You don't have those?

MR. ROZZI: Yeah. I don't know – and I also don't know what's coming next, so I just thought I would address this –

THE COURT: Sure.

MR. ROZZI: -- before we get a barrage of –

THE COURT: Yeah.

MR. ROZZI: -- images. How many images are – of the cartridges are on here?

MR. LUTTRULL: There'll be images of – there's probably a half a dozen of those.

MR. ROZZI: 'Cause I plan on putting them in, too.

THE COURT: Okay.

MR. ROZZI: So maybe, if we took a break, I can look at what he's got, but –

THE COURT: Okay.

MR. ROZZI: -- then we don't have to, you know, make this complicated.

THE COURT: Okay.

MR. ROZZI: I just didn't know what was coming.

THE COURT: Right.

MR. ROZZI: And so –

THE COURT: Okay.

MR. ROZZI: Make sense? Okay.

(Sidebar conference concluded.)

THE COURT: All right. Well, let's go ahead and take a quick break then to get this resolved. Ladies and gentlemen, we're gonna go ahead and take a break, give you a chance 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. You may discuss the evidence that you've heard, but please, only do that if all 16 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 10:26 a.m.)

THE COURT: Okay. You may be seated. So how much time will we need to get all of this resolved here?

MR. ROZZI: I think –

MR. LUTTRULL: I think I can just give him a copy right now.

THE COURT: Okay. So you've got those, so just – we'll – and then, those will need to be marked and admitted, so that we can do this properly. So let's take about 15 minutes, then; okay?

MR. LUTTRULL: My apologies.

THE COURT: All right. That's all right. Thank you.

MR. MCLELAND: Thank you, Judge.

(Off record at 10:27 a.m.)

(On record at 10:45 a.m.)

(Sidebar conference conducted.)

THE COURT: I'm glad you brought that up, because I'm – but I

don't see (inaudible)

MR. ROZZI: Yeah, that's fine. So Jim shared this with me, I appreciate that. I just kind of looked through the pages. I don't have any objections. He can – it's his exhibit –

THE COURT: Is this the PowerPoint?

MR. LUTTRULL: This is just the PowerPoint.

THE COURT: Okay, good.

MR. LUTTRULL: Yeah.

THE COURT: 'Cause I was just gonna ask you, we need the PowerPoint for the record. Okay. Go ahead.

MR. ROZZI: My only objection, in terms of the admissibility of all this – is that what you're planning on doing? I mean, I guess that's what –

MR. LUTTRULL: I wasn't going to until you objected, but I think I'll just – instead of trying to pull –

MR. ROZZI: You were just gonna use it for demonstrative purposes only?

MR. LUTTRULL: I'm gonna admit it and just go ahead and ask – give copies to the jury.

MR. ROZZI: My issue is, is that pages 35 – well, I numbered them, I'm trying to make this easier – 35, 38 – they're not numbered –

THE COURT: No.

MR. ROZZI: -- page 43 contain research on the bullets and I guess I would object on the basis that it's hearsay. I understand that the witness, she can consider and testify based on hearsay –

THE COURT: Right.

MR. ROZZI: -- her testimony can do that –

THE COURT: Right.

MR. ROZZI: -- but in terms of the admissibility of the articles and all the other information, that's the part that I object to. I can give you those numbers if you want to –

MR. LUTTRULL: The images do not –

THE COURT: Oh, here we go.

MR. LUTTRULL: -- contain the whole article, but they're showing a sampling of the research she did and what she – what – a sampling of what supports her conclusions. We're not giving the jury the entire article to read, but this is – this would simply be what the caption is, what the subject matter of the article is, so I don't see how it's hearsay. I think it's relevant and I don't see prejudice to it.

MR. ROZZI: Then you've got a complexness problem, too. That's –

THE COURT: Well, I mean, experts can testify based on their examination and based on their research of articles and stuff like that, I mean, that's not the issue. I think the issue now is the completeness issue.

MR. ROZZI: And it's highlighted and –

THE COURT: And highlighted. So is this going to the jury?

MR. LUTTRULL: I can have those articles removed if you're –

THE COURT: Okay. I mean, I don't have a problem with them being displayed on the screen and her discussing them, but then giving them to the jury when they're not – is probably not proper.

MR. LUTTRULL: It's not complete.

MR. ROZZI: It's also gonna be few more days of deliberations.

THE COURT: Yeah. So if you want to – as opposed to giving them this entire packet, if you wait and later on you just want to give them the photographs, I don't have a problem with that, not one bit.

MR. LUTTRULL: So what you're objecting to, all of –

THE COURT: The articles.

MR. LUTTRULL: -- your objections to the articles?

MR. ROZZI: Yes.

MR. LUTTRULL: Okay.

THE COURT: I mean, and those can be projected up on the screen –

MR. LUTTRULL: Yep.

THE COURT: -- and she can talk about them, but we just won't give them to them.

MR. LUTTRULL: That was my original plan.

THE COURT: Okay. Are you okay with that?

MR. ROZZI: You want me to give you the page number?

THE COURT: No, 'cause it's just – it's the pages that have the articles; right?

MR. ROZZI: Yep.

THE COURT: Okay.

MR. ROZZI: 279 is the exhibit number already?

THE COURT: Correct.

MR. ROZZI: Okay.

THE COURT: Correct. Okay.

MR. ROZZI: All right. Very good.

THE COURT: Thank you.

(Sidebar conference concluded.)

THE COURT: All right. So we're gonna display 279 in its entirety with the witness. The objection from the Defendant is sustained as it relates to the articles. She can testify about the articles that she used in her research, I have no problem with that, but giving those to the jury, because they're not complete, would be improper and I would sustain the Defendant's objection to that part. So if you want to redact those from – are you providing copies to the jurors?

MR. LUTTRULL: We will. We'll redact them.

THE COURT: Okay. So anything that has the articles in it would not be going back to the jury, okay. With that understanding then, are we ready to proceed, Mr. Luttrull?

MR. LUTTRULL: Yes, Your Honor.

THE COURT: Mr. Rozzi, are you ready?

MR. ROZZI: I am, Your Honor.

THE COURT: Okay. Let's bring them in.

THE BAILIFF: All rise.

(Jury in at 10:51 a.m.)

THE BAILIFF: Thank you. You may be seated.

THE COURT: All right, Mr. Luttrull.

MR. LUTTRULL: Thank you, Your Honor. At this time, the State would move the admission of State's Exhibit 279, which is, essentially, the PowerPoint presentation testimony today. We will remove from the packet the references or the portions of articles that are on the screen.

STATE'S EXHIBIT 279 OFFERED

THE COURT: Okay. Thank you. Mr. Rozzi.

MR. ROZZI: No objection.

THE COURT: All right. Without objection, then, 279 is admitted.

STATE'S EXHIBIT 279 ADMITTED

Q I wanted to begin by we're looking at this image here of the portion of the cartridge that was submitted to you, State's Exhibit 148, and while that's up, I wanted you to tell – talk to the jury about the stamp – is this called the headstamp?

A Yes. So anything outside of the primer area, what you see stamped there, would be considered a headstamp.

Q And explain what's markings or what is stamped on that headstamp.

A So this stamp that you see here is Winchester, so this cartridge would have been manufactured or marketed by Winchester. And it is a .40 Smith and Wesson caliber designation.

Q So the Smith and Wesson, S&W, reference is not to a firearm in this situation?

A It's not – if you're thinking of Smith and Wesson, the company, it's not that. It's actually – this is a caliber designation. So if you looked at a firearm and say whoever manufactured it, just say it was Glock, a Glock will say on there "Glock .40 S&W", that means that you would put .40 Smith and Wesson caliber ammunition into that gun. So it can fit into anything that is designated as .40 Smith and Wesson.

Q Is there anything else about this image, this portion of Exhibit 148, that you'd comment on?

A No, there's not.
Q The next image, is that also a photograph of State's Exhibit 148?
A Yes, it is.
Q And what does it show?
A This shows extractor or what appear to be extractor marks underneath the rim of this cartridge, and it is what I observed on the comparison microscope.
Q And the next image?
A This image here shows the sidewall of the cartridge. So again, if you remember the little exhibit from before, it's gonna be this side area that I'm looking at, so it's turned to its side on the comparison microscope, and I'm looking to see is there anything that's indicative of maybe chamber marks or magazine lip marks, and what I noticed was is that there are marks present. The two pink arrows, they could, potentially, be magazine lip marks, they could be from something else. They're not what I would call – they don't have a lot of information there to assess off of, but there is something there. The gray area at the top are random scratches, I don't know what they're from, but there's just not a lot of information up there, but I assessed it to see what's there and what potential marks might be there.
Q Let's back up to the submission 1 slide, we see that photograph of the Glock. Did you compare the Glock – or the cartridge on the left, State's Exhibit 148, to the Glock?
A Yes, I did.
Q Could you explain to the jury how you did that.
A So basically, that goes back to the level 1 and level 2 analysis. I would have function tested the firearm, test fired it, and cycled it, and I would have

compared those to the cartridge that was my item 16.

Q And what was your conclusion after doing so?

A The conclusion on this firearm to the cartridge that was submitted is, is I noticed that there were differences in the position of the ejector mark from the Glock. It was closer to the primer, it was – looked like an upside-down checkmark, basically. I did not observe any corresponding individual to item 16. I didn't observe any significant class characteristics similarities; however, since I only received one of item 16, I did not officially exclude it, but there was nothing to suggest that item 16 was cycled in the firearm in item 24.

Q Did you receive, later in 2017, another submission?

A Yes, I did.

Q And what did you receive?

A In this submission, I received two additional firearms. I received a Smith and Wesson, this time not to be confused with the cartridge designation, but the actual manufacturer of a firearm, a Smith and Wesson Model M&P 40, .40 Smith and Wesson caliber firearm. I also received a magazine, but no ammunition with that firearm. The second firearm, I received a Sig Sauer Model P239 .40 Smith and Wesson caliber pistol. I received a magazine with that, as well as an envelope containing six cartridges. Those six cartridges were Winchester caliber .40 Smith and Wesson caliber cartridges, they had a different headstamp than item 16, and they had a brass primer and brass cartridge case.

Q So you compared what your number – item 16, which is State's Exhibit 148, you compared this to the Smith and Wesson and to the Sig Sauer Model P239?

A Correct.

Q But both of these are .40 caliber Smith and Wesson pistols?
A That is correct.
Q It's just the Glock was?
A That is correct.
Q And your conclusion on both the Smith and Wesson pistol and the Sig Sauer Model 239 pistol was what?
A So my item 90, with is a Smith and Wesson Model M&P 40. That was very similar to the Glock in the sense that it didn't have similar class characteristics to item 16. It had differences in the way the shape of the ejector was, it was more oval-shaped, and it also had ejector sheer. It also had nice representative marks on the chamber that I could readily identify back test to test, but I did not observe that on item 16. So in this case, again, there was really no similarity in class characteristics and there was no significant agreement of individual characteristics; so while I didn't fully exclude it, there was nothing to suggest that it was from that firearm. The second firearm, the Sig Sauer, this firearm did have similar class characteristics to item 16. It also exhibited heavy subclass marks in the ejector mark on this Sig Sauer pistol that were not representative or indicative of what I saw on item 16. So there were similar class characteristics, but the subclass characteristics that I saw on this pistol did not carry over into item 16, nor did I see any other substantial individual characteristics that aligned with item 16, so this one I could not identify or exclude, it was inconclusive at that time.
Q Now, when you examined the Glock, as well as the Smith and Wesson, and as well as the Sig Sauer Model 239, did you do test fires and test cycles?
A Yes, I did.

Q Explain to the jury how you actually do that.

A So basically, initially what you saw today was cycling. That is how I would have – it would have been a laboratory setting and I would have actually had the firearm raised, but the way I would have cycled is that I would have loaded ammunition into a magazine and I simply would have just kept on pulling back on the slide to cycle several cartridges through there. I also then would have test fired each firearm.

Q And where do you test fire them?

A The firearms are test fired in our water tank at the Indiana State Police. So basically, you'll load the magazine, put it in the magazine well, and you'll fire those. The bullets will land in the water and the cartridge cases will extract and eject to the side of the firearm.

Q Now, your – State's Exhibit 148, your item 16, is a Winchester cartridge that you received in February of 2017. It's a cartridge, it's not a – as you explained, it's not a fired or spent casing; correct?

A It was not fired, no.

Q So explain to the jury why you did test fires with these firearms?

A I will always do test fires, even in cycled cases, because it's important for an examiner to understand what the difference is between the fired and cycled marks, if there is any differences. Sometimes there's not very much difference between the two, so I want to be able to see the difference, if there is any differences, or if there's substantial difference between them, so I'm gonna take both fired and cycled. The firing process creates a lot more pressure than just cycling so, at times, they can give you a much better picture of what you're actually seeing and much better duplication of the marks that are occurring.

Q The various tools inside the firearm when you cycle it are also acting upon the fire – or the cartridge –

MR. ROZZI: Objection: Leading.

THE COURT: Sustained.

Q What is the similarity between a cycled cartridge and a fired bullet that ejects a casing?

A So the similarities are you load it into the magazine, you're going to rack that slide to the rear, it goes into the same chamber area, and it can come into contact with any of those tools in there. The only difference really is the pressure that happens. The pressure during firing is much greater than it is with cycling, so that's going to be your main difference, but it doesn't suddenly go into like a magic turn out of the firearm, it goes in the same hole the same way, and it's just the difference in pressure that's actually occurring between the two.

Q Can you give us the date – I've asked you for the date of submission 1. Can you give us the date you received and examined this Smith and Wesson pistol and the Sig Sauer Model 239?

A So item 90, which is the Smith and Wesson, I received that on February 27th, 2017. The second pistol here, the Sig Sauer pistol, I received on 3 – hold on – sorry, my mistake there, I received it on 2/28/2017.

Q You had a third submission of firearms; is that correct?

A Yes.

Q Describe what this consisted of.

A So this – I received a bunch of bags of water and guns, and the actual second picture right here was a manila envelope, so it was not in water, but all four of these guns were received in water and my task was to make them safe

and check to see if they fit the caliber of item 16 or if they could have potentially fired or cycled item 16. So what I did is I took the guns out of water, I tried to restore them as best as possible. The first thing is, is always safety, so making sure they're unloaded. All of these guns were seized and had some form of gunk attached to them or shells or a lot of random stuff attached to them from being in water, so I had to let them sit in rust release for quite a while to unseize some of them. The first firearm that you see up here, right here – (indicates) – this was found to be a Springfield Armory .45 Auto caliber semiautomatic pistol. I could never make it functional, but I was able to restore what it was and the serial number. The second portion over here, I wasn't sure what this stuff was. I tried to restore it, as well, and basically, at the end of the day, it disintegrated. I have no idea what it was a part of or what it is, they were just miscellaneous objects that I received. The lower three firearms all are not of the .40-caliber Smith and Wesson family, so basically all of these I, basically, had to hammer or break to make sure that they were safe and that they could be stored appropriately. So none of these actually fit or could have cycled item 16.

Q Can you tell the jury when you received these items that are shown on the screen under submission 3.

A So the first item that I received was item 273, which would have been the firearm, the Springfield Armory, that was received on 8/23/22 at 12:26 p.m. The rest of the items received here were received on 8/23/22 at 1:26 p.m.

Q Next submission 4, what was submission 4?

A Submission 4 was item 314, was submitted to me, it was a Sig Sauer Model P226 .40 Smith and Wesson caliber pistol. It was bearing the serial number U625627. I also received item 315, which is one Winchester .40 Smith and

Wesson caliber cartridge. I also received item 316, which was a Blazer .40 Smith and Wesson caliber cartridge, and I received two magazines that each had cartridges in them that were Blazer .40 Smith and Wesson caliber cartridges.

Q This photo here on the left is this item right here?

A Yes.

Q You – the previous Sig Sauer that you had examined and received in late February of 2017, how does it compare to this model, the 226?

A So there are differences in magazine styles. The width of the magazine well area is different because the magazine in the first one is, basically, a single stack, this is a double stack. There are probably slight other differences that are – that can happen, but I didn't – since I didn't have the firearms next to each other, I couldn't do a full-on comparison of any of the other differences.

Q Ms. Oberg, I'm gonna hand you State's Exhibit 280 and ask if you could identify this.

A So State's Exhibit 280 is my item 315, which would be a Winchester .40 Smith and Wesson caliber cartridge.

Q And State's Exhibit 281?

A State's Exhibit 281 is representative of my item 316, which would be a Blazer .40 Smith and Wesson caliber cartridge.

Q And State's Exhibit 282?

A State's Exhibit 282 would be consistent of the two magazines with the ammunition that was received in them that are packaged in these two manila envelopes now by me.

MR. LUTTRULL: I would move the admission of State's Exhibits 280, 281, and 282.

STATE'S EXHIBITS 280 THROUGH 282 OFFERED

MR. ROZZI: No objection.

THE COURT: All right. Without objection, 280, 281, and 282 are admitted.

STATE'S EXHIBITS 280 THROUGH 282 ADMITTED

MR. LUTTRULL: And for the record, based upon the testimony yesterday, these items were collected at the same time as State's Exhibits – Exhibit 276 in the search warrant of the Defendant's home.

Q You received these items when, again?

A I received these items 10/14/2022 at 2:12 p.m.

Q So this would have been received five and a half years following receipt of State's Exhibit 148 or your item 16, the Winchester Smith and Wesson .40 cartridge?

A Correct.

Q Are you aware of studies that deal with the characteristic of longevity when it comes to firearms if you're gonna be examining something five years after you received an item that you'll be comparing it to?

A Yes. As I'd stated previously, some of the black box studies deal with longevity. The Indiana State Police actually possessed a 10,000-round test that examiners could look at and do comparisons on. That 10,000-round test was of bullets.

Q Would you explain what a – what do you mean by a 10,000-round test?

A So our troopers used to carry Beretta pistols, so what they do is, is they will do a longevity test of these pistols to see how well they hold up over time. During that time, they collected every – I think it was every tenth round that was

fired into the barrels that they use, so that was collected and maintained through the Indiana State Police in the Firearms Section. That way, examiners could look at things that were fired over time and they could see what it looks like for things to be fired a lot.

Q Are you – have you conducted or have you warmed yourself to research of issues of longevity of firearms?

A Yes. I mean, typically, any – in any longevity study, typically what happens is that you may be able to identify for a while, but after – in some cases, if the firearm does not hold up, typically, you're not able to identify at some point in time. Sometimes, with some firearms, it's not a problem. Some firearms, depending on what the manufacturing process was, it may subside after a time and you may not be able to identify back to that firearm. Typically what happens, at least what I could see in the Indiana State Police 10,000-round test was, is that sometimes you will get a little bit of drop-out, and some of the bigger studies, it could be potential that you just lose everything, because the firearm just depreciates and that's over a very long time. Typically, most firearms in – when you're firing a couple hundred rounds or a couple thousand rounds, you're not seeing that depreciation quite as fast. And it also depends does the person clean, use a bore brush, and so forth, and expose it to potential chemicals that could break down the inside surface.

Q You examined the Sig Sauer Model 226, did you not?

A Yes, I did.

Q And would you describe its condition and the – well, describe its condition that you found it in.

A As I found it, it didn't appear to have anything broken, it functioned as

designed. There was some orange substance in the breech face area that appeared to be from firing a certain type of ammunition, it might have been from primer sealant or so forth, but other than that, there was nothing that I noticed that looked to be out of character for what I would typically see from a firearm that I've received.

Q Explain to the jury how you proceeded to this examination of the – comparing this cartridge, State's Exhibit 148, with this firearm, State's Exhibit 226.

A So similar process as before doing the level 1 and level 2 analysis. Of course, at this point, I had already examined item 16 multiple times, so I'm looking at the level 1 and level 2 analysis of the firearm that I received, so I'll complete those steps. I'll function exam the firearm and I'll get test fires and test cycles from the firearm, and then I will proceed to a comparison process at that time, which I can render a conclusion.

Q And in the process of doing so, you utilized your comparison microscope, obviously.

A Correct.

Q And you took photographs?

A Yes, I did.

Q What's the purpose of taking photographs?

A The purpose of taking photographs at the time of examination is to have for the examiner to recollect their memory. They are not to be used for identification purposes, that is not something that an examiner will do in the Firearms Unit. They are made for memory purposes, so that the examiner, when they can testify, that they can testify to the areas that they looked at. Again,

going back to the movie, the pictures are not the movie, they are just capturing certain points of the examination process. An examiner does the best they can to take pictures and try to capture everything, but at the end of the day, it's a 3D object and you're trying to capture it with a 2D portion, so you won't be able to get everything picked up in a picture. We try our best, but they are for recollection and memory purposes, we do not do examinations on them.

Q Would any firearm examiner who's certified and follows the training that would be approved by AFTE, would they make an opinion based upon – offer an opinion based upon studying photographs?

A So at the Indiana State Police, we did not render conclusions off of photographs. For the majority of people I knew, they did not render conclusions off of photographs. I know in some limited instances, I had heard of some laboratories that might take pictures of something that is typically really good, something associated maybe with a Glock, they may be able to – their guidelines may allow them to render a conclusion and that would not be the initial conclusion, that would be of the verification process.

Q So only in some limited situations by some laboratories for the verification process?

A Yes. I mean, I wasn't very familiar with that being done, but I do know that there's at least one laboratory that does it.

Q So your purpose for showing the jury photographs is not to conduct an examination here in court?

A No, it is not. It would be inappropriate to do that.

Q I believe I've walked away from my clicker. What do we see in this image, ma'am?

A This image right here is a picture of the ejector on the head. This on the left-hand side here is item 16, and this is a test fire from the firearm that I received in this case, so that's in item 314. You'll see case number, you'll see item number, you'll see magnification level, the hairline right here – (indicates) – and the area that I circled was the area that I was looking at.

Q The jury's familiar, I believe they've seen multiple packages that bear the number 17K00066; is that – what is that number?

A That was the first case number that I received, so item 16 would have been received underneath that case number.

Q What is 19K00197?

A That would have been when I received the firearm, it came in underneath that case number.

Q Why did the case number change?

A From what I was told is that within our laboratory information management system that there was some maxing out of the first case number and they were not able to add items into it or there was some issue going on, so they had to create the additional case.

Q Is the 17 and the 19 a reference to – well, what is that a reference to?

A Basically, those are the case numbers that each item was submitted underneath, so item 16 would have been referenced as the 17K case and item 315 would have been underneath the 19K case.

Q That's only because you ran out of numbers on the 17K?

A That's what I had been told; whether that's true or not, I can't confirm.

Q But it's the same case?

A Correct.

Q And does 17 relate to the year?

A Yes, it does.

Q And the 19 would again relate to two years later?

A Yes. Whenever they pulled that out, if they submitted more evidence underneath that case number, it would have been relevant to when they submitted that first item in that year.

Q Let's go back to this: You've test fired and test cycled pistols, the – this item, 276, and then compared those test cycles and test firings to State's Exhibit 148, the Winchester Smith and Wesson that you received – cartridge that you received in February of 2017; correct?

A That is correct.

Q And what was the result of your –

MR ROZZI: Judge, request a sidebar.

(Sidebar conference conducted.)

MR. ROZZI: I mean, we're obv – I'm sorry.

THE COURT: No, you're fine.

MR. ROZZI: I mean, we're, obviously, gonna get to her conclusions.

THE COURT: Um-hmm. (Affirmative response)

MR. ROZZI: I'm gonna just gonna make the record that I'm gonna object to her testifying that there's sufficient agreement between any of the test-fired rounds in that firearm or the item 16 and the firearm based on the arguments that are referenced in the June 13, '23 motion in limine regarding ballistics that you've summarily denied. I'm just gonna make it now.

THE COURT: That's – that's fine. Okay. Perfect. Thank you.

(Sidebar conference concluded.)

Q What was the result of your examination, ma'am?
A I was able to identify the pistol in item 314 as having fired the – or, sorry, having cycled the cartridge in item 16.
Q So this cartridge contained in this package marked "cartridge near bodies", you were able to identify that it had been cycled through this firearm that came from the Defendant's home, State's Exhibit 276 or your item 314?
A Yes, I was.
Q In looking at this image that we just previously showed the jury, was this – does this remind you and give you an ability to articulate for the jury one of the things that you identified or used in making this identification?
A Yes.
Q Will you, please, explain that.
A So basically here I'm looking at the ejector mark and I am looking at the edge of the ejector towards the – this would be the rim area over here, and so I'm looking at that area first. (Indicates)
Q This next image?
A This next image is another image of the same area, but I'm moving the hairline over to look at the area that I'm observing.
Q And this third image?
A So I walked around this ejector, all the way around in a 360-view to see the different things that I could observe in different lighting and different areas, so this is basically a different area of the ejector and areas of agreement that I could see.
Q This next image?
A This image is the same thing, I'm turning it around, adjusting the light to

see what else I could see. This was another area that I could see of agreement.

Q Would you explain for the jury – we talked about the numbers on the left side of this blue banner at the bottom of the image. Would you explain to the jury the numbers on the right side, it begins with 016.

A So basically the 016, this is item 16, which would be represented on the left, and on this side is going to be my test fires from item 314 on the right-hand side. This 60 times is the magnification level I used to observe this.

Q Did you observe that particular portion at various magnification marks?

A Yes, I did.

Q So when you see 1 – 016 there and the various test items that you compared to it, that is this item, cartridge, State's Exhibit 148, the cartridge near bodies; is that correct?

A That's correct.

Q What is this image?

A This image is another rotation and adjustment of the light so that I can observe other things. This is outside of the parallel marks originally observed on the very edge, just showing some more areas of agreement that I could see with adjusting the light.

Q What does this slide with the five images show us?

A These five images here are representative of the photos that I took at the time of my examination process to remind me of the areas that I looked at, and this is just all of them compiled together. This is just the ejector marks, so it's just that section so far.

Q What is this, ma'am?

A This picture is a direct observation of the ejector in the pistol. So this is

where I talked about, on an earlier slide, about ways to identify class, subclass, and individual, and here I'm doing a direct observation of the ejector itself in the pistol. What I can tell you about this is that the ejector itself did have subclass markings present on it. The subclass is from these lines that go directly all the way across, those would be subclass. Another interesting fact about this ejector is down here on the bottom, it has a recessed portion. This is actually the portion that is making the ejector mark. It does have some of that subclass also present down there on the bottom. So what I'm doing here is I'm directly observing, I'm noting that there is potential for subclass, and that when I'm doing my examination process, I should be very aware that subclass could be a potential.

Q So by subclass means other firearms manufactured in the same lot could share those characteristics?

A Wouldn't necessarily mean the same firearms, but ejectors.

Q Ejectors, okay. You – this slide showing – well, tell the jury what it shows.

A So this slide is in relation to the ejector that I directly observed. The process that appeared to be going on with that ejector is that it was ground. That grinding process has a potential to be observed and others have observed that process in our community, as well. So there's two articles here that talk about grinding and the potential for subclass and also the potential for individual characteristics that can be found in that grinding process. So the bottom one with 9-millimeter Smith and Wesson ejectors, these are a series of ejectors, they are not consecutively made, but these are a series of ejectors that was observed by somebody taking an armorer's course, and so they wanted to look at them and they ended up casting them and looking at them and noting that they did have subclass characteristics but they also possessed individual characteristics

that they were able to look at to differentiate one ejector from the other ejector. The top article is by Stephanie Ackerman and she looked at chisels, some of them were consecutively manufactured, and the final process was a grinding process. She noted that an examiner could make an identification on the grinding process even though that they were consecutively made.

Q And why would you look at a study on chisels when you're conducting this examination?

A For us, it doesn't matter what tool it is, we want to know the process that was used, the process is what is important. So whether it's ground, whether it's milled, whether it's lathed, whether it's MIMed, which is a molding technique, any time of study that's out there that studies those processes which makes the tools that we see, we would be interested in. So it could be any of those processes, no matter which type of tool it makes.

Q Are these two studies simply a representation or a representative sample of other research that you're aware of in this area?

A Yes. This is just some basic articles that I would have come across during my training and experience and from taking subclass courses.

Q And did they serve to support and inform your decision and your conclusions in this matter?

A Yes, they do.

Q Next, you look at another tool on the firearm; is that correct?

A Yes, I did.

Q What is this image?

A This is an image – so if you're looking at the – one of the ejectors down in the bottom, for you guys this is gonna be the left-hand corner, this would be up

in this area right here. It's a mark that is found on the head, and I noticed throughout my examination process and looking at the cycling of this firearm that there's an area on the barrel that comes into contact that – with a cartridge up there that can potentially make that mark. So this is an image of the agreement that I saw at the time. Again, this is item 16 on your left and on the right is 314, and I did use test 2 in this case. This is a 60 times magnification level.

Q And again, you looked at it under various magnification levels; correct?

A Yes, I did.

Q And photographed it under the 60?

A Correct.

Q The first set of photos you saw, the five that you've been describing to the jury were all ejector?

A Correct.

Q And what is causing this?

A This would be the front of the chamber face area of the barrel of the firearm.

Q You talked about on one of your earlier images, not of this firearm, but one of your earlier images, you showed how the – there was a shape to the chamber face area; is that correct?

A That is correct.

Q Tell us about the chamber, this chamber, the firearm, 314.

A So the chamber face of this firearm has this raised – well, this portion here, and it has the U-shape. It's also attached to what you see behind here, 'cause that's the barrel. So what you're seeing here is the area that is coming into

contact with the head of the cartridge.

Q And your – what conclusion did you come to when you examined the marks of the chamber – the chamber area marks on this cartridge?

A Sorry, could you repeat that again.

Q What was your assessment at that time, after examining the chamber area of the firearm and the chamber marks?

A So this head area or the face of this chamber face is that I noticed that it was manufactured in a milling way, so the barrel is drilled, then it's milled. I was able to observe that here. I also ended up painting – this area I actually painted because I wanted to actually cycle a cartridge in there to see does it hit the head in the area that I'm observing, and so I was able to do that, as well. An interesting part about this area up here is, as you can see, it comes to a point, so in the firearm it comes down to a point. When examiners see that area coming down into a point, it has a good potential of leaving behind individual characteristics.

Q And did you observe any individual characteristics that you related back to this chamber area?

A Yes, I did.

Q And did you do research and had you done research previous on this chamber face area?

A I had been exposed to previous research at training classes.

Q What is this article?

A This article is an article published by Rachel Bolton-King and others on here, it talks about the manufacturing of a Sig pistol and it talks about the barrel process and, specially – now, this is a 9-millimeter in here, so it is not referencing

the .40-caliber. Why I looked at this article and why I paid special attention to it is because she talks about the milling process that Sig uses. So if you go to the next slide, she talks about the milling process that are used on Sig Sauer barrels. Now, it's not specifically the .40, but it talks about the 9-millimeter.

Q Would that manufacturing process be similar?

A I would expect it to be somewhat similar, and also for the various fact that I looked at the barrel directly and I could tell that milling was used as a process on this barrel.

Q What further does this article communicate that you felt was relevant?

A So when she toured the factory at Sig – she is a European analyst, so she toured the factory over in Europe. What she noticed was that during the milling process, the first steel piece is cut off and turned away with cutting head 1, so the first portion of the barrel is cut with cutting head 1, while the second piece is produced at the same time, so a second barrel coming behind it, is cut with the second cutting head. So something that's consecutively running on a line gets cut with the first cutter, the second barrel behind it gets cut with a second cutter, meaning that from that start process right there, they're not consecutive in that machine that's processing it.

Q And why is that important to you as a firearm analyst?

A So as I talked about before, we do studies where we look at consecutively made items and so consecutively made items are typically those items that could present potential problems in the sense that they would be manufactured at the same time and so they would show – they could show more relatable individual characteristics or potential subclass characteristics.

Q But the fact that they're two different tools are doing the two consecutive

barrels, what does that suggest to you?

A Well, it suggests that, at least in that operation lot that they're working with on that particular piece of equipment, that those barrels that are going in there aren't, from the very start, consecutively made.

Q And why is that important to you?

A It's important to me because it lets me know that there's at least two cutting heads in there and that I can deduce that there is a potential that even made at the same time in the same lot, that it would not be consecutive for how it's operating on that one machine. If we could go back, there's actually more to that article.

A Yes.

Q So she does go on to talk a little bit further about this and she says, "The use of two cutting heads is particularly noteworthy for any firearm examiner undertaking tool mark comparison and investigation utilizing consecutive by a barrel manufacturer or when investigating potential subclass characteristics. Another aspect to highlight is that there are six CNC milling machines located at the factory that are all used for barrel manufacturing and a variable number may be running at any one time to produce one batch of pistols." So that means that six machines, two heads apiece, so there's 12 heads cutting during one lot. She then further talks about a robot will then polish the external surfaces of the barrel and moves to the barrel into a laser machine, which engraves the serial number.

Q What is the significance of six lines of production going with two different tools on each of the six lines? What is the significance to you when you're looking to see if you can find individual characteristics on a Sig Sauer?

A It could be suggestive that the marks that I'm seeing would be indicative of individual, because they are not consecutively made. That doesn't mean that it is, one would have to evaluate the surface and the actual mark that is coming from there, but it has a high likelihood of it not being consecutively made is all I can state.

Q And if not consecutively made, what impact does that have on the idea of subclass characteristics showing up on an item?

A The subclass characteristics could be less, one would have to evaluate those, but I can't tell you definitely, I can just tell you that there is a potential that it could be less.

Q Are you ready for the next item?

A Yes, please.

Q What are we looking at here?

A So here this is another area that I observed, which was the extractor mark underneath the rim. Something to look at here is that there – as I talked about earlier, like way earlier, about straited and impressed marks, that some tools can make both; and in this case, we are seeing that here. Here you're actually seeing the impressed mark of the extractor. What's interesting is, is you see the movement forward of the extractor, creating stria, and then you see the movement back, created the striated area, so it has a lot of movement going on there when it's being extracted and ejected, so that could potentially be from the unevenness of the ejector that is in this firearm.

Q And why is that?

A It just happens to be that it is coming into contact a couple different ways, it's hitting that impressed area and then it can move as it's being extracted and

ejected from the firearm.

Q And the potential of marks being made on that cartridge each time those actions occur?

A I'm not quite sure what you're asking, sorry.

Q I'll withdraw that. What are we looking at here?

A So in this picture here, this is a picture of the extractor. So the extractor in the firearm is actually curled around. I'm actually looking at the back of the extractor in the sense that this area does not come into contact with the actual cartridge. So as installed, I can't see around this area here. So what I could observe was the outside area. This outside area did not have mold or MIM line to it, so it did not appear to be MIMed in any shape or form, at least from this observation; and the reason that's important is because MIMing can have a high potential for leaving subclass behind; but if there's additional processes done to that MIMing process, there is a potential that it could have individual.

Q And did you conduct – have you studied and researched this area of the extractor mark?

A I have come into contact with different articles that talk about extractors and the marks that they can leave behind.

Q What do these two articles represent?

A So the first article up top is a study in which an analyst looked at Remington 870 shotguns and they looked at extractor marks from Remington 870 shotguns. They looked at both cycled and fired components from here and they were able to tell even with –

MR. ROZZI: Judge, may I – I'd object to the question; and may I ask a preliminary question?

THE COURT: You may.

MR. ROZZI: Do – Ms. Oberg, do they, these manufacturers, take the same extractor that is manufactured and installed in a Remington 870 shotgun and place those in Sig Sauer P226 handguns?

A No.

MR. ROZZI: I'd object to relevance and to 403, also. They're comparing apples to oranges.

THE COURT: Relevance?

Q How did this article support your conclusion in this –

THE COURT: No, no, no, no. Excuse me. What is your response to his relevance objection? How is this relevant?

MR. LUTTRULL: Yes, Your Honor. This is relevant because it's part of the research that she was aware of, that she had testified assisted her in making this identification. She's permitted to refer to those articles.

THE COURT: I guess it would go to the weight the jury would give this particular research versus its admissibility, so I'll overrule the objection.

MR. LUTTRULL: Thank you.

Q Why did you direct our attention to this article?

A I directed our attention to this because it also deals with milling. It – as I had stated earlier, the barrel had a milled process done to it, as well, and this one, while it does talk about extractors, it also relates back to the milling process. While it's studied on a different object or a different tool, it is relevant in the fact that it is a study of a milling process. It's also a study of things that were made at the same time and whether an analyst can come to a conclusion of identification of things that are made at the same time.

Q What did you learn from this research?

A What was interesting about this research was even though there were MIMed extractors present here and this was the only mark that the person was observing, that they were able to still differentiate between the milled surfaces – sorry, not milled, but MIMed surfaces. There were additional things that were done to the MIMed parts, the finishing processes, that allowed her to do that. She was also able to differentiate all of the milled extractors, as well.

Q The second article?

A The second article below deals with extractors that were made at the same time, as well, and the process here was milling, as well. And what this study does is it was sent out to examiners to evaluate. These examiners were only allowed to do comparisons on the extractor marks themselves, so –

MR. ROZZI: I'm gonna make the same objection I made before. It looks like it's a Remington 870 case study, so same objection.

THE COURT: Overruled. Again, I think it goes to weight, rather than admissibility.

MR. ROZZI: Thank you.

Q How did a study on these ejectors – or, excuse me, extractors, how does this relate to your examination in this particular case?

A So in this particular case, it lets me know that examiners even looking at things that are manufactured at the same time could come to a conclusion only on extractor marks, they did not need other marks to look at to come to a conclusion, but they could use extractor marks alone to come to a conclusion. In this particular study, there were over 250 comparisons and 259 were correct and three were incorrect based off of just looking at extractors marks alone.

Q In examining of the firearm from the Defendant's home and the – comparing it to this item that was taken from the crime scene, did you find what you believed to be individual characteristics that you can identify?

A Yes, and that would be based on the striated portion. So impressed marks have a tendency to be higher in the subclass area, but in this case, I not only had impressed, but I had striated marks. I believe striated marks were created from the extractor that appear to, based on the impressed mark, have what looks like an irregular edge.

Q And did you go to research to assess your identification in this case?

A Well, these would have been articles that I had come across during my subclass training that I've been exposed to that I knew of.

Q And why is subclass training important as you made this examination in this case?

A It's important so that an examiner knows how to recognize them and be able to observe them, whether that's directly on the firearm or whether it is on an object that is received without a firearm.

Q This is the final research article we're gonna have to ask you reference or refer to the jury on. What did this tell you that assisted you with your examination?

A So in this particular examination here, this is actually a repeat of the study with the consecutively made extractors. So this analyst here actually received the extractors. He was also sent –

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

THE COURT: You may.

MR. ROZZI: Ma'am, these extractors – I'm sorry, these extractors

that were received, were they the same kind of extractors that were manufactured or tooled for a Sig Sauer P226?

A They have the same type of process that could potentially be used on an extractor that would put into a Sig Sauer, but it is not the extractor that would be inserted into a Sig Sauer.

MR. ROZZI: So again, comparing apples to oranges?

A It's not in the sense of comparing apples to oranges. This goes to the ability – in this case, this particular article actually looks at an examiner who uses extractors marking in lead versus actually test firing the firearm to come to a conclusion.

MR. ROZZI: You don't know that they're like the extractor in that firearm, do you?

A No, I cannot prove that.

MR. ROZZI: Same objection as earlier.

THE COURT: Overruled.

MR. ROZZI: Thank you.

THE COURT: Weight versus admissibility.

Q Why is this not apples to oranges? Why did this help inform your opinion?

A This helped me form my opinion in the sense that the examiner here used the extractors to make marks into lead. He then used those marks to compare to the items that he received, the fired cartridge cases, to be able to make an identification. So this supports the fact that you don't need a fired cartridge case or a cycled cartridge, an examiner can make a conclusion simply by making marks with those tools. It could be from a cast, it could be from making that mark in lead, so it's not necessary to always have to fire or cycle a firearm to

come to a conclusion.

Q Thank you. I'll ask you to return to your seat, if you would, and you can take your material with you. Ma'am, did you – were you prepared to display to the jury two short videos that talked about the manufacture of the Sig Sauer?

A Yes, I was.

Q And why would they be helpful in – for the jury to understand your identification in this manner in your examination?

A So these two videos show how a pistol barrel at Sig Sauer would be manufactured. It also is indicative of what I have observed in literature from the Rachel Bolton-King article that talks about the milling of the barrel itself. It is also represented in this video through a walk-through of how Sig manufacturers their items. It also shows you in the two videos how a firearm comes together. So some people may think that a firearm is just spit out from a machine and it's right there, but there's actually a lot more processes that are involved. Parts can be ordered from third-party companies and they can be assembled into these firearms, and some parts are made in-house, so this video just represents what you might see at a Sig Sauer manufacturing plant.

MR. LUTTRULL: For demonstrative purposes, Your Honor, we would like to display the first of the two videos.

MR. ROZZI: No objection.

THE COURT: All right. You may.

MR. LUTTRULL: May we approach, Your Honor?

THE COURT: Certainly.

(Sidebar conference conducted.)

MR. LUTTRULL: I think there's about six minutes between these

two videos and so it's – they played fine when we turned the TV on.

THE COURT: Of course they did. Now they don't.

MR. LUTTRULL: They played fine this morning.

THE COURT: Do you want a break? Is that what you're saying?

MR. LUTTRULL: Yes, if we could take a break –

THE COURT: Okay.

MR. ROZZI: We'll just do it after lunch.

MR. LUTTRULL: Yeah, break for lunch.

THE COURT: Just do it – okay.

MR. ROZZI: Yeah, that's fine.

THE COURT: Okay. That's fine. We – this is not the first time this –

MR. ROZZI: The anticipation will kill everybody I'm sure, but we'll do it after lunch.

THE COURT: Okay. We'll go ahead and break.

(Sidebar conference concluded.)

THE COURT: All right. Not surprising, we're having technical difficulties, ladies and gentlemen, so we're gonna go ahead and break for lunch while we try to get this set up for you. While you're outside the courtroom, please, keep your minds open. Please don't form any opinions or conclusions about anything. You may discuss the evidence that you're heard so far, but please, only do that if all 16 of you are present in the jury room at the same time and then don't deliberate. Gentlemen.

THE BAILIFF: All rise.

(Jury out at 12:01 p.m.)

THE COURT: All right. You may be seated. You can go ahead and step down from the stand –

THE WITNESS: Thank you.

THE COURT: -- Ms. Oberg. All right. So we'll recess until about 1. And those of you out in the audience, if you can just kind of sit tight for me until we get our jury back into the jury room, then we will release you. Thank you. Okay, Jodie, you can go off the record.

(Off record at 12:02 p.m.)

(On record at 1:16 p.m.)

THE COURT: Okay. Could I have counsel at the sidebar, please.

(Sidebar conference conducted.)

THE COURT: Okay, very good. Okay. Just wanted to make the record that we met in chambers just a few minutes ago to explain to the attorneys that Juror Number 15, who was alternate seat number 3, had a family emergency with some issues going on at home. First, thank you for meeting with me and thank you for your agreement that he really just needed to go home and take care of the situation. So counsel has agreed to allow Juror 15 and alternate seat 3 to go home. There's a member of the Carroll County Sheriff's Department that is escorting him back to the hotel. The bailiff, the female bailiff, that is the one that he shared his concerns with, is driving him back to Fort Wayne and will get him to his vehicle and probably follow him home, just to make sure he gets home okay. Does this fairly accurately represent our conversation from outside of court?

MR. MCLELAND: Yes, Judge, from the State's perspective. I agree with the Court's recitation.

MR. BALDWIN: It does, Your Honor.

THE COURT: Okay. And no issues with sending him home?

MR. BALDWIN: No, no issues.

THE COURT: And I appreciate that. When they – when the bailiffs went back into the jury room to let him know, he broke down crying.

MR. BALDWIN: I wanted to ask that.

MR. MCLELAND: Okay.

THE COURT: He was – the relief that in this young man was palpable. He was – he's going to immediately, when he gets back to the hotel, he'll have access to his telephone again, and he's indicating to us that he's immediately going to call his partner and let his partner know that he's on his way home and that, hopefully, his partner will be relieved (inaudible).

MR. BALDWIN: Okay.

THE COURT: Okay?

MR. BALDWIN: Thank you.

MR. MCLELAND: Thank you, Judge.

THE COURT: Thank you very much. I appreciate it.

(Sidebar conference concluded.)

THE COURT: Okay. Is our technology working where we can display the videos?

MR. LUTTRULL: We will – in the singular, Your Honor.

THE COURT: Okay.

MR. LUTTRULL: One video.

THE COURT: Okay. And your witness, do you want her back up here in this chair?

MR. LUTTRULL: Yes, I do.

THE COURT: And so that you're not popping up and down when the jury comes back in, you can just stand next to the stand, Ms. Oberg. And I'll just remind you that you're still under oath.

THE BAILIFF: All rise.

(Jury in at 1:20 p.m.)

THE BAILIFF: Thank you. You may be seated.

THE COURT: Thank you, gentlemen. All right. Well, welcome back, folks. I hope lunch was okay. The attorneys have indicated they are ready to proceed, and I think we got the technical issues figured out. And, Ms. Oberg, I'll just remind you that you are still under oath.

THE WITNESS: Okay. Thank you.

THE COURT: Mr. Luttrull.

MR. LUTTRULL: Yes, Your Honor. For demonstrative purposes, we would like to go ahead and play one of the two videos that we had intended to play. For technical difficulties, the second video we will not play. We would like to play that at this time.

THE COURT: You may.

Q Ms. Oberg, as a firearm examiner, how does that information on the video relate to your examination that you conducted in this case?

A The examination in this case, based on that video, it lets me know how there is a potential of how Sig firearms are manufactured. It also touched on the base, that the barrels are drilled and milled in that step process, so that what I was observing had consistency with being milled in that barrel area. It also highlights some of the important facts of how firearms are made and that it's not

just an assembly line one right after the other. There's different pieces and components that are made by different parts of things in a factory. Parts such as the firing pin, the extractor, or the ejector, those parts can come from other third-party sources, so they may not be made in-house.

Q In the shorter, second video that we had intended to show, how did it help inform you as a firearm examiner in your analysis in this case?

A The second video just went more in-depth about their assembly process and how they acquire their parts and how they assemble them, which I had already touched on. Basically, it just lets me know that their processes that they do, it's just not one machine making all the tools in that type of firearm.

Q And does that relate to the Bolton-King article that you referenced and quoted from?

A Yes, it does.

Q And that relates to the issue of when you identify a characteristic helping inform how you know whether it is an individual or subclass?

A It can help aid by knowing the manufacturing process and being able to look at research that might be relevant to that type of manufacturing process.

Q Ma'am, your identification that this cartridge was cycled in this firearm was based on what?

A It was based on sufficient agreement of quality and quantity of marks from both – from all the areas that I observed agreement in, which were the ejector mark, the extractor mark, and the marks on the head of the cartridge.

Q And what is the significance that you related – you identified the three different tools impacting that cartridge?

A The three different tooled areas helped me know that it's not just one area,

I'm able to look at not only the areas in the firearm and where they line up as far as class characteristics, but I'm able to look at the different tools that came into contact with those areas, so it's not just one tooled area, it's three different tooled areas.

Q Is the final stage of the level 1 and level 2 analysis that you described is at the end, once you come to a determination? Is there a – you mentioned a verification process?

A Yes, there's a verification process that follows my examination process.

Q And would you explain to the jury what that consists of.

A The verification process is where a second examiner will reexamine the comparative part of my work. So in our laboratory system, a email would be sent out to the other examiners detailing only that the number of items that need to be looked at. They don't get any conclusions, they – we just give them numbers of items; and the reason we do that is so that the examiner can work it into their schedule to do the verification process. So if I have a hundred items, they know that they're probably gonna have to sit down for a day to look at all of those items, so that's why we give them the number of items that they would have to verify. Other than that, when the verification process starts, I hand over the items of evidence that need to be verified to the second examiner and then they do the work-up on the scope themselves and they come to a conclusion and they write a verification worksheet.

Q Do you stand there and give them your account of how you came to your identification while they're doing that?

A No, I do not.

Q By 2022, sometime prior to 2022, had you established the patterns of

when you request verification?

A I tried to have everything verified at that time so an examiner wouldn't just be verifying identifications. They could be verifying either they're an exclusion, an inconclusive, or an identification.

Q And would your team know that, that that was your pattern?

A Yes. Any examiner at any time could have anything verified, it didn't have to be an identification. In our system, you had to have identifications verified and you also had to have exclusions that were excluded based on individual characteristics verified. The other ones should be verified, but they didn't have to be verified. So going a step above, I knew that the outside community would like to see us do all of the verifications, instead of just parts of the verification.

Q And who did the verification process in this particular instance?

A In this particular instance, it was my supervisor, Mark Keisler.

Q He's the supervisor of the Firearms and Tool Mark Unit?

A Yes, he is.

Q And how long has he been a firearms and tool mark examiner?

A Over 20 years.

Q And what was the result of his verification?

A He was able to identify the cartridge as having been cycled in the firearm that was submitted to me.

Q Was his verification in agreement with your findings?

A He wrote – he writes his own separate verification worksheet, so he agreed that it was an identification.

MR. LUTTRULL: I have no further questions.

THE COURT: Mr. Rozzi.

MR. ROZZI: Thank you, Judge.

CROSS EXAMINATION OF MELISSA OBERG

QUESTIONS BY MR. ROZZI.

Q So "sufficient agreement" is the phrase of art here; right?

A I'm sorry, I'm not exactly sure what you mean by that.

Q Well, you just said earlier that you found sufficient agreement between the markings on that item 16 and that gun, 314; right?

A Yes, I did.

Q So the word "sufficient", have you ever looked that up in the dictionary?

A Not in general terms, no, but through the AFTE theory of identification I have, yes.

Q Okay. If I told you that one of the synonyms for sufficient is enough, would you believe that?

A People can describe things the way they want to describe things.

Q What about adequate, does that sound right?

A You're reading it from whatever you're reading it from, so it's what you're reading – whatever source you're reading it from.

Q So it's just enough agreement is where we are with the standard; right?

A Well, the definition you're reading from is just a laymen's term definition, not the definition that's provided through the AFTE theory of identification.

Q Well, is it okay for a juror to utilize a layman's term in the course of making a decision in this case?

MR. LUTTRULL: To which I would object that that's – I think that's improper for this – question for this witness.

THE COURT: Sustained.

Q Is there a problem with me using the laymen's terms and layman's synonyms?

MR. LUTTRULL: Objection, and ask leave to ask a preliminary question.

THE COURT: You may.

MR. LUTTRULL: Is the word "sufficient" as stated in your report, is that a term of art in your discipline of firearms/tool mark examination?

A The term "sufficient" comes from the AFTE theory of identification, how it relates to that, so there's more than just saying sufficient. It's based off of knowing the research, the science behind it, and that all goes to the weight of that term.

MR. LUTTRULL: Your Honor, I would object to the question and, to use a phrase I've heard previously, it's apples and oranges to take a term that means something specific in her field and then suggest that it should be used in a more general fashion.

THE COURT: Any response?

MR. ROZZI: I think it's an appropriate question, asking her what her definition is of the word "sufficient".

THE COURT: Well, I'll sustain the objection, because the definition you're giving is not the definition that she's under.

MR. ROZZI: I'll follow-up. Thank you for that.

THE COURT: Okay.

Q So did the members of AFTE used Black's or the Webster dictionary when they created the term – phrase "sufficient agreement"?

A I wasn't there when they wrote the AFTE theory of identification, but the

AFTE theory of identification is based on the knowledge that comes from the field, so they can use terminology, but it has to associate to the field in with – within which you're working in.

Q So the language you're speaking today in court may be different than the language all of us speaks; right?

A It's not that it's different, it's that it's in relation to what I do.

Q So then to analogize the words "enough" or "adequate" to the word "sufficient" would be a fair thing to do?

A In relation to what?

Q This case, this man's guilt.

A I'm not asserting that those terms that you're using are what the AFTE theory of identification states.

Q We're talking different languages; right?

A It appears to be, yes.

Q Okay. All right. Just real quick on the video: That video does not make any reference to ejectors, does it?

A No, it does not.

Q That video doesn't make any references to extractors, does it?

A No, it does not.

Q And that video doesn't make any reference to chamber hood marks, does it?

A It actually references how the barrel is made, so it doesn't say "chamber" or "hood marks", but it actually references how the barrel was made, so even that front portion that includes the chamber face is actually referenced in the video.

Q They don't use those terms though, do they?
A No, they do not.
Q And there's actually a couple of different plants where they manufacture Sigs; is that right?
A There have been different plants where they manufacture them. They have manufactured them overseas, and a lot of their operations are currently here in the United States.
Q Germany?
A Yes, Germany would be one. It initially started out in Switzerland.
Q And I think you touched on this earlier, but that video just demonstrated the basic components of that particular P226 firearm, which is platform and the barrel; right? The handle, I guess.
A It went through how the manufacturing process works and also how the assembly process works, but in general, yes.
Q But there's a whole bunch of moving parts inside of those firearms that we've been talking about today that were not part of it; correct?
A The assembly process is actually part of that, so the extractor and the ejector, they all come into that assembly process, but not – the manufacturing of it was not shown in that video, no.
Q It's possible that Sigs may actually acquire their – for example, their ejectors from another manufacturer; right?
A Correct.
Q So like, for example, Glock is a handgun manufacturer we've talked about today.
A Correct.

Q So it's reasonable to believe that maybe, for example, Glock might actually manufacture ejectors and then sell them in large volumes to Sig to be placed into Sig guns; right?

A There could be the potential to do that.

Q So that does happen in the industry, doesn't it?

A Yes, it does.

Q I mean, in this case, I believe, earlier, in one of the lab reports you put in was – involved a Smith and Wesson handgun; right?

A That is correct.

Q And there was some similarity between the tools in those and the tools in the Sigs?

A What do you mean similarities? That they have extractors and ejectors?

Q Well, if the ejectors can be found – similar ejectors can be in each of those guns?

A Similar styles and shapes. It would have to fit the actual frame of it, so there may be little nuances that it may or may not fit in that firearm.

Q Same is true for the extractors; right?

A That's correct.

Q So you've got a lot of different combinations out there in the industry when it comes to tools being placed in certain platforms with certain manufacturers; right?

A That's correct.

Q And I don't – I just counted five off the top of my head: Beretta, Glock, Smith and Wesson, Hi-Point, and another one – how many gun manufacturers do you think there are making (inaudible) pistols, if you just had to take a guess?

A I really don't want to take a guess, but I know that there's a lot.
Q Dozens?
A I have no idea.
Q You've been looking at guns for 17 years and you can't make an estimate about how many manufacturers there are?
A Well, in the sense that, before I left my career, there's a lot of black market stuff going on right now, so there's a lot of 3D printing going on, so it make a guess would only not give it sufficient justice.
Q You were a lab technician when you worked for the State Police; right?
A I was never a lab technician, I was either a forensic drug chemist or I was a forensic firearms examiner.
Q You worked in a laboratory.
A I worked in a laboratory.
Q You did technical stuff; right?
A I did technical stuff.
Q And there's no minimum requirement in terms of education that's required by AFTE to do the job that you did at the State Police Lab, is there?
A There is not through AFTE' but through our accreditation standards, we do have to meet them.
Q With the State Police, you gotta have a minimum – what? – a bachelors degree?
A A minimum of a bachelors.
Q But you could have a bachelors degree in physical education and get a job in the laboratory, couldn't you?
A In some of the disciplines, you usually need in the criminal justice or hard

science category, so those are some of the courses and areas that we look for. Certain disciplines allow different things. A drug chemist, you usually have to have some type of chemistry background; DNA, some type of biology background; and so forth.

Q If you had a degree in physical education, would you meet the minimum requirements to work in your laboratory at the State Police Post?

A Not in all disciplines, no.

Q Okay. What about the one you worked in?

A In the one I worked in, I believe you had to either have criminal justice or some type of science courses, but you did not have to have a physical degree in that.

Q So you didn't have to have a degree in science, you could have a degree in criminal justice; right?

A Correct, yes.

Q You could be a sociologist, basically, and work in that laboratory?

A In our division, but not all of them.

Q You don't even work there anymore; right?

A I do not.

Q And those are actually civilian positions, aren't they? They're not actually law enforcement positions.

A That's correct.

Q And you work for a health care company?

A Yes, I do.

Q And you analyze data; right?

A I do.

Q You told me – we talked back in March, didn't we?
A Yes, we did.
Q Over here in the room behind us?
A Yes.
Q Took your deposition?
A Yes.
Q And you remember telling me that you were thinking about changing your employment back in 2018?
A Yes.
Q You thought maybe you might jump ship then and try to carry out some other plan; right?

MR. LUTTRULL: Objection to the term "jump ship". I think it's inappropriate.

THE COURT: Sustained.

Q Excuse me. You were thinking about leaving?
A I was thinking about leaving at that –
Q Yes or no, were you thinking about leaving?
A I don't think I could adequately explain it by just saying yes or no.
Q I'm asking the questions. Were you thinking about leaving?

MR. LUTTRULL: Objection, Your Honor. She's indicated she can't answer the question yes or no and then he persists in asking it, I – that's inappropriate.

MR. ROZZI: Judge, her response – she's non-responsive, so –

MR. LUTTRULL: She was responsive, she said she could not answer the question.

THE COURT: Answer the question, please.

A Yes; at that time, yes.

Q And you were concerned that there weren't any opportunities for you to be promoted; right? Or very few?

A There were just not enough areas that I felt that in my five-year plan that there wouldn't be anything that had changed or been different at the time and I was thinking to what I wanted to do next, and it could have been staying in the laboratory or it could have been leaving.

Q Your current job has nothing to do with firearms; correct?

A It does not have anything to do with firearms.

Q Or bullets?

A No, it does not.

Q Or cartridge cases?

A No, it does not.

Q You mentioned the word "IBIS" earlier in your testimony, didn't you?

A Yes, I did.

Q And that is the Integrated Ballistics Identification System; is that right?

A Yes.

Q And you'd worked with that system in the course of your employment as a firearms examiner with the State Police?

A Yes, I have.

Q That's a database that stores information regarding cartridge cases; right?

A Yes, it does.

Q And allows you to compare and contrast images from cartridge cases around the world?

A It allows you to compare it from state to state, if it's requested; but typically, it only pulls from the state in which you are currently in.

Q And those – sometimes those comparisons can be helpful in determining if one cartridge case has similarities with another in one state or two states?

A It's an investigation tool that will rank things and, at the time when I left, there was an outside agency that actually read the correlations for us. No examinations were actually performed on it. The examination was done by them and it was returned to us. If we ever needed to do an examination, then we would re-call the evidence to do an examination.

Q It's an investigative tool; right?

A It is.

Q You're not allowed to come into courtrooms and testify about the results from those searches, are you?

A Only if asked and it's allowed.

Q But it's not allowed per policy, is it?

A It's not a definitive conclusion. It's only an investigative tool.

Q And one of the most common things you do in your lab or did in your laboratory when you worked there was basically taking a projectile or a cartridge casing and trying to determine if a certain firearm, like 314, discharged that cartridge; right?

A That was one of the common exams.

Q I mean, just to be real practical about this, most of the time when you're examining – when you were examining firearms in the course of your employment, you were trying to, essentially, determine whether or not a projectile or what a lot of people called a bullet was fired from a certain gun;

right?

A It didn't matter whether it was fired from a gun, trying to come to some type of conclusion. It could have been exclusion, it could have been identification, or it could have been inconclusive.

Q Right. But that's the most common thing you did at the laboratory?

A Correct, yes.

Q By far, isn't it?

A Yes.

Q Okay. There's never a time, in the course of your work – there was never a time, in the course of your work at the State Police, when you could say with absolute certainty that any particular firearm discharged any particular projectile or bullet; right?

A We did not give statistical analysis on it. We're not allowed to say to the exclusion of all others.

Q There was never a time when you worked there when you could say, "That bullet came from that gun"?

A I cannot say –

Q Correct or not correct?

A I cannot say it to the exclusion of all others, I can only say based on my training and experience and throughout the examination process that I came to an identification conclusion.

Q Was there ever a time when you worked for the State Police when you could say a bullet came from a particular gun, yes or no?

A Yes.

Q Okay. When was that?

A Any time I testify, when I say that it's coming from an identification standpoint, I am identifying it to that particular firearm. I cannot say with any percentage or certainty, I cannot state that, that's not proven in our field.

Q All you're really allowed to do is come in here and say there's some hallmarks, some similarities; right?

A It's more than just hallmarks or similarities. When I testify to it, I'm testifying to sufficient agreement and the identification process.

Q Which is a different language than we all speak?

A It's different in the sense that the AFTE theory of identification explains it.

Q Okay. Proficiency testing, you talked about that; right?

A Correct.

Q Lab personnel are all required to engage in proficiency testing; right?

A Yes, they are.

Q And that's done by an independent agency?

A Yes.

Q And the idea, if I recall you testifying earlier, is to ensure that – you're trying to track whether or not the processes in your laboratory are sufficient; right? We'll use that phrase – word again.

A The proficiency test is not testing all the laboratory processes, because there's no verification process that occurs during the proficiency part. The examiner takes it and they submit the test, so it does not test all the processes, because it does not go through the verification process.

Q The tests are pass/fail?

A Yes, they are.

Q And you've never failed one, have you?

A No, I have not.
Q Not in your entire life?
A I have not – while at the Indiana State Police, I didn't fail any of the proficiency tests.
Q In fact, you even told me you never even made a mistake on any of those tests; right?
A I did not come to an incorrect conclusion on any of those tests.
Q And you told me, when I deposed you, that you'd never even made a mistake in the laboratory in 17 years.
A I am not familiar with doing that, so you'd have to point that out in a deposition and show me exactly where I've seen that.
Q One second, please.

MR. ROZZI: May I approach?

THE COURT: You may.

Q Would it help you to refresh your memory as to our conversation back on March 15th, 2024, here in this courthouse –
A Yes.
Q -- when we talked about this issue?
A Yes.
Q Let me direct your attention to page 18, lines 19 through 22, just read those first and I'll question you.
A Read them out loud or read them to myself?
Q Just read them to yourself. I'm sorry, I've got you on the wrong page, ma'am. Page 19.
A Page 19, okay.

Q Lines 19 through 22. Just read those and let me know when you've read those lines.

A Yes.

Q My question to you is, "Have you ever made any mistakes in terms of identification in the course of your work where, in the 17 years you were there, you concluded something and you later learned that it was wrong?" What was your answer?

A Not that I'm aware of.

MR. ROZZI: Excuse me, Your Honor, I'm kind of limited with space.

Q And you told me actually, on the page before, that you're not aware of anyone else in your laboratory ever making a mistake; right? Page prior, line 18 I think it was.

MR. LUTTRULL: Are you referring to page 18?

MR. ROZZI: Eighteen, lines 21 through 23 – 22.

MR. LUTTRULL: That's relating to proficiency tests.

A Yeah, for proficiency tests, I'm not aware of anyone in our unit every failing one.

Q So you've got a perfect laboratory; right?

A Not saying that we're perfect, I'm saying that I was not made aware of anybody ever failing one.

Q And in the course of the 17 years you were there, how many tests did you do a year, if you could estimate?

A Approximately 350. Not all of them actually included comparison work, but of those 350 examinations, they could consist of examining firearms for functionality, but they could also include comparisons.

Q So thousands of them in total?
A Approximately – I believe when I left there were 6500 comparisons that I had made –
Q Never made a mistake?
A -- around that. I cannot attest that I know the ground truth in any of the cases that I worked. An examiner who works casework from criminal justice agencies cannot attest that they have either made or not made a mistake, it's just whether that they were made aware of that they had made a mistake. So we don't know the ground truth of what happens in any criminal justice cases, we only know the ground truth when we're taking proficiency tests or black box studies.
Q So we really don't know the ground truth about the accuracy of your examination in any particular case, let alone this one?
A We don't know that in any criminal justice case, I cannot attest to that, no.
Q The proficiency testing was done by CTS; is that right?
A No, it was not.
Q Okay. What company did that?
A Forensic Assurance.
Q Okay. And how long have you been using them?
A Forensic Assurance I believe we started right around 2014 or 2015.
Q What did you use prior to that?
A We used CTS, which is Collaborative Testing Service.
Q And they had a reputation for being a little lax in their tests, didn't they? Or they didn't scrutinize enough, did they?

A That was one of the reasons that we switched over to Forensic Assurance, their tests were just not as hard, and so we switched over to Forensic Assurance because of how the tests were made up and that they were harder.

Q And there were even attorneys that passed some of those tests with CTS, weren't there?

A I have no idea if there were or not.

Q So you knew that they were scrutinized?

A Yes.

Q And so all of these examinations, 60 – 6000 or more, you never really had an opportunity to get promoted, so you left; correct?

A No, that's not the reason.

Q Let's talk about the tool mark discipline for a second; okay?

A Okay.

Q Now, just to be fair, just to make sure we're educating the jury, tool mark examination is kind of the umbrella discipline under which firearms identification falls; right?

A That's correct.

Q But you mentioned earlier you might be examining things like axes or I don't know what you said, knives, hatchets, anything that's a metal tool of some kind, a metal substance; right?

A Anything that can be used to gain mechanical advantage that would make a mark or leave a mark in something that we could examine.

Q And when I talked to you back in March, we talked about the DNA industry, didn't we?

A Yes, we did.

Q And you pointed out that there were some flaws in that industry, didn't you?
A There's flaws in all industries.
Q Even in DNA analysis?
A Yes.
Q And that there was room for improvement in that analysis?
A There's room for improvement everywhere.
Q But that's widely accepted in courtrooms, isn't it?
A It is, but courtrooms should not be the measurement of acceptance, science should be a measurement of acceptance.
Q And we were comparing the tool mark industry with paternity testing, as well, weren't we?
A I was asked a question about that.
Q And you know what paternity testing is; right?
A Yes, I do.
Q And you're basically matching DNA between parents and children?
A Yes.
Q And that's a practice that's acceptable in courtrooms; right?
A Courtrooms have accepted it, yes.
Q And but you told me you didn't know a whole lot about the inner workings of that process; right?
A No, I've never done any type of DNA testing.
Q That's not a process that you would ever compare with your business in the firearms identification sector; right?
A No, that's not something that I would compare the same thing to as

firearms.

Q In this particular case, you would not have told a law enforcement officer involved in this investigation that the tool mark process is just as reliable as paternity testing?

A What I talked about was the actual error rate in our scientific community, which goes to around 2, 2 and a half percent, and that was – some people had thought, well, if I think about this like paternity testing, I would just flip the numbers around, so that basically you're about 98 percent accurate.

Q Would you have ever communicated to a law enforcement officer in this case that the tool mark process is just like paternity testing, 99.9 percent sure that you could match kid with a man, would you?

MR. LUTTRULL: Asked and answered, Your Honor. I object.

MR. ROZZI: That was a specific question.

THE COURT: Overruled. You may answer.

THE WITNESS: Okay.

A No, I –

Q Did you ever tell a law enforcement officer that in this case?

A No, I would not say it's just like paternity testing and that we have the same rate.

Q And you don't know anything about paternity testing, so it would be kind of reckless to start comparing the two anyway.

A Yes, it would.

Q Let's talk about error rates for a minute; okay?

A Okay.

Q You would agree that a great deal – a lot of the research in the firearm

identification industry revolves around errors rates, you might have even said that earlier; right?

A Yes, it does.

Q Lots of studies about error rates of examiners; right?

A Yes, there is.

Q And the different processes that you use in examining cartridges?

A Cartridge cases and bullets, yes.

Q Studies to determine the processes within the laboratories themselves?

A There are some studies of within the laboratory system themselves, yes.

Q And there are a lot of professionals that are very supportive of the tool mark industry; right?

A There are.

Q And that's really what AFTE is; right? These are the people that believe in firearms identification as a subdiscipline of tool mark identification?

A Yes, they do.

Q But there's also a critical community that exists in the business of firearms identification, isn't there?

A There are some people, yes.

Q And that critical community is comprised, at least in part, of a lot of educated people.

A Yes.

Q Doctors?

A Yes.

Q Scientists?

A Yes.

Q And even organizations that exist that have been critical of the tool mark industry; right?

A There – I don't know of a specific industry, but I do know that there are individuals that may have become part of a group, yes.

Q And there's also a bunch of research focused on trying to introduce new technology to your industry of firearms identification, isn't there?

A Yes, there is.

Q Trying to move forward and advance this discipline; right?

A Yes, there is.

Q Because it's not perfect, is it?

A No.

Q And one of those organizations is PCAST; right?

A PCAST is an organization, yes.

Q The President's Council on – I'm trying to get my acronyms again – you tell them.

A Okay. PCAST is actually – it stands –

Q Just tell them what it stands for.

A It stands for –

MR. LUTTRULL: Objection, Your Honor. I actually –

MR. ROZZI: I just want her to tell them what it stands for.

MR. LUTTRULL: He continues to interrupt her. She was – but I withdraw the comment and I apologize to the Court.

A So PCAST stands for the President's Council of Advisors on Science and Technology.

Q Thank you for that. I struggle with it.

A That's all right.

Q What's NAS? I know that's the other one.

A National Academy of Sciences.

Q So PCAST is an organization that has taken – that has rendered some opinions about the processes involved in firearm identification discipline; right?

A They have evaluated research, but they have not conducted any of their own research.

Q Okay. But they definitely generated some opinions about the firearms identification discipline?

A Yes, they have.

Q And they basically kind of work for the President of the United States; right?

A They are appointed by the area of that.

Q And the people that are on that council are, some of them, scientists?

A Some of them are scientists, yes.

Q I might be wrong, but some of them may just be lawyers or doctors or laypeople; right?

A I don't know all the people and all their titles on there.

Q Okay. And – but they're supposed to be kind of an independent body that oversees and critiques different disciplines, not just the firearm discipline; right?

A Yes, they're there to advise the President.

Q And there's been an on-going debate in your industry, the firearms identification industry, just about whether or not it's a science in the truest sense; correct?

A There's a debate from some people, yes.

Q And PCAST did some studies, I'm sure you know the year, probably back in '13, '14, '15-ish, and they generated some opinions about whether or not the firearms identification industry is actually a science, didn't they?

A PCAST didn't actually do any studies, so I'm not quite sure what you're –

Q Okay. Fair enough. They published some literature; right?

A In 2013/14, not on forensics.

Q Okay. Tell them when PCAST published their report that contained an opinion about the firearms and tool mark industry.

A It would have been 2016.

Q Okay. Thank you for that.

A Yes.

Q And that report basically concluded that the firearms identification industry is not a science in the truest sense, didn't it?

A No, they did not conclude that.

Q What did they conclude?

A They concluded that there needed to be more black box studies to assess examiner performance and how it works, so they felt that we needed to do more black box studies to provide what examiner performance rates are like.

Q And they were critical that you weren't vetting your own industry enough; right?

A They were critical that we didn't have enough black box studies to show that and be able to assess and tell jurors how examiners perform. We had plenty of research, but not the research that they wanted, which were the black box studies.

Q And they published in part, at least – well, strike that. NAS is the other

organization, the National Academy of Sciences; is that right?

A Yes.

Q They also have been critical of the tool mark industry, haven't they?

A Yes, they have.

Q And specifically the firearms identification discipline within tool mark?

A They were critical of all the forensic science disciplines.

Q Well, they looked at all the different – at many of the different disciplines and rendered some opinions about the reliability of those disciplines; right?

A They have looked at research and reliability of those and they have come to certain opinions, but no actual physical testing was done.

Q Okay. But one of the opinions they generated about the firearms identification industry was that you needed to have independent laboratories; right?

A That was one suggestion, yes.

Q And that was one of the most significant ones because it requires a lot of time and energy and money to accomplish that; right?

A Yes.

Q And what they're basically saying is, is that because you're so closely connected to law enforcement, there are concerns about the biased nature of the work; right?

A It was a recommendation to do that, to have them separated; that way, there wouldn't be any undo or miscarriages of influence that could potentially happen if it was so that they felt that moving it out of any type of organization that oversees police work would be ideal.

Q That hasn't happened?

A In our – at the Indiana State Police where I worked at downtown in Indianapolis, we were actually connected to the Department of Toxicology and the Department of Health. At the time when I left, there were only two sworn officers in the building. So all the people that make up the area that I was in were actually laboratory scientists and personnel.

Q But you're State employees, aren't you?

A Yes. Well, all of us are.

Q And you work hand-in-hand with the police and the courts in your business all the time when you were there.

A What do you mean by hand-in-hand?

Q Well, they come into your laboratory, bring items in for inspection and things of that nature, don't they?

A They bring them to the evidence clerks. They don't necessarily bring them to us, but –

Q I mean – I'm sorry, go ahead.

A Go ahead.

Q I couldn't walk in there and hand you something and ask you to test it, could I?

A I have actually had a case where a defense attorney did relinquish evidence to our laboratory to be tested.

Q One time?

A Yes.

Q But that's not something that happens on a normal basis, is it?

A It's not on a consistent basis, no.

Q And with the NAS, the second recommendation outside of the independent

laboratories was that there be further – a further examination of the scientific foundations and limitations on several of the disciplines, including tool mark identification or firearms identification; right?

MR. LUTTRULL: Objection, Your Honor. I'd like leave to ask a preliminary question.

THE COURT: You may.

MR. LUTTRULL: NAS has issued more than one report that encompass firearms or just one?

A Just one.

MR. LUTTRULL: And when was that?

A The National Academy of Science's was released in I think 2009.

MR. LUTTRULL: 2009. So the reference by Mr. Rozzi is a 2009 study?

A Yes, it is.

MR. LUTTRULL: Okay. Thank you. I have no further questions. I'll not object.

Q When was that video made?

A That video was made back I think about ten years ago.

Q Okay.

A Yeah.

Q So the recommendation from the NAS was that there be further research to examine the scientific foundations and the limitations in your industry?

A Yeah.

Q So in other words, they were questioning the entire discipline, the entire foundation of the discipline?

A What they wanted was more research to prove our reliability and accuracy of that.

Q And the NAS has not issued a supplemental report saying that they're happy now, are they?

A They have not issued a subsequent report that I'm aware of.

Q Now, let's talk about other research in the industry. Would you agree with me that there is – well, there – yeah, there is a lot of research in your industry as it relates to the comparison between bullets, projectiles – which word do you prefer?

A So it depends what you're actually trying to reference here. So a cartridge would be the entire unit of ammunition or a cartridge case or a bullet.

Q Okay. I'm talking about the end, the business end of it.

A Okay. The bullet.

Q Okay. Do you – in your language, they call them bullets; right?

A That's correct.

Q Not projectiles?

A You can call it – the slang term would be projectile, but we typically call it a bullet.

Q Okay. Same thing?

A Yes.

Q So most of the research – the bulk of the research in your industry revolves around comparing bullets with firearms; right?

A There is bullets and there are also cartridge cases, yes.

Q Well, we're gonna talk about that in a minute. Bullets with a particular firearm?

A Correct, yes.
Q Kind of the traditional sense of, "Hey, somebody fired a gun and we recovered the bullet, we're trying to compare it back to a gun"; right?
A In that sense, yes, looking to see whether a bullet can be identified to a particular firearm.
Q There's another kind of subset where there's research regarding identifying the size or caliber of a bullet that's recovered; right?
A There is – there's research on being able to determine that, yes.
Q But that research is pretty lean; correct?
A Yes, there is.
Q And there's some research on the impact of the tool – strike that. Chamber marks. You know what chamber marks are?
A Yes, I do.
Q We haven't really talked much about those today; right?
A No, we haven't.
Q But that's part of – those kind of marks could be on around like (inaudible), in a sense; right?
A Yes, they could be.
Q There some research on that, but that's also pretty lean; right?
A Yes, it is.
Q And that describes the marks that are on that – that are impressed or striated on that cartridge when it's cycled in and out of the firearm; right?
A Yes.
Q And there's just really not much there in the industry to really put on them?

A There's enough research to be able to know that one can do it and they can be able to identify it back to a particular firearm.

Q But you told me back in March it's quite lean, didn't you?

A There are not a lot of articles, but there are some out there.

Q That was the word we used; right?

A Yes.

Q Now, of most significance in this case is your examination or the examination of an unspent cartridge; right?

A Yes.

Q So we're talking – just to be really simple here, spent rounds are a fired round versus an unspent round.

A Correct.

Q Correct? And there's a definite distinction between those two things, isn't there?

A There's a definite distinction in how it occurs, yes.

Q So you kind of mentioned that a little bit earlier, didn't you?

A Yes.

Q And one of the biggest distinctions is that a spent round or a fired round is subject to the pressures, I guess if you will, or the obvious pressures that are created by a firearm when the trigger is pulled?

A That is correct.

Q And so a spent round is subject to an entirely different environment, a contained environment in this situation, than an unspent round?

A Well, they're all loaded into the firearm the same way. The pressure is what's the difference between the two.

Q Two different circumstances are responsible for creating two different marks; right?

A It's still the same process. It's loading it in there, it still goes in the same way, but there's a difference in pressure.

Q So two circumstances are responsible for creating two different types of tool marks?

A An ejector mark's an ejector mark, whether it's cycled or fired, so it's not different. There could be differences in the marks that are replicated, but an ejector mark is an ejector mark, it doesn't somehow become something else.

Q I appreciate that. An ejector's gonna make a mark, no matter how you look at it; right?

A Well, an ejector is going to make a mark if it comes into contact. It could maybe not make a mark if the pressure is not great enough.

Q But that's a material distinction in your line of work, those two different cycles?

MR. LUTTRULL: Which two diff – I would object.

MR. ROZZI: A fired round versus an unfired round.

A So yes, a fired round is something that will have different pressure asserted to it. An unfired round will not have the same or similar pressure.

Q Now, you talked about the ability to analyze the marks left on an unfired round, didn't you?

A Yes.

Q And there's not much research available in that area, either, is there?

A There's leaner research in that as associated to the cycling process of it.

Q But you used – you just said the word – when we talked before, you used

the word "lean" in terms of the research.

A Yes.

Q Lots of room to improve in that particular area of research?

A If you're just associating the process, yes, but not the tool or tool marks that come from it.

Q But there's lots of room to improve from a research standpoint?

A As far as, yes, the cycling process and the fire process, yes, but not the tool marks that come from it.

Q And the research is what helps drive say like error rates; right?

A In that particular instance, it just depends how you're looking at it. Do you want a black box study to be able to determine those errors or are you looking for research in the fact you just want to see how cycling works or how cycling is produced from the tool marks that it comes into contact with.

Q One of the reasons why there's not a lot of research is because when you have uncycled cartridges, you don't often have people hurt; right? It's just kind of common sense.

A Typically when you have it, it just depends what's going on with the case, and I don't know that for a fact, but I mean, we get, a lot of times, a lot of unfired cartridges with the cases that we receive, it's just typically it's not the only item of evidence that we receive.

Q There's no proficiency testing involving analyzing unfired cycled cartridges, is there?

A There's no proficiency test that goes directly to unfired cartridges; however, the marks that are represented on a fired cartridge case also consist of cycling marks.

Q Is there any proficiency testing involving unfired cartridges, yes or no?

MR. LUTTRULL: Asked and answered.

A No.

THE COURT: Sustained.

MR. ROZZI: She's answering – she's talking beyond the question. It's non-responsive.

THE COURT: She did answer that one specifically, so I would sustain the objection.

MR. ROZZI: Thank you.

Q All proficiency testing for forensic assurance purposes involve test-fired bullets?

A Yes, it does.

Q And your conclusion in this case comes from an analysis of a fired round, not an unfired cycled, doesn't it?

A I guess I'm not really following. I had both fired and cycled with my test fires and I did a comparison to an unfired round.

Q But it's the test fires that you used to draw your conclusions, isn't it?

A It is, yes.

Q Not the cycled rounds?

A It is, that's correct.

Q You started working on this case in February of '17?

A Yes.

Q And you received some information early on about the crime scene circumstances you told me.

A I – the only thing that I had was provided on the request for laboratory

examination that was provided to me.

Q And that was pretty normal back in the day when we first started, you would get information about what went on at the crime scene; right?

A Basically, whatever the officer wrote up there would be on there. In this case, there was one sentence that talked about – I don't recall from memory exactly what it was, but that there had been a crime that had occurred and it involved two girls.

Q We're trying to get away from that kind of information in the laboratory, so it's more independent?

A Yes. Eventually, by the time I left, we had gotten rid of that information and that ability to actually put that on the request for laboratory examination sheet.

Q And you don't – they don't do that anymore at all; right?

A That's correct, yeah.

Q So let's talk about your initial examination of item 16; okay?

A Okay.

Q Your first impressions of that item were that there was really nothing remarkable on the round itself; right?

A Yes. I didn't notice any biological material, I didn't notice anything adhering to it, and there didn't appear to be any corrosive nature to it.

Q No dirt or any residue on it or anything?

A It – I didn't observe anything like that.

Q And you thought maybe it came from a laboratory?

A What do you mean?

Q The DNA laboratory?

A I received the item from the DNA analyst, correct.
Q So the cartridge case might have been examined before you got it?
A Yes, the cartridge was received from the DNA analyst in this case.
Q And when you looked it, there were three ejector marks on it; right?
A Yes.
Q Three extractor marks?
A Yes.
Q So that tells you that the round most likely had been cycled through a firearm at least three times?
A Yes.
Q So – but you said that there was no wealth of forensic information on that round; right?
A I said that there was not – in the chamber mark area, I did not notice a wealth of area there, but as far as the ejector and extractor areas, there were marks of value there.
Q You told me, when I took your statement back in March, that there was no wealth of information on that particular cartridge after you examined it; right?
A Well, there's information as far as the ejector mark, the extractor mark, but there is no firing process that happened to it, so there's no breech face marks and so forth.
Q Not nearly as much as you might find on a fired round; right?
A That's correct.
Q And based on the information you acquired when you first examined that round back in 2017, you would have never communicated to a police officer that, "You, the officer, gets me the correct .40-caliber Sig Sauer, that I will match it

with that gun"; you would have never said something like that, would you?

A I never said I needed a Sig Sauer to identify to. I said that if a firearm is found, there may be the ability to be able to identify it back to a particular firearm.

Q Never mentioned the words "Sig Sauer"?

A I told them that a Sig Sauer could be a possibility as a firearm that could have cycled this firearm.

Q So you were already starting to draw some conclusions about potential for that round back in 2017?

A I was not drawing conclusions, I said that there was the potential. I also did not say that it was only a Sig Sauer, there were other firearms that could be of interest, such as a Smith and Wesson.

Q It would be improper to make an opinion like that in advance of your full examination, wouldn't it?

A Yes. I cannot say definitively, I can only tell you, "Hey, there's a potential that there is the ability to be able to identify it if a firearm is found."

Q So in October of 2022, you examined that particular round again; right?

A Sorry, what?

Q October of 2022.

A '22, yes, correct.

Q And I think you mentioned earlier that you were pretty familiar with it, it had kind of been travelled back and forth to your laboratory a number of times; right?

A Yes. I had examined it on the first occasion when I received it and on the second occasion when I received it. This would be the third occasion that I

received it.

Q So you test fired four rounds; right?

A Which gun? Which time?

Q In October of 2022.

A In Oct –

Q Talking about – sorry.

A Go ahead? In October of 2022, when I received this firearm, I test fired it and cycled it a total of ten times.

Q Four test fires, six cycles; right?

A That's correct.

Q And that was item 314?

A That's correct.

Q And you didn't view any of the test-cycled rounds or test-fired rounds microscopically before you actually did your testing?

A I'm sorry, I don't know that I follow. I guess I don't understand what you mean.

Q You agree with me that you didn't examine those test fires or test-cycled rounds microscopically before you did the testing?

A Oh, to say – are you asking about whether they had marks on it prior to actually test firing it?

Q Well, those are stock rounds; right?

A They were stock rounds, yes.

Q They come from like a vault or something where you pull them off and use them for these types of things?

A We have boxes of ammunition.

Q My point is that you didn't examine those under a microscope before you did that.

A I did not examine them under a microscope, but I visually observed them before I used them.

Q Now, just for ease of identifying some objects, let me – these are the biggest exhibits you've probably ever seen, but let me hand you – I'm just gonna go through these really quick. Defendant's Exhibit EE, do you recognize this generally?

A Yes.

Q Okay. Is this the firearm we've been talking about all day, item 314?

A Yes.

Q Okay. This is a photo that you took?

A Well, I can't say that it's a photo that I took, I don't know that, I can't specify that because I don't know where you're actually acquiring it from.

Q You have a 14-page report in this case?

A Yes, I do.

Q And it looks pretty much identical to the one in your report?

A It looks similar.

THE COURT: Could you not display those exhibits until they've been admitted.

MR. ROZZI: Oh, I'm sorry.

THE COURT: Thank you.

MR. ROZZI: Well, these are my exhibits.

THE COURT: Well, I understand that –

MR. ROZZI: Yeah.

THE COURT: -- but they haven't been admitted.

MR. ROZZI: Right. Can I just show them to her?

THE COURT: Yes, please.

MR. ROZZI: Sorry about that.

THE COURT: That's okay.

MR. ROZZI: Well, actually, these are – they're in the slide show, so all – all but just a few of them, so I'll go through them.

Q FF is this a photograph of item 316 that's referenced in your report?

A It looks similar, yes.

Q Okay. Exhibit GG's a photo of item 315, a second round that's referenced in your report?

A Yes.

Q HH, a photograph of a couple magazines that's referenced in your report?

A Yes.

Q And II, a photograph of some Blazer cartridge rounds that were removed from one of the magazines?

A Yes.

Q JJ, another photograph of Blazer rounds that were removed from one of the magazines?

A Yes.

Q And you had some test fires, we looked at some of these on the slide show earlier; right? I'm showing you KK; is this an image of item 314, which is a test fire, and item 16, which is a bullet or the unspent round over here side by side?

A Yes.

Q This would be the chamber marks?

A No.
Q Or extract – what marks are these?
A They are marks that are located on the head of the cartridge.
Q And then, LL, another microscopic image of test fire 1 and item 16; right?
A Yes.
Q Also referenced in your report?
A Yes.
Q MM, another microscopic image of item 314, which is a test fire, and item 16?
A Yes.
Q Also referenced in your report?
A Yes.
Q And item NN, same question, same answer, basically?
A Yes.
Q And item OO, is this a microscopic image of item 16 and test fire 1?
A Yes.
Q That's the ejector mark; right?
A Yes.
Q And then, at the end, PP, also another microscopic image of item 16 and 316, which is one of the rounds that was collected – I call it one of the closet rounds. We'll talk about that in a second.
A Yeah.
Q This was also in your report?
A Yes, it was.
Q Do all of these truly and accurately depict the conditions that existed at

the time you took the photos or whoever in your lab took them?

A Yes, they do.

MR. ROZZI: I move to admit, Judge.

DEFENDANT'S EXHIBITS EE THROUGH PP OFFERED

THE COURT: I need the number – the items again.

MR. ROZZI: I'm sorry?

THE COURT: Where did you start?

MR. ROZZI: EE through PP.

THE COURT: You have a GG in there? I didn't hear it, either. Mr. Luttrull? Do you have a GG in there? I didn't hear it.

MR. ROZZI: EE, FF, GG, HH, II.

THE COURT: What is GG?

MR. ROZZI: Item 315.

THE COURT: Okay. Mr. Luttrull?

MR. LUTTRULL: No objection.

THE COURT: All right. Without objection, EE through PP are admitted.

DEFENDANT'S EXHIBITS EE THROUGH PP ADMITTED

MR. ROZZI: Thank you for that. We'll get back to those in a minute.

Q So just to kind of lay out the separate items here, so number 1, this is the Sig Sauer we're talking about; right?

A Yes.

Q And number – I shouldn't say number 1, EE. Then FF – I think one of the problems with these is they're not tall enough to lean kind of on the table. And then FF, I've got this labeled closet – or a Blazer closet cartridge. You see that?

A Yes.
Q Is it fair to say that on your packaging there's a reference that this was removed from the closet?
A I believe maybe on the examination request there might be, but let me double-check that.
Q If I could just hand you maybe –
A So that was 315 are you saying?
Q Yes.
A 315 said, "Found in wooden keepsake box on dresser between both closets in master bedroom."
Q Okay. There's a reference to the closet in there?
A Yes, there is.
Q And then 316 or – I'm sorry – well, we just talked about 315.
A Yes.
Q 315 and 316 are two rounds that have – both have closet references to them; right?
A 316 is actually the Sig Sauer handgun – or wait, hold on.
Q Want me to just hand you the two exhibits?
A Hold on – yeah, sorry.
Q Okay. 315 –
A Yes. Okay, sorry.
Q -- is the Winchester –
A Yes, correct.
Q S&W .40-caliber round. It references the closet on there; right?
A Yes, it does.

Q And then, 316 is the Blazer round that references the closet on the packaging?

A Correct, yes.

Q Thank you. And then the two cartridges, item 317, that was referenced; right?

A 317 –

Q Magazines, two magazines.

A Yes, two magazines containing cartridges.

Q And then, just because the jury hasn't seen these. Well, when they published the other exhibits, I guess. Next time, I'll make them in color. 317A, these are rounds that were taken out of the magazines in 317 and placed in the boxes; right?

A Yes, in the manila envelopes.

Q All right. And 317 being, again, taken from the second one of those magazines and placed in a – in the cartridge boxes; right?

A Yes.

Q So item 16, let's talk about item 16, it's in this package. We haven't actually seen it yet, but it's in here; right?

A I cannot verify that until I actually open it.

Q You can squeeze it and tell there's probably something in there; correct?

A There's something in there, yes.

Q Okay. And item 16 is a Smith and Wesson .40-caliber Winchester round; right?

A Not correctly the way you stated it. It should be a Winchester .40 Smith and Wesson caliber cartridge case.

Q Manufactured by Winchester?
A Manufactured or marketed by Winchester.
Q A very common round, isn't it?
A Yes, it is.
Q And Winchester's one of the most reputable and recognizable manufacturers in the firearms industry; right?
A I can't speak to their – anything like that. I can just say that yes, they do manufacture a lot and it's something common that I would see.
Q Okay. Have you ever been to one of their plants?
A Yes. I toured Winchester over in Illinois when it was there, but it has since moved.
Q But you can't speak to the reputation of the company?
A It's not whether – for me to judge their reputation or not.
Q You agree that they manufacture millions and millions of rounds though?
A They manufacture a lot of ammunition, yes, they do.
Q It's not reckless for me to say millions, is it?
A Not – no, it wouldn't be.
Q And there's really nothing unique about the manufacturing characteristics of that round, is there?
A No, there's nothing unique.
Q You might use a round like that, item 16, for personal protection?
A Yes, that is correct.
Q I guess, theoretically, you could hunt with it; right?
A I don't know what the hunting laws are in Indiana, but if it's allowed, sure.
Q Or you might use it to target shoot?

A Yes, that's correct.
Q Multiple uses; right?
A Yes.
Q And that particular rounds, item 16, has multiple markings on the round, doesn't it?
A Yes, it does.
Q And it – you talked earlier, it could have been cycled at least three times.
A That's correct.
Q And it could have been cycled through more than one firearm?
A It could at least have been cycled in one firearm, and the areas that I identified go back to a particular firearm. There are times where it may – you could have had something cycled in a firearm, but it did not pick up enough marks, so there is a potential you could cycle another firearm and it didn't pick up enough identifiable marks.
Q But it could have been cycled through multiple firearms?
A I guess I'm not following as to what you mean by that.
Q Well, you said there's three cycling marks; right?
A Correct, there's three cycling marks. They were – the ejectors were three triangular marks, they were similar in nature to each other. They each had similar individual marks to an extent, but not all of them had the same degree of individual marks.
Q So possibly could have been cycled through other firearms?
A There is a potential that it is possible.
Q And you can't make any determination as a firearms examiner as to when those cycling marks were impressed upon that unspent round?

A No, I cannot.

Q You can't say with any sense of certainty that that round was cycled at all in 2017, can you?

A I cannot tell you whether it was cycled at that timeframe in there. Like, I don't – I didn't collect the evidence, I can't testify to that.

Q There's nothing unique about that round and the marks on that round that help you determine when that round was last cycled or when it was cycled in its entirety, however many?

A No, I cannot determine that.

Q Okay. So you compared, at some point, items 315 and 316 with item 16; right?

A Yes, I did.

Q 315 being the two rounds, one of them was the Winchester round – I apologize, closet round – forgive me – and the Blazer closet round; right?

A There was one cartridge in each of those, but yes, I did compare them to item 16.

Q Because you received those kind of individually, as opposed to the rounds you got from that magazine; right?

A That's correct.

Q And of all the items that were given to you in this examination, 315 is actually the most similar – 315 is actually the most similar to item 16 in terms of manufacturing and make?

A That's correct.

Q Make and model, I'm thinking about cars. We've heard about hatchbacks. Makes and models; right?

A Basically manufactured or marketed by, yes.

Q And in fact, now that I'm thinking about it, I don't have a photo – I think we do have one from earlier, but I don't have a photo of item 16. This was admitted earlier, State's Number 278; you remember seeing this particular exhibit?

A Yes.

MR. ROZZI: Can I move freely, Judge? I'm knocking a lot of exhibits down.

THE COURT: Yeah.

MR. ROZZI: Thank you.

Q This four-page exhibit which has the photos on it.

A Yes.

Q This is item 16; right?

A Yes.

Q And this is item 16 – did you take these photos?

A Yes, I did.

Q Photographed from different angles?

A Yes.

Q And different sides?

A Yes.

Q It's important to do that to document the totality of what you're seeing; right?

A Yes. You can either document it either photographic-wise or through typing it out in notes.

Q Okay. You can't sit here today and say with any certainty that this

photograph came from any particular location before it got to you today.
A Well, I took that photograph, so I examined the evidence at my place, so I can't – I guess I'm not sure really where you're going with it.
Q You can't say with any certainty where it came from before it got to you?
A No, I cannot.
Q You issued a 14-page report in this case, didn't you?
A Yes.
Q And in that report – do you have the report in front of you?
A Yes.
Q I'd direct your attention to page 1 of that report. Are you there?
A Yes.
Q Is there a photo of that – of item 16 on page 1?
A On page 1 of this one, no, there is not.
Q What about page 2?
A No, there is not.
Q What about page 3?
A No.
Q Four?
A No.
Q Five?
A No.
Q Six?
A No.
Q Seven?
A No.

Q On page 7, there is a photo of this bag; right?
A Yes, there is.
Q But not a photo of the round inside of it?
A No.
Q Page 8, now you're down to the microscopic photos; right?
A Yes, I am.
Q So there's not a photo on this page similar to the one that was in Exhibit 278; right?
A That's correct.
Q Page 9, basically similar to page 8?
A Yes, that's correct.
Q Microscopic images?
A Yes.
Q Page 10, same thing, basically?
A Yes.
Q Page 11?
A Yes.
Q And then, page 12, there's a photo of the headstamp on the ground; right?
A Yes, there is.
Q That's a test fire?
A Yes, that is a test fire.
Q But no photo of item 16 here?
A No, there's not.
Q Page 13, microscopic images?
A I do want to clarify: They are microscopic images of 16 in some of these

microscopic photos, so it's not the complete photo, no.

Q Not the traditional photo like in this exhibit?

A No.

Q And page 14?

A No.

Q And that's the last page of your report; correct?

A That's correct.

Q So you don't have one photo of that round in your 14-page report?

A In this one, no, I don't, because it actually is in my original set of my notes, when I first examined it.

Q There's not one in this 14-page report.

A No.

Q This is the report you had given the police?

A This – the report that I give to the police is not through this. I give them the actual certificate of analysis.

Q Well, I've asked you for information more than once, haven't I?

A Yes, you have.

Q And when I asked you – the first batch of information that I requested, you gave me this; right?

A You asked for notes and the certificate of analysis, so yes.

Q Bench notes I think is the way we phrase it in the industry; right?

A Yes.

Q Which pretty much says, "Give me a copy of your entire file"; right?

A Yes.

Q Because you don't actually give those to the prosecutor when you generate

the certificate of analysis with your conclusions, do you?

A No, I don't.

Q So when you – after you did this examination and the dust settled, so to speak – those are my words – you were finished, you generated a COA or a certification of analysis; right?

A That's correct.

Q And that certificate of analysis has some summaries about what your findings were?

A That's correct.

Q And that certificate of analysis in this case didn't contain any photographs, did it?

A No, it does not.

Q It doesn't include a 14-page report?

A No, it does not contain that with it.

Q So lawyers like me have to ask for those things, don't they?

A They sure do.

Q And so we sent a request to say, "Hey, give me everything you got"?

A They'll ask for specific things, correct.

Q And that's what I did?

A Yes.

Q And so you ended up releasing this later?

A Yes, I did.

Q And microscopic images that I asked for?

A Yes.

Q Basically, a copy of your file; right?

A Yes.
Q But nowhere in the information that you gave me was there a photo of that round, was there?
A There should have been, because what that's pulled from is from the release to you.
Q Okay. Well, certainly wasn't in the 14-page report; correct?
A It was not in that report, no.
Q Which is really the summary of everything.
A It's actually not, because every report I did had something in it. So, I mean, this does not summarize everything that I did from every single exam, so there –
Q Well, let's talk about this firearm and that round.
A With this particular evidence, yes, but I also referenced the initial set of notes that can be looked at to see that information.
Q No photo; right?
A Not in that set, no.
Q So that item 16, when you got it from the police, had no prominent ejector marks is what you said; right?

MR. LUTTRULL: Which item? I don't understand.

MR. ROZZI: 16. No, I'm sorry, 315, we're going back to 315.

A Okay. 315, yes, I did not observe a prominent ejector mark.
Q Item 16, however, did have prominent ejector marks, didn't it?
A It did, yes.
Q One significant difference between these two items?
A Yes.

Q So there's no way to conclude that item 315 was even cycled through 314; right?

A Yes. I was not able to determine that.

Q Item 316, the second round, this is not quite as similar as the first to item 16, 'cause it's the Blazer; right?

A That's correct.

Q That round had three ejector marks on it?

A Yes, it did.

Q Cycled at least three times?

A Yes.

Q And I think you said it had apparent multiple extractor marks.

A Yes.

Q But you couldn't find any sufficient agreement between item 314 and that firearm up there?

A I found some marks of value, but I could not – there was not enough marks to be able to identify it back to that firearm.

Q The round that came from apparently the closet; right?

A Said to be, yes.

Q So basically, there's a few rounds that were found – item 315 and 316, those two closet rounds, were not really helpful in you connecting item 16 with this firearm.

A No. I mean, I was not able to identify them to each other or to the firearm that was submitted to me.

Q If I were to (inaudible) about this, which is dangerous in this situation, I would say you were trying to cross reference them and you didn't have any luck

doing it; right?

A Basically, I was not able to see an association to item 16 to 315 and 316, nor was I able to see any additional information that would have alluded to the fact that it was identified as having been cycled in the firearm in item 16.

Q So let's talk about the test-cycled rounds. We don't really have a photograph of those; is that correct?

A That's correct.

Q Okay. So just to remind the jury, when you received this firearm – just to make sure we're clear – I was thinking about taking it out and doing it myself. You know what, I actually am gonna do that.

MR. ROZZI: May I?

THE COURT: Do what?

MR. ROZZI: Can we just approach?

THE COURT: He's asked to approach.

(Sidebar conference conducted.)

MR. ROZZI: I guess I'm okay taking a break whenever you are. I don't need one, I just want you – don't be afraid to cut me off.

THE COURT: Okay.

MR. ROZZI: You know, I know this is gonna take a while, so –

THE COURT: Okay.

MR. ROZZI: -- I'm okay with you just –

THE COURT: What are you opening?

MR. ROZZI: I'm gonna take the firearm out.

THE COURT: Okay.

MR. LUTTRULL: Are you handing it to her?

MR. ROZZI: No. I'm gonna hold it myself.

THE COURT: I don't know what your level of expertise is in handling firearms, so I'd rather she handled it. She's an expert.

MR. ROZZI: She's gonna have to put gloves on to do that?

THE COURT: Yeah. I assume. Yeah, she's saying yes.

MR. ROZZI: I'll just move on.

THE COURT: Okay.

(Sidebar conference concluded.)

Q All right. This firearm, when you got that firearm and you started your examination, one of the first things you did, of course, you checked to make sure it wasn't loaded; right?

A That's correct.

Q Then you cycled it, didn't you?

A I don't know that I went directly into cycling it. Basically, I'll take it out, make sure it's not loaded, and then I'm gonna do any of my examination process where I'm typing notes, looking at is there any biological material or anything adhering to it.

Q At some point in your examination, you got those test fires out of your stock safe; right?

A I got the test fires out of an ammunition box, which we have ammunition boxes sitting on shelves that we use for test-firing purposes and cycling purposes.

Q Okay. And you started cycling rounds; right?

A I didn't just start randomly cycling rounds. I actually have to do a function exam of the firearm at first and then, after that function exam is complete, then

I will cycle and test fire. And in this case, since I had two magazines, I had to use each magazine.

Q Six cycled rounds?

A That's correct.

Q And you noted in your report, page 7, that the cycled cartridges have some extractor mark areas and limited to no ejector marks; right?

A That's correct.

Q Okay. And that's a summary of what you – your findings with regard to the cycled rounds?

A That's correct.

Q You didn't offer up any information about what you found on each of those six cycled rounds, did you?

A Not individually, no.

Q So –

A I summarized it.

Q So you had six rounds in front of you, cycled them all through item 314; right?

A That's correct.

Q And you said, "I found some extractor marks and no ejector marks."

A I said cycled – in here, "Cycled cartridges have some extractor mark area and limited to no ejector." So that means that some would possibly have the potential to have ejector marks, not all of them exhibited ejector marks.

Q You don't know what rounds had what marks?

A I know by the evaluation of looking at them, but I don't specifically say 1, 2, 3, 4 had it or so forth, no.

Q It's not referenced in your report; correct?
A No, it's not.
Q It could have been one round with one ejector mark and the other five without?
A Basically, when I'm saying limited, it could mean more than one.
Q But what we do know is that the results, when you cycled each of those rounds, were different.
A Basically, it's not that it's different, per se, it's just the verocity of those marks and the availability of them is less than what I saw when it was fired.
Q We also know that the marks that were generated on those six cycled rounds were different than the marks that are on item 16; right?
A I don't –
Q It's not similar.
A How are they not similar?
Q Well, you didn't use them to draw your conclusions, did you?
A I didn't use them to draw my conclusions, but I didn't say that they were dissimilar.
Q You didn't use them to draw your conclusions?
A No, I did not.
Q So at this point, you've got a firearm that you – or a round that you know it's only been cycled. You test cycle six rounds. You got not enough information out of that gun, 314, to move forward with your examination, do you?
A As far as being able to move forward, I could move forward with the test fires. I chose to the use the test-fired ones because they did mark better than the cycled ones, so this is a case of work smarter, not harder.

Q Okay. They were different, weren't they?
A They weren't different, they were just – they had more verocity to them, they had additional markings that were available, so I'm getting the complete picture when I'm seeing them fired versus cycled.
Q The test-cycled rounds were not exactly the same in terms of their markings as the test-fired rounds, were they?
A They are not the same in the depth and the actual availability of them, but it's not that they're different, it's that they did not mark as well.
Q So they were different.
A I don't consider them different. To me, different would mean that they look completely different in the sense that they don't go at all, like – I guess that's where we're having some terminology issues here. But different, to me, means so I saw a circle in one area and, in this area, I saw a triangle. To me, that means different. So they weren't different, there just wasn't enough of them
Q So you chose not to use the cycled rounds?
A That is correct, yes.
Q Did you also compare chamber marks and magazine lip marks on the test-cycled rounds in 16?
A Yes, I did.
Q And there was no significant agreement between those marks, were there?
A No, there was not.
Q More differences between the test-cycled rounds and that item 16?
A More differences? I'm not sure what you mean by that.
Q Well, they – there was no sufficient agreement; right?
A There was no sufficient agreement in either cycled or test fired for that