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 7 of 7

Pages 1 to 250

Nicholas McLeland/James Luttrull/
Stacey Diener
Carroll County Prosecutor's Office
101 West Main Street, Suite 204
Delphi, Indiana 46923

Attorneys for Plaintiff

Bradley Rozzi
Hillis, Hillis, Rozzi and Dean
200 Fourth Street
Logansport, Indiana 46947

Andrew Baldwin
Baldwin, Perry and Wiley, PC
150 N. Main Street
Franklin, IN 46131

Jennifer Auger
42 East Jefferson Street
Franklin, IN 46131

Attorneys for Defendant

files were labeled and handed over to the Defense.

MR. BALDWIN: I don't –

MR. MCLELAND: Judge – I'm sorry.

MR. BALDWIN: I don't know what they – I don't know that we were ever planning on doing anything like that, so I don't even know how that would be done, but if you tell me what you're worried about, then maybe we can just tell you that's not gonna happen.

MR. MCLELAND: That's fine, Judge, I can – we can do that off the record or –

THE COURT: Okay.

MR. MCLELAND: -- we can address that, Judge, and that's fine.

THE COURT: Okay. The same for paragraph 12?

MR. MCLELAND: Yes, Your Honor. There were certain documents we handed over to Defense that were labeled in a certain way and – we can talk about it later, Judge. I don't want to waste any of the Court's time.

THE COURT: All right. Is the Defense now done with its presentation?

MS. AUGER: Your Honor, one quick issue: Mr. Baldwin had referred to earlier perhaps calling First Sergeant Cecil from the Indiana State Police Digital Forensics Unit. He is the individual I was talking to you, feels like forever ago, on day 1, that we took his deposition on May 15th, he had conducted additional examinations, two, three, four days prior to that, that we still don't have. When I spoke with him today, he has additional data that, frankly, we're not prepared to – it would be inappropriate for us to discuss that without reviewing it, without reviewing it with our experts. He told me about reports he

has. I don't have those reports. So, you know, Mr. McLeland stood up at the beginning and said, "Well, they can't prove this." Obviously, he knew about the new data and we haven't been told, so I just want to make that clear, we're gonna re-depose Mr. Cec – Sergeant Cecil. He says he's gonna – tells me he's gonna have a report in the next two or three weeks and we'll take that information from there. Your Honor, we can only – we don't have L.G.'s phone, we can't obtain this data. We're at the mercy of the State and it feels little bit like rope-a-doping. You know, we take the evidence we have, we prepare a defense based on that. Now the data has changed. Mr. Cecil's 2019 report that we based a defense on he says is no longer accurate, so we're working out that issue is a long response to that.

THE COURT: All right.

MS. AUGER: Thank you.

THE COURT: Thank you. Mr. McLeland.

MR. MCLELAND: Thank you, Judge. I'm gonna put in the paper documents that I have first, Judge –

THE COURT: Okay.

MR. MCLELAND: -- just for time efficiency, and I'll try to do them in – I guess as they relate to each other. The first document I'm gonna move to admit is the work record of Brad Holder. It's been admitted prior, Judge, but I wanted to admit it at this hearing, and that's gonna be State's 22. It's actually his work record and the Anytime Fitness log. So State would move to admit what's been marked as State's Exhibit 22.

STATE'S EXHIBIT 22 OFFERED

THE COURT: Any objection?

MR. BALDWIN: No.

THE COURT: All right. Without objection, 22 is admitted.

STATE'S EXHIBIT 22 ADMITTED

MR. MCLELAND: Judge, these are – the State's gonna move to admit what's been marked as State's Exhibit 23, that's a copy of Brad Holder's deposition with the pages tabbed that I want the Court to consider. So State would move to admit what's been marked as State's Exhibit 23.

STATE'S EXHIBIT 23 OFFERED

MR. BALDWIN: No objection.

THE COURT: All right. Without objection, 23 is admitted.

STATE'S EXHIBIT 23 ADMITTED

MR. MCLELAND: And then, lastly, Judge, the State's gonna move to admit State's Exhibit 22 –

MR. ROZZI: 24.

MR. MCLELAND: -- 24 – sorry, what'd I say? 22? Okay – 24, which s a copy of Susan Case's deposition. She is the person who works at Liberty Landfill, where Brad Holder was employed. She is the one who was deposed about his work record and his alibi. The pages that I want the Court to consider are marked in that, as well. So the State would move to mark – admit what's been marked as State's Exhibit 24.

STATE'S EXHIBIT 24 OFFERED

THE COURT: Any objection?

MR. BALDWIN: No objection.

THE COURT: All right. Without objection, 24 is admitted.

STATE'S EXHIBIT 24 ADMITTED

MR. MCLELAND: Judge, then I would move on to State's Exhibit 25, which is a copy of the deposition of Johnny Messer with pages marked that I want the Court to consider. State would move to admit what's been marked as State's Exhibit 25.

STATE'S EXHIBIT 25 OFFERED

MR. BALDWIN: No objection.

THE COURT: All right. Without objection, 25 is also admitted

STATE'S EXHIBIT 25 ADMITTED

MR. MCLELAND: State's Exhibit 26 is the work records and bank records of Johnny Messer. I'm gonna have to get a copy for the Defense; I thought I had a copy, but I don't. But those were the work records and bank records that support Johnny Messer's alibi, so State's gonna move what have been marked as State's Exhibit 26.

STATE'S EXHIBIT 26 OFFERED

MR. BALDWIN: No objection.

THE COURT: All right. Without objection, 26 is admitted.

STATE'S EXHIBIT 26 ADMITTED

MR. MCLELAND: And one more batch, Judge, this deals with the Odinism. State's going to – State's Exhibit 27, which is a deposition – a copy of the deposition of Jeffrey Turco, with the pages marked I'd have the Court consider. The State would move to admit what's been marked as State's Exhibit 27.

STATE'S EXHIBIT 27 OFFERED

MR. BALDWIN: No objection.

THE COURT: All right. Without objection, 27 is admitted.

STATE'S EXHIBIT 27 ADMITTED

MR. MCLELAND: And in conjunction with that would be State's Exhibit 28, which is a copy of Professor Turco's report that he submitted.

MR. BALDWIN: That's fine –

MR. MCLELAND: So State would move to admit what's been marked as State's Exhibit 28.

STATE'S EXHIBIT 28 OFFERED

MR. BALDWIN: No objection.

THE COURT: All right. Without objection, 28 is also admitted.

STATE'S EXHIBIT 28 ADMITTED

MR. MCLELAND: And lastly, Judge, State's Exhibit 29, which is the BAU report from the US Marshal Service, and so the State would move – talking about the crime scene and that there's signs of Odinism there, so State would move to admit what's been marked as State's Exhibit 29.

STATE'S EXHIBIT 29 OFFERED

MR. BALDWIN: No objection.

THE COURT: All right. Without objection, 29 is admitted.

STATE'S EXHIBIT 29 ADMITTED

MR. MCLELAND: And then, that's all the paper evidence I have to admit. And then, if the Court's prepared, I'll call my first witness. Call Christopher Cecil, please.

(Witness sworn.)

MR. MCLELAND: Thank you, Judge.

THE COURT: You may proceed.

DIRECT EXAMINATION OF FIRST SERGEANT CHRISTOPHER CECIL

QUESTIONS BY MR. MCLELAND.

Q Officer, will you state your name, please.

A Christopher Cecil.

Q And could you spell that for the record, please.

A C-H-R-I-S-T-O-P-H-E-R C-E-C-I-L.

Q And how are you employed?

A I'm employed with the Indiana State Police.

Q And what is your rank currently?

A I'm a first sergeant.

Q So, First Sergeant Cecil, how long have you been employed with the Indiana State Police?

A Almost 20 years.

Q And did you go through special training and schooling to be a law enforcement officer?

A Yes, I did, sir.

Q And do you continue to go through yearly training to keep updated on current laws, policy, those kind of things?

A Yes, sir.

Q And what is your current assignment?

A So I'm the commander of the Indiana Internet Crimes Against Children Task Force.

Q And throughout those duties, do you have an occasion to take cellular phones or electronic devices and what we refer to as dump them, which means take the contents off those devices and examine that information?

A Yes.

Q And is that something that you routinely do?
A Not routinely anymore, since I'm the task force commander, but I did prior to that position.
Q Currently, you're the first sergeant who is working on the analysis – the new analysis of L.G.'s phone?
A That's correct.
Q But you've done an analysis prior to this new one; correct?
A Yes.
Q Tell me about the – when did you do the prior one?
A I did the prior one in 2019.
Q Okay. And that one's complete?
A Yes.
Q You decided to do a new analysis of it why?
A New tools, and then, also, technology's changed; so this was done in 2019, we're in 2024, and I know, from experience, that forensic software updates and gets better and can find things.
Q But the analysis for 2022, you did draft a report for that analysis; is that correct?
A You mean 2019?
Q 20 – I'm sorry, yes, 2019. Thank you.
A Yes.
Q And that report has been turned over to Defense; is that correct?
A Yes.
Q And so I'm gonna focus on that report mainly. Through that report, were you able to determine that there was a video on L.G.'s phone taken on the High

Bridge on the day of the murders?

A Yes.

Q And that video is the famous video that we know that has Bridge Guy in it; is that correct?

A That's correct.

Q And it's also the famous video where Bridge Guy says, "Down the hill"; is that correct?

A Correct.

Q And so that is the point where A.W. and L.G. are abducted from the Monon High Bridge; correct?

A My understanding, yes.

Q Okay. What I want to know specifically is what is the time that video was taken?

A So referring to my report here –

Q Let me establish foundation for that.

A Go ahead.

Q What do you have in your hand?

A So I have a case report.

Q And is that case report one that you drafted?

A It's one that I drafted.

Q And was it drafted after the analysis of L.G.'s phone in 2019?

A Yes.

Q And it is your report?

A This is my report.

Q And you believe it's accurate?

A Yes.

Q And actually, it says "Defendant's Exhibit 1" at the bottom. Is it something that was admitted in your deposition?

A Yes, on May 15th.

Q Okay. And would it help you to refer to this report to refresh your recollection?

A Yes.

MR. MCLELAND: Judge, I'd ask the Court to allow the witness to refer to the report to refresh recollection on the details of the timestamp on the video.

THE COURT: You may.

Q First Sergeant Cecil, can you take a look at that report and tell me the time, if you can find it, when the video started on the Monon High Bridge.

A So the video starts on February 13th, 2017, at 1413:51 or 2:13:51 p.m.

Q And was there a location or GPS location associated with that video?

A So when the video initially starts, the GPS geolocates kind of over near the Delphi High School, but then, within a matter of seconds, it comes back to the Monon Trail, that's where it goes.

Q And there were pictures on the Monon High Bridge Trail taken before the video; is that correct?

A Yes, sir.

Q And you were able to recover those pictures?

A Yes.

Q And those pictures have GPS coordinates with them; is that correct?

A There – the pictures don't, but there are – there are – when Snapchat's

being used, there are GPS locations when Snapchat's being used.

Q And so there are pictures taken throughout Snapchat and you're able to get a GPS location through Snapchat of those pictures?

A Yes.

Q And they show that the pictures were taken on the Monon High Bridge, as well?

A Yes.

Q And you were able to examine the pictures and the video; is that correct?

A Yes.

Q And in both the picture and the video, does it portray or does it show A.W.?

A Yes.

Q And is she wearing the same clothing?

A Yes.

Q And so you're confident the video is taken at the same location and time as the picture prior to it?

A Yes.

Q Okay. And again, give me the time of that video.

A So the time of that video, it starts at 2:13:51 p.m. on February 13th.

Q And when does it end?

A It ends 43 seconds later at 2:14:34 or 1414:34.

Q And then you're able to track movement on the phone after that; is that correct?

A Correct.

Q And that is through the internal functioning or the internal GPS of the phone?

A Well, it's – has to do with the Apple Health data.

Q Okay. And you're able to track – so you're able to track movement of that phone?

A Right. I'm not tracking GPS, I don't know where the phone went, I just – I'm tracking –

Q Just movement?

A Yes.

Q And at some point, does the phone stop moving?

A Yes.

Q When is that?

A So the phone stops moving same date, February 13th, 2017, at 1432:39.

Q So 2:32 p.m.?

A Correct.

Q And through your analysis, have you been able to tell, did the phone move after that time?

A No, it did not.

Q And do you know, how long did the phone stay on?

A My understanding from my examination I'm currently still in the process on, it stayed on until sometime after 4:30 in the morning on February 14th.

Q And so from 2:32 p.m. until 4:30 a.m. on February 14th, the phone never moved?

A Correct.

Q And do you know where the phone was ultimately found?

A My understanding, it was found underneath one of the girls.

MR. MCLELAND: Okay. Just a moment, Judge.

THE COURT: Yes.

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

THE COURT: All right. Ms. Auger.

ATTORNEY JENNIFER AUGER: Thank you, Your Honor.

CROSS EXAMINATION OF FIRST SERGEANT CHRISTOPHER CECIL

QUESTIONS BY MS. AUGER.

Q Now, First Sergeant, Sergeant Cecil, how do I refer to you?

A You can call me First Sergeant Cecil.

Q Okay. First Sergeant Cecil, now you got your – you said earlier the girls were abducted at 2:14 on February 13th of 2017; correct?

A I didn't say they were abducted, I just said that this is when – this is the video happened.

Q Okay. You have no idea if the girls met someone they knew or what happened at 2:14 when the video ended; correct?

A I only know what's on the phone.

Q Sure. So you can't say that they were or were not abducted?

A I can't say anything, you're right.

Q Okay. Now, the ability to track movement on the phone you said came from Apple Health data?

A Yes, ma'am.

Q Okay. And the Apple Health data, does it show L.G.'s phone leaving from L.G.'s home to the – do you have a map? Okay, do you have – did Apple Health show L.G.'s phone moving from her home over to the location where they got out of the car and got onto – walked onto the Monon High Bridge?

A I'm not sure I understand what you're saying.

Q Well, you said that the cell phone tracks movement; correct?
A Correct.
Q And it shows movement when people walk?
A Yes.
Q It doesn't necessarily show movement if you're in a vehicle travelling down the road; correct?
A The only way it could is if, for some reason, it would detect a movement as if, like, you went over a bump, right.
Q Okay. So it doesn't show any movement of L.G.'s phone leaving from her home to the trail that day when they were in a vehicle; correct?
A And you're referring to the Apple Health data; correct?
Q Yes.
A No, it doesn't.
Q Pardon?
A It does not, the Apple Health data does not.
Q Okay. Because it doesn't necessarily pick up if you're in the car unless something kind of significant happens; is that right?
A Right, like if you hit a bump or something, yes.
Q Okay. Are you familiar with the area around the south end of the Monon High Bridge?
A No, ma'am. I've never been there. I only know what I've seen on the news reports.
Q Okay. Are you aware that between the south end of the Monon High Bridge and the location where the bodies were found, there is an access road?
A I did not know that.

Q And the Apple Health data, the number of steps and the distance could have gotten those girls to somewhere on that access road; is that correct?

A Not necessarily.

Q But it's not – it's not wrong, it's not right, you just don't know?

A Correct. You're right, I don't know.

Q It's a possibility?

A Possibility.

Q Now, would you agree with me, Sergeant Cecil, that different information is transmitted to an iPhone by different measures? Does that make sense?

A No, ma'am, I'm sorry, it doesn't.

MS. AUGER: Your Honor, I was told that Mr. Cecil – that he was gonna be dismissed. Can I have a minute to find an exhibit that we had put away?

THE COURT: Sure.

MS. AUGER: I'm sorry. Your Honor, I'm sorry, my exhibits were put away, so it's a little (inaudible).

Q First Sergeant Cecil, I'm gonna show you what I've marked as Exhibit QQQ, which is a hand-drawn map of the areas where the bodies were found, and if you can see this area right here –

A Yes, ma'am.

Q -- and we can highlight that – is an access road. And would the Apple Health data get the girls somewhere on that access road; do you know?

A Like on a specific point? Are you asking me like a GPS point?

Q Any – yeah, any point. If they walked this distance and this many steps, they could have ended up on this access road; correct?

A So Apple Health data doesn't collect – doesn't track GPS.

Q No, it doesn't. I'm not asking you for a location. I'm saying if we start the number of steps that you measured –

A Um-hmm. (Affirmative response)

Q Have you measured any of those steps?

A No, I haven't.

Q Okay.

A I mean, I don't know who – the – you know, I don't know which girl could have been carrying the phone, because –

Q Sure.

A -- as I mentioned in my deposition, if you're carrying my phone and then you give it to me, you may walk different steps than I do, because I may be a little bit taller than you and have a different stride than what you would have.

Q Sure. And the steps are more accurate than the actual distance that the iPhone reports; would you agree with that?

A I – I'm not sure. I've got that written down in my notes, but I can't recollect that right now off the top of my head.

Q Okay.

A Ms. Augier –

Q Auger. Yes?

A I apologize.

Q No, you're fine. It's a tough one.

A To answer your question, I'm – 'cause I – from my research preparing for this other examination, both of them are gonna be correct, according to research that's been done by other police officers who've wrote a white paper on this.

Q Okay. So the distance will be as accurate as the number of steps?

A From this research that's been done by another law enforcement officer out of Europe, because I have the paper, it's part of my research that I've done for this examination.

Q Okay. And just to be clear: Your testimony is that the distance travelled with be as accurate as the number of steps?

A I'm not saying – I'm just telling you what I've learned. I'm not saying that I know that for a fact. I do not know that for a fact.

Q Okay. And would you agree with me, harkening back to your testimony two minutes prior, if one individual has a different stride –

A Correct.

Q -- than another, then this number of steps will be different than the amount – the distance traveled?

A Correct.

Q Now, your Graykey report that you did in 2019, or your report that you did in 2019; do you recall that?

A You mean my written report?

Q Your written report –

A Okay.

Q -- it was admitted as an exhibit – it's labeled Defendant's I, but I don't –

MS. AUGER: Your Honor, do you have the exhibit?

THE COURT: No.

MS. AUGER: The Graykey report?

THE COURT: No.

MS. AUGER: No?

MR. MCLELAND: It was not admitted as an exhibit.

MS. AUGER: Oh, okay.

THE COURT: I don't have it.

Q First Sergeant Cecil, I'm gonna show you what has been marked as Defendant's RRR.

A Okay.

Q What is that?

A Let me look through it here. So this is my written report, my digital forensic report that I had wrote back in 2019.

Q And you paid a lot of attention to that, given the fact that this is a double homicide; right?

A Yes.

Q I'm sure you give attention to everything you do.

A Yes.

Q And if you could, please, look at page 10, the last line.

A Yes, ma'am.

Q Well, I'm gonna – actually, I want to back up to the middle of the page first. There is – in all caps, it says "L.G.", there's a little notation there, I don't know what is, 38A158; you see that?

A Yeah, the L.G., tilde, 38A; yes, ma'am.

Q Tilde, thank you. And what did you note there?

A It's a picture of the Monon High Bridge and it's like – it's a picture that was uploaded to Snapchat and the picture is like – just like somebody would be standing like in front – like you're getting ready to walk across it.

Q I'm gonna show you what's marked as Defendant's Exhibit – well, sorry –

Defendant's Exhibit SSS.

A Okay.

Q Is that the photo you're referring to?

A It's not this exact one, because this has got some – it's got that written up there on it.

Q Okay.

A Right?

Q All right. Is there a phone – or a picture that you have learned of that you could not find on L.G.'s phone?

A Yes.

Q What was that?

A That was a picture of A.W. walking across the bridge and it's kind of taken off – like off on an angle.

Q And that was posted on her Snapchat account?

A So my understanding from social media is that's what it was and I was asked to try to see if I could find that by the investigators.

Q And you could not find that?

A I could not find it.

Q Now, if we go back to page 10, at the last line of your report –

A Yes.

Q -- what do you say?

A So on the last line, on February 13th, 2017, at 22:32:26, I wrote, "Last recorded data received by iPhone, the iPhone battery was likely depleted."

Q And what was the last data you mean was received?

A I'm looking at the data for that day; and this, as I testified in my deposition,

this was a mistake, I made a mistake, I didn't calculate other things, I wasn't looking into February 14th.

Q Okay. But even if we don't look – so what you're saying now today, when you said May 15th, is that you don't believe the phone's battery was likely depleted?

A Right.

Q Okay. But you – are – did you also make a mistake when you said, "Last recorded data received by iPhone"?

A Yes, I did.

Q Okay. Did – when you said that, what were you – what data were you referring to?

A If you look on the next page, right here, where I talk about – it says, "After the phone – it stopped recording" – excuse me, yeah, "It continued to function, meaning it still powered on. I found no evidence the user physically interacted with the phone. The phone continued to receive iMessages, SMS messages, Facetime calls, mobile calls, and other similar communication. In addition, several applications updated in the background. The activity continued until the phone battery was depleted." That's what I put in there, that's what I was referring to.

Q Okay. And did – were you referring to a particular piece of data that you believed the phone received at 2232:26?

A I do not remember. I don't know.

Q Would you agree with me that an iPhone receives data in different ways or messages in different ways?

A That's a very broad – you're gonna have to narrow it down.

Q Okay. Well, let's – so if an iPhone receives an SMS message –
A Right.
Q -- that is a short message service; do you agree?
A Yes.
Q Okay. And that's transmitted by a cell tower; is that right?
A I get – I don't know a whole lot about cell towers, how that is coming there.
Q Okay. You –
A 'Cause it could be –
Q You testified to that in your deposition.
A So it could come from a cell phone tower, it could come from Wi-Fi, there's other things it could come from.
Q Okay. How does an iMessage get to a phone?
A It could come from over the cellular ne or it could come from the internet, so if you're – basically, if you're connected to Wi-Fi. If you don't have cell phone service, if you're on Wi-Fi, you can get an iMessage.
Q Okay. Is it your belief that L.G.'s phone was connected to Wi-Fi between 5:44 p.m. on February 13 and 4:33 a.m. on February 14?
A No.
Q And if it's not connected to Wi-Fi, the only way it can receive an SMS message is through a cell tower; correct?
A Yes.
Q Okay. And do you agree with me, if L.G.'s cell phone received zero SMS messages between 4:06 p.m. on February 13th and 4:33 a.m. on February 14, 2017?
A I would have to look at that. I can't –

Q Okay. We talked about that in your deposition –
A Right, but –
Q -- recall that?
A I vaguely recall it.
Q Okay. What – yeah. What do you need to look at?
A I can pull up my computer and –
Q Okay.
A -- look, if it's – if the Judge is okay with that.

THE COURT: That's fine.

A It may take a bit for it – for me to pull up the report, but yes.
Q Sergeant Cecil, do you have the –
A I'm sorry, which –
Q -- the copies of your report?
A Do you want your RRRR [sic] back?
Q Yes, while we're waiting on you.
A Yes.

MS. AUGER: Your Honor, I'd go ahead and admit Defendant's Exhibit RRR, which is his 2019 report.

DEFENDANT'S EXHIBIT RRR OFFERED

THE COURT: Any objection?

MR. MCLELAND: No, Your Honor.

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

DEFENDANT'S EXHIBIT RRR ADMITTED

MS. AUGER: Thank you.

A Okay, ma'am, I have my computer up right now.

Q And can you tell me how many SMS messages did the phone receive between 4:06 p.m. on February 13th and 4:33 a.m. on February 14th, 2017?

A So 4:33 and 4 – I'm sorry?

MR. LUTTRULL: What was the first time?

Q 4:06 p.m. –

A 4:06 –

Q -- on the 13th.

A -- and 4:33? You said 4:06 to 4:33?

Q Yes.

A So it – there's nothing at 4:06, but at 4:33:31, from what Magnet is showing that there is a SMS message or nine messages as it's referring to. And then, this is a – it's the same one. There's two of the same ones here. There's another one at 4:33:36. There's one at 4:33:37. 4:33:38, 4:33:39, 4:33:40. There's multiple SMS messages at 4:33, but at different seconds throughout – you know, throughout that minute.

Q Sure.

A That's what you're asking.

Q There's 15 of them, isn't there?

A Some of these may be duplicate, because it's showing – it'll show up as an iMessage and it may also show up as an SMS, so it may be the same person.

Q Okay. There's the messages on your report that are marked SMS.

A Um-hmm. (Affirmative response)

Q How many of them are there at 4:33 –

A So –

Q -- a.m. on 2/14 in '17?

A Are you counting the duplicates?

Q Are there notes on 2/13 that show up as an SMS message?

A 2/13 or 2/14? I'm sorry, I'm – you're confusing me, ma'am.

Q Did I say 2/13?

A Yes, ma'am.

Q I meant 2/14. I mean – I'll tell you what, let me do this, I'm gonna show you Defendant's Exhibit TTT.

A Okay.

Q Does that help you? That is from the Cellebrite extraction.

A Whose Cellebrite extraction is this one? Is this mine or Brian Bunner's?

Q That is 2017.

A Okay. I'm not gonna be familiar with this.

Q Okay. If it doesn't help you, we can – that's fine.

A I mean, I can look at it, but I'm just saying I'm not familiar – I won't be familiar with this. I'll compare it.

MR. MCLELAND: Judge, if it helps things, the State's willing to concede that there were messages that came in at 4:33 a.m. on February 14th and the Court can consider that. If that helps move things along, I'm satisfied with that, Judge. I don't know that the specific number matters. But the State's willing to agree that messages came in at 4:33 a.m. on February 14th.

MS. AUGER: I think the number's important, Your Honor –

THE COURT: Okay.

MS. AUGER: -- I'm sorry.

A So I'm looking at this with Magnet; okay? And then, there's one call that is – that Magnet has not parsed. I'm not looking at it with Cellebrite.

Q Okay.

A And I can show you which one that is.

Q Which one is it?

A It's number 3, when it says – I think it says "Becky Patty Marchand". For some reason, that entry is not here. Again, this is the reason why you gotta use multiple forensic tools, because – to put everything together. I've only got one of them open right now. Cellebrite takes a little bit to load on my computer. Magnet's pretty fast, so I'm trying to be efficient here for the Court, but these other ones are fine, we're here.

Q Okay. And does that perhaps – so if we look at Defendant's Exhibit TTT –

A Yes.

Q -- that what – that shows 15 SMS messages on L.G.'s phone, but you're saying you think that number 3 didn't go through for some reason, and in fact, that box is blank and it says – what does it say there? – unknown.

A So what I'm saying is Cellebrite may have parsed it – 'cause again, you're going off something that I didn't do – but actually, when I'm looking at it with a completely different, separate tool, it's not showing it here, so I would have to pull up Cellebrite and compare it and see if Cellebrite parsed it.

Q How about this, can we agree, First Sergeant Cecil, that L.G.'s phone received at least 14 SMS messages at 4:33 a.m. on 2/14/2017?

A Yes.

Q Yes. Okay. And are those – and you agree with all of the 4:33 SMS messages at the top of the page other than, perhaps, line number 3?

A What are you asking when I say I agree?

Q You agree that L.G.'s phone received all of the text messages that this

document shows other than – on 2/14/2017, other than, perhaps, the one on line number 3.

A Yeah, number 3 would have to – I would have to do more analysis, but yeah, I would – that's what the software's showing.

Q Okay. Thank you. Now, what was the last SMS message received by L.G.'s cell phone on February 13th, 2017?

A From what Cell – excuse me – from what Magnet is showing here is that on February 13th, 2017, at 2248:22 or 10:48:22 p.m. was the last SMS message.

Q Okay. Would you agree with me that Defendant's Exhibit TTT does not show that SMS message?

A It's only one page, so, I mean, it would –

Q Those are in – well, would you agree with me, sir, that those are in chronological order?

A They're in reverse chronological order, but –

Q Okay.

A -- yes.

Q All right. And if you look at TTT, what is the time of the last SMS message to the phone?

A Here it shows it's 4 – excuse me – here it shows it's actually February 13th, '17, at 4:47:33 p.m.

Q Thank you.

MS. AUGER: Move to admit Exhibit TTT.

DEFENDANT'S EXHIBIT TTT OFFERED

MR. MCLELAND: No objection.

THE COURT: All right. Without objection, TTT's admitted.

MS. AUGER: Thank you.

Q So your data is even different than Brian Bunner's data from 2017; is that right?

A Yes, but I know why.

Q Okay. Why?

A Because Brian Bunner, after he did his exam several days later or weeks later, he connected to the network to do an iCloud dump of L.G.'s phone, which would have automatically brought some of this data there. This is the reason why this is here.

Q Now, you used – you have different software that analyzes this data; right?

A Yes.

Q Okay. And let's go back to the SMS messages. Those are timestamped by the phone as of the time they are received by the phone; correct?

A What Magnet and Cellebrite are doing is they're pulling as – if you look right here –

Q So that's not my question.

A It's pulling it as – it's how it's sent.

Q Not my question.

A Okay.

Q Okay? When an SMS message appears on a cell phone, it appears timestamped as of the time it's received by the cell phone; correct?

A No. I just had my phone in airplane mode and received a text message and it was sent – I received it – when I opened it up, it showed me when my daughter sent it to me.

Q An SMS message?

A iMessage.

Q Okay. Those are different; right?

A Same thing.

Q No. Okay. An iMessage is timestamped as of the time it's sent; correct? It goes through the Apple server, goes through the Internet, and those are timestamped as of the time they're sent; correct?

A When they're sent from – if you're texting me and you're sending me a text, yes, when you're sending it to me.

Q And I want to be clear, because there are lots of different things that people talk about as text messages. So you got SMS messages –

A Right.

Q -- that you earlier testified are transmitted through the tower if L.G.'s phone is not connected to Wi-Fi; correct?

A Right.

Q Then, you have iMessages, chats, Facebook, those are all transmitted through a server; correct?

A They can come through the tower, because you're on the Internet.

MR. MCLELAND: Judge, can I object at this point and I guess can Ms. Auger give me an offer of proof or show me how this is relevant to whether or not a third party can be talked about at the trial. The State called him just to establish the time of the video to cover the alibi of Mr. Holder and the other people that they want to name as third party. When you receive a text message, I guess I don't see the relevance, Judge.

MS. AUGER: Your Honor, the relevance is – and I think that Mr. –

First Sergeant's gonna get there, it's in his deposition, if we need it. An SMS message is timestamped as of the time it's received by the phone and an iMessage, a chat, is timestamped as of the time it's sent by the other phone. And so the relevance is, even though people were sending L.G. text – SMS messages, she did not receive those until 4:33 in the morning, meaning her phone is not connected to a tower between 5:44 and 4 – on the 13th, and then it's suddenly connected at 4:33 a.m. on the 14th –

A I would agree with that.

MS. AUGER: -- and so the relevance is – okay.

A I would agree with that, yes.

Q Oh, thank you.

MS. AUGER: And so the relevance is something changed at 4:33 in the morning to make that cell phone –

THE COURT: Well, why don't you get to that specific point, then.

MS. AUGER: Well, I – I'm sorry.

THE COURT: You're dancing around the field here, because I'm wondering, as well, what does this have to do with the third-party perpetrators that you are alleging.

MS. AUGER: Okay. Well, earlier, I believe it was Jerry Holeman testified that they have no evidence that Mr. Allen went back to the crime scene after maybe 3:30, and some – that phone – it was under the – under L.G.'s shoe under A.W.'s body, according to the State, didn't move after 3:30.

THE COURT: Okay.

MS. AUGER: Okay? And our point is that something changed at 4:33 in the morning that it's suddenly connected to the tower.

THE COURT: And this witness can answer that for you?

MS. AUGER: He just did.

THE COURT: Okay. Then, move on.

MS. AUGER: Thank you.

Q First Sergeant Cecil, in 2019, when you first conducted your examination of the phone, what did you know about the crime?

A I knew two girls from Delphi had went out on the trail, went for a walk, and then there was a video, apparently, was recorded of what was believed to be the last person that saw them, and then eventually, later on, they were found murdered. What I know about it was from what I read on the news, 'cause I was never given access to the report, never read the police report.

Q Did you have an understanding of the relevant timeframe that you were to review in your examination?

A Yes. I was there to look to see if there was anything that would help identify like why they were out there on the trail, if they were meeting someone, anything like that.

Q So is it then fair to say you were only looking at data prior to 2:14 p.m. on February 13th, 2017?

A Prior to 2:14, yes.

Q Now, what is your – can you tell the Court about knowledgeC, the database?

A So, Your Honor, knowledgeC is a data –

MR. MCLELAND: Judge, I'm gonna object again. I just – I'm not sure what – she can make an offer to prove. I don't see what the relevance is of talking about knowledgeC in terms of third-party perpetrators.

MS. AUGER: Your Honor, we'll withdraw it. I think we have what we need.

THE COURT: Okay.

MS. AUGER: And I'll just let Mr. Baldwin make his argument and save the rest for trial.

THE COURT: Okay.

MS. AUGER: Thank you.

THE COURT: Any re-direct, Mr. McLeland?

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

THE COURT: Thank you, First Sergeant. You may step down.

MR. AUGER: First Sergeant Cecil, is that a copy of the (inaudible) you have or is that the exhibit?

THE WITNESS: No, this is the Defense exhibit that we had from our deposition.

MS. AUGER: Okay. Yeah, that's okay.

THE COURT: Would counsel approach, please.

(Sidebar conference conducted.)

THE COURT: Do you need a break?

(Sidebar conference concluded.)

THE COURT: Let's be back in ten minutes.

(Off record at 6:47 p.m.)

(On record at 7:00 p.m.)

THE COURT: All right. Mr. McLeland, are you ready with your next witness, sir?

MR. MCLELAND: Yes, Your Honor. We call Trooper Purdy, please.

(Witness sworn.)

DIRECT EXAMINATION OF TROOPER ROLAND PURDY

QUESTIONS BY MR. MCLELAND.

Q Would you state your name, please.

A Roland Richard Purdy.

Q And how are you employed?

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

Q And how long have you been with the Indiana State Police?

A Twenty-eight years.

Q And what is your current role with the Indiana State Police today?

A I work Organized Crime and Corruption Unit.

Q And you've testified about this case I think on Tuesday; is that correct?

A Yes.

Q So at some point in your career, you were involved with the investigation into the killing of A.W. and L.G.; is that right?

A Yes, I was.

Q And you testified on Tuesday that you looked into – one of the persons you looked into was Brad Holder –

A Yes.

Q -- is that correct? Okay. And I tried to find – Trooper, I'm gonna show you what's been marked as Defendant's Exhibit SS; do you recognize that?

A Yes.

Q And you testified earlier – you testified I believe on Tuesday that you believe that was from – the impression was that was from Brad Holder's Facebook page.

A Yes.

Q Did you actually look at Brad Holder's Facebook page?

A I would have seen the picture in the file, and I did look at Brad Holder's Facebook page, but I'm not sure if it – I don't remember if I saw it on Brad Holder's Facebook page, but I know –

Q You don't recall if you saw that photo on Brad Holder's Facebook page?

A I don't recall if I saw it on his actual Facebook page.

Q And I'm asking 'cause Brad Holder denies posting that picture, even seeing that picture before. You understand that?

A Yes.

Q And so, at the time and through the investigation, this was in the Brad Holder file. You can't recollect today whether or not that was actually on Brad Holder's Facebook page?

A That's correct.

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

THE COURT: Okay. Mr. Baldwin, Mr. Rozzi.

MR. BALDWIN: That's me.

CROSS EXAMINATION OF TROOPER ROLAND PURDY

QUESTIONS BY MR. BALDWIN.

Q So when I deposed you last August and I asked you when you were looking into Brad Holder for the period of time that you did, did you see that image – and that's the image we're talking about – on his Facebook page, and your answer was?

A Yes.

Q Yes. So now your mind is changed?

A I wasn't sure. That picture was in his file and it's a Facebook picture, and

I assumed it was from Brad Holder's Facebook page.

Q I didn't ask did you see that image somewhere on a file on his – with – from his Facebook page. It was specifically, "Did you see the image somewhere on his Facebook page?" And you had – did you agree with me, I would have given you the opportunity for you to say at that time, "Well, I don't know if it's in his Facebook page or in a file that I saw"; right?

A Yes.

Q Your answer then was, "Yes, I saw it on his Facebook page"?

A Yes.

Q And now that that image is creating a little problem for you, your mind has changed?

A I guess I assumed it was on his Facebook page, 'cause it was with other Facebook photos –

MR. BALDWIN: I've made my –

A -- so then I questioned myself, yes.

MR. BALDWIN: I've made my point.

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

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

MR. LUTTRULL: Call Major Pat Cicero.

(Witness sworn.)

DIRECT EXAMINATION OF MAJOR PATRICK CICERO

QUESTIONS BY MR. LUTTRULL.

Q Would you state your name, sir.

A My name is Patrick G. Cicero, C-I-C-E-R-O.

Q And where are you employed?
A I'm employed with the Laporte County Sheriff's Office.
Q How long have you been there?
A I've been there for a little over 24 years, sir.
Q What's your rank?
A Current rank is a major and I'm with the administration.
Q And have you, in your career with the Laporte County Sheriff's Department, worked investigations?
A Yes. Prior to being promoted to the rank of major, I was a detective in our bureau as a chief of detectives for over 20 years.
Q You were the chief of detectives for the Laporte County Department?
A Yes, sir.
Q And do you have any specialized areas in crime scene investigation?
A Yes. I specialize in blood stain pattern analysis; crime scene reconstruction; forensic entomology for the practitioner, as far as collections and the investigative approach; as well as just overall crime scene investigation, sir.
Q Do you have any certifications in that field?
A Yes. I am certified in the state of Indiana as a crime scene investigator. I'm also on the certification board for the State of Indiana, you know, setting standards and making sure that investigators are certified throughout the state.
Q And you've, therefore – I assume you've been to specialized schools in blood stain pattern analysis.
A Yes. Over my 20-plus years in the detective bureau, I attended numerous courses, basic, advanced courses, courses in crime scene reconstruction where blood stain patterns and analysis is incorporated with that, individual courses

on certain topics in blood stain pattern analysis, as well.

Q And are those courses that require you to pass tests and to show your proficiency?

A Yes.

Q They're not just attending a conference?

A No, but I have attended conferences, as well.

Q Do you do training, do you teach blood stain pattern analysis and crime scene reconstruction training?

A Yes. I teach at the Indiana Law Enforcement Academy for crime scene investigators. I've taught at Rensselaer College as the basic and advanced courses. I'm slated to teach at the National Forensic Academy. I teach at the Forensic Academy already for the last 18 years in forensic entomology, but I'm slated to – this October, to go back for blood stain pattern analysis, as well.

Q What is that academy that you're talking about?

A The National Forensic Academy is in Oak Ridge, Tennessee, it's through the University of Tennessee. It's a ten-week intensive course at the University and it's – we teach investigators throughout the county.

Q How long have you been involved in blood stain pattern analysis investigation?

A Approximately 20 years, sir.

Q You've testified as an expert before in that area?

A Yes. I believe this would be the 31st or 32nd time.

Q Only in Laporte County?

A No.

Q Aside from today.

A No, sir. I've testified in Lawrence County, I've testified in Lake, Porter Counties. I believe I testified in Jasper County, as well.

Q It's late and we're all a little tired, but would you give us a brief explanation of what blood stain pattern interpretation is.

A Sure. Blood stain pattern analysis is a field of study which relies on the fact that blood is a fluid and, as such, it adheres to our physical laws; therefore, it is a repeatable – blood stains are repeatable, they're testable, they're measurable. An analyst examines the blood stains within a pattern, specifically looking at the size, shape, the location in the scene, the distribution, the volume of blood. Ultimately, the goal is to determine the origins that gave rise to the blood stains.

Q Were you asked to assist the Prosecution in this prosecution of the murders of A.W. and L.G.?

A Yes, I was, sir.

Q And when were you asked?

A February 12th, 2024.

Q And you and I first had a conversation about that time; is that correct?

A Round about that time, I believe so, sir.

Q What materials did you examine to prepare to give an opinion and to provide analysis on blood stain patterns at – in the crime scene?

A I received files, electronic files, of many individual files of photographs from I believe five or six different officers, investigators; I received lab reports; I received the post-mortem exam reports; diagrams associated with the case.

Q Showing you eight photographs; I'm gonna ask if you recognize these and if these would be photographs that you relied upon in your examination. They're

– for the record, it's Exhibits 30 through 37.

A Yes, sir, I recognize these photographs.

Q And were these photographs provided to you when you requested a number of photographs in this case?

A Yes.

Q Did you receive a lot more than these eight photographs?

A Yes, sir, many files of photographs.

Q And you said you reviewed both crime scene photographs, as well as photographs of the autopsies?

A Yes.

Q And the various reports related to the crime scene and the autopsies; is that correct?

A That is correct, sir.

MR. LUTTRULL: Only asking that they be kept under seal; but under that condition, I would ask that 30 through 37 be admitted into evidence.

STATE'S EXHIBITS 30 THROUGH 37 OFFERED

ATTORNEY JENNIFER AUGER: No objection.

THE COURT: All right. Without objection, 30 through 37 are admitted and will be marked as confidential and sealed.

STATE'S EXHIBITS 30 THROUGH 37 ADMITTED

MR. LUTTRULL: To assist the Court (inaudible).

THE COURT: Okay.

Q These two don't have stickers on them, but they have on them handwritten numbers that correspond with the Court's –

A Yes, sir.

Q -- sticker numbers, so I apologize if you have to scour to find the numbers.
A Yes, sir.
Q Did you actually go to the scene, as well, your –
A I did.
Q And were you accompanied by retired FBI Agent Rich Davies?
A Yes.
Q And did the two of you – were you given time there to review and see the scene yourself?
A Yes, I was, sir.
Q And was that helpful to you in understanding the photographs and understanding the reports that you had evaluated?
A Yes, it was.
Q And did you physically examine items of evidence?
A Yes. I examined clothing.
Q Were these the clothing that were – what clothing did you examine?
A The clothing I examined was the clothing that was discovered with A.W.
Q I want to have you describe – and we'll not do it in terrific detail, but I want you to describe the blood that was documented at the crime scene as you saw it on the photographs, beginning with the blood on the tree; and as you want to look at and reflect and refer to the photographs, if you would state the number for the record as to what –
A Sure.
Q If you want to begin by what is Exhibit 30 and what does that show us?
A Exhibit 30 is kind of an overall midrange photograph of the tree, as well as the decedents that are in the background. In the foreground, near the bottom

of the photograph, there is a blood stain on the ground that I observed and categorized as an accumulation of blood that would be consistent with a pooling. It would be very noticeable if, you know, the surface was not a forested floor, but it was large enough and it appeared voluminous enough that it would be consistent with a pool of blood stains.

Q And so when we refer later in the photographs to blood on a tree, that tree is pictured in Exhibit 30?

A It is, sir.

Q It's in the foreground?

A Yes, sir.

Q Okay. What does 31 show us?

A 31 shows us a more close-up photograph of the floor – the forested floor, leaf litter with blood stains on them.

Q And that's also – 31, is it a close-up of what's pictured in a portion of 30 – of Exhibit 30?

A It's not as readily – easily viewed in 30, but it's – I know where the general location is on – in the photograph. It's easily viewed on a computer, due to printing quality. But it's associated with the areas that I observed in front of the tree, almost like – I believe it was like a little bit northeast of the tree –

Q Ex –

A -- north/northeast.

Q Okay. Exhibit 32, what does that show us?

A This is another photograph of the tree, a different angle that the photographer took. You can see the decedents in the background. It is of the tree, more on the north side of the tree, and showing blood stains upon the tree.

Q And the next is 33, I believe.

A Yes, sir. This would be, again, the tree, a more – closer shot of the tree. It's blood stains I believe on the more northern part of the tree, more of the same.

Q And what is the next – 35?

A This is the tree again with the scale – I'm sorry, this is 34.

Q I'm sorry, 34.

A It's a picture of the tree with the scale. It's scaling out the blood stains, specifically the blood stain in the center, which I had described as an upside down L-shape.

Q Did you see references in the examination or in reviewing reports of a tree noted as a – with a letter F?

A I did, sir.

Q See any reference to that in the materials you reviewed?

A Yes, sir.

Q And we'll get to why in a moment, but does that appear to you to be a symbol F on the tree?

A No. It appears like an upside down L to me.

Q In terms of its configuration?

A Yes.

Q Okay. What's the next photograph, what number is it and which –

A That would be photograph 35. This would be the photograph of the F/ upside down L, without the scale, but this time it's – the discoloration of the stain was due to an additive or a chemical reagent called crystal violet.

Q Have you used that chemical yourself?

A Many times.

Q And what is the purpose of using that chemical?

A It's to enhance the visualization of blood stains. It – the actual chemical will basically pigment or change the color for more-easy viewing.

Q And is it your understanding that the crime scene officers returned in the daylight a following day and applied those chemicals to the tree and took the photograph at that time?

A Yes, that's my understanding.

Q Did that help to – you to appreciate and more fully understand the configuration of the blood stain pattern on the tree?

A It did. As – and I can understand why individuals would say that this looks like an F. The – what's missing to make it an F would be the lower horizontal bar to make it an F, there's not one there, so that's why I had called it an upside down L.

Q Had you note on the various – the numerous photographs that you reviewed of the crime scene, and perhaps even your trip there yourself this spring, but did you note any reddish tint or pinkish tint to the bark on that tree at certain locations?

A Yes, I did.

Q In some of the crime scene photographs, does that, in effect, provide a visual distortion of what is on the tree?

A Yes, it could.

Q What's the next photograph after the chemical-applied photograph?

A It would be photograph number 36.

Q What does 36 show us?

A It shows the decedents. I believe the photographer is facing the camera

towards the north, so the decedents are now in a different location. The – on the left side of the photograph, there's a large accumulation of blood, which would be consistent with a pooling.

Q And is that – did we get to the end? Is there a 37?

A 37's the last one.

Q I'm sorry?

A I'm on 36.

Q Okay. Go to 37, then.

A Yes, sir.

Q What is that?

A This is a – like a topographical-type of photograph, I believe the investigators were on a ladder or some – of some type, and you can clearly see, again, that discoloration which would be to the west of the decedents, especially west of A.W., and again, the decedents laying supine on the forest floor.

Q Major Cicero, I'd like you to give some detail about the blood stain that you saw on the tree. Would you describe it's approximate size and distribution of the blood as you saw it.

A Yes, sir. On the northeast – northeastern part of the tree, where the symbol, again, I had described as an upside down L – we'll focus on that area – the overall pattern was I believe like 3.4 by 7 inches approximately. The pattern consisted of several different blood stain patterns, trace – not trace, but transfer blood stains. I observed approximately six individual spatters and then more on the upper left portion of the area of the pattern. Again, transfer stains to the left of the upside down L, of course, and the L, all consistent with transfer.

Q And what do you mean by transfer?

A Transfer is – the definition for the terminology is a bloody object that comes in contact with another object and transferring the blood over.

Q And I believe the Court is well aware of some of these terms, but would you distinguish for us what you mean by spatter versus the other transfer that you saw.

A Spatter consists of individual droplets of blood that had – energy was applied to blood to break it up, and then the target surface being the tree, had impacted with the tree and that is spatter. Usually, spatter is in the realm of one to four millimeters in size. In this case, the sizes were one to three – if I remember correctly, approximately one to three millimeters in size. Also, one other additional pattern that's referred to as flow was also observed in the vertical portion of the L, the upside down L, whereas there was a voluminous amount of blood to create flow from gravity that was after the transfer was made.

Q There was blood at the base of that tree or near the base of the tree?

A Yes. In my analysis, I defined or identified three areas of blood stains. Of course, I just described the one on the northeastern portion of the tree. On more north or, basically, to the right, approximately four feet from the base of tree, I observed more transfer stains. As a matter of fact, the – those transfer stains oc – a couple areas of the transfer stains were quite voluminous, you can see with the dark – darker red/darker brown application when it dried. Directly below that – those stains was another set or was another series of transfer stains approximately two feet – a little more than two feet from the base of the tree, as well.

Q Was there a section on the ground a distance from the tree where there was a large pool of blood that was documented by photographs?

A Yes. The large pool or pooling accumulation of blood was more to the south of the tree and I believe maybe a few feet to the west of A.W.'s foot.

Q Could you point to that area, the pooling, for the Court and identify which photograph we're looking at.

A In Exhibit 36, the pooling, Your Honor, would be right here. (Indicates) In Exhibit 37, Your Honor, the pooling would be right there. (Indicates)

Q In between the blood at the base of – near the base of the tree and the pooling, was there also documented blood in between those two points?

A Yes. There was two other areas, according to the reports and the diagram, where there two smaller areas of – they'd be very – when I say very small, I'd say just smaller than the large one observed in 36 and 37, that could be considered accumulations. It lacked drips or other descriptives that we use for blood and when we look at the blood and provide with a definition, but these areas, again, were much smaller and, depending upon the surface, the soil, and the leaf litter – if there was a tile floor, a smooth, nonporous, it would be large enough that it would be a smaller pooling.

Q Now, let's go to your analysis of the blood on the body of L.G.

A Okay.

Q Did you study those photographs and read the descriptions and reporting, but did you, yourself, studies those photographs of the – of her body?

A Yes.

Q And you had numerous – dozens of photographs of that?

A I did, yes.

Q Would you give just a brief overall description of where – well let me approach it this way: Beginning at – you examined the lab reports that were

submitted in this case, as well; is that right?

A I did.

Q Specifically DNA?

A Yes, sir.

Q And what did you find in terms of the scene at the tree, the base of the tree, the smaller amount away from that base, and then the large pool; whose blood was identified with those portions?

A All the blood, according to the DNA reports, originated from L.G., L.G.

Q And the only blood identified as A.W.'s blood was right there, either on her body or very adjacent to it?

A Yes.

Q Would you describe for the Court what you can discern about the movement of L.G.'s body from the tree to where she was found?

A Yes. So observing the small accumulations, that would indicate that L.G. was mobile at the time the bloodshed occurred. Likewise, blood stains consistent with the transfer was observed on the bottom of her foot, indicating that she was standing at some point. So all the blood on the tree, the blood that's to the northeast of the tree, the areas – again smaller areas, two areas noted by the investigators, and the large pooling, all L.G.'s blood. Likewise, the blood – L.G.'s body was dragged through the larger accumulation, which was noted by the pictures, you can see blood from the accumulation to where her final location is, but also the transfers of blood to her – the back of her leg and her calf.

Q In examining the photographs of the conditions of L.G.'s body, are you convinced she was, at some point, dragged through, pulled through that pool of blood to the final resting point near the tree where she's photographed?

A Yes.

Q And she – her left arm is up-raised?

A Yes.

Q And the position of the left arm, is that consistent with someone pulling her body from the area where the pooling was, through that pool, to the point next to the tree?

A Yes, it's consistent.

Q I want to talk for a little bit about the blood on A.W.'s body. You – well, first, before we leave L.G., is it your belief that L.G. was mobile, was moving, after she received at least her first initial injury?

A Yes.

Q And you say that because of what?

A Again, the small accumulations of blood that were observed at different locations within the immediate scene would indicate that she is in those positions, bleeding, for it to get onto the ground and accumulate in that fashion.

Q Is it also apparent that she was at least sitting, in a sitting position, at some point?

A Based upon the blood stains that were observed on her right thigh, there is a what is referred to as projected pattern observed on the thigh. And a projected pattern is a – it's basically blood stains or blood under pressure that is being ejected out of the injury, in this case being her neck, which coincides with what I observed on the leg. The stains ejected onto her leg and subsequent flow patterns were made flowing to the inner thigh of the leg.

Q And that evidence itself confirms to you that her – she was sitting at some point with her head above her thigh?

A Yes. In order for that projection to be there, the target surface has to be present and the most logical way for that to happen would be that the injury itself would have had to have been over the thigh. We can tell this mostly because of the flow patterns. The flow patterns went straight down the leg, so the best explanation for that particular pattern would be that her – she was most likely seated at the time.

Q Let's talk about A.W. for a moment. She – what evidence – do you believe that she was not moving upon receiving her one wound? Does she not move upon receiving that wound at all?

A She was in that general location the entire time. I mean, there may have been some movement, but generally, it's right where she was found where she's come to her fatal injuries.

Q What does the blood evidence on her body tell you?

A The blood stain on her body, observed flow patterns on A.W.'s face which were not consistent with her final resting, meaning that either her head was turned to the side at one point, maybe her body was turned at one point. The stains were limited really to the back and the clothing where saturation occurred, and saturation is where blood accumulates and soaks into a absorbent material: carpeting, clothing, and whatnot. The saturation – the sweatshirt was so saturated in blood, also went onto the forested floor, trickled to the right of her, as well, where a pooling or accumulation occurred, as well.

Q So the most movement of her upper torso or – and head were from maybe – let me ask it this way: The only movement from her body that you could discern from the blood was that – would have been a movement of her head from one side to another?

A Potentially, yes. Maybe her upper body was lifted up at one point to create the flows that went over her chin. Because our bodies can articulate so much, I can't, you know, say exactly what occurred, but again, blood is a fluid, fluids will flow towards the least resistance, and based upon the flow patterns upon her face and chin, it was consistent with some movement.

Q L.G. had a significant amount of blood on her – both hands; correct?

A Yes.

Q Given – how many violent crime scenes – let me put it this way: How many death scenes have you been to in an investigative capacity?

A Hundreds, sir. I don't know, it's been 20-plus years. I've been an officer for 28 years and I've been to many death scenes.

Q Given the wounds to her neck, did that seem likely that she had a significant amount of blood on both hands?

A Absolutely, especially the injuries and the internal portion being that both carotid arteries and the jugular vein – we're talking about L.G.; correct?

Q Yes.

A The – both carotid arteries and the jugular vein were compromised. There would be massive blood loss as a result of that.

Q What about the hands? What have you learned in your investigation about injuries and – to the neck and hands?

A Yeah, I believe it's a natural reaction and you're gonna be putting your hands in that blood, touching portions of your body that is now being blood soaked, as well. You know, the fact that we know that L.G. was mobile, blood is flowing down her shoulders, her neck, it would be very logical that she's touching those areas, as well, and she had a voluminous amount of blood on her arms

and her hands, as well, so that would coincide with that.

Q But A.W. did not, did she?

A A.W. did not have any blood on her hands, nor did she have any blood on the sleeves of the sweatshirt, the dark-colored sweatshirt she was wearing.

Q In terms of – there's been some testimony, some documentation in this case referencing whether A.W. was redressed after receiving injuries. Can you tell the Court what your opinion is about whether or not, in terms of the clothing she was wearing when found, a large dark sweatshirt, a tank top, the grey sports bra, the black bra, were those items on her at the time that she received her injury?

A Yes.

Q And how can you say that?

A So based upon several factors. In examining the clothing, examining the photographs, there was heavy saturation to the clothing, you could see mostly on the back and the shoulders and the neckline, and this is just the outer hoodie sweatshirt that she was wearing. In reviewing her torso, her pink sleeveless shirt, it was a grey-colored sports brassiere, and a black-colored sports brassiere – I'm sorry, just a regular brassiere, that the – there was no blood located on any one of these things other than the neckline or the shoulders. To – the best explanation is that she's wearing it at the time. If she was dressed after the fact, we would expect to see a lot of blood transferred to the portions of the – the lower portions of the shirt, the sports brassiere, the brassiere, and especially her abdomen as it's being – as she's being dressed.

Q There – the sticks and limbs that were near or on the bodies, you saw photo – the photographs showing those; correct?

A Yes.

Q And did you, by visiting the scene and also examining photographs, observe any indication that those – a limb, a large limb near L.G.'s body, and even the smaller sticks would assist in concealing those bodies from view?

A Yes.

Q If someone were looking from across the creek in the – towards the direction where the girls were found, would those sticks and that large limb assist in concealing their body from someone looking in that direction?

MS. AUGER: Objection, Your Honor. This is –

A It's okay.

MS. AUGER: Major Cicero – right?

A Yeah. It's fine.

MR. AUGER: -- is an expert in blood spatter analysis. What someone may or may not have seen across the creek would be beyond his area of expertise.

THE COURT: Mr. Luttrull.

MR. LUTTRULL: He visited the scene, Your Honor, he looked at it from a variety of perspectives, he looked at it from the vantage point – maybe not the specific location, but from the angle of someone across the creek. He was on the crime scene side of the creek, but he looked at it from that same angle, and I believe he can give opinions. If Dr. Perlmutter can give her opinion about a crime scene, certainly Major Cicero could.

MS. AUGER: Your Honor, may I ask a preliminary question?

THE COURT: Yes.

MS. AUGER: Major Cicero, you never saw – you were never at the

location where the bodies were found on February 13th, 2017; correct?

A That is correct, ma'am.

MS. AUGER: Your involvement didn't come into place until, I think, April of 2024?

A February, 2024. I was at the scene in April, yes, ma'am.

MS. AUGER: Okay. Thank you. And so you were never in a position to see what you could or couldn't see with leaves on or off the tree or anything like that or differences in topography or anything like that in the seven years between the time the girls were killed and the time you went to the scene?

A Correct.

MS. AUGER: Your Honor, I think that this would be complete speculation. We would object.

THE COURT: Anything else?

MR. LUTTRULL: It's not speculation at all, but I can ask further questions that may clear up the matter.

THE COURT: Please do.

Q You observed dozens and dozens of photographs taken from various locations by the crime scene techs showing, from various distances, the scene as it existed before the bodies were moved; is that right?

A That is correct.

Q And did you see, from the benefit of those photographs and from your own visit to the scene to give it that further context, did you see any advantage or any effect to cover up or make it more difficult to see the bodies from those sticks and limbs that were present?

A Yes.

MS. AUGER: Your Honor –

A Oh –

MS. AUGER: -- I would just renew my objection. I'm sorry, Major.

A That's okay. I was waiting for you.

MS. AUGER: It's his fault.

THE COURT: Overruled. I'll give you some latitude.

A Yes. My observations in April, as it pertains to topography, foliage from, you know, leaves – there were no leaves that I observed on the trees. It's my understanding and observations of the crime scene photos that there were also no leaves in February of 2017. It's just – it's Indiana, we know when we start to get leaves. My view in April – and I – and it would be logical to conclude that the views in February of 2017, and my views in April of 2024, would be similar in that I could clearly see across the river – or, I'm sorry, the creek to the other side of the bank. I could see the path – I could see a path in the forest going up the hill. So in comparison to the scenes, though the topography may have been different somewhat, and the vegetation and the tree bark would be different over seven years, the – I could still see across and, yes, I believe that the – especially the large limb could have been utilized to conceal the – especially the light-colored skin of a person who is unclothed from across the bank.

Q Major Cicero, did you take the photographs that you've shown, plus the dozen and dozens of other photographs and the reporting by the crime scene investigators, the measurements they took – and I'm talking now specifically about the blood on the tree – and conduct an experiment yourself on testing a hypothesis about how the blood was applied to that tree?

A Yes.

Q And this is what we'll wrap up with here. Would you describe for the Court what the result of your experiment was.

A Yes. The results of my experiment –

MS. AUGER: Your Honor, may I ask a preliminary question?

THE COURT: Yes.

MS. AUGER: Major Cicero, the experiment you conducted, I believe you drew some of your own blood?

A Yes.

MS. AUGER: Okay. You probably didn't do it, I think some – one of your friends.

A Yeah. We had a law enforcement phlebotomist draw my blood, so we used my blood for the experiment.

MS. AUGER: And you put it in some containers?

A We had numerous vacutainers that they were, yeah, put into.

MS. AUGER: And you put your blood in the vacutainers. Was there any kind of anticoagulant or anything in those containers?

A No.

MS. AUGER: No? It was just your blood?

A It was just my blood. I made sure that there was no anticoagulant.

MS. AUGER: Okay. And do you know how your blood compares to the blood of L.G. or A.W.?

A I do not.

MS. AUGER: In terms of coagulation or type or anything like that?

A No.

MS. AUGER: Do you take any medication? Or did you in – when –

at the time you were drawing your blood?

A I am on medications, yes, ma'am.

MS. AUGER: I'm trying to be –

A I understand.

MS. AUGER: -- polite. You understand where I'm going with this?

A I take supplements and I do have medication for hypertension.

MS. AUGER: For hyper?

A Hypertension.

MS. AUGER: Hypertension, okay. And do you know how your medication for the hypertension affects the coagulability – that's a terrible word – of your – but you know what I'm saying; right? – of your blood.

A It does not.

MS. AUGER: Okay. I have no other questions. Thank you.

Q Have you conducted experiments as a blood stain pattern analysis expert in the past?

A Many.

Q And have you used your own blood or the blood of a colleague in order to do that experiment – those experiments?

A Primarily, we use animal blood in experiments. I had used my blood before. We needed blood right away to do the experiments because of time restraints. But blood, we have – through studies, we have shown that blood still reacts in a predictable manner, regardless of what kind of blood it is. Blood has a certain viscosity, surface tension, cohesion, and again, it adheres to our physical laws, whether it's my blood or the blood of another, it will adhere – it will do the same, it will react the same to energy and forces applied to it.

Q In your opinion, was the blood on that tree painted or applied deliberately in a fashion to create a pattern or symbol or was it a blood pattern transfer onto that tree in a non-deliberate, non-painting fashion?

A Based upon my observations and the results of the experiment, the best explanation for the pattern on the tree was a result of a transfer stain, not from painting.

Q And what type of transfer stain and what type of action with what type of object did you find was the best explanation?

A From our experiments, we – and I'll briefly explain the experiments. We used many different parts of a hand from a test subject, applied different pressure, applied different amounts of the volume of blood that was placed upon the hand of the test subject. We have found that the most – in comparison to the stain observed on the tree, that the test subject's hand would be palm facing the substrate or the tree with the pinkie finger in an upward position, and this area of the hand created a stain that was very consistent with what we observed on the tree at the crime scene.

Q You're pointing to the edge – not the edge of palm – not the heel of the hand, but the edge of the palm, and you're using your left hand; is that correct?

A We used the left hand.

Q And the – in a horizontal fashion?

A Yes. But it would be the – this – not the edge of the palm, it would be more of the meaty area of the palm, which left a similar result.

Q And what – how tall was the test subject that you used?

A She was 5 feet, 4 inches, similar to the decedent.

Q Similar to L.G.'s height; you did that intentionally?

A Yes.

Q And did you try painting blood on the tree?

A Yes; yes, I did.

Q Would you describe that briefly for us.

A We tried painting with fingers and a stick. Obviously, we don't know, if painting was a possibility, that – what was utilized to paint, but a logical conclusion is fingers or a stick. It is possible to paint such a upside down L. We found it very difficult because the – it lacked the volume each and every time that we would try to apply. It would wipe it off our fingers, so you'd have to reapply several times in order to get the full pattern if this was painted.

Q A person trying to paint that blood on the tree would have to go – keep going back to the source of the blood?

A Yes, some source, yes.

Q And did you also observe any sign – any shape of a finger when you tried using a finger that was discernable to you as you looked at it?

A As it relates to the painting, when we would use a finger or two fingers, we could see the very edges of the fingers, the roundness of it, each and every time. As it pertains to a finger, going back to the tree, I believe that's what you're referring to –

Q Yes.

A -- it should be noted, approximately an inch or inch and a half, if I remember correctly, I don't have my notes with me, to the right of the upside down L again was another transfer stain that appeared to be a pattern.

Q Either using the photograph with the chemical applied or another photograph, would you point to the Judge –

A Yes.

Q -- what you're talking about?

A Your Honor, in State's Exhibit 34 and 35, the area that I'm referring to is to the right –

ATTORNEY ANDREW BALDWIN: Is it okay if I see what he's –

THE COURT: Yes.

A Oh, I'm sorry. I'm sorry, ma'am.

MR. BALDWIN: Judge, is it okay if I just –

THE COURT: Okay.

A So here's the upside down L, ma'am, sir, and this is the stain that I'm referring to right here, ma'am. And that's 34. In 35, ma'am, I'm referring to the stain that's here that was utilized – the stain that was – crystal violet was applied to. So in that stain, we did testing, as well, for that particular stain and we used digits, and we found that the portion of the thumb created a stain that was similar to what we observed in the photographs of what the investigators observed in February of 2017.

Q So the – a thumb made the most accurate duplication of that stain on the tree that you were talking about that's just an inch or so from this L?

A Yes. And it was more of kind of the edge of the thumb, the meaty part of the thumb and the edge, not direct straight on. And we replicated this several times and it may not have been the exact size or volume, that was hard to replicate, or pressure, but the shape of itself was very consistent with a certain portion of the test subject's thumb.

Q Would this have been consistent – the blood stain that you see in the photographs on the tree, after examining those photographs and then

conducting your experiments, was that stain that you observed on the tree consistent with L.G.'s hand and her thumb hitting that portion of the tree while covered with blood?

A Yes.

MS. AUGER: Objection, Your Honor: Speculation in that could have been anyone's hand. Unless he's got something from the actual body that he can compare it to, I think that's complete speculation.

MS. LUTTRULL: He's got a DNA report, Your Honor.

THE COURT: Okay. Overruled.

MS. AUGER: But a DNA report, Your Honor, doesn't have measurements of L.G.'s hand.

THE COURT: I understand that. Overruled.

A Yes, it is consistent.

Q And is that the best explanation for the stain pattern that you saw on the tree that was in the upside down L portion?

A That's the best explanation, given the data and the observations I made.

Q And if that happened, if L.G.'s blood came into contact with that tree and with her hand in the form that you described, and that hand was covered with blood, would that explain all of the blood that you saw, including the spatter and the downward flow on the L portion that you described?

A Yes. The spatter, I don't believe so, that could have been caused from another action. What I would expect to see with the spatter, if a hand that was – contained a voluminous amount of blood struck the or made contact, we may see what's referred to as sensation cast-off. We didn't see that. This was too – it's not, by any means, a great distance, it's just a few – maybe an inch away

where we saw the spatter. We would expect to see maybe some directionality; however, blood stains, especially spatter, is direct – there's a direct correlation between the substrate surface. The surface on this tree was furrowed, very rough, cratered, layered. This spatter may have been the result of another action that occurred maybe simultaneously or shortly prior to the contact. Again, it's just a very small area. We're talking about a surface area that's curvature of a tree. There could have been spatter out there in the forest that was not located, because it's hard to see blood, especially on a forested floor, you see small stains.

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

THE COURT: Ms. Auger.

CROSS EXAMINATION OF MAJOR PATRICK CICERO

QUESTIONS BY MS. AUGER.

Q So we know somehow there is a pool of blood near a tree, a large pool; right?

A Near a tree?

Q Yes.

A No.

Q No?

A There was a smaller accumulation near the tree.

Q Oh.

A Which pool are we referring to, ma'am? I'm sorry.

Q Well, there are multiple large – there are several large pools of L.G.'s blood; correct?

A There is three smaller ones, accumulations, and there was one very large one.

Q Okay. One very large one. Now, L.G.'s neck had several cuts; correct?
A I believe there was three.
Q And would you agree with me, Major Cicero, that the individual cutting L.G.'s neck, their hand could also be covered in blood?
A It's very possible, yes.
Q And probably likely?
A Depends on his actions. It's very possible that what he does and how she faces the assailant, what her actions are, her movement moving away from him, the initial cut, if you will, I'm not sure which injury did that, so there's a lot of factors to automatically saying if I'm going to agree with you or not.
Q Okay. Now, you said "his hand", why do you say "his hand"?
A Mistake.
Q Okay. Thank you.
A A hand.
Q All right. Now, you know that someone had blood on their hand and it was transferred to the tree?
A Yes, ma'am.
Q In a pattern?
A Yes, ma'am.
Q Okay. And one of the patterns is an upside down L; correct?
A Yes.
Q Now, did you do any analysis of any other individual's hands?
A I don't understand, ma'am. Anyone else?
Q Well, you picked an individual who was 5'4"; correct?
A Yes; yes, ma'am.

Q And that is because L.G. was 5'4"?
A Yes, ma'am.
Q Do you know how your subject's hand compared to that of L.G.'s hand?
A I don't, ma'am, no.
Q So you have no idea how similar, at all, those two hands might be?
A When you say similar, what characteristics are you referring to?
Q In size.
A Correct, correct.
Q And then, you didn't, for instance, have any idea about the size of, let's say, Brad Holder's hand?
A I'm not sure who that is, ma'am.
Q Okay. So you were just limited to your test individual; is that correct?
A Yes. This experiment was merely a way to show that there's an alternate explanation other than painting.
Q Okay. But if I want to make a pattern of an upside down L, I can recreate that with my hand; right?
A Yes.
Q I can dip it in blood or, if my hand already has blood on it, and put it on a tree?
A Yes.
Q And you have no idea how that blood was transferred to the tree other than that L.G.'s blood was transferred to the tree?
A Yes.
Q Now, sir, if I could, you talked about L.G. – and I'm looking at page 5, if it – it's kind of the end of the first paragraph of your report.

A Okay.

Q And you said blood stain evidence would indicate L.G. would have been stationary for some time at the location of the large pooling believed to be placard 3; is that –

A Yes, ma'am. That's the large accumulation pooling, yes.

Q Okay. Can you show me what – I've looked and I can't find the placards. Can you show me on one of these exhibits where that pool is? Can you point that out?

A Sure, ma'am. I'm going to point it out to State's Exhibit 36.

Q Okay. Hold on, let me get there. I see what you're saying.

A And State's Exhibit 37, right here. (Indicates)

Q Of course, it's the last one I look at.

A Sure.

Q Thank you. And you said her body was stationary for some time and then it was later moved to the vicinity of the pooling to her final location where she was discovered?

A Yes.

Q Now, when you said "later moved", are they – that implies to me that someone else moved her.

A Yes.

Q She didn't move herself?

A No.

Q And in your experience, sir, have you ever had the occasion to move a dead body?

A Yes.

Q Is it – how would you compare moving a dead body to someone who's alive? Is it more difficult?

A I think it all depends if the person's – I believe it'd probably be the same if the person is alive is limp and I'm supposed to move them. Are they fighting? I don't know.

Q And how far do you think L.G.'s body was moved?

A Well, whatever the distance was from that pooling area to her final location, whatever that may be. Perhaps it was seven, eight feet. I'm just looking at it. I don't know a context, I don't have the scale in there. The –

Q And I'm going to show – I didn't mark – I don't know which exhibit this is. Do you have that exhibit?

A 37.

Q 37. Okay. Can you draw on there where the track of L.G.'s body went?

A I cannot with these photographs, it's too difficult. We'd have to have different photographs.

Q Have you seen any photographs –

A Oh, I've seen all of them.

Q -- that show the exact path that her body took?

A From the pooling to the tree?

Q Yes.

A It – you can actually look in the photographs, and I believe it's 36, and see the blood trail as it moves around, so it appears to me that it's a direct path from here. Her – most likely, her head would have been in the vicinity – head and neck would have been in the vicinity of the large pooling. So whomever would have done this would have pulled her and, as a result, the leg, the buttocks, the

under the leg, the calf also came in contact with the blood and it drug through there and which is indicative of the staining upon the leaves and the foliage, as well as the staining observed on the back of her leg.

Q You also said that several of the flow patterns observed on L.G.'s face were not consistent with her final positioning.

A Correct.

Q Can you tell me what patterns those were?

A Well, those patterns are going across her chin, across her face, down her eye that, when you look at her final position, I believe her head is turned to the left, and that would not be consistent with the patterns that we observed on her face. Again, blood is a fluid, fluids travel in the least resistance. Gravity's a factor here and so, at some point, her head was, potentially, turned at some point, maybe her had was – when she was – however she was picked up, her head was down. You know, if you pick up a person who is limp, their – because of gravity, the neck – the head would go back, that would allow these flow patterns to occur.

Q Major Cicero, I'm gonna show you Defendant's Exhibit UUU. Have you seen that photo before?

A Yes, it looks very familiar from all the photos that I observed.

Q Okay. It's probably not the best one to do this, but can you identify the flow pattern on her face that you believe has been altered.

A I don't believe anything's been altered –

Q Okay.

A -- on her face. On her body, there was alterations. But the flow patterns aren't consistent with her positioning.

Q Okay. I see what you're saying.

A Yeah.

Q Okay. And so, at some point, her head was positioned differently with respect to the rest of her body?

A Her head would have – to be clear, the head would have had to have been in a different position where the blood would have flowed across the face in that manner. For her head to be like that and – the blood would not flow up her chin and over her face. The face and the neck would have had to have been, at some point, back and turned to create that.

Q And you're talking about the blood flow on her right cheek?

A Primarily her right cheek, but, you know, blood does not defy gravity, so I – on her chin and whatnot.

MS. AUGER: Move to admit UUU.

DEFENDANT'S EXHIBIT UUU OFFERED

THE COURT: Any objection?

MR. LUTTRULL: No objection, Your Honor.

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

DEFENDANT'S EXHIBIT UUU ADMITTED

MR. MCLELAND: Judge –

THE COURT: And I'll seal it.

MR. MCLELAND: Sorry, yeah, can we make sure that's under seal though?

THE COURT: Yes, sir.

MR. MCLELAND: Okay. Thank you, Judge.

Q Now, upon moving on to A.W.

A Yes, ma'am.

Q Now, to be clear, you're getting all of this from photographs?

A Yes.

Q Okay. And you said on the left side of A.W.'s neck you observed what appeared to be coagulated and wet and dried blood?

A Yes.

Q So not all of the blood had dried on the side of her neck?

A The side of her neck mostly in the hoodie sweatshirt area, it's a protected place, it would not dry as quick, especially accumulations.

Q And the flow patterns on A.W. face are also not consistent with her final position?

A Yes, some of them were not, correct.

Q Now, page 7 of your report, you said there's no conclusion being made A.W. was nude at some point on or about February 13th, 2017. You want to see it? I'm a visual person.

A Yeah, I am, too.

Q Yeah.

A Thank you.

Q Sure. Last sentence.

A Right, no conclusions are being made that she was completely nude. She could have been –

Q Completely nude?

A Right. She could have had her pink shirt, grey brassiere, and black brassiere on at the time, I can't determine that.

Q But would you agree with me that, at some point, she was partially nude?

A Yes.
Q Okay. You did not video record your experiment?
A No.
Q Sorry.
A You're fine, ma'am.
Q Okay. Do you know what exhibit number – is that 37?
A This – yeah, 37, ma'am.
Q Okay. And, Major Cicero, Exhibit 37 is an aerial view of the bodies; is that correct?
A Yes. I believe the investigator was on a ladder.
Q Thanks. And can you estimate, with respect to, let's say, L.G., what percentage of her body is covered by sticks?
A Maybe – I'm bad at this, ma'am, I'm sorry – maybe 3, 5 percent, 3 percent maybe. I don't know.
Q Maybe 3?
A Maybe 3.
Q Not much?
A Not much, no, no.
Q Okay. And with respect to A.W., same question: What percentage of her body –
A Very small.
Q Okay.
A Very small percentage.
Q And would you agree with me, sir, that there are lots of leaves –
A Yes.

Q -- in the area?
A Yes.
Q All right. And there are other sticks in the area?
A There are.
Q Okay. And if I want to cover a body, do you agree with me it would be much better to use the leaves and the sticks than sticks that cover maybe 3 percent of their body?
A I don't disagree.
Q Major Cicero, would you agree with me, based on viewing the pictures and the crime scene, viewing these girls' injuries, it would be safe to say there was a lot of chaos out there?
A I would agree with that.
Q And it would be – given that, it would be impossible to actually recreate what happened?
A Given the data, yes.

MS. AUGER: I have no further questions.

THE COURT: Mr. Luttrull.

RE-DIRECT EXAMINATION OF MAJOR PATRICK CICERO

QUESTIONS BY MR. LUTTRULL.

Q Have you seen sticks on bodies at murder scenes before?
A Yes.
Q More than once?
A Yes.
Q And have you seen sticks used as a sort of a grid or a pattern for putting other objects on –

A Yes.

Q -- bodies? Would you explain what you've seen.

A However the person who did it would have, you know, covered the person, they would put it on the sides, sticks across the center and diagonal, almost building a bridge for other sticks. The idea of concealment is to break up the pattern, and I've seen that before where they use sticks and leaves to cover up the body.

Q Without fully covering up the body?

A Yeah, to try to fully cover up the body and it never – obviously, the bodies were found, they didn't do a good job.

MR. LUTTRULL: Nothing further.

THE COURT: Ms. Auger.

RE-CROSS EXAMINATION OF MAJOR PATRICK CICERO

QUESTIONS BY MS. AUGER.

Q Have you seen bodies that were buried?

A Yes. I work at the University of Tennessee in training, I bury bodies all the time and dig them up, it's part of the training, it's the entomology and forensic anthropology.

Q And the other bodies that you have seen that had sticks and leaves, were they more covered or more concealed than the bodies of L.G. and A.W.?

A The ones that – in my real-life cases, yes, they had more sticks on them. Why there were not more sticks on this, I don't know.

MS. AUGER: Okay. Thank you.

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

THE WITNESS: Thank you, ma'am.

THE COURT: Any additional evidence from the State?

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

THE COURT: Is there anything else that we have on the – I think we're done. I mean, there's no other pending motions. Anything else that we need to – I mean, obviously, I'm gonna have to take all of this under advisement. Mr. Baldwin.

MR. BALDWIN: Judge, is it – I know it's late, I mean, could I have a few minutes of closing?

THE COURT: A very few minutes.

MR. BALDWIN: Yeah. Thank you. I want to spend that time focused on what happened when Chris Cecil went up, because it is very incredibly important related to that – what this third-party suspect motion in limine is all about. What happened there is that, at 4:33 a.m., that phone was turned on, and it's hard to follow, and that's – at 4:33 a.m., the phone turned on, connected – it was not connected to the tower and then, at 4:33 a.m., it was turned on and connected to the tower, that is a reasonable way to view what Chris Cecil said. And because of that, because of the alibi of Brad Holder that they depend on is over. It is arguable that Brad Holder was at the gym at 2 a.m. while they're bringing the body there so that he can say that – in case they get caught and then he shows back up. At 4:33 a.m., that phone was turned on, that is arguable based upon Chris Cecil's testimony, and because of that, Judge – you know, everything else that I talked about, you know, pales in comparison in a way to that very moment in time when Chris Cecil testified, and I hope that – I know it's hard to understand and – but that was very, very vitally important

and I want the Court to know that. So I'll – with saying that, I will sit down.

THE COURT: Mr. McLeland.

MR. MCLELAND: Judge, much of what I would argue is in our motion, the case law cited there. I don't think the Defense has made the connection of a direct, material nexus for anybody to the crime scene. I guess I can't make a leap that Mr. Baldwin's making that, even if you believe it's true that a phone turned on and off at 4:30 a.m. that, a.k.a., there's enough evidence to bring Brad Holder as a third-party perpetrator. So I've got more of a closing, Judge, but it's late and I'll just rest on the motion that we filed and ask the Court to consider everything and move forward from that way, Judge.

THE COURT: All right. Well, I appreciate that and I appreciate the willingness of all counsel to stick it out until almost 8:30 this evening. I know that when we set this hearing some – about a month ago, you'd indicated that three days would be sufficient and they've been three very long days, but we have completed now our –

MS. DIENER: Judge, can we approach?

THE COURT: Yes, come on up.

(Sidebar conference conducted.)

MS. DIENER: Judge, with regard to the (inaudible)

THE COURT: Yes.

MS. DIENER: (Inaudible)

THE COURT: You had asked for a closed hearing on that.

MR. ROZZI: Yeah. Yeah, we were just kind of discussing it and really haven't, you know, thought it through a lot, but if the Court has some concern on that issue, you can direct us to how you want to address that. I'm

not really – you know, we just didn't talk about it in any detail –

THE COURT: No, it's just that –

MR. ROZZI: -- so I'm not really sure what you're getting at or what you're trying to accomplish.

THE COURT: Well, my concern was that your client has indicated that he's having difficulty with counsel, because he wants to plead guilty but counsel isn't letting him do that. We all know that that is his decision.

MR. ROZZI: Yeah, sure.

THE COURT: So that jumped off the page at me. Ms. Diener (Inaudible).

MS. DIENER: (Inaudible)

THE COURT: Okay. Well, that changes things. That offer has been extended?

MR. MCLELAND: (Inaudible).

THE COURT: Okay. So this, clearly, an offer. This is a discussion to be held.

MR. ROZZI: Yeah, I agree with that.

THE COURT: Okay.

MR. ROZZI: I'm okay with whatever the Court's approach to that is, if you want to have a closed hearing where you vet that out, that's fine, as long as there's a little structure to it and we have some expectation from the Court as far as (inaudible).

THE COURT: Okay. Well, it's 8:30. Are we doing that now or are we doing it another time?

MR. ROZZI: I would much like to do it another time so I can look

at the material and talk to our client and then why don't you give me some idea of what you're trying – I'm sorry, I'm just not really sure – what are you suggesting? There might be a conflict of interest or something?

THE COURT: No. I am suggesting that your client has indicated to somebody on that record that he's having trouble with counsel because counsel isn't listening to him because he wants to plead guilty, but counsel won't let him plead guilty. We all agree that that's not your decision to make, that's his decision to make.

MR. ROZZI: Oh, yeah, absolutely.

THE COURT: So if he wants to plead guilty, he is absolutely entitled to do that. My understanding was that no offer had been extended for there to be transmitted, but now I'm hearing that an offer was extended; and that has not been transmitted to Mr. Allen?

MR. ROZZI: Okay, but there's been no –

THE COURT: Okay.

MR. ROZZI: There's been no formal offer made, Judge.

MR. MCLELAND: I offered (inaudible).

MR. ROZZI: I believe you were bickering about –

MR. MCLELAND: This is in direct (inaudible) about a discussion where we (inaudible).

MR. BALDWIN: (Inaudible)

THE COURT: Well, excuse me, Mr. Baldwin, but that was a record submitted by you, attached to your motion to suppress.

MR. BALDWIN: Sorry, Judge, you're right. (Inaudible)

THE COURT: I assume – well, that's neither here nor there. So yes,

we need to have a hearing, because we need to put that (inaudible)

MR. ROZZI: (Inaudible) so it's hard for me to (inaudible). So this part can be (inaudible). We can do it here. Let's do it here, that's fine.

MR. BALDWIN: (Inaudible)

THE COURT: Well, it doesn't matter to me. I just – whatever works for you guys and gals, but it's clearly an issue that had to be – needs to be resolved, 'cause there seems to be some disagreement if an offer is extended or not extended.

MR. ROZZI: There's been no offer extended. There's been no offer.

THE COURT: Okay.

MR. ROZZI: There was an email (Inaudible). That's not an offer.

MR. MCLELAND: (Inaudible)

MR. ROZZI: They send formal written offers, some prosecutors.

MR. MCLELAND: (Inaudible)

MR. ROZZI: Well, we can – this is too late –

THE COURT: Yeah.

MR. ROZZI: -- we're all frustrated.

THE COURT: Okay. So why don't we just step back. I had one thing we've not addressed that I need to address, not up here, out there.

(Sidebar conference concluded.)

THE COURT: Okay. So we will address the issue that we discussed up here at the bench at another time. I would like to inform counsel – I know that the Sheriff is here and his chief deputy is here. Mr. Allen, clearly, has been transported back to Carroll County, is being housed – I don't know where the Sheriff is housing him, but he's being – he's in the custody of the Carroll County

Sheriff. I had the opportunity, after our first day of hearing, to review Defendant's motion for safekeeping – to vacate the safekeeping order, the affidavit that was submitted by counsel, and based on that affidavit and the testimony of the current sheriff and the arguments of counsel, I'm gonna grant the motion to vacate the safekeeping order in full. I'm gonna remand Mr. Allen back to the custody of the Sheriff of Carroll County. The Sheriff of Carroll County has the Constitutional authority to protect Mr. Allen however the Sheriff wishes to do that. I trust his judgment and he will take the appropriate measures to ensure that Mr. Allen is safe. I will notify the Department of Correction of the change of his circumstances. Clearly, it's 8:30 at night, Sheriff, I don't have a formal written order to provide to you. I do have the change of commitment paperwork from the Department of Correction, I will attach a formal written order to that and get that delivered to you sometime tomorrow, but he is remanded back to your custody.

MS. AUGER: Thank you, Your Honor.

THE COURT: And then, the other issue –

THE DEFENDANT: Thank you, Your Honor.

THE COURT: -- we'll talk about – hey, folks, we're still working. We're still working. When do you want to address the other matter that we've chatted about?

MR. ROZZI: Actually, now that he's gonna be a little closer, it'll be a little easier to talk to him, so I would say next week maybe.

THE COURT: Why don't you talk with him – you, Mr. Rozzi, talk with your client, and then, counsel, you get together and make a decision how you want to proceed and let me know.

MR. ROZZI: Okay. Very good.

THE COURT: Give me a date.

MR. ROZZI: Thank you.

THE COURT: All right.

MR. BALDWIN: Thank you.

THE COURT: Nothing further? We are off the record.

(THIS CONCLUDES THE PROCEEDINGS HAD AT MOTIONS HEARING CONDUCTED JULY 30 THROUGH AUGUST 1, 2024, IN THIS CAUSE.)

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

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

RECORD OF STATUS HEARING

HELD AUGUST 23, 2024

APPEARANCES

For State of Indiana:
Nicholas C. McLeland/Stacey Diener
Carroll County Prosecutors Office
101 West Main Street, Suite 204
Delphi, Indiana 46923

For Defendant:
Bradley A. Rozzi
Hillis, Hillis, Rozzi & Dean
200 Fourth Street
Logansport, Indiana 46947

Jennifer Jones Auger
Law Offices of Jennifer Jones Auger
42 E. Jefferson Street
Franklin, IN 46131

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

JODIE L. WILLIAMS..... .REPORTER

PROCEEDINGS

THE COURT: All right. Well, good afternoon. We are on the record in *State of Indiana versus Richard Allen*, 08C01-2210-MR-1. I'll show that Mr. Allen's here in person with his attorneys, Mr. Rozzi and Ms. Auger. I understand Mr. Baldwin is tied up in another matter and won't be able to join us. The State is here by the Prosecutor, Mr. McLeland, and Deputy Prosecutor, Ms. Diener. Thank you for making yourselves available for our hearing. I know it was kind of short notice, I know everybody's really busy, but I know that we had an issue that we kind of left hanging at the end of our hearing; and I appreciate, one, that we had the forethought to schedule this hearing and, two, that we weren't trying to do it at seven o'clock at night on the last day of our hearing. I know, when we were up here at the bench, everybody was very tired and it was an extraordinarily long day that last day, as well as the two days prior, so I appreciate that we all had the opportunity to get some rest and then reconvene. So I also appreciate our agreement that this portion of our hearing is closed to the public. I know we have members of Mr. McLeland's staff and members of Mr. Rozzi's staff, but this hearing is closed to the public and to the media, and I think that's appropriate based on the nature of the discussions. I know that we were having discussions up here at the bench and it's really hard to do that and have any kind of privacy with a thousand people in the courtroom, so I appreciate that we had this opportunity. Mr. Allen, at the conclusion of our hearings on July 30th through August 1st, I did have some concerns that I shared with counsel up here at the bench. Those concerns were about a statement that you had made to Dr. Wala. You're aware that your attorneys filed a motion to suppress the statements that were made. I think that motion was filed April 11th of this year. Attached to that

motion were reports that were provided by Mr. Rozzi to the Court from the Department of Correction. I think there were – I know there were reports by Dr. Wala, there were reports from other inmate guards, reports from, I know, the warden, I think there was a comment in there from the warden, and on page 84 of the motion is the report that caused me a little bit of concern. That was the report from Dr. Wala, it covered an interaction that she had with you June 11th of 2023. I know, in that interaction – I believe I've given that information to counsel in an e-mail. The specific area that caused me my concern, you expressed some frustration, and Dr. Wala quoted you in that report indicating, "He felt his attorneys were not listening to what he wanted, such as him wanting to just plead guilty." So I told the attorneys up here at the bench, Mr. Allen, that this statement caused me some concern. The attorneys are very well aware that the decision to plead guilty rests entirely with the defendant, with yourself. It's akin or similar to a decision to testify at a trial, that is only your decision. It is similar to a decision that you would make as to whether or not you want to have a jury trial or a bench trial. Those are decisions that are made by yourself with the advice of counsel, but that's your decision to make. So your attorneys have a duty to carry out your wishes; so if you tell them that you wish to plead guilty, they have an obligation to help make that happen, and that's what I shared with everybody up here at the bench. I know Mr. Luttrull isn't here, but he was up here at the bench, as was Mr. Baldwin, as well. So I shared those concerns. I asked the State, at that point, if a plea agreement had been offered to you. The State initially indicated that it had not made an offer to you, but then Mr. McLeland indicated that he had made an offer. I believe it was Mr. Rozzi told me that it wasn't an offer, I think you referred to it as an angry e-mail, and Mr.

McLeland stepped in and indicated, no, it was an offer, so the State again indicated that that was an offer. Are you aware, Mr. Allen, that an offer had been extended to you?

THE DEFENDANT: As of today, I am.

THE COURT: As of today you are, okay. So you weren't aware of that prior?

THE DEFENDANT: No.

THE COURT: Okay. So, Mr. McLeland, I asked if you would, please, prepare that offer and, if you have that offer, I'd like you to read that into the record and provide a copy of that to Mr. Allen and to his attorneys here in open court.

ATTORNEY NICHOLAS MCLELAND: Yes, Judge. The offer the State made via e-mail – it wasn't a formal offer in writing, but it was through an e-mail – is that the Defendant agrees to plead guilty to the information charged in counts 1 and 2 of murder, that the sentence is left to the Court in its entirety; and that, if the Court deems probation is appropriate, the terms and conditions of probation be left to the Court; that the Defendant will have no contact with the victims' family; that all fines, fees, and costs be left to the Court as deemed appropriate. The State will agree to dismiss all remaining counts.

THE COURT: Has that been reduced for a formal offer, written offer, to the Defendant?

MR. MCLELAND: Yes, Your Honor. I brought it with me today in court. Do you want me to give the Court a copy, as well?

THE COURT: No, no. I don't need a copy. I want to make sure that Mr. Allen has a copy of that and that his attorneys have an actual, formal offer

other than an e-mail; but I understand an offer is an offer in whatever shape or form that it is tendered, so thank you for providing that to counsel and to Mr. Allen. So, Mr. Allen, you now have received the State's offer. Do you wish to plead guilty?

THE DEFENDANT: No, Your Honor.

THE COURT: Okay. So you wish to proceed with trial?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. I would, then, ask that we recess this hearing, so that we can invite the public in, if they wish, because there's only a couple of logistical matters that we need to discuss on the record about the upcoming trial and the Court's availability prior to trial. Mr. Rozzi, did you wish to make any comments or say anything or add to this record?

ATTORNEY BRADLEY ROZZI: Yeah, I have a – really kind of a question. I, you know, of course, thought about the context of all this and I certainly don't want to see a situation where, you know, if Mr. Allen is convicted and there's an appeal, that somehow somebody comes in and says, "Well, wait a minute, his lawyers were ineffective, they didn't communicate an offer to him," and I'm thinking that that's important to the Court, as well. I'm not trying to, you know, suggest that that's why we're here today, but that would make sense. Mr. Allen indicated that, as of today, he was aware of that, and I'm just reporting to the Court that I shared this e-mail with him, it was probably a week or two ago now. I've lost track of time, but it was since we were last here.

THE COURT: Okay.

MR. ROZZI: I shared this e-mail that I have from Mr. McLeland, the one that I referenced previously at the bench, with him, let him read it, and he

acknowledged that it existed, and so that's kind of the back story of how he became familiar with this e-mail. I don't want to get into a bunch of arguments today, but we are making a record. I didn't view this as a formal offer. I viewed it as two lawyers who were, you know, exchanging blows over e-mails about an issue that was – actually, it was about an issue of your recusal is how it started, 'cause there was a motion filed around that time. This e-mail is dated January 30th of 2024, it's not – you know, it's eight months after the circumstance that you wanted to address today, so I'm just trying to clear the record on that. And the offer that was made in the e-mail was one of, well, basically, "If your guy wants to plead guilty, this'll be over. I'm – he can plead guilty to two counts and I'll dismiss the other ones." Well, at that time – well, actually, there were only two counts. The State had filed a motion to amend the information about two weeks prior to this, I think sometime around that hearing we had in front of the Supreme Court in January, and Your Honor didn't even address the amended charges I think until March. If you look at the CCS, you'll see those dates. But I guess my point being is that the banter that was going back and forth was about – also about counts that hadn't even been formally accepted as part of the charging information, and I just want the Court to have some context in how all this kind of unfolded and that's the backdrop.

THE COURT: Okay.

MR. ROZZI: Yeah.

THE COURT: Ms. Auger, did you wish to speak?

ATTORNEY JENNIFER AUGER: No, thank you.

THE COURT: Mr. McLeland or Ms. Diener?

MR. MCLELAND: I don't have anything on that topic, Judge, no. I

do have a few other things I'd like to address with the Court in the closed session, but on the topic of the plea –

THE COURT: Okay.

MR. MCLELAND: -- it's been presented. If he doesn't want to accept or plead guilty, then the conversation's over and we'll move on.

THE COURT: Okay. And my experience with prosecutors up in my jurisdiction is they put time limits on extended formal offers, like seven days prior to trial the offer expires, five days prior to trial the offer expires. So I don't know what your practice is here in Carroll County.

MR. MCLELAND: It varies, Judge.

THE COURT: Okay.

MR. MCLELAND: I would say the offer's expired at this point. If Mr. Allen does want to plead guilty at some point, the door's always open to talk about –

THE COURT: Okay.

MR. MCLELAND: -- an offer, a negotiated offer. I never close that door, Judge. You know, if the Court'll accept an offer at the last minute and we can work something out, the State have done that on occasion, as well, so – but at this point, I'd say the offer's closed. He doesn't want to plead guilty. If we need to come back to the negotiation table, we can do that.

THE COURT: Okay. That's fine. All right. What else did you want to discuss, then?

MR. MCLELAND: Judge, I don't know – in most cases, I wouldn't even bring this up to the Court; but given the nature of this case, I want to talk to the Court about it. What I'd like to be able to do is show the families some of

the crime scene photos and some of the photos we plan to introduce as evidence before the trial to mentally and emotionally prepare them for those, in case they see them at trial. Again, typically, I wouldn't address this with the Court, but given the nature of this case, I wanted to get the okay from the Court to be able to do that. I haven't done that to-date.

THE COURT: I –

MR. ROZZI: No objection.

THE COURT: I'd have no issue with that. That's – candidly, I think that's probably good trial prep for family members. Perhaps the same could be held for Mr. Allen's family. I know, during the course of the hearing, everybody was being very careful about displaying those to the Court, but I know that there were – there was – you can't see it, because you're facing me, but I'm looking out to the audience and there was a lot of emotion from both sides of the courtroom, specifically with Mr. Allen's family to my far left and the victims' families over here to my right, so I think that would probably be a good idea.

MR. ROZZI: I –

MR. MCLELAND: You – go ahead.

MR. ROZZI: While we're on the topic, I would appreciate the Court allowing us to address those with Kathy Allen and Janis Allen, his mother and his wife. Those would be the two people that I think we would disclose that to –

THE COURT: Yeah.

MR. ROZZI: -- so we'd ask for the same.

THE COURT: Absolutely, absolutely.

MR. ROZZI: Just wanted to make sure – I want to name those people for the record. Thank you.

MR. MCLELAND: The other topic, Judge, I thought was appropriate to address in the closed session is, I guess, whether or not the Court was still planning on sequestering the jury and then, I guess, for my scheduling purposes, whether the Court planned to have the trial Monday through Saturday and even on the holidays that are gonna fall within that 30 or 31-day range. And so my question to the Court was, was the Court still planning on sequestering the jury for the full amount of the trial, and was the Court's schedule still going to be the Monday through Saturday and even on the holidays. I think there may be one or two holidays within that month, but I could be wrong.

THE COURT: I don't – what holidays are they?

MR. MCLELAND: I think there's Columbus Day and maybe Veterans' Day. Columbus Day may be the first day we're planning on starting, actually, Judge.

THE COURT: It is, up in Allen County, yeah.

MS. AUGER: There's also Election Day –

MR. MCLELAND: Oh, yes.

MS. AUGER: -- so that might be problematic to have –

THE COURT: I know that we –

MS. AUGER: I want to make sure they – everyone has a chance to –

THE COURT: To vote. And I know that –

MS. AUGER: Oh, I'm sorry, I didn't mean to interrupt. I'm sorry.

THE COURT: No, I know that when we scheduled the trial, the Clerk of the Court immediately reached out that the election polling place is downstairs in the basement and there was tremendous concern from her and

the Department of Homeland Security Director about that, and I said, "I don't know what to tell you. You'll have to find a different place to have –

MR. MCLELAND: Yeah.

THE COURT: -- voters go." But sequestering the jury, yes. We've already made arrangements for the jury's hotel, similar to what we had made arrangements before in May. I had anticipated going Monday through Saturday, at least through the – like till noon on Saturday. That gives – you guys need a break, you know. I was a trial attorney for 15 years, it – trial work is hard. Attorneys need a break. Mr. Allen needs a break. Your witnesses need to be kind of juggled and massaged a little bit. So my thought would be that we would work until noon on Saturdays. And as far as holidays are concerned, we're starting the trial on a holiday. We'll have to figure out Election Day, so thank you, Ms. Auger, for bringing that up. We'll have to figure out Election Day, but I have no intention of not working on holidays, unless something comes up. I mean, trials are fluid, we all know that.

MR. ROZZI: What hours are we talking about?

THE COURT: I was thinking 9 to 5. That gives everybody the chance – because I know Mr. Baldwin and Ms. Auger are out of town. You're out of town, but you're closer.

MR. ROZZI: Yeah.

THE COURT: I'm not sure about Ms. Diener and Mr. Luttrull. I know Mr. McLeland's local. But regardless, I think nine o'clock is a good time to start. That way, Mr. Allen can be awakened and get breakfast and get dressed to be presented into court.

ATTORNEY STACEY DIENER: That will include jury selection days

that are in Allen County; right?

THE COURT: Yes. They jury packets have gone out and they're starting to trickle back in; and much like we had discussed before, we would start round 1 at nine o'clock and we would start round 2 at about 1:30. It takes – and they'll be coming in in groups of 50. Now, that may not be 50 actual humans, it may – we're splitting the venire into the packets that we gave you before. It's not the same people, but the same groupings as before, so that we would have a hundred people on each day, anticipating that we would probably be done Wednesday I would think.

MR. MCLELAND: And then Thursday would still be a travel day and start testimony –

THE COURT: Yes –

MR. MCLELAND: -- on that Friday?

THE COURT: -- and start testimony on Friday. Prelims –

MR. MCLELAND: Sorry, Judge –

THE COURT: No, and that's kind of good that we are having this discussion. I hate having these discussions in front of company, because it kind of interrupts flow of thought; but yes, that would be my intent.

MR. MCLELAND: And just so I'm clear: The plan is sequester the jury the whole time, even on the Saturday afternoon and Sundays?

THE COURT: Oh, yes, yes.

MR. MCLELAND: Okay.

THE COURT: I'm not sending these folks home, not after you've spent days picking them –

MR. MCLELAND: Sure.

THE COURT: -- and being – I don't want them exposed to anything. We've made arrangements with the hotel to remove televisions and phones and radios and – so I have a whole agenda that I've used – this is probably my fifth or sixth sequestered jury.

MR. MCLELAND: Okay. Very well, Judge. So Friday at 9 is when we'd be expected to make opening statements I supposed would be the day.

THE COURT: Yes.

MR. MCLELAND: Okay.

THE COURT: Yes.

MR. MCLELAND: Thank you, Judge.

MS. AUGER: Your Honor, it may not be my place to say, but we should probably make – figure out what we're gonna do with – wait, if the jury's sequestered, how – are they going to be bussed back to vote or will they be given the opportunity – how are we gonna handle that?

THE COURT: Bussed where?

MS. AUGER: Well, to Allen – they're Allen County voters; right?

THE COURT: Yes.

MS. AUGER: So –

THE COURT: We will transport them here. I've already made arrangements for transportation and everything.

MR. ROZZI: When is Election Day? Like the first Tuesday of November or something?

MS. AUGER: Yeah.

MR. ROZZI: I'm just trying to –

THE COURT: November 5th.

MR. ROZZI: Okay.

MS. AUGER: Yeah.

MR. ROZZI: All right. So we won't be taking that entire day off because we're trying to accommodate the jurors voting or will we? I – maybe I just misunderstood what –

THE COURT: No. My hope is that everybody's already coted by then.

MR. ROZZI: Oh, okay.

THE COURT: That we will have – I think part of my initial conversation with each panel, each round, is going to be, "Once you get selected" – we have early voting in Allen County –

MR. ROZZI: Sure.

THE COURT: -- and there are like five voting centers. My conversation with them after they've been selected will be to include – and I'll give them a written form, as well, to include, "If you wish to vote, you need to do that prior to us leaving, because I can't bring you back here on November 5th to vote." So –

MS. AUGER: Thank you. Sorry, I don't mean to beat that horse, but –

THE COURT: No, I mean, voting is important, it's –

MR. ROZZI: Yeah, yeah.

THE COURT: -- it's very important. So anything else from the State, Mr. McLeland? Any other topics to discuss?

MR. MCLELAND: No, Judge. I think that covers everything I wanted to cover with the Court. Thank you.

THE COURT: Okay. Mr. Rozzi, anything that we need to cover?

MR. ROZZI: No, ma'am, no.

THE COURT: Okay. Is there a need, then, to go into open session?

MR. ROZZI: You know, there were some filings this morning, I don't expect that you necessarily would have seen them, you were maybe in transit. They're just some discovery-related issues.

THE COURT: I saw them.

MR. ROZZI: I mean, you know, I don't – I mean, I trust the Court can handle them in the normal course. If you want to address some of those things now, I mean, I'm – we're here, I'm willing to do that.

THE COURT: Go ahead.

MR. ROZZI: I'm okay with however you want to handle it. I just noticed that –

THE COURT: Well, I mean, you're asking for information, basically, from State, the DOC and the Attorney General.

MR. ROZZI: Yeah. I filed two motions basically asking to shorten the timeframe on a request for Dr. Wala's employment file –

THE COURT: Uh-huh. (Affirmative response)

MR. ROZZI: -- and then a request for any DOC investigative materials associated with her employment. And then, the State filed a motion to quash some sub – or some depositions that are scheduled next week of Patrick Westfall, Make – Mike Westfall? –

MS. AUGER: Nick.

MR. ROZZI: -- Nick, sorry, and of former Sheriff Leazenby – Chief Deputy Leazenby, so those are the two filings, or I guess three technically that

are on the record.

MS. AUGER: I think they're on the motion to suppress (inaudible).

MR. ROZZI: Oh, they did? I didn't see that.

MR. MCLELAND: Quash.

MR. ROZZI: Oh, the motion to quash?

THE COURT: I have not seen the motion to quash.

MR. MCLELAND: Yeah, it's not done.

MS. DIENER: (Inaudible)

MR. MCLELAND: Yeah.

THE COURT: Oh, okay, that's why.

MR. MCLELAND: Yeah.

MR. ROZZI: So, I mean, I'll just speak to the Wala stuff, I mean, you know, it seems discoverable to be. I mean, I have, you know, reason to believe there's maybe even some changes in her employment. I did try to reach out, as a courtesy, to the DOC staff attorney and the Attorney General and just ask the questions and, you know, their response was, "You're gonna have to send formal discovery requests" So – and that's what I expected them to say, so I was just trying to follow up with that. And I did reach out to Ms. Diener and asked her if she would waive the 15 days or if the State would waive the 15 days on one of the requests and they declined, and so I'm just seeking to shorten the timeframe. That's – I don't really want to make a bigger deal out of it than it is, that's what it is.

THE COURT: Okay. What's the State's position?

MR. MCLELAND: I don't know, Judge, I haven't considered it –

THE COURT: Okay, all right.

MR. MCLELAND: -- at this point and so I don't really have a good, formal response for the Court. I don't know that there's any valid objection to her employment record. The other one, I think was – and I didn't get a chance to review it before court, but they had some disciplinary complaints perhaps or Internal Affairs investigations I believe, but I didn't look at it at length, Judge, so I'm not really in a good position to be able to respond intelligently about that.

THE COURT: All right. Then, get familiar with it and get me a response.

MR. MCLELAND: Yes, Judge.

THE COURT: And then, again, I have not seen the motion to quash, you have not seen the motion to quash, so we'll have to – can we agree that we can just – that I can just rule on these things?

MR. ROZZI: Yeah, yeah.

MR. MCLELAND: Yes, Judge.

THE COURT: Okay.

MR. ROZZI: I think it – we – the backdrop of all this is that we've been working together, the State and the Defense, to get the rest of the depositions scheduled and that has included us sending the people we wanted to depose to the State a few weeks ago, on the back end of our hearings we had, and then them saying, "Here's our reaction to that, you know. Nick's available on one day, Stacey's available on another, Jim's available on another, and Stacey needs to handle this witness, Nick needs to" – and so we actually spent a considerable amount of time together trying to accommodate all that and we ended up sending them a schedule like, "These are all the people, these are the dates based on all of our communications", and there were a few of them that

we just couldn't find a middle ground on, and so I just suggested to the State that, "Look, here are the dates. The two or three that we couldn't find a middle ground on, we're gonna schedule them on the dates we want to do them, and then we'll kind of deal with the fall-out", because there's just too many moving parts. You know, it – there's no – I mean, there's nothing going on any more than us just having a very short period of time and trying to schedule 15 or 20 depos, and I think there was two or three of them they were hoping we would hold off on until you issued some rulings on the third-party stuff. And I just said, "Look, we gotta schedule them and then we'll kind of deal with the fall-out," because there's too many moving parts.

THE COURT: Right.

MR. ROZZI: So that's really what it amounts to, or at least in my eyes.

THE COURT: All right. Is there anything else from the State?

MR. MCLELAND: No, Your Honor.

MS. DIENER: No.

THE COURT: Anything else from the Defense?

MR. ROZZI: No, ma'am.

THE COURT: So no reason to go into the open session, since we've had this conversation? And again, I appreciate the opportunity to have some conversations without everybody sitting out there staring.

MR. ROZZI: You gonna go out there and tell them that we're not doing anything on the record? 'Cause I'm not.

THE COURT: I'm gonna recess and we're going. How's that? I figured that it would be – I would be on the road longer than our hearing; but,

you know, we needed to have this conversation, and honestly, I'd rather have it today than try to have it on August 1st at seven o'clock at night, when everybody was tired and tempers were getting short and people were getting hangry and everything else –

MR. ROZZI: Oh, yeah.

THE COURT: -- and, clearly, Mr. Allen was tired.

MR. ROZZI: I anticipate, you know, once you issue some rulings, I think – and this is just kind of what we're talking about as a unit, the Defense, that we're gonna file some kind of a notice with the Court about how much time we think we need in much more detail, you know, so that the Court has some idea from us, "Okay, this is how we perceive how long it's gonna take us to present our case." I'm assuming you want that, after we've kind of been through this other – you know, the May situation –

THE COURT: Sure.

MR. ROZZI: -- so I'm just letting you know that's what our plan was.

THE COURT: Okay.

MR. ROZZI: If the Court wanted to do that in another hearing like this, as opposed to us filing something that kind of lays out our anticipated timeframes, that's fine with us, too, but I don't – that's how we discussed handling it.

THE COURT: You can file something. I mean, and if you're concerned about it being work product, you can certainly file it as a confidential pleading –

MR. ROZZI: Yeah.

THE COURT: -- that's then available to the State, so you're aware, as well, but the public isn't gonna have access to it.

MR. ROZZI: Right.

THE COURT: I'm fine with that. I –

MR. ROZZI: Well, that's kind of what we were thinking. I don't – you know, we can't really control what they're doing, obviously.

THE COURT: No, no. I mean – and just so you know, when we start voir dire, I will – I mean, it's gonna be kind of cumbersome for both sides, because you're gonna have to do it twice every day –

MR. ROZZI: Yeah.

THE COURT: -- so the first time, I mean, I'm gonna ask you – I will introduce you – just since we're here, I'll tell you how I do voir dire. I'll introduce you; I have – you know, Rule 14 says I have to introduce the case; and I'll ask you to list your witnesses so that people will know, and I know that those names have been already included in the questionnaire, but there's a lot more witnesses that aren't in that questionnaire that I'm sure that you're gonna want to have. And I don't expect that any of Allen County jurors are gonna know any of these people, since they're not from around here. I'll give – I'm pretty liberal with time, I mean, it's usually – on a murder case, I'll go an hour a round for – per side, just so that you're aware. And the bailiffs will have seating charts for you that will be fresh every round, so you'll have the 50 people with this seating chart, the 50 people with that seating chart. And I won't sequester them upon selection, we will tell them to come back on Thursday to be prepared to be bussed down here to Delphi.

MR. ROZZI: Okay.

THE COURT: Okay? All right.

MR. MCLELAND: Judge, one other thing.

THE COURT: Yes, sir?

MR. MCLELAND: It made me think of something when you said about if the Defense is gonna file something confidentially so that the attorney – so the State can see it, and I appreciate that. One of the problems – one of the reoccurring problems that the State gets notice of weekly is the continued leaks about the case and discovery being leaked and those kind of things and I think part of the problem is that we've got several attorneys still on the case as attorney of record. Cara Wieneke, Mr. Ausbrook, there's media, Hennessy. Are these attorneys still necessary? Do they still need to be involved in the case, have access to the case? The attorneys for media groups are still there. And so filing confidentially, basically, it just goes to all those attorneys and it gets broadcast to the world anyways. So I guess my question is do those attorneys need to stioll be attorney of record on the case when I don't see that they have any further function in the case.

THE COURT: I don't think they have any function on the case. I mean, I know Cara Wieneke filed a limited appearance, but I don't know that a limited appearance shows as a withdrawal at the conclusion, because the Clerk doesn't know. I'm happy to do an order striking all of the extraneous – there's six lawyers that need to know what's going on, the four of you that are here and the two that aren't here –

MR. ROZZI: Yeah, I agree with that.

THE COURT: -- those are the lawyers that need to know, so I'm happy to do an order directing the Clerk to remove them as attorneys of record.

If they don't say the six names that I know that are – then they're out. And that's a good point. Thank you for bringing that up.

MR. ROZZI: I don't know, can you do that with the media? DO they have a right to have a limited appearance in?

THE COURT: Well, it was the media attorneys, because remember, at the beginning of the hearing, they were – they filed motions to intervene because they wanted the public access to the –

MR. ROZZI: Yeah.

THE COURT: -- charging information and the affidavit for probable cause. They filed a motion to intervene, but with that motion came their appearance, and they're still – I assume still listed as attorneys on the case.

MR. MCLELAND: I think there's like 15 attorneys on the case.

MR. ROZZI: Yeah. I don't have a problem with you striking them as long as Mr. Baldwin, Ms. Auger, and myself are part of –

MR. MCLELAND: And, Judge, they can always refile their motion to intervene –

MR. ROZZI: Yeah.

MR. MCLELAND: -- if they think there's a necessity for them to be – to make another filing, and so it's not blocking them from doing that, it's just taking them off because the reason they entered their appearance, in my mind, is concluded.

THE COURT: Oh, it concluded two years ago.

MR. MCLELAND: Correct.

MR. ROZZI: Are Scremin and Lebrato still getting notice?

MS. AUGER: Yeah, they are.

MS. DIENER: They're still on there, because when I looked at the most-recent item that I got discovery of, I could see Wieneke –

MR. ROZZI: Okay. Yeah, I'm fine with all that.

MS. DIENER: -- Ausbrook.

MR. ROZZI: No objection.

THE COURT: All the attorneys and Wieneke, okay, and Scremin and Lebrato. All right.

MS. DIENER: And Scremin and Lebrato, yeah, I think they're still getting notices.

THE COURT: I will do an order when I get back directing the Clerk to remove all of those individuals as attorneys so that we don't have that problem and it's just the six of you.

MS. AUGER: Thank you.

MR. MCLELAND: I don't have anything else, Judge, so thank you for accommodating that request.

THE COURT: Oh, sure. Anything else from the Defense?

MS. AUGER: No.

MR. ROZZI: No; no, ma'am.

THE COURT: Okay. Before we recess, I did want to let you know that the two weeks – I don't have a – oh here we go, thank you. Okay. I just wanted to advise you of my avail – thank you, Jodie – my availability. I'm a judicial conference September 17th through the 20th, so I'm –

MR. ROZZI: Okay.

THE COURT: -- I'll be – I think it's in Indianapolis that week, so I'm not available that week.

MS. AUGER: September 17th through the 20th?

THE COURT: September 17th through the 20th. And then, I am out of the office on a holiday October 1st through the 10th.

MS. AUGER: That's probably a really good idea.

THE COURT: I'm sorry?

MS. AUGER: That's probably a really good idea.

THE COURT: Well, I had this scheduled when ended up cancelling – well, when we set the trial in May.

MS. AUGER: Oh.

THE COURT: I was like, "Oh" – 'cause those were weeks that we had set for October's trial. I was like, "Oh, I can take those weeks now." So I'm –

MR. ROZZI: Well, that – I mean, I'm just opining that there could be a circumstance where we need the Court's intervention or quickly – you know, what would the Court – I don't want you to, you know, not go on vacation.

MS. AUGER: Yes.

MR. ROZZI: But is there – are you gonna be available on kind of an emergency basis?

THE COURT: Yes.

MR. ROZZI: Okay.

THE COURT: And you all have my cell phone number.

MR. ROZZI: Yeah.

THE COURT: And you have my e-mail, and my e-mail I think will work where I'm going.

MR. ROZZI: Okay. That's a shame.

THE COURT: if it doesn't work –

MR. ROZZI: That's a shame.

THE COURT: I know.

MS. AUGER: Yeah.

THE COURT: It is what it is.

MR. ROZZI: All right. Very good. Okay.

THE COURT: Okay.

MR. ROZZI: I could just see something like – something coming up.

THE COURT: Well, and something always comes up at the last minute.

MR. ROZZI: Yeah, right.

THE COURT: But that's why I'm back in town the 9th or the 10th.

MR. ROZZI: Yeah. Okay, very good.

THE COURT: All right. Thank you.

MR. MCLELAND: Thank you.

(THIS CONCLUDES THE PROCEEDINGS AT STATUS HEARING CONDUCTED AUGUST 23, 2024, IN THIS CAUSE.)

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

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

RECORD OF PROCEEDINGS AT JURY TRIAL

HELD OCTOBER 14 – NOVEMBER 11, 2024

APPEARANCES

For State of Indiana:
Nicholas C. McLeland/James Luttrull/
Stacey Diener
Carroll County Prosecutors Office
101 West Main Street, Suite 204
Delphi, Indiana 46923

For Defendant:
Bradley A. Rozzi
Hillis, Hillis, Rozzi & Dean
200 Fourth Street
Logansport, Indiana 46947

Andrew J. Baldwin
Baldwin, Perry & Wiley, PC
150 North Main Street
Franklin, Indiana 46131

Jennifer Jones Auger
Law officers of Jennifer Jones Auger
42 E. Jefferson Street
Franklin, IN 46131

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

JODIE L. WILLIAMS..... .REPORTER

PROCEEDINGS

THE COURT: All right. Well, good morning, ladies and gentlemen. We are on the record in *State of Indiana versus Richard Allen*, 08C01-2210-MR-1. I'll show that the Defendant is here in person with counsel, Mr. Rozzi, Mr. Baldwin, Ms. Auger. The State is here by the elect prosecutor, Mr. McLeland, Mr. Luttrull, and Ms. Diener. We are in courtroom 1 outside the presence of the jury. They're all downstairs in the jury assembly area, and I believe – I think we have 51 people of the 55 that were summoned that showed up.

THE BAILIFF: Fifty-two.

THE COURT: Fifty-two. All right, we've got 52. Officer Bohde has finished the – well, let me back up. They watched the video that's required to be shown, so they've watched the video and Officer Bohde has given them minimal instructions about what we're going to be doing, and he's now giving me the panel and the rounds. We're gonna be doing this in rounds, as we discussed by email. We'll be doing five rounds. The fifth round has four people in it, so the other 4 rounds will have – the box will be filled. So we'll be bringing them through the jury room, seating the first 12 in the box, and then the balance of the panel will be seated out to my right, your left. As we complete rounds, we'll be refilling the box as necessary. We'll probably take a break about 11 maybe. And I'll give you each 30 minutes per side for the rounds. I will trust that you will keep track of your time accordingly. I'm happy to give five-minute warnings, if you want. If not, I will indicate, as you get to your time, that you're about out of time. I don't want to embarrass you in front of the jury, but I don't want this to go on forever and ever. I think 30 minutes was the agreed-on time for voir dire per round. We'll do strikes tat he bench here on my right, your left. Okay. So you've got

your jury questionnaires, you've got the panelist. And who will be doing the first round of voir dire for the State? Mr. McLeland?

ATTORNEY NICHOLAS MCLELAND: I'll be doing the entire voir dire, Judge.

THE COURT: You will do the entire voir dire?

MR. MCLELAND: Yes, Judge.

THE COURT: Okay. And what about the Defense?

ATTORNEY BRADLEY ROZZI: I'll be doing round 1.

THE COURT: Round 1?

MR. ROZZI: Yes.

THE COURT: Okay. And I know that the Defendant filed a motion to five a mini-opening, and I granted that. So the mini-opening is about five minutes in length, and I'll explain that matter to the jury as we get started. Okay. And then, I had indicated to counsel via email that I anticipate selecting four alternates based on the length of trial; and I'll give you two strikes for the alternates. You can't save your strikes. If you have strikes – I can't imagine that you would, but I can't imagine that you would have strikes left over during jury selection, but you can't save those for the alternates, and that's I think Trial Rule 47 for alternates. Okay. Is there anything else we need to discuss? I know there's a lot of pending motions. I had anticipated that, once we complete jury selection, we can address all of those pending motions; that way, we're not keeping citizens waiting. If we're done early, we won't start the trial, as I indicated, until Thursday because of logistics and getting the hotel and the lodging and the transportation and everything, so you may have a day or two off if you are quick with jury selection. Mr. Baldwin?

ATTORNEY ANDREW BALDWIN: Judge, is it – Friday morning is opening statements; correct?

THE COURT: Correct.

MR. BALDWIN: Okay.

THE COURT: Prelims and openings and then the State's case – beginning the State's evidence on Friday. Mr. Rozzi?

MR. BALDWIN: Thank you.

THE COURT: Okay. Mr. Rozzi?

MR. ROZZI: Yeah, two points of business, Judge. First, just want to request a separation of witness order and then ask the Court, even though it has one of those motions that was filed that you just referenced, to designate Max Baker as our representative so that he's excluded from the separation of witness order, which is Rule 615. So that's the first request. And then, the second request is, to the extent the Court's going to address or read the prelims here – I know you've been kind enough to give those to us in advance – the instruction regarding the burden of proof, it starts at the bottom of page 1 and then bleeds over into page 2, and I'm looking at the pattern and I don't – it does not appear that this is consistent with the Indiana pattern on burden of proof preliminary, which is 1.15, and I think – you know, I'm not gonna get into all the reasons unless the Court wants us to make that argument, but my request is, is that we use the pattern 1.15 and not the instruction that was referenced here. I think it's a little light and State friendly. There is language such as "strict and heavy burden" that's not included in here that's in the pattern, and so I just ask the Court to maybe take another look at that or – well, that's our position with regard to that. Otherwise, I do have a quick question for Mr. Bohde about the

seating chart when – that he just handed when we get a second; if I could just talk to him, that would be great.

THE COURT: He was just leaving and then he heard his name and he just spun around and came back through.

MR. MCLELAND: Judge, I do want to address the Court before we move on, but I don't know if we're at that point yet or not.

THE COURT: I think the Defense is done. Go ahead.

MR. MCLELAND: Judge, just a couple things. I assume – and I shouldn't do that – but does the Court want us to address for-cause strikes at the bench?

THE COURT: Yes.

MR. MCLELAND: Okay. All right. Easy enough. And then, I was gonna wait to do this when we talk about the motions on Thursday, but we'd like to designate a witness to be –

THE COURT: Okay.

MR. MCLELAND: -- exempt from the separation of witnesses, too. And actually, we have two. We'd like to have my investigator, Steve Mullin, he's the one that handles, basically ,all the evidence for us, he can find it quickly and sort through it quickly; and then also Jerry Holeman with the Indiana State Police, designate him as the lead investigator. We'd like to designate those two people to be separated or set aside from the separation of witnesses to have sit in during trial.

THE COURT: Okay. Do you have any objection to the Defendant retaining Max Baker at table?

MR. MCLELAND: No, Your Honor.

THE COURT: Do you have any objection to the State retaining Steve Mullins [sic] and Jerry Holeman at table?

MR. ROZZI: I do, Judge. We would object to them having two representatives identified. If the Court would look at – if I could direct your attention to Rule 615, which is the exclusionary rule on separation of witnesses, the rule's pretty clear that, in this circumstance, that either subdivision B applies, which is both party's rights to identify a representative, and the case law is supportive that it be one person from each of the parties that would be designated and excluded from the separation of witness order. There is a subsection C, which says that this rule does not authorize excluding a person whose presence a party shows to be essential to presenting the party's claim or defense. And I would point out to the Court that, in looking at some of the case law, I think what that pertains to are situations where you may have expert witness that needs to sit in and listen to maybe the other party's expert because some information that's going to be offered up would be pertinent to the ex – the competing expert's testimony. Those two, subsection B and C, are mutually exclusive and the case law supports that. I'm looking here – one second – at *Osborne v. State*, 754 N.E.2d 916, it's a Supreme Court case where there was some articulation that those two – those two provisions are mutually exclusive and so there's a burden of proof that needs to be met by the requesting party, essentially to satisfy subsection C, which is that they gotta show that this person's an essential party presenting the claim or defense. Again, I think that's more really directed toward expert witnesses. In this case, the request is to have Officer Mullin and Officer Holeman, those two officers are the two I guess I would call them lead investigator, at least from our stand – our perspective in

conducting discovery in this case; and those two officers I believe, in terms of their knowledge of the case, the significance is, is that they will be testifying about timeline and then about things that went on at Westville, naturally, and I point those two things out because those are two of the big pillars of this case, the timeline and then the circumstances with Mr. Allen's detention. And it's the Defense's belief that there will be different opinions offered by those officers regarding those things based on the discovery that we've done, depositions and the like. For example, we talk about Westville, what you're gonna find is – what you're gonna hear is, is that in the last calendar year there have been many times where those two officers, I think actually together on at least one occasion, if not more, but certainly separately, have gone to Westville and conducted interviews and guards, inmates, and other things that have spoken or that have offered up information about Mr. Allen's actions while at the DOC. And beyond that, there are some of those interviews which were audio recorded where the audio did not function correctly; and so you've got officers going up there, they're talking to an inmate or a guard, they're reporting that, then they find our, "Hey, the recording didn't work, so let's just go ahead and offer up a quick summary, now that we've got the recorder that works." And so my point in all this is, is that those two individuals may have differing accounts of those things; and it's our belief that the purpose of the separation of witness rule is to, obviously, keep one witness from influencing the testimony of another. They're both, essentially, police officers in this case. They don't meet the materiality rule in 615(C), and so we believe that only one of those representatives should be permitted, which is under section B, and again, the case law is pretty clear that it means – one means one. Thank you.

THE COURT: All right. Well, I'll take it under advisement. Are we ready to start jury selection?

MR. MCLELAND: Yes, Your Honor.

THE COURT: Okay. I know I provided to counsel the preliminary instructions. The jury rules require that I read the information and the statutory elements, so that the jury understands what it is that they're being asked to look at. There's been some recent case law that is critical of courts following the statute where informations just list – in a murder case, just list the victim and it just says "Victim 1", "Victim 2". There's just been some recent case law that's critical of that designation from the Court outlining a victim, and the case law seems to imply that I should be giving initials of the individuals. I've talked to both sides independently, but said the same thing to both of you, that I'm following the information, I'm following the statute. I'm happy to continue to do that with the consent of counsel, unless you want me to name the individuals Victim 1, Victim 2. I believe Victim 1 is A.W.

MR. MCLELAND: Correct.

THE COURT: Which means Victim 2 would be L.G. I'm happy to use their initials in place of "Victim 1" and "Victim 2", if that's what the parties want me to do.

MR. MCLELAND: State's satisfied with the Court using the initials, Judge.

MR. BALDWIN: Same for the Defense.

THE COURT: All right. So I will – I've given you copies. I'll change those copies when we get ready for trial.

MR. MCLELAND: And, Judge, the State would request – sorry, if

I'm speaking out of turn here.

THE COURT: Go ahead.

MR. MCLELAND: The State would request that you give me a prompt that – whatever the latter prompt that you said that your time's about up to cue me in that I'm out of time so I can –

THE COURT: Okay. Like you want a two-minute –

MR. MCLELAND: -- end the sentence an –

THE COURT: You want a two-minute warning or something?

MR. MCLELAND: That's sufficient, Judge. If you just want to say, "Your time's about up," I'll know I've got to finish my thought at that point and sit down. That would be helpful to the State.

THE COURT: Okay. What about the Defense?

MR. ROZZI: Are you gonna be tracking our time with each of the separate rounds within the morning session? I was kind of –

THE COURT: Yes.

MR. ROZZI: -- trying to do some of this –

THE COURT: Thirty minutes per round.

MR. ROZZI: Okay. Oh.

THE COURT: So each round is a seating chart.

MR. ROZZI: Very good, okay.

THE COURT: Okay?

MR. ROZZI: Thank you. I'll take what he's getting, same treatment.

THE COURT: So just let you know your time's about up? I'll give you like a one-minute warning.

MR. MCLELAND: That's fine, Judge. And just to clarify one other

point that – and your deputy threw me for a loop this morning, but the local rules in Carroll County call for a two-strike or a two-pass system. We're not following that; is that correct? Or we are?

THE COURT: We are not.

MR. MCLELAND: Okay.

THE COURT: Based on the rounds, I see no way to do that.

MR. MCLELAND: That's fine, Judge. I just wanted to –

THE COURT: Okay. Yeah. 'Cause when I read the rule, I thought, ooo, if – we have agreed that we were gonna do it in rounds, I don't know how you would – the only way we could do that would be to completely eliminate the audience and have the jury out in the audience, which is how I had it set up originally, which means there would be no extra seating for family, no extra seating for media, no extra seating for the public. When I communicated with counsel by email a couple of weeks ago about that and you all agreed that the rounds would be satisfactory, that's when I opened it back up so that we could have more folks sitting in here watching. Okay. Are we ready to bring the jury up, folks?

MR. MCLELAND: Yes, Your Honor.

MR. BALDWIN: Judge, in terms of the mini-opening, when would that – different judges do that at different points in time. How would you do that?

THE COURT: I will do that at probably about 15 minutes into my voir dire, where I go through the things I'm required to go through.

MR. BALDWIN: And then the State'll go and then I'll go?

THE COURT: Yes.

MR. BALDWIN: And then they'll start asking questions after that?

THE COURT: When I complete my voir dire, yes.

MR. BALDWIN: Okay. Awesome. Thank you.

MR. ROZZI: I'm sorry, I'm just finishing up trying to put these in order.

THE COURT: That's all right.

MR. ROZZI: I apologize.

THE COURT: Put your phones on silent, please. I mean, this is how I'm communicating with the bailiffs out in the hallway and the jail and the sheriff.

MR. ROZZI: Okay.

THE COURT: And don't forget, I will ask you to list your witnesses, so that one of the questions that I have for jurors is, "Do you know any of the folks that are expected to testify?" So I will be asking you to stand and introduce yourselves and list your witnesses for us.

MR. MCLELAND: Okay, Judge.

THE BAILIFF: All rise.

(Potential jurors in at 9:27 a.m.)

THE BAILIFF: Thank you. You may be seated.

THE COURT: Thank you, Jason. Thank you, Jeremy. All right. Well, good morning, ladies and gentlemen. My name is Fran Gull, I am a judge here in Allen Superior Court in our Criminal Division. I've also been appointed by the Indiana Supreme Court as a special judge in a case entitled *State of Indiana versus Richard Allen*. The case is from Carroll Circuit Court in Delphi, Indiana, which is approximately two hours west here of Allen County. Thank

you for coming in today and for filling out the questionnaires that were sent to you several weeks ago. Your thoughtful responses to those questions will greatly reduce the amount of time necessary in selecting a jury. All of you will be asked to take an oath or an affirmation that you answers to the questions that we have for you today will be truthful. I will then ask a number of questions addressed all of you as a group. Those of you that are seated in the jury box, if you have any responses to my questions, just let me know and we'll take care of your responses as they come up. Those of you out in the gallery, if you'd just be so kind, please, to keep track for us anything you would be responding to, the only question that I'll as of you if you do get up into the jury box will be to ask you if you had any responses to any of the questions, and then that would be your opportunity to share with us anything that you might be responding to. Once I'm done with my questioning, the attorneys for the State and the Defendant will question you, as well. Again, those of you in the gallery, please, pay careful attention to all of the questioning by the attorneys, as well. The questions you will be asked are not intended in any way to be offensive or personal or prying, but rather, are necessary to ensure that a jury is selected of individuals who can fairly and impartially resolve this case. This is a criminal case that's been brought by the State of Indiana. The trial is scheduled to conclude November 15th of 2024. The attorneys have indicated that may be done sooner, but it is currently scheduled for October 14th, which is today, through November 15th, 2024. We'll start each day at 9 o'clock in the morning in the Carroll Circuit Court. We will break for lunch is close to noon as we can get. And we do take breaks in the morning and in the afternoon to give those of you that are selected an opportunity to get up and move around. We'll work into the late afternoon,

perhaps as late as 5 or 6 o'clock, it just kind of depends on where we're at with the trials. I just tell you this so that you know what kind of a time requirement would be asked of you if you are selected to serve. It will be necessary that those of you that are selected as jurors will be kept together under the supervision of the Court's bailiffs from the time you are sworn in as the jury until the trial is concluded. This procedure is necessary to ensure that you are not subjected to any improper influence or information. Those of you that are selected will be provided with transportation, food, lodging, and other necessities by the Court during the trial. We realize that such service may be a hardship for many of you, but Indiana law provides for this in order to ensure that there is a fair trial for the Defendant and the State. If this procedure, which is called sequestering, will be subjecting you to any especially severe hardship, you'll have an opportunity to explain your situation to me before the decision is made that you will be a juror. If you are selected to serve as a juror in this case, you will receive a phone call from the Court's bailiff sometime later in this week, perhaps as early as Wednesday, giving you instructions on when to report to the courthouse. Prior to leaving the courthouse, if you are selected as a juror, the Court's bailiffs will give you information, an information packet, actually, and directions regarding what to pack and what to bring and your return to the courthouse for transportation to the court for the trial, and again, that transportation will be provided by the Court. We begin the trial with a process called voir dire or jury selection. I'll tell you a little bit about this case, I'll tell you a little bit about our trial process, and then ask you some questions to determine your qualifications to sit as a juror in this particular case. To begin that process, first I'm going to introduce the attorneys to you and then they're going to list their witnesses. I

will ask that you, please, pay careful attention as the attorneys are listing witnesses, as one of the questions that I'll ask you is if you know any of the folks that are expected to testify. Representing the State of Indiana is the elected prosecutor of Carroll County, Nicholas McLeland, and deputy prosecuting attorneys Stacey Diener and James Luttrull. Folks, if you would, please, stand, introduce yourselves, and list your witnesses for us, please.

MR. MCLELAND: My name is Nicholas McLeland, I'm the elected Carroll County Prosecutor. With me is James Luttrull, deputy prosecutor, and Stacey Diener, deputy prosecutor, as well.

ATTORNEY JAMES LUTTRULL: Good morning.

ATTORNEY STACEY DIENER: Good morning.

MR. MCLELAND: I'm gonna go through these names quickly, 'cause there are several names, but these are the witnesses that we anticipate calling at trial: Becky Patty; Kelsi German; Derrick German; Anna Williams, Mitch Catron; Steve Mullin; Shane Haygood; Pat Brown; Darren Giancola; Jason Page; Duane Datzman; Brian Olehy; Greg Edwards; Brian Bunner; Jeremey Chapman; Railly Voorhies; Breanna Wilber; Betsy Blair; Daniel Pearson; Cheyenne Mill; Sarah Carbaugh; Jake Johns; Thomas Plantz; Kathy Pennington; Nikkole Robertson; Steve Mullin; Dr. Roland Kohr; Christopher Cecil; Kathy Shank; Dan Dulin; Steve Mullin; Tony Liggett; Matt Clemons; Dave Vido; Jerry Holeman; Tony Liggett; Kathy Allen; Melissa Oberg; Stacy Bozinovski; Pat Cicero; John Galipeau; Mark Moneypenny; Ethan Drang; Mark Clemons; Michael Roberts; James Early; Antonio Contreras; John Miller; Nicholas Greer; Brandon Fisher, Raymond Smith; Jason Bedwell; Monica Wala; Brad Weber; and Brian Harshman.

THE COURT: Thank you, Mr. McLeland. Representing the Defendant, Richard Allen, are attorneys Bradley Rozzi, Andrew Baldwin, and Jennifer Auger. Folks, if you'd, please, stand, introduce yourself and your client, and list your witnesses for us, please.

MR. ROZZI: Thank you, Judge. My name's Brad Rozzi and I'm one of Mr. Allen's attorneys.

MR. BALDWIN: Oh, I'm attorney Andy Baldwin from Franklin, Indiana, actually.

ATTORNEY JENNIFER AUGER: I am attorney Jennifer Auger, also from Franklin, Indiana.

THE COURT: And list your witnesses, please.

MR. ROZZI: All right, Judge. I'm gonna go and just name them all, because for me to mine out the ones that are duplicates would be –

THE COURT: Okay. That's fine.

MR. ROZZI: -- practically impossible, so I appreciate your patience in that regard. Tobe Leazenby; Anthony Liggett; Jerry Holeman; Brian Harper; Doug Carter; Steve Buckley; David Vido; Greg Edwards; Brian Bunner; Kevin Murphy; Todd Click; Richard Davies; Dan Dulin; Jason Page; Roland Purdy; Ryan Winters; Steve Mullin; Nikkole Robertson; Roland Kohr; Betsy Blair; Sarah Carbaugh; John Galipeau; Randy Jones; Josh Robinson; Teresa Liebert; Brad Holder, Elvis Fields; Patrick Westfall; Johnny Messer; Amber Holder; Taylor Hornaday; Kelsi German; Railly Voorhies; Bre Wilber; Anna Spath; Carl Abbott; Kegan Kline; Tony Kline; Derrick German; Mike Patty; Becky Patty; Anna Williams; Drew Yoder; Taylor Bryant; Thomas Plantz; Dr. Polly Wescott; William Tobin; Dr. Eric Warren; Brian Alvey; Dr. Monica Wala; Matt Hoffman; Max Baker;

Ed Schroder; Dr. Stuart E. Grassian; Kathy Allen; Janis Allen; Andrew Jackson; Susan Case; Richie Davis, Jr.; James Haas; Misty Moore; Troy Jacobs; Lacie Patton, Jr.; Jaime Jones; Cheyenne Mill; Shelby Duncan; Shelby Hicks; Daniel Pearson; Bradley Heath; Melissa Dawn Yoakum; Richard Kaman; Karl Reich; Logan Holder; Ron Abrams; Ned Smith; Kerrie Messer; Mitch Blocher; Rebecca Stephens; Brittany Zapanta; Brandon Mansfield; Josh Moore; Alvin Flynn; Matt Buzberg; Larry Speigel; Danny Hammond; Peter Dunn; Josh Harrison; Benny Cameron; Terry Wilson; Brett Ingram; Mitch Catron; Angela Empey; Raymond Smith; Michael Roberts; C. – Officer C. Grassig, I believe it's Chris, could be wrong about that; Jesse James; Pat Cicero; Robert Ives; Neil Broom; Stacy Eldridge; Joseph Alvey; Gregory French; Brian Kubiak; Stacy Bozinovski; Robert Orr; Adam Pohl; Christopher Gootee; M. Blessing; J. Burkey; James Caldwell; Richard Everett; David Jones; Johnathan Jewell; Misty Adams; Chris Cecil; and one second, please, Joanna Primeau; Sarah Clark; Kenneva Mapps; Thomas Willington; Phil Ivy; Steve Bour; John Martin; Bravlio Eloiza; Deanna Dwenger; Dawn Stephens. Thank you.

THE COURT: Also in the courtroom with us are officers with the Allen County Sheriff's Department assigned to assist the Court, Officer Jason Bohde and Corporal Jeremy Tinkel, who are the gentlemen that brought you upstairs from the jury assembly area. Also with us is Leslie Ross, who is seated to the left. Leslie, stand so they can see you. We've also got Zach Fillipiak, Reed Davis, and Deontre Campbell in the courtroom with us. If there's anything that you need from me during your stay with us here today and into the actual trial itself, if you would just let Jason, Jeremy, or Leslie know that you've got an issue or a question or a concern, they'll get that to me and I'll take care of it quickly as

I can. We have a lot of microphones in this courtroom. The attorneys are wearing wireless microphones so that we can pick them up as they move around the room speaking with you. Seated directly in front of me is Jodie. Jodie is my court reporter and she's monitoring the proceedings on her microphone – on the microphones, her headset, and the computer. If she can't hear you during our discussion, she will interrupt and say, "I didn't hear you, please, speak up." Please don't be embarrassed or offended by that. We're not trying to shine a light on you as a quiet or a soft-spoken person, or maybe as a nervous person, we're just trying to make a good record. This is a beautiful courtroom, it is a wonderful place to work every day, but the sound is terrible; and we find when you are sitting in the jury box and talking, you may be looking right at me when you speak, but the acoustics in this room drag your head – it up into that beautiful skylight overhead. The Preservation Trust has made it perfectly clear they won't let me put any equipment up there to capture your voice, so it's just real important that you speak up nice and loud so that everybody can hear you. This is a criminal case that's been brought by the State of Indiana. I'm going to read the charging information to you and the statutory elements of those charges that the State's required to prove beyond a reasonable doubt. This case charges the Defendant with count 1, felony murder, a felony; count 2, felony murder, a felony; count 3, murder, a felony; and count 4, murder, a felony. The informations read in count 1 that: On February 13th, 2017, in Carroll County, Indiana, Richard Allen did kill other human being, to-wit: A.W., while committing or attempting to commit kidnapping. To convict the Defendant of this count, the State is required to prove these elements: One, the Defendant, Richard Allen; two, killed; three, A.W.; four, while committing or attempting to commit

kidnapping, which is defined as a person who knowingly or intentionally removes another person by force or threat of force from one place to another. Count 2 reads: On February 13th, 2017, in Carroll County, Indiana, Richard Allen did kill another human being, to-wit: L.G., while committing or attempting to commit kidnapping. To convict the Defendant of this count, the State's required to prove these elements: One, the Defendant, Richard Allen; two, killed; three, L.G.; four, while committing or attempting to commit kidnapping, which is defined as a person who knowingly or intentionally removes another person by force or threat of force from one place to another. Count three reads: On February 13th, 2017, in Carroll County, Indiana, Richard Allen did knowingly or intentionally kill another human being, to-wit: A.W. To convict the Defendant of this count, the State is required to prove these elements: One, the Defendant, Richard Allen; two, knowingly or intentionally; three, killed; four, A.W. And count four reads: On February 13th, 2017, in Carroll County, Indiana, Richard Allen did knowingly or intentionally kill another human being, to-wit: L.G. To convict the Defendant of this count, the State is required to prove these elements: One, the Defendant, Richard Allen; two, knowingly or intentionally; three, killed; four, L.G. Now, as I said, the State of Indiana has the burden of proof in a criminal case since the Defendant is presumed to the innocent. The burden of proof is proof beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that would leave you firmly convinced of the Defendant's guilt. If, based upon your consideration of the evidence, you are firmly convinced the Defendant is guilty of the crimes charged, you may find him guilty. If, on the other hand, you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty. Under our jury rules, the attorneys have an opportunity

during this process to give you a brief overview of their case in order to acquaint you with any facts or issues which may arise during the trial. These are called mini-opening statements and they're about five minutes in length. For purposes then of the mini-opening statement, Mr. McLeland.

MR. MCLELAND: Thank you, Judge. Ladies and gentlemen, good morning. I'm gonna try to speak to all of you. This case is about three things: Bridge Guy, a bullet, and the brutal murder of two girls. Two girls from Delphi, Indiana, A.W. and L.G., they lived in Delphi. On February 13th of 2017, they had a day off of school. It was an unseasonably warm day that day back in 2017, and A.W. and L.G. decided to go to the trails, specifically to the Monon High Bridge. The trails are a trail system in Carroll County, Indiana, that people go to to enjoy nature, to get outside, a place they use in their free time. The Monon High Bridge is an abandoned train trestle, it's about 60 feet above the Deer Creek, and kids in middle school and high school age, they typically cross this bridge. Don't really know why, would they do it for fun, as a rite of passage, they test their bravery. Well, A.W. and L.G. decided to do that on this day, to cross the Monon High Bridge, but they weren't alone. You'll see they were followed by a man that we're gonna identify as Bridge Guy. And Bridge Guy used a gun that day and he kidnapped A.W. and L.G., he used that gun to force them down the hill, and his intent was to have his way with them, do whatever he wanted to do with them; but he was interrupted and, with that power that he had at that moment, he forced them to cross the creek, to remove their clothes, and then he cut their throats. He brutally murdered A.W. and L.G. Then he took their clothes that he could gather, threw them in the creek, and then casually walked back to his car, and went home. But what he didn't know is he left behind a clue, a

bullet, a bullet that we will show you that had distinct marks that show it was cycled through his gun, that it came from his gun. A bullet that was found right between the bodies of A.W. and L.G. Now, you don't have to take my word for any of this, because you're gonna hear a statement from Richard Allen himself that places him on the trail at the same time the girls were there and, in fact, places him on the bridge at the same time the girls were there. Then you're gonna see photos, evidence, and a video that show Richard Allen is Bridge Guy, that Richard Allen is the one that kidnapped the girls and forced them down the hill. Finally, you're gonna hear Richard Allen himself, in his own words, tell his wife, his mother, correctional officers, his therapist, and anybody else that would listen that he brutally murdered A.W. and L.G., that he killed A.W. and L.G., and not only that he did it, but how he did it and why he did it, and he's going to repeat this over and over and over again. The State has charged Richard Allen with the murder of A.W. and L.G. because Richard Allen is Bridge Guy, who left the bullet from his gun when he brutally murdered A.W. and L.G.

THE COURT: Mr. Baldwin.

MR. BALDWIN: Richard Allen confessed to taking a gun and shooting those girls in their back. The problem is the medical evidence will show that those girls weren't shot at all; therefore, Richard Allen confessed to a crime that he did not commit and admitted facts that simply aren't true. Richard Allen confessed to raping those girls and burying them in a shallow grave. The problem is the medical evidence will show that those girls weren't raped and they weren't buried in a shallow grave. They were – and the photographs from the crime scene will show that they were on top of the land. Once again, Richard Allen confessed to a crime that he didn't commit and admitted to facts that

simply aren't true. And all these confessions that the State is gonna rely on, you're gonna find out in this case – should you be on the jury, you're gonna find out there's a ton, as he said, a ton of admissions and confessions, confessions to things that aren't true, like, "I killed those girls." Now, one of the things that's gonna be important and you're gonna find in this case is the context of those confessions. What you're gonna learn is that Richard Allen, for four months prior to any confession or any admission that he gave to all these different people, he had been languishing, deteriorating both mentally and physically, in solitary confinement in Westville Prison for over four months. Now, where was he four months earlier? You will learn that, as well. He was at home with his wife of 30 years, Kathy, his dog, and then, all of a sudden, he was arrested for a crime he didn't commit. And instead of going to the Carroll County Jail, as every other person in the history of Carroll County – I think it's unprecedented – the Sheriff, 15 days or so before an election, requested that Richard Allen be sent for safekeeping, and he was sent to Westville Correctional Facility, one of the – you're gonna learn about this, one of the worst places and housing some of the worst convicts and murderers and rapist; and not only that, into the place where they are all housed, and then in solitary confinement. And you're gonna see video of Richard's life for those four months. You're gonna see that he was walking around in this tiny, little cell. And then you're gonna hear from psychologists and they're gonna say, "These are the ingredients for false confessions." And we're gonna be asking you guys in jury selection about that and how you feel. Do we have a shot or are you giving up on this case because you've heard of a confession? We need to talk about that and we will. You're also going to hear about evidence, I'll call it soft evidence and hard evidence. You're gonna find out

about this bullet, for example. Is their evidence open to interpretation or is it hard evidence? The bullet, for example, you're gonna find out that the person the State will rely on is – her name is Melissa Oberg, she's gonna tell that you she's had over 1100 analysis of bullets and that she's never been wrong, that her – that she's never been wrong in any of her analysis; yet, when see looks at other people that she works with and she oversees their work, the same work that she does, they've been wrong, she's pointed that out, but she's never been wrong. We're gonna be talking about analysis and that is subjective. And then over here, you've got hard evidence. We're gonna be – there's a phone of one of the victims and that phone has hard data in it, not with emotion, not with opinion, hard data that will say, when these girls left, where were they and what were they doing. And, unfortunately, you're gonna find out that the State Police were ill equipped to understand the data in that phone, because if they were equipped properly, Richard Allen would have never been arrested. They had a chance, you will learn. There was an infighting between FBI and the local police, and the local police said, "Bye-bye, FBI. Go away." And they had given – this local police had given them the phone to look at for the complicated nature of this hard data, and they never bothered to look and find out from the FBI what they thought. And you're gonna hear – part of what's gonna happen during jury selection is we're gonna be talking about the police and how we're going after them hard, and we need you to be honest. In the end, guys, in the end, I need you to give us answers from your heart, because this is serious business; okay? This is serious business and I think you know that. And we appreciate it, because at the end of the day, we're gonna tell you Richard Allen is innocent and the evidence will show that.

THE COURT: Before we begin the questioning process, I'm required by state law to administer an oath to you. If you would, please, respond at the end of the other either by stating "I do" or by stating "I so affirm." If all of you out in the gallery, as well as the 12 of you in the box, if you would all, please, raise your right hands for me. Do you solemnly swear or affirm under the penalties for perjury that you will honestly answer any question asked of you during the jury selection process?

(Potential jurors sworn at 9:54 a.m.)

THE COURT: Thank you. When you were selected for jury duty, each of you were assigned a juror number. Under our jury rules, those of us in the trial courts are required to maintain your privacy. We're also required to maintain as a confidential court record that questionnaire you filled out and sent back to the courthouse. To maintain your privacy, I'll use that juror number. The attorneys may use your number, they may use the number of the seats that the 12 of you are currently occupying, or they may just address you as "ma'am" or "sir", I leave that up to the attorneys, but we do not use your names here in criminal court. I'll begin the questioning process and then the attorneys will have about 30 minutes per side to question you. Once they're done with their questions, they'll approach the bench to excuse jurors. They have two types of challenges that they can make to a juror. The first kind is called a peremptory and, within certain guidelines, they can use that for any reason at all. The other kind of challenge is a challenge for cause and that is used to excuse a juror who, for whatever reason, can't be fair or impartial. Please don't be offended if you are excused from jury duty. It means you're free to go. It also means, under our jury rules, before we can call you back within the next two years, we have to go

through the list of folks that are eligible to serve. Allen County is very fortunate that we've got about 270,000 people on our list and we're not gonna go through all those folks in the next two years and get to you again, so thank you in advance. I know when you got your summons to appear all of you had something going on that you needed to set aside to come in and go through this process with this and I'm grateful for your time. If you are selected to serve, you have to keep an open mind. You can't form an opinion or a conclusion about the case until deliberations begin. Our jury rules do give you the opportunity to take notes during the trial, to ask questions of witnesses during the trial, and to have some limited discussions about the evidence when we're on breaks. And once we get through this process and get into the actual trial itself, I'll give you written instructions on everything I've just covered, so don't think you have to remember everything. So most of my questions anticipate no response from you. By that, I mean you probably don't know these lawyers, you probably don't know any of these witnesses. And so if you have a response other than no, those of you in the box, raise your hand and let me know and we'll take care of it as it comes up.

VOIR DIRE BY THE COURT

ANSWERS BY POTENTIAL JURORS

Q So with all of that being said, do you any of you know the attorneys?

A (No response or indication from any potential juror.)

Q Do any of you know any of the people who may testify during the trial? Okay. Juror 18?

JUROR 18: To the first question, I am a psychic and a half, and I can feel other people's emotions. And when I got the summons, I knew the

answer to this trial. I am valuable not as a juror, but as help to the prosecution.

Q Okay. So with that being said, do you feel that you can't be fair and impartial to the Defendant?

JUROR 18: I cannot.

Q Okay. Then, I won't ask you any more questions, sir, but thank you very much for your candid response. Do any of you know the Defendant, Richard Allen?

A (No response or indication from any potential juror.)

Q Do any of you have any personal knowledge concerning the facts in this case?

A (No response or indication from any potential juror.)

Q Do any of you remember reading or hearing anything about this case in the media? Okay. Those of you out in the audience, if you do get up into the box, I'll ask you that particular question. Nobody up here? Okay, so Juror 39, you're saying just a little bit?

JUROR 39: Yeah.

Q Okay. Without going into anything that you may have read or heard, have you formed an opinion about this case?

JUROR 39: (Responds by shaking head in the negative.)

Q No? Can you disregard anything that you may have read or heard and make a decision just on the evidence that you see and hear in the courtroom?

JUROR 39: (Responds by nodding head in the affirmative.)

Q Yes? Okay. Thank you. Anybody else? Juror 21, without going into what you read or heard, have you formed an opinion about this case?

JUROR 21: I have not.

Q No? Okay. And, Juror 20, without going into what you read or heard, have you formed an opinion about this case?

JUROR 20: I have not.

Q Okay. Can you set aside anything that you read or heard and make a decision on the evidence that you hear in the courtroom?

JUROR 20: I don't have an opinion.

Q Okay. You have no opinion, that's exactly what we want to hear. Juror 53, without going into what you may have read or heard, have you formed an opinion about this case?

JUROR 53: No.

Q Can you set aside whatever you read or heard and give the Defendant and the State a fair trial?

JUROR 53: (Responds by nodding head in the affirmative.)

Q Yes. You're nodding your head yes. And, Juror 35, without going into what you may have read or heard, have you formed an opinion about this case?

JUROR 35: I heard about it.

Q You heard about it. Can you set aside whatever you heard about and make a decision just on the evidence that you see and hear in the courtroom?

JUROR 35: Yes.

Q Okay. Anybody else? Okay. Juror 42, without going into what you may have read or heard, have you formed an opinion about this case?

JUROR 42: No.

Q Can you set aside whatever you read or heard and make a decision on the evidence that you see and hear in the courtroom?

JUROR 42: Absolutely.

Q Okay. Thank you. Anybody else? Okay. I'm sorry, Juror 23, without going into what you may have read or heard, have you formed an opinion about this case?

JUROR 23: (Responds by shaking head in the negative.)

Q Can you set aside whatever you read or heard and make a decision on the evidence that you see and hear in the courtroom?

JUROR 23: Yes.

Q Okay. Thank you. Do any of you feel that a person who has been arrested probably is guilty or else that person would not have been arrested?

A (No response or indication from any potential juror.)

Q Have you, any members of your family, or close personal friends ever served as a law enforcement officer? Okay. Juror 1, family or friends?

JUROR 1: My son.

Q Your son. Is he currently serving?

JUROR 1: He is a Fort Wayne police officer.

Q Okay. Do you talk with him about his work?

JUROR 1: I watch his kids, but I don't talk about his work.

Q Okay. Is there anything about his work that would affect your ability to be fair and impartial?

JUROR 1: No.

Q Okay. And, Juror 53, friends or family?

JUROR 53: Family.

Q Family. And do you talk with them about their work?

JUROR 53: No. He's retired, but he was a state police officer –

Q Okay.

JUROR 53: -- in the state of Pennsylvania.

Q All right. Is there anything about his employment that would affect your abilities to be fair and impartial?

JUROR 53: No.

Q Okay. Anybody else?

A (No response or indication from any potential juror.)

Q Do any of you feel that the testimony of a person who is a law enforcement officer should be given extra weight or consideration because they are a law enforcement officer?

A (No response or indication from any potential juror.)

Q Have you ever served as a juror in a criminal or a civil case or as a member of a grand jury, either in a state court or a federal court? Okay. Juror 21, when did you serve?

JUROR 21: Oh, it's been a long time. I served on three of them back in my 20s.

Q Okay. Criminal or civil or both?

JUROR 21: All drug related.

Q All drug related. Is there anything about that previous experience that would affect your abilities to serve in this case?

JUROR 21: No.

Q Okay. Thank you. Has anyone talked to you about this case?

MR. BALDWIN: Judge, I'm sorry, there's –

Q Oh, I'm sorry. Was there another person that had served as a juror? I'm sorry. Juror 20, when did you serve?

JUROR 20: A few years back, I think it was 2018 or 2019.

Q Do you recall the type of case?

JUROR 20: Criminal.

Q Was it here in state court?

JUROR 20: Yes.

Q And is there anything about that previous experience that would affect your abilities to serve in this matter?

JUROR 20: No.

Q Okay. Anybody else?

A (No response or indication from any potential juror.)

Q Has anyone talked to you about this case?

A (No response or indication from any potential juror.)

Q Are you now or have you ever been an official or an employee of the State of Indiana?

A (No response or indication from any potential juror.)

Q Do any of you have any reservations about the rule of law that requires you to presume that the Defendant is innocent throughout the trial?

A (No response or indication from any potential juror.)

Q Do any of you disagree with the theory of the law that the burden and duty to prove a person is guilty of a crime rests entirely on the State of Indiana and that a person so accused has no burden or duty whatsoever to take any steps to maintain his innocence?

A (No response or indication from any potential juror.)

Q Have you, any members of your family, or close personal friends ever been the victim of a crime? If you were the prosecutors charged with the re – oh, I'm sorry. Juror 53, you, family, or friends?

JUROR 53: It was me.

Q It was you. And is there anything about your personal situation, the way it was handled or not handled, that would affect your abilities to serve as a juror?

JUROR 53: How it was handled.

Q Okay. Can you set that aside and make a decision on the evidence in this case?

JUROR 53: Yeah.

Q Okay. And, Juror 39, family or friends or yourself?

JUROR 39: Family, but before I was born. My aunt was murdered in the state of California, but I never knew –

Q Okay. And is there anything about that?

JUROR 39: I never knew her and we barely really talked about it.

Q Okay. So you can set that aside and make a decision on this evidence, not on that particular experience?

JUROR 39: (Responds by nodding in the affirmative.)

Q Okay. Anybody else?

A (No response or indication from any potential juror.)

Q If you were the prosecutors, charged with the responsibility for prosecuting this case, or the Defendant on trial here today, charged with the same offenses, or his lawyers, do you know of any reason why you would not want your case tried by someone in your frame of mind?

A (No response or indication from any potential juror.)

Q All right. Well, ladies and gentlemen, you recall the brief explanation I gave you earlier on the sequestration process; are there any reasons why you do not feel that you would be able to be a juror under the procedure I described for

you earlier?

A (No response or indication from any potential juror.)

Q Do you have any health or medical condition which might affect your ability to serve as a juror in this case?

A (No response or indication from any potential juror.)

Q Do you have any special health or medical needs which you do not think could be adequately provided by – for you by the Court while you stayed with other jurors during this trial?

A (No response or indication from any potential juror.)

Q Do you take any special medication which would affect your abilities to concentrate and remain alert?

A (No response or indication from any potential juror.)

Q Would you have any difficulty having to stay in the company of just the other jurors and the Court's bailiffs during the trial?

A (No response or indication from any potential juror.)

THE COURT: Thank you very much. Mr. McLeland.

MR. MCLELAND: Thank you, Judge.

VOIR DIRE BY THE STATE – MR. MCLELAND

ANSWERS BY POTENTIAL JURORS.

Q Ladies and gentlemen, good morning. Who's nervous to be here? Okay. To be brutally honest, I'm a little nervous, too. I've never been in this courtroom but a couple times, don't know any of you. I'm from a very small county, this courtroom is way bigger than what I'm used to, so it's okay to be a little nervous. I want to talk about brutally honest. Is it okay if I refer to you by your number? I don't have your names. I can either point to you or I can call you by your

number, I may do both. But does anybody have a definition of what "brutally honest" means? How about Number 39; ma'am, what do you think "brutally honest" means?

JUROR 39: Honest without reservation.

Q Anybody have any different explanation or different definition of it?

A (No response or indication from any potential juror.)

Q Can we agree that's gonna be the definition for today?

JUROR 18: I did not hear her definition.

Q Okay. Can you say it again, ma'am.

JUROR 39: Honest without reservation.

Q To be honest, whether it's good, bad, or indifferent. Everybody agree? Can we agree that's what it's gonna be today?

A (No response or indication from any potential juror.)

Q And that's what we want you to be, we want you to be brutally honest with us, because you're all good jurors, every single one of you's a good juror, you may not just be a good juror for this case. And so can we agree that you're gonna be brutally honest with me today?

A (No response or indication from any potential juror.)

Q Perfect. So this is jury selection, the Judge explained it a little bit. It's the chance that the attorneys get to talk to you, and we have very few chances to talk to you, but we're talking to you to get to know you to determine whether or not you're a good juror for this case. And so the first thing I want to talk about is being sequestered, the Judge touched base on it a little bit. This trial is supposed to last from today until November 15th. I don't know all the rules the Judge is gonna put in place for being sequestered, but does anybody have a

problem with being away from work or family until November 15th? Okay. Number 21, let's start with you, sir.

JUROR 21: Yes. I work for a public school system. We are severely short staffed. We currently have five open routes. We have three on medical leave and that doesn't include all the other people that took off. Typically, I'm the only one in the transportation office answering the phones and stuff, because my supervisors are out on route.

Q Okay.

JUROR 21: It's not a burden on me, but it would be a burden on them.

Q If you are picked as a juror and you are sequestered and you're away from that job for that long, is that gonna cause you to draw your attention away from what you hear and see in court? Is it gonna distract you to the point where you're not gonna be able to focus on what you hear?

JUROR 21: No.

Q Okay. Anybody else? Number 18, I think you raised your hand.

JUROR 18: Yeah. Okay. So restate the question so I can phrase this correctly.

Q Sure. The Judge is gonna sequester the jury –

JUROR 18: Yeah.

Q -- and so you're gonna be held together in a hotel of some kind –

JUROR 18: Yeah, exactly, so –

Q -- and be away from home or work that long.

JUROR 18: My issues primarily is – are, you know, it is what it is, location, transportation, and also I need to – am needing some dental care and I

need to get new glasses immediately, 'cause I'm on my last pair of contacts, so those are things I need to care for in my life, you know. (Inaudible) maybe, but that's an issue in my life.

Q Okay. Anyone else? Number 53, ma'am?

JUROR 53: I'm the only, like, caretaker of my older sister who is 75, is handicapped, I take care of her, and my granddaughter who is autistic, she's with me, and I'm the only driver, so I take her to appointments and grocery shopping and things like that.

Q Have you made arrangements for someone else to do those functions if you're selected as a juror?

JUROR 53: No. Well, it's family, I know all my children work dayshift, so it's like out of the question.

Q Is it to the point where you're gonna be thinking about that instead of focused on what you hear and see –

JUROR 53: No.

Q Okay. All right. Anybody else? I'm gonna try to get these numbers right. Number 33?

JUROR 33: Yeah.

Q Yes, sir?

JUROR 33: Mainly just childcare. My wife's a public health worker, so we would need – my daughter's a year old now, so we need to be able to find childcare for a potential month.

Q Sure, sure.

JUROR 33: So –

Q If – I assume you don't have that lined up right now.

JUROR 33: No.

Q Okay.

JUROR 33: No.

Q So is that gonna be – I mean, what we want to know, is it gonna be such a distraction where you're not gonna be focused on what's happening here in court, 'cause you're gonna be thinking about – I live in a county that has a lot of farmers, this is harvest season for us, a lot of farmers wouldn't want to serve on the jury because they'd be focused on getting the crop in, getting it to where it needs to be, and those kind of things, and they can't focus on what they hear. Is that – are you gonna be so worried about that, that you're not gonna be able to focus on what's going on?

JUROR 33: Probably not.

Q Okay.

JUROR 33: I can probably – yeah.

Q Okay. Anybody else? I don't want to miss anybody.

A (No response or indication from any potential juror.)

Q Okay. We went over the charges – the Court went over the charges, the State of Indiana has charged Richard Allen with four counts of murder for the murder of A.W. and L.G. Counts 1 and 2 deal with felony murder, what we call felony murder, that a death occurred in the act of committing a felony, in this case kidnapping. That's counts 1 and 2, and then counts 3 and 4 deal with intentional murder, which is probably what everyone's used to. So there's four counts and two victims. I just want to focus on the offense of murder, just the murder itself, not the murder in these charges, but just murder itself. And so, Number 22, when you hear the charge of murder, what first comes to mind?

JUROR 22: The taking of someone's life probably against their will.

Q Number 19, what about you?

JUROR 19: Yeah, I would say close to the same thing, taking someone else's life. I think it's really basic, you know.

Q What kind of evidence would you expect to see in a murder case?

JUROR 19: Evidence? Like phones, like was mentioned before –

Q Sure.

JUROR 19: -- location –

Q Sure.

JUROR 19: -- and testimony –

Q Sure.

JUROR 19: -- evidence from other people, witnesses, things like that.

Q Sure. This is awkward calling you by your numbers instead of Mr. or Mrs., so I apologize. But, Number 35, what do you think? What kind of evidence – is that right, you're 35? What kind of evidence would you expect to see?

JUROR 35: Pretty much what they said.

Q Okay. Who here has seen *CSI* or *NCSI* [sic] or any of those shows?

A (Most potential jurors respond by raising hands.)

Q Does anybody expect the evidence that are presented in those shows, do you expect that to be the evidence in a court case? Does anybody expect that to be real life?

A (No response or indication from any potential juror.)

Q What about DNA evidence? Does anybody expect to see that? Okay. I see some heads – let's start, I'll talk to you, Number 1, ma'am, talk about that for a

little bit. What do you – do you expect to see DNA evidence?

JUROR 1: At times. It's not always available.

Q Sure, sure.

JUROR 1: So – and if it does, I think it takes a long time sometimes to match them up. There could be – I'm trying to think how it is, could be not exactly that match, but could be family matched. Just what you see on TV.

Q Sure.

JUROR 1: Yeah, it is like it's TV.

Q Sure, right. Who here says, "Look, I have to see DNA evidence in every case"? Who agrees with that even just a little bit? Who agrees there has to be DNA evidence in every case for the State to be able to prove their case? Who agrees with that even just a little bit?

A (No response or indication from any potential juror.)

Q Who says there has to be phone data? There has to be phone data? You brought it up.

JUROR 19: Right. I don't think that's the only thing at all.

Q Okay.

JUROR 19: I think there's many different things.

Q Okay. Who haven't I talked to? Let's see, Number 42, what kind of evidence would you expect to see?

JUROR 42: (Inaudible)

Q Okay.

JUROR 42: Where was the person at the time that it happened. Fingerprints. Just on both sides there has to be – like I said, there has to be proof of where the – if the person was accused and pleaded innocent, where was

he at the time? Did somebody see that person?

Q Sounds like you'd expect some witness testimony.

JUROR 42: Maybe.

Q Okay. Okay. Number 33, what about you?

JUROR 33: Want to see the evidence of a weapon being used or if that was, you know, the main methodology being presented to us of how the crime was convicted; location of the person; there was videos mentioned, with conclusive, you know, facial evidence of the individual; on top of whatever else anyone else has said.

Q Does anybody agree with Number 33 that a – there has to be – "I have to be presented with the weapon"? Does anybody agree with that just a little bit, anybody? A little bit? Okay. So Number 39. I see, Number 19, you shaking your head. Nope, nope. Okay. Ma'am, in the back, just – you'd have to see the weapon?

JUROR 1: If there were a weapon.

Q Okay. Okay. Well, some of the evidence that you guys have mentioned and the evidence, the State has to use that to prove to you each element of each offense beyond a reasonable doubt, and the Judge has went over this a little bit, and you're gonna hear, if you're selected as a jury, that beyond a reasonable doubt is something that leaves you firmly convinced. That's the burden, you have to be firmly convinced. And so I use a lot of examples, it's just the way I do jury questioning, 'cause I like examples. So, Number 22, do you believe I'm an attorney?

JUROR 22: I do.

Q Why do you believe that?

JUROR 22: You represented yourself as an attorney.

Q You haven't seen my ID.

JUROR 22: Have not.

Q You haven't seen my bar license. You haven't seen my law school degree; right? You don't know me. Why do you believe I'm an attorney?

JUROR 22: 'Cause you're practicing law in front of Judge Gull.

Q You convinced beyond a reasonable doubt?

JUROR 22: I am, yes.

Q Okay. Firmly convinced?

JUROR 22: Yes.

Q Very little evidence to go by though; right?

JUROR 22: Um-hmm. (Affirmative response)

Q Number 23, what about you? Believe I'm an attorney?

JUROR 23: Yes.

Q Why do you believe that?

JUROR 23: 'Cause you're up there and you're talking, you act like you know what you're saying.

Q I appreciate that. But you don't know who I am; right? Are you convinced beyond a reasonable doubt?

JUROR 23: Yes, 'cause the Judge is letting you up there.

Q Okay. Fair enough. Number 21, I haven't talked to you much; what about you, do you believe I'm an attorney?

JUROR 21: Yes, sir.

Q Is there anybody that doesn't think I'm an attorney? Is there anyone that's not firmly convinced that I'm an attorney?

JUROR 19: I would –

Q Number 19, go ahead. Sorry, ma'am, go ahead.

JUROR 19: I would just say no based off of, like, solid evidence.

Q What else would you need to see?

JUROR 19: Like you mentioned, bar license, other people that would tell me that you are, in fact, a lawyer.

Q Okay. So you would need more proof?

JUROR 19: Yes.

Q Okay. So you're not firmly convinced?

JUROR 19: I'm not.

Q Okay. The burden is not beyond all doubt. Very few things are beyond all doubt. Things we see with our own eyes, things we see on video, those would be things that are beyond all doubt. That's not the burden for the State, it's firmly convinced. So it sounds like you're getting closer to beyond all doubt, you want to see – you're not – you don't trust the Judge that she allows me up here, you don't trust that I'm – you don't trust it; is that fair?

JUROR 19: Sure.

Q Okay. That's okay. We want you to be honest. I mean, we want you to be honest with us. And so is there anybody that agrees with Number 19 even a little bit, that, "Hey, I have to see more. I gotta see a bar license. I gotta see – I gotta talk to other judges, other attorneys. I gotta know more. I gotta see your certificate that says you're the elected prosecutor"? Anybody else feel that way?

A (No response or indication from any potential juror.)

Q Okay. Well, sorry, (inaudible). But that's okay, that's what we want to know. That's – those are the kind of things that we want to know. But does

everybody agree that the burden is not beyond all doubt? Does everybody agree that it'd be very difficult for anybody to prove anything beyond all doubt? Does everybody agree with that? I see everybody shaking their hands. Anybody have a problem with the burden on the State? Does anybody think the burden is too low? Anybody think the burden should be higher, that the State should be required to prove beyond all doubt? Anybody at all?

A (No response or indication from any potential juror.)

Q No?

JUROR 19: No.

Q Okay. We meet this burden, as I've stated a couple times, by presenting evidence and, in this case, in the form of physical evidence and then evidence by witnesses, and it's gonna be up to you to determine the weight of that evidence, the strength of that evidence, and how much evidence it takes for you to get to firmly convinced. And if you don't get there, then the Judge is gonna instruct you, you can't enter a verdict of guilty. And so the amount of evidence will depend. Sir, you only needed very little evidence to be convinced I'm an attorney, the fact that I was here, the fact that the Judge let me stand here. Ma'am, you needed more. So it's gonna be different for everybody. And so again, I'm – I love examples and so I'm gonna use another one. Let's say – who do I want – who haven't I talked to yet. Well, I haven't talked to Number 35 yet. Sir – or not much. Let's say – we're not quite to Spring Break, but let's say that you go on Spring Break, and when you come home, there's a giant puddle in your front yard. Can you tell me what happened?

JUROR 35: A flood or something, water, could be.

Q Do you know?

JUROR 35: No, I don't.

Q Are you firmly convinced about what happened?

JUROR 35: I have ideas maybe, assume.

Q Assume? What if you come home and there's a big puddle in your front yard and two sticks in it? Tell me what happened?

JUROR 35: A flood, I guess.

Q Okay.

JUROR 35: I don't know.

Q What if you come home, there's a puddle in your yard, two sticks, and two pieces of coal? Can you tell me what happened?

JUROR 35: Can you repeat that again?

Q A puddle in your yard, two sticks, and two pieces of coal.

JUROR 35: Could be a flood, I guess. I don't know.

Q What about a puddle in your yard, two sticks, two pieces of coal, and a carrot? Can you tell me what happened?

JUROR 35: Food I guess.

Q Food? Okay. We're gonna keep going, see how long it takes you to get there. A puddle in your yard, two sticks, two pieces of coal, a carrot, and a scarf; can you tell me what happened?

JUROR 35: A murder case or something?

Q Okay, let's keep going. A puddle in your yard, two sticks, two pieces of coal, a carrot, a scarf, and a top hat; can you tell me what happened?

JUROR 35: A snowman.

Q Okay.

JUROR 35: I don't know.

Q Firmly convinced?

JUROR 35: Yeah.

Q Okay. Let me go a little bit farther, just make sure I remember all this, puddle in your yard, two sticks, two pieces of coal, a carrot, scarf, top hat, and a name tag that says “Frosty”.

JUROR 35: Snowman.

Q Firmly convinced?

JUROR 35: Yeah.

Q Okay. Who was convinced before the name tag, firmly convinced?

A (Some potential jurors respond by raising hands.)

Q So, Number 33, sir, when were you convinced of what happened?

JUROR 33: The carrot, once you got to the carrot.

Q Fairly early.

JUROR 33: Yeah.

Q Firmly convinced at that point?

JUROR 33: Yes.

Q Okay. Who else raised their hand? I’m sorry. Number 19, when were you convinced?

JUROR 19: I think it was the top hat.

Q Top hat? Okay. All right. Number – sorry, ma’am, Number 23?

JUROR 23: The carrot.

Q The carrot? Okay. Anybody else have anything different? Sir, Number 20?

JUROR 20: Just putting all the pieces together like a puzzle.

Q Sure, sure. Ma’am, Number 1? Sorry.

JUROR 1: That's okay.

Q I got to keep looking at your numbers. I'm used to calling you by the names and we don't have those, so –

JUROR 1: It seems to still be a puzzle missing, because if it's spring, I've never had a snowman in my yard in spring –

Q Sure.

JUROR 1: -- unless he was made out of ice blocks –

Q Sure.

JUROR 1: -- so I'd still need a little bit.

Q You'd need more?

JUROR 1: Yeah.

Q So you would need something to the effect of there was snow on the ground when you left for Spring Break?

JUROR 1: Yeah.

Q Okay. Fair enough, fair enough. Anybody else agree with that, they would need more?

A (No response or indication from any potential juror.)

Q Okay. And so that covers kind of the physical evidence, the physical evidence aspect of the case. There's also testimonial evidence of a case. You're gonna hear from testimony from witnesses and it's gonna be up to you to judge the credibility of those witnesses, and so I want to talk a little bit about what kind of things you're gonna look for when you judge credibility of a witness, and not necessarily just a witness, just any person. So, sir, you've been on a jury before, three of them. It was back in your 20s, I think you said.

JUROR 21: Yeah, a long time ago.

Q Long time ago? Do you remember any part of it?

JUROR 21: I remember some of them, yeah.

Q Okay. How was the experience for you? I've never had somebody been on three juries before. I'm from a very small county, usually it's one at best.

JUROR 21: Yeah. It – you know, two guilty and one not guilty. You know, they're just one-day trials. They were – most of – the State did a pretty good job except for the one that we said not guilty.

Q Sure.

JUROR 21: We couldn't go along with it.

Q Sure.

JUROR 21: I think they were stretching it.

Q Was your experience through that process a generally positive one?

JUROR 21: Yeah.

Q Okay. So in one or all of those trials, did they have witnesses testify about evidence?

JUROR 21: Some.

Q Some? What kind of things did you look for to determine whether or not that witness was credible?

JUROR 21: Basically – how do I say this? You know, it's hard to tell what's inside the person's heart, so basically the questioning of the witness and stuff like that to draw out the information to help prove them credible.

Q Okay. So I want to try to summarize this a little bit. Consistency in statements, would that be something you'd look for?

JUROR 21: Yeah, yeah.

Q Okay. Number 18, what are some things you would look for to determine

whether or not someone's telling the truth or someone's credible on the stand? Sir, what kind of things would you look for to determine whether or not someone's credible on the stand?

JUROR 18: Are you asking me?

Q Yes. Number 18, yes. Yes, sir.

JUROR 18: Sorry.

Q That's okay.

JUROR 18: No, I – restate the question, 'cause I was sort of lost in thought.

Q Okay.

JUROR 18: I have ADHD, so forgive me.

Q Sure, sure, sure. What kind of things would you look for – when a witness is testifying, what kind of things are you gonna look for to determine the credibility of that witness?

JUROR 18: Well, there's a lot of things.

Q Okay.

JUROR 18: A lot of things. Credibility of anyone, you – you know, you gotta watch their body language, their facial expressions –

MR. ROZZI: Judge, may I?

JUROR 18: -- you know, how they behave –

MR. ROZZI: Could you just please – I'm sorry – just maybe ask the jurors to speak up a little bit? It's just a little hard to hear.

JUROR 18: Oh, sorry.

THE COURT: Yeah, just make sure you talk up nice and loud.

JUROR 18: Okay. I'll try to –

THE COURT: It's hard to get all the way across –

JUROR 18: -- enunciate more. I am soft-spoken. There's a lot to look at. You know, I grew up in an abusive household, there was emotional abuse, and so I had to learn how to navigate that situation. I had to learn how to figure people out.

Q Sure.

JUROR 18: And one, when your emotions are not involved in it, you can feel other people, like the energy of a concert or energy of a church or the energy of this courtroom. I feel your nerves. We have senses, you know, not just, you know – we have senses –

Q Sure.

JUROR 18: -- and we need to pay attention to them. And when you don't pay attention to your senses, that puts you in danger.

Q Okay. Fair enough.

JUROR 18: And to – and also, how else do you tell but people's behavior, their – how they – they portray themselves. A good example is I believe an honest person, when they speak from their heart, they don't think too much about it, they just say it like it is.

Q Sure.

JUROR 18: And when a person's trying to hide something, they avoid eye contact, they avoid the question, they make excuses, they don't take accountability.

Q Sure. All good points. Talked about some eye contact, talked about truth is easy to talk about. Sir, Number 20, what kind of things are you gonna look for to determine credibility that hasn't been mentioned? We talked about eye

contact, consistency in story, truth is easy. What other things are you gonna look for?

JUROR 20: Look at some of the evidence, like say photographs of the crime scene, things that have been disturbed or out of place.

Q What if a witness is nervous? Is that something that's gonna – something you're gonna look at to determine whether or not they're credible?

JUROR 20: They might leave some things out if they're nervous.

Q Who agrees that they're gonna look at nervousness, nervousness of the witness, as something to determine credibility? Okay, Number 18. Ma'am, Number 1, what kind of things are you gonna look for?

JUROR 1: Mostly I think consistency of the story.

Q Okay.

JUROR 1: Eye contact could be just they're a little bit ADHD or they have another ailment where they really can't look at somebody; it's not necessarily, in my opinion, they're lying.

Q Sure.

JUROR 1: It's the consistency more.

Q Okay. Would nervousness be in there with you with eye contact?

JUROR 1: Probably, 'cause I'm nervous –

Q Yeah. Who's nervous –

JUROR 1: -- with all these people staring.

Q Can you imagine if you were sitting here –

JUROR 1: No.

Q -- being asked questions by myself and Mr. Rozzi and Mr. Baldwin? I mean, we agree witness – likely, a witness is nervous when they testify?

JUROR 1: Yes.

Q Something to consider. Does anybody have anything different? Ma'am, Number 53, do you have anything different from what's been said?

JUROR 53: I just would put it all together.

Q Good.

JUROR 53: The eye contact, the movement, even how they, you know, speak and sometimes they pause, and everything like that. I just watch it all –

Q Good.

JUROR 53: -- and put it together, an opinion.

Q Okay. Ma'am, I haven't talked to you much, Number 39; what kind of things would you look for?

JUROR 39: Mostly the things that have already been stated. I feel like consistency is right, because even if you're nervous, if you're telling the truth, it's easier to tell the truth consistently because it's the truth.

Q Sure.

JUROR 39: Although nervousness does play a huge part.

Q Sure. Why – we expect everybody to tell the truth on the stand, the Court expects that, attorneys expect that. Why would somebody lie?

JUROR 39: Because they think they can get away with it.

Q Ma'am, why would someone lie?

JUROR 1: They just lie. Some people do.

Q Okay. Anybody else have any other reasons? Number 19?

JUROR 19: Maybe to protect someone that they care about.

Q Perfect. That's the first thing that comes to mind. Sir, Number 18?

JUROR 18: Wanting to believe their own delusion.

Q Sure. Yeah, the things I had written down are to protect someone, just because they lie, to protect themselves a lot of times, believe their own delusions. What about the testimony – are you gonna give someone more credibility simply because of what they do? And, ma'am, I'm gonna focus on you, 'cause your son's a cop. If an officer gets up here and testifies, you gonna give him more credibility simply because he's a law enforcement officer?

JUROR 1: Unfortunately, probably not, because he's human –

Q Okay.

JUROR 1: -- and all humans, whether intentional or not, make mistakes.

Q Okay.

JUROR 1: So I would have to say no.

Q Ma'am, what about you in the back row, Number 42, sorry, what do you think? Are you gonna give a law enforcement officer more credibility simply because he's a law enforcement officer?

JUROR 42: No.

Q Okay. I'm gonna make it harder, what if it's a preacher? Gonna give him more credibility simply because he's the preacher?

JUROR 42: No.

Q Anybody gonna give someone more credibility simply because of what they do?

A (No response or indication from any potential juror.)

Q Okay. All right. Some final thoughts here. I've done a lot of jury trials in the past couple years and a common theme that I hear – in my courtroom, I'm

able to talk to the jurors afterwards, and a common theme that I hear is that it is difficult for jurors to convict somebody, to pass judgment on somebody else. And so is it difficult for anyone here – does anyone have the belief that they are not in a position to be able to pass judgment on anyone else? Who agrees with that?

JUROR 18: Kind of.

Q Kind of?

JUROR 18: Well, I think it's not about – judgment's a tricky thing, you know. You can't just judge – pass judgment on everybody until you have all the information, and then it just comes down to what the truth is, and the truth is – will be the judgment. I think that's what that boils down to.

Q Anyone else have an issue? Ma'am, Number 39?

JUROR 39: I think if it was me personally, if I was the only one passing judgment, then yes, it would; but with the 12 people, we're trying to come to a consensus and it's not one person -

Q Sure.

JUROR 39: -- passing judgment.

Q Sure, sure. Now, one of the things that you're gonna learn is that you can't worry about the punishment portion, you're only here to determine the facts and to determine whether or not I, as the State, have met my burden, whether or not you're firmly convinced. And so I'm gonna ask all of you: If the State does meet its burden and if you're firmly convinced that we've proven each element of each offense beyond a reasonable doubt, will you be able to enter a verdict of guilty? Is there anybody that has reservations about that, whether it's personal beliefs or religious beliefs?

A (No response or indication from any potential juror.)

Q I live in an area where there is a large German Baptist population, they are not allowed to pass judgment on anyone, and I know that follows along in other beliefs. Anybody in that position where, regardless of what the State – if they make the burden or not, I am not in a position where I could pass judgment? Anybody have any concerns about that? I know you said if it was just you, but with the group, you're okay. Okay.

THE COURT: You have a minute left.

MR. MCLELAND: Thank you, Judge.

Q I gotta finish up. Is everyone comfortable with being a juror on this case? Kind of not?

JUROR 18: Well, here's the thing, I don't want to – like I said, I'm not messing around with who I am.

Q Sure.

JUROR 18: I'm very in tune to what the truth is.

Q Sure, sure.

JUROR 18: And I could be an asset to the case in many ways, more than being a juror.

Q Anybody else uncomfortable with being a juror?

A (No response or indication from any potential juror.)

MR. MCLELAND: Okay. Thank you, Judge.

THE COURT: Mr. Rozzi.

MR. ROZZI: Thank you, Judge.

VOIR DIRE BY THE DEFENSE – MR. ROZZI

ANSWERS BY POTENTIAL JURORS.

Q All right, ladies and gentlemen, I appreciate your time today and I'm gonna do my best to try and talk loud. I can't hear very well and some of the things that were being said back there, unfortunately, I wasn't able to hear everything, but I don't want to keep interrupting, so I'm gonna try to reciprocate by talking loud and so that way it'll be a little bit more efficient when we get some of the rest of you in the box later this morning. So forgive me if it seems like I'm yelling. But that's also what you do when you can't hear – right? – is you yell. My grandpa used to do that. So let's talk about human behavior, let's talk about human behavior. And, you know, we're gonna be using numbers today, which again, is a little impersonal. Typically when I do this – there's different rules in different counties and even in different courts within the counties, and so there's nothing that's right or wrong about this, I'm just used to using names, so forgive me if this seems a little, you know, unusual to call somebody by a number, but that's okay. Number 39, let's talk about human behavior. What kind of things would you expect to see from someone who did something wrong, committed a crime? Let's say your brother comes home one day and, you don't know this, but he had committed a robbery with some of his friends. What kind of things would you expect to see from him behaviorally that might tip you off to that?

JUROR 39: I would definitely say probably some nervousness, unability to concentrate, maybe some misdirection even before I thought anything was wrong, he might try to, like, over-explain things of where he had been, to try to set something up to say that he hadn't been somewhere.

Q Okay. So nervousness –

JUROR 39: Yeah.

Q -- which is his demeanor; right?

JUROR 39: Um-hmm. (Affirmative response)

Q You're just saying like, “He's just not acting like he usually does”; right?

JUROR 39: (Responds by nodding head in the affirmative.)

Q Is that fair?

JUROR 39: (Responds by nodding head in the affirmative.)

JUROR 18: No.

Q Hold on one second here, I'll get to you. Appreciate that. And you're also suggesting that he might start to say some things that are inconsistent, is that what I heard? I'm not trying to put words in your mouth.

JUROR 39: Yeah.

Q You agree with that? Okay. So he's acting a little nervous and he's saying some things that, you know, maybe aren't very consistent. Sir, what about you? What do you think, what kind of things?

JUROR 22: Probably a change in his habits.

Q Good, yeah.

JUROR 22: His personality, and may become introverted.

Q Okay.

JUROR 22: Stay more to himself possibly.

Q Okay. So a change in habits? That’s interesting.

JUROR 22: In habits.

Q So – yeah, you know, instead of going to the grocery store or going to the coffee shop every morning at 8, maybe those patterns change, or maybe his eating patterns change, things like that?

JUROR 22: Correct.

Q Okay. All right. Very good. Anything else?

JUROR 18: Yeah, I have something. Also, some people who are really used to being in uncomfortable situations, like they're pathological, have an issue, they get very comfortable with behaving normally –

Q Okay. So maybe they're –

JUROR 18: -- while they're basically masking their behavior.

Q All right. Okay.

JUROR 18: They have self-mastery over what their emotions look like, no matter what they're feeling on the inside. But, like, if you put them on a lie detector, their heart would be pounding, and they're basically just cool as a cucumber.

Q All right. Okay. What do you think? What kind of things would you expect to see out of somebody who did something wrong?

JUROR 20: They could be avoiding places or avoiding certain topics of conversation.

Q Avoiding places?

JUROR 20: Yeah, like maybe a place that –

Q Like maybe the police department, might that be one of them?

JUROR 20: Yeah, or the area where the crime happened.

Q Yeah, yeah, right. Stay away from the crime scene; right? Maybe stay away from police? You agree with that or not?

JUROR 20: I agree with that.

Q Okay. What are your thoughts, ma'am?

JUROR 42: Just behavior being different, pacing, nervousness, spaced out, not listening to what people say.

Q Okay.

JUROR 42: I agree with some of the other things that some people said.

Q All right. You got any thoughts that we haven't heard?

JUROR 35: I agree with what they said, paranoid, watching your back, you know, pretty much.

Q Okay. What about flight? What about just taking off; right? I mean, I – in my mind, that might be one of the most common things you would see from someone who did something wrong; right? Getting the hell out of here. Does that make sense? Does anybody – what are your thoughts on that?

JUROR 1: Well, if it was my brother, I would know, yeah, maybe he would be thinking that. But if I don't know them, it's like, I don't know. You'd have to see what his other actions are, if he's consistently the same way.

Q Okay.

JUROR 1: Does that make sense?

Q Yeah. That's fair. I appreciate that. Yeah, go ahead, fire away.

JUROR 42: If somebody disappears, I mean, they're making themselves guilty, so it depends on the case. If somebody comes home and acts – tries to act normal, but yet you see they're a little nervous and things change about the way they go about their day, you would be a little tipped off.

Q Okay. But disappearance would be one more obvious explanation for somebody's guilt; right? Is that what you're saying?

JUROR 42: Yes.

Q Okay. I have a tendency to say some – kind of put words in people's mouths sometimes, so just tell me, "Hey, Rozzi, that's not what I said"; okay? And what do you think? What about destroying evidence?

JUROR 19: Yeah, I think that would definitely happen. Anything to really get off of the trail, I guess.

Q Okay. So kind of a cover-up?

JUROR 19: Yeah.

Q All right. Okay. What would your thought be if someone actually did the opposite, that they – we talked about it earlier about flight, but what would your thought be if somebody didn't flee, but they actually went and cooperated with the police?

JUROR 19: I feel like that can happen, too, with someone guilty, because –

Q Okay.

JUROR 19: -- I mean, the same effect of getting someone off their trail.

Q All right. I appreciate that. I hadn't thought about that. So explain that a little bit more to me; what do you mean by somebody would do that to try to get somebody off their trail?

JUROR 19: Yeah. I mean, if you're looked at as like you're cooperating, it could make you seem not guilty of something.

Q Okay. Do you think it's more likely or less likely that somebody cooperates would be responsible for something bad?

JUROR 19: Oh, I don't – I think it would probably be half and half, I think it would probably be 50/50.

Q Okay.

JUROR 19: I don't know if there'd be a trend with that.

Q All right. I appreciate that. Your thoughts, sir?

JUROR 33: For?

Q What do you think about cooperation?

JUROR 33: I think it depends on how good they think they covered themselves up. If they're cooperating, then they're just gonna walk through everything like normal and act like nothing happened; but if it's something where they think they might have made a mistake, they'll – they could flee or do whatever.

Q Okay. So if they think that there's maybe a lot of evidence that they may be responsible, then, "Hey, I'm gonna run"; right?

JUROR 33: Yeah.

Q But the alternative is, "Hey, I think I'll cooperate"?

JUROR 33: Yeah.

JUROR 18: You know, there's – we all know the term, it's hiding in plain sight.

Q What's that?

JUROR 18: Hiding in plain sight.

Q Oh, yeah. Yeah, I've heard that phrase before. All right. Appreciate your thoughts. Let's move on. Let's talk about Rick's right to remain silent. Has everybody heard that phrase in this business? Okay. What do you think that means?

JUROR 21: Right to remain silent?

Q Sorry, Jodie. Sorry, I gotta put my mic down. I've gotta work out a few kinks here.

JUROR 21: That's all right.

Q Yeah, what's that mean to you?

JUROR 21: I think, to me, it's his right to not self-incriminate himself type of thing. I mean, as a person who actually had to fight, I was accused of something and I had to fight for the truth to prove that I was innocent, which I did type of thing, you know, I didn't reserve my rights to talk. In fact, I was – fully, you know, shared everything type of thing, but I think a person, you know, has a right to wait for an attorney before they say anything type of thing. I mean, just to be honest with you, I just – in today's – what's going on in today's world with politics and stuff like that, I can see, most people, why you wouldn't want to say anything until you talk to an attorney, because I just – I have a trust issue.

Q All right. I appreciate that. So you've kind of been in this position and –

JUROR 21: Yes, I have.

Q -- when you're accused of something –

JUROR 21: I was, yes.

Q -- the way you feel is just different about your rights and about –

JUROR 21: Right. I wasn't arrested.

Q -- how you're gonna act?

JUROR 21: I just had to hire an attorney. He gave me some guidance. This is something that happened like 9 months prior and I didn't even know where I was or the timeframe and stuff, and in digging through my checkbook and finding out where I was, I was able to provide the evidence that, "This is where I was at that time."

Q You had to have somebody with a independent mind and that wasn't under the same stress you were in –

JUROR 21: Correct.

Q -- to speak for you basically; right?

JUROR 21: Yes.

Q Okay. All right. What about somebody who is accused, but doesn't want to get up here and talk in their own trial? I mean, I talk to jurors fairly routinely and one of the things that I often hear is, "Oh, if somebody accused me of something I didn't do, I'd be right here, right here in this seat." What are your thoughts about that? How do you feel about that?

JUROR 20: I would say if I wasn't guilty, I'd want to say my peace of why I wasn't guilty based on the guidance of my representation.

Q Okay. What are your thoughts?

JUROR 34: I agree with that.

Q You feel the same way?

JUROR 34: Yeah.

Q Like, "Oh, I think I'd be totally ready to get up here"?

JUROR 34: Yes.

Q Okay. Your thoughts?

JUROR 1: I agree with that. I would like to be represented though, because sometimes I say stupid things because I'm nervous.

Q All right.

JUROR 1: When I get nervous, I'll say something –

Q Yeah, right.

JUROR 1: -- that's wrong.

Q You get nervous, you might say something stupid.

JUROR 1: Yeah, like just now.

Q In the most critical moment of your life possibly.

JUROR 1: Right. I definitely know I would say something.

Q Okay. What about you? What are your thoughts? Would you have to get up here and speak your peace?

JUROR 53: No. I would always go to an attorney, that's what they're there for. And really, how many people know all of the laws and ins and out when it comes to what they're being tried for?

Q So you'd listen to your attorney's advice?

JUROR 53: Yeah.

Q "Hey, that man or woman's got some experience and they're in a better position to tell me whether or not it's right for me to go up here or not"?

JUROR 53: Yeah. And also too, because you're paying him.

Q Oh, okay. Cha-ching, cha-ching. All right. I get it, I get it. Okay. What about the fact that somebody might sit in this chair, this wooden chair, and might not be themselves in that moment? Am I blowing steam here or do you think that that's a real concern?

JUROR 19: Yeah, I agree that is a concern. And what I was thinking before too, testifying, even if you aren't guilty, can – being able to be cross examined can put you in a vulnerable –

Q Ah.

JUROR 19: -- spot.

Q Being questioned by a skilled examiner; right? Somebody that's sitting at one of these tables possibly?

JUROR 19: Yeah.

Q So even if you're not nervous, it might be a circumstance where, "Hey, look, I don't want to expose myself to somebody that really knows how to ask

questions in a skilled way"; right? I've heard that one before, not often, but that comes up. So that would be a reason. If the Judge instructs you – if you're seated as a juror and the Judge instructs you at the end of the case and says, you know, you may not consider that as evidence of guilt – I mean, it's – those are words on a piece of paper, frankly. But tell me how you feel about those words and whether or not you can carry that out. I don't want a "yes" or "no", I want you to tell me how you feel about it.

JUROR 39: It would be hard, 'cause, I mean, I've never been a part of a jury before, but I have, you know, seen on TV and I – you know, "Jury, you may not, you know, take that into account," and I've always wondered how people can do that, because you've heard it. Once you've heard something, it's hard to unhear; you can't unhear it.

Q Yeah, you can't put it back in the bag; right?

JUROR 39: Yeah. But I'm a nurse and I take care of people, and I take care of a lot of people who are angry or sometimes a little aggressive, the majority of the time it's 'cause people are in pain, so I can – I have been able to completely ignore what's happening at the moment and focus on what I need to do, so I think I would bring kind of the same – you now, the same thought to that, like I –

Q You're able to put your emotions aside, is that – am I reading you right?

JUROR 39: Yeah.

Q In other words, you work in some kind of traumatic circumstances from time to time, people that are under pain, and you're able to just kind of calm things down?

JUROR 39: To look at now and not maybe everything that's behind

the now, but just to look at what's happened at the moment.

Q Okay. What if somebody else here says, “You know, that guy should have got up on that stand and defended himself”? You know, what if she's on the jury and she says that to you? What are you gonna say to her during deliberation if you have this instruction in front of you?

JUROR 39: I mean, I would say – I don't know if – I would like to think that I could get up, if I was accused of something, and say my peace and be done, but I don't know if I could. Like, I don't know if I would have all of the words, so I am not going to say that somebody else should do that for themselves.

Q But what I'm saying is if the Judge tells you, you can't consider that as evidence of guilt, and somebody else in this panel is saying, “We should have heard from him” –

JUROR 39: Oh.

Q -- are you going to be able to –

JUROR 39: Yeah.

Q -- be the whistleblower?

JUROR 39: Yeah.

Q I mean, some people don't have that in their system, there just can't tell other people, “Hey, that's wrong.” Do you think you could do that?

JUROR 39: I think so.

Q What about you? You were in a jury trial one time; right? Murder case?

JUROR 20: Yep.

Q Were there people in that circumstance that, you know, weren't following the law or the instructions that you're given?

JUROR 20: The defendant tried to lie his way out.

Q The defendant tried to lie his way out you said?

JUROR 20: Yeah. Blame it on the guy he killed.

Q Okay. Was that a pretty easy decision in that case?

JUROR 20: It –

Q I mean, was the evidence pretty firm?

JUROR 20: Like two or three days worth of a court hearing.

Q Okay. But was it a situation like where there were a bunch of eyewitnesses? Was –

JUROR 20: Security footage.

Q Oh, there was a video?

JUROR 20: Not of the murder, just of where they entered the vehicle and then took off.

Q Okay. So a really short timeframe and some video that really helped make those decisions?

JUROR 20: Yeah, within maybe a 15 or 20-minute window.

Q Okay. And were the images on the video pretty easy to discern, “Hey that's obviously Bob Smith” or “Susan” –

JUROR 20: Yeah, kind of like how they walked or what kind of drugs they were on or something like that.

Q Okay.

JUROR 20: Their body language was different from a normal person.

Q Okay. What about you? Somebody's – the instructions tell you, hey, you can't hold it against this guy if he doesn't want to testify. Are you able to tell other jurors, that “You know what? That's not fair, you gotta follow the rules”?

JUROR 21: So basically, you're saying if something came up and we're told to disregard it?

Q Yeah.

JUROR 21: That's gonna be very difficult. I mean, once you hear or see something, it's just not like you can erase it. I mean, you'd have to weigh it in with the facts of everything else that happened, but it could be very difficult.

Q But what I'm saying is, is if you go back in the jury room at the end and the Judge tells you you're not to consider his non-testimony as evidence of guilt –

JUROR 21: Oh.

Q -- and one of these other jurors is like, "Ah, we should have heard from him."

JUROR 21: Well, I believe if that if you're innocent, you should stand up and fight for your innocence.

Q That's what you believe?

JUROR 21: That's what I believe.

Q All right. I appreciate that, because that's important to me. So are you telling me that if the Judge instructs you that you may not – give me a second – that you may not consider someone's non-testimony as evidence of guilt, you just couldn't do that?

JUROR 21: I would say that if the person did not want to testify, I would not say – he's not necessarily guilty, no. But if – me, as a human being and fighting for my innocence, I'm gonna stand up, I'm gonna fight.

Q Okay. So if the Judge instructs you that you may not consider someone's choice not to testify as any evidence of guilt, you're not gonna be able to follow

that instruction; right?

JUROR 21: It'd be difficult.

Q Okay. Impossible almost?

JUROR 21: Not impossible. It'd be difficult.

Q Okay. Well, it seems ingrained in you as I'm sitting here talking to you, it just seems that way to me.

JUROR 21: Yeah.

Q Do you think that all of a sudden, in – over the course of a couple days of deliberations, that you could just put that aside, forget about your past?

JUROR 21: Put aside your past? That plays an integral part of who you are.

Q Right. So probably hard to follow the instructions under those circumstances, 'cause your gut's just telling you something different?

JUROR 21: Yeah.

Q Okay. I appreciate that. I mean, look, I want to know.

JUROR 21: Yeah.

Q It's fair; right?

JUROR 21: Um-hmm, sure.

Q I'm not ask – am I asking questions – okay, I just want to make sure.

JUROR 21: It's your job.

Q All right. Let's talk about statements.

JUROR 18: Um –

Q I'll get to you in a minute. This is important, you've already heard this in mini-opening that you're gonna hear that Mr. Allen said some things that were incriminating; okay? And I want somebody here to tell me why – why don't you

tell me why somebody would say something incriminating, that's against their interest as we say; right? It's a statement against your interest.

JUROR 35: I don't know.

Q Well, what about because you did it?

JUROR 35: I might have.

Q I mean, is that possible?

JUROR 35: Yeah.

Q What do you think?

JUROR 19: Why –

Q Why somebody would say, "I committed a crime."

JUROR 19: Like you said, because they did it or, I mean, mental health can play a factor sometimes.

Q Okay.

JUROR 19: Or just kind of mental health along with wanting to get it over with and, like, and everything that – you know, whatever is happening at that period of time –

Q Okay.

JUROR 19: -- being questioned or, you know –

Q Boy, that's a whole bucket of good stuff here. Okay. So one of them is 'cause you did it; right? The second one might be because you want something to end, you want this to be over; right? Maybe there's some pain involved in what you're going through or some suffering and you're like, "You know what? I just have the ability to end all this." But does that mean it's true?

JUROR 19: It doesn't mean it's true.

Q It's an explanation for why you would say something, but not necessarily

mean it's accurate; right? You're a nurse?

JUROR 39: (Responds by nodding head in the affirmative.)

Q She said mental health; right? Forgive me, but you – I think you told me – told us in your questionnaire that maybe you suffer from some depression?

JUROR 53: Yeah.

Q Okay. I appreciate that, because I understand it's hard for people to talk about those kind of things, but it's really important for us to know that. Can you tell me how might somebody who's depressed be impacted by accusations or allegations that they did something really bad?

JUROR 53: Well, first of all, because if he is taking medication for it, and how I see it, sometimes when they pull you in and interrogate you, it's not a couple hours, that could be a long time and they just keep repeating themselves, repeating themselves until they mentally break him down, until he can't handle it, "I'm just gonna say I'm guilty."

Q One man can only handle so much; right?

JUROR 53: Yep.

Q Okay.

JUROR 53: Everybody's different. Maybe it could go on for days, who knows they will – how long it'll go on.

Q But do you think that someone with depression, with that underlying condition like you have, would be impacted by that more than somebody without it?

JUROR 53: Yeah, I'd probably have a few choice words, you know, like, "Give me a break," but it wouldn't be so nice.

Q Uncle; right? That's what we say when we were kids, "Uncle", I give up;

right? Give me a break.

JUROR 53: Yep.

Q So mental health one of those factors that might cause somebody to say something that's just not true. Can anybody think of any others? Actually heard I thought earlier, maybe during jury selection, somebody said that you were taking the blame for others. Did somebody here say that? Or was that just you?

JUROR 19: I wasn't the one that said that.

Q You remember that?

JUROR 39: Yeah, I thought somebody said something about taking the blame for somebody else.

Q Yeah, yeah, I'm pretty sure I'd heard that earlier.

JUROR 19: I heard something –

Q We all heard it, but nobody has any idea. Okay. All right.

JUROR 19: I think I said to protect.

Q Protect somebody else, yeah. That's another reason; right? To take the heat off of somebody else; right? My first thought is, "Hey, look, I'm gonna admit to this so that my buddy over here, who really did it, doesn't get in trouble." Like I'm one of those kind of friends; right? But what about the idea that putting something to an end might cause other people to feel peace, because you're more worried about their emotions and feelings than you are your own? Are you – you think I'm selling a bag of goods here or –

JUROR 42: No.

Q -- are these all fair things to talk about?

JUROR 42: Yeah.

Q Is there anything you're thinking like, “Hey, Rozzi, hasn't said this yet”?

JUROR 42: Not really.

Q Okay.

JUROR 42: I was just thinking the same thing, when someone’s nervous or pressured, sometimes they'll just give up.

Q Yeah. You're just overcome; right? You're overcome. We all have a breaking point.

JUROR 42: Yeah.

Q Okay. What about just the conditions that you're in? I mean, let's think about – I don’t know, the one that comes to mind for me, it's pretty obvious I think for most, is Guantanamo Bay; right? Those two words mean something to people. What about being in conditions that are just substandard? Do you think that that has an impact on – that might have an impact on what somebody's willing to do or say?

JUROR 23: Yeah, because you're under such pressure and you're tired.

Q Exhaustion can make you say something you might not –

JUROR 23: Exactly.

Q -- that might not be true. Okay. All right. I appreciate that.

MR. ROZZI: How much time? Just trying to stay organized here.

THE COURT: You have four minutes.

MR. ROZZI: Four?

Q Let's talk about burden of proof in four minutes, it's a crash course. All right. Mr. McLeland talked about it. We can – two lawyers could talk about this for a week, but here's my chart. I tried try to dumb this down. These, starting

right here, beyond a reasonable doubt, clear and convincing evidence, greater weight, probable cause, and reasonable suspicion are all the burdens of proof that we deal with in our business; okay? Beyond a reasonable doubt being the most significant, that's the top of the mountain, and at the bottom down there, reasonable suspicion. You see those? Okay. Reasonable suspicion, this is what it takes to, basically, stop somebody for a traffic violation. Probable cause, this is the standard for arresting somebody. Greater weight of the evidence, the standard in a personal injury case, 51/49 kind of stuff; right? Like "Hey, you hit him – you ran into him at the stoplight" and who's responsible, 51/49. And then clear and convincing evidence, this is the standard we use to terminate somebody's parental rights in the state of Indiana. Pretty big deal; right? But up here is the highest, proof beyond a reasonable doubt; okay? This is the one we're dealing with in this case. So tell me, do you have a problem applying the most highest of standards in this case? What do you think?

JUROR 42: Do I have a problem?

Q Yeah, do you have a problem –

JUROR 42: No.

Q -- holding them to this highest of standards?

JUROR 42: No.

Q No? Okay. Some people tell me, "Wait a minute, you can terminate somebody's parental rights with less proof than you can find somebody guilty of a crime?" Does that seem a little strange?

JUROR 39: I don't think so.

Q What's that?

JUROR 39: No, I don't think so.

Q Okay. So you believe a criminal accusation is even more important than terminating someone's parental rights? Or at least equal?

JUROR 39: I think they're very close.

Q Okay. So maybe we move this one up a little bit; right?

JUROR 39: Um-hmm. (Affirmative response)

Q Okay. All right. Anybody have a problem holding Mr. McLeland and his team to this standard?

A (No response or indication from any potential juror.)

Q No? Okay. Ma'am, you said that you might have an intellectual issue, I think I saw on your questionnaire.

JUROR 23: What?

Q Did you report that you had an intellectual disability on your questionnaire? The questionnaires are a little jumbled, so – you didn't say that?

JUROR 23: No.

Q Okay. All right. I just wanted to – I definitely have one here, I was maybe confused about that. Where are we on time?

THE COURT: You have four minutes.

Q All right. Let's talk about government processes; okay? The government use different processes – let's talk to you. Can you think of any government process that you're like, "You know what? I don't really trust that process"?

JUROR 22: A government process I do not trust? I don't think they're perfect, but I do trust them.

Q All right. Well, can you think of any one example?

JUROR 22: That I have less trust for than others?

Q Let me throw one out there --

JUROR 22: Okay.

Q -- just help you.

JUROR 22: Thank you.

Q We're limited on time. What about unemployment, the process of getting unemployment benefits in this country? Is that a process that you think is perfect?

JUROR 22: Not perfect, no.

Q Okay. Why do you think it's not perfect?

JUROR 22: In Indiana, I think you have to actively go out and pursue jobs periodically throughout the week. There's really no verification, I don't believe, that someone is actually going out, they're just reporting that they're going out.

Q Okay.

JUROR 22: The process can be (inaudible).

Q Okay. But the government adopts that process; right? We all live by it?

JUROR 22: Right.

Q So do you think there's other processes the government has that, hey, we have to live by them, but they aren't perfect?

JUROR 22: Correct.

Q Okay. So just because the government rubber stamped something doesn't mean that we should all rely on it every time – every point in our life; right?

JUROR 22: Right.

Q Medicaid would be another thought, I had a few others here. COVID protocols – right? – recently. We all had different opinions about the government's opinion on that, didn't we?

JUROR 22: We did.

Q Okay. So it's okay – can you be critical – let me ask you, can you be critical of a government process?

JUROR 33: Yes.

Q Okay. Even if the government adopts it and says this is what we use?

JUROR 33: Yes.

Q Okay. Can you think of any processes that I haven't that might be in dispute, or not credible or reliable?

JUROR 33: The main one was COVID, that popped up in my head.

Q Okay. All right. What about government operations like things like the Space Shuttle program; right? Put a lot of money and effort into that. Is that always reliable?

JUROR 39: No, I would assume not.

Q All right. But we're willing to strap people on a rocket ship and send them up to space; right? The government promotes that; right?

JUROR 39: Um-hmm. (Affirmative response)

Q But reliable?

THE COURT: You have a minute left, Mr. Rozzi.

MR. ROZZI: Thank you, Judge.

JUROR 39: It's the best systems we've got right now. They're not all 100 percent.

Q Okay. And you're willing – are you willing – if you were to hear evidence of a government system, are you willing to scrutinize that and say, "You know what? Yeah, the government adopts that, but that doesn't mean it's necessarily the best thing going"?

JUROR 39: Yes.

Q Okay. Some people just think because the government rubber stamps something, it's okay.

JUROR 39: You may have to follow the law, but you have to kind of, like you said, scrutinize it.

Q Okay.

JUROR 39: Go through it.

Q I'm going to say one more thing and I'm gonna finish up here. It's gonna be a long trial and we're gonna be sitting over here at our table, they're gonna be sitting at their table for 30, 45 days, and the one thing that might happen is you might see Mr. Baldwin and I laughing about something or Ms. Auger and I laughing about something or Mr. Allen and I laughing about something, and I'm just asking you to understand that we've been dealing with this for a long time, there's a thing called gallows humor in my business which, this is a real serious business, but sometimes, because you deal with this stuff all the time, that sometimes you just have to smile and laugh and it's one of the ways we deal with that. And I'm just asking you not to hold that against us, to be sitting over there thinking, “Oh, Rozzi thinks this is funny.” Because I don't think this is funny and I don't want you to think that. Do you understand that? Is that fair for me?

A (No response or indication from any potential juror.)

Q Does somebody have a problem with that?

A (No response or indication from any potential juror.)

MR. ROZZI: Okay. I appreciate your time. Thank you. Thank you, Judge.

THE COURT: Counsel may approach when you’re ready.

(Sidebar conference conducted.)

THE COURT: Okay. So you are in agreement on seat 6 for cause. I don't need to hear anything else about that.

MR. ROZZI: That's the only thing unanimous we've agreed on in two years.

THE COURT: Um-hmm. (Affirmative response) And then, the State is asking for cause on seat 11.

MR. ROZZI: Asking for who?

MR. MCLELAND: Seat 11.

MR. ROZZI: Seat 11? What was the basis for it?

MR. MCLELAND: I'm asking for cause just because, I think Mr. Rozzi is right, she lied on her – she lied in here today or she lied on the questionnaire about having an intellectual disability and being special education, so I'd ask that she be struck for cause because of that.

MR. ROZZI: Do you want to go get the questionnaire and make sure we're talking – because we had shuffled them all.

THE COURT: No. I mean, you agreed on that.

MR. ROZZI: Okay.

THE COURT: You asked her directly –

MR. ROZZI: I know.

THE COURT: -- and she said no, and you're telling me that's in her questionnaire.

MR. ROZZI: Let's go make sure we've got the same questionnaire, actually. Let's make sure we're talking about the right person. I just want to get my –

MR. MCLELAND: (Inaudible)

THE COURT: Oh, okay. Yeah, go ahead.

MR. ROZZI: Because I – because – well, we had to reshuffle them.

THE COURT: I don't doubt it, I don't doubt what you're saying.

MR. ROZZI: I mean, it was like a whole page worth of stuff.

THE COURT: Okay.

MR. MCLELAND: That's why we're asking for cause, she lied.

THE COURT: She lied. Okay.

MR. ROZZI: Yeah.

THE COURT: So he's asking for cause because she lied.

MR. ROZZI: Yeah, okay. I just –

THE COURT: Yeah, I don't have a problem with that at all.

MR. ROZZI: Okay.

THE COURT: And the State is taking seat 5 and seat 7; and you accept the balance. That's two for the State. Are you – did he give you strike sheets for every round?

MR. MCLELAND: No; but then, I don't know if I'm doing that right.

THE COURT: Okay.

MR. MCLELAND: I thought he was making a new one for each round, so I filled it out like that.

THE COURT: Okay.

MR. ROZZI: But Bohde can get us a new paper, I think.

THE COURT: We'll get you a new sheet.

MR. MCLELAND: I'm sorry, Judge.

MR. ROZZI: What were the two strike peremptories?

THE COURT: 5 and – seat 5 and seat 7.

MR. ROZZI: 5 and 7.

THE COURT: And the Defendant is taking seat 4, seat 2, and seat 5, as well; and you accept the balance. So that's three for you.

MR. ROZZI: So –

THE COURT: So here's who you all agreed to: You all like – and I'm gonna use seat numbers, just 'cause it's easier –

MR. MCLELAND: Yeah. Thank you.

THE COURT: -- you all accepted seat 1; you all accepted seat 3; you have all accepted seat 8; seat 9; and seat 10.

MR. ROZZI: All right.

THE COURT: So five.

MR. ROZZI: So to be sure I'm clear: 2 was struck by who? By us.

MR. MCLELAND: 2, 4, 5 struck by you guys, 5 and 7 struck by us. For cause is 11 and 6.

THE COURT: Okay. And then –

MR. MCLELAND: Is that right?

THE COURT: Right. And we all accept seat 12, as well.

MR. MCLELAND: I'm sorry, I missed that one.

MR. ROZZI: We accept 12?

THE COURT: You all accepted 12.

MR. ROZZI: But we had a double-dip on 5; right?

THE COURT: Right.

MR. ROZZI: Okay.

MR. MCLELAND: And we both get dinged on that; right?

THE COURT: Um-hmm. (Affirmative response) You used two. You used three. I used – okay. Okay, so I will excuse them all to go into the jury room. I will explain the process, you know, "Juror 22, you've been excused, but don't leave just let"; okay? So that – maybe what I'll do is I'll just go through all of the jurors and say, "Okay, seat 1, you've been accepted. Seat 2, you've been excused. Seat 3, you've been accepted." And then – 'cause everybody's gonna go into the jury room. We have escorts to get people to their cars.

MR. MCLELAND: Okay.

THE COURT: Okay? And then we'll fill the box.

(Sidebar conference concluded.)

THE COURT: Okay. Ladies and gentlemen, this is the process that we're going to use: I'm gonna address each of you individually and advise you whether you've been accepted to serve as a juror or you've been excused to serve as a juror. I'm gonna have – the bailiffs will take you all into Room 320, which is the room that you came through before. Those of you that have been accepted to serve will be given additional instructions; so those of you that are selected, please – you will accompany the bailiff into the jury room for a briefing and information gathering. Those of you that have been accepted to serve, please, do not speak to anyone about this case. You are free to tell your family and friends that you have been selected to be a juror in a criminal case, but that's all that you may share. Please avoid any media coverage about this case and, please, don't conduct any research on your own about this case. Please don't post any remarks on any social media platform or read anybody else's remarks on a social media platform. When we reconvene later on this week, I'll swear you in to serve as the jury and then we will depart for Delphi. You will get a phone

call from one of the bailiffs later on this week instructing you the date and the time that you will need to report back to the jury room. So, Juror 39 in seat 1, you have been accepted to serve. Juror 22 in seat 2, you have been excused. Juror 19 in seat 3, you have been accepted to serve. Juror 33 in seat 4, you have been excused. Juror 20 in seat 5, you have been excused. Juror 18 in seat 6, you have been excused. Juror 53 in seat 7, you have been excused. Juror 8 in seat – no, Juror 1 in seat 8, you have been accepted to serve. Juror 35 in seat 9, you have been accepted to serve. Juror 42 in seat 10, you have been accepted to serve. Juror 23 in seat 11, you have been excused. And, Juror 21, in seat 12, you have been accepted to serve. So, Jason, if you would get – or Jason and Jeremy, we're gonna get – again, we're gonna get you all through this jury room. Those of you that have been accepted to serve will get a briefing from the bailiffs and some information. Gentlemen. Okay.

THE BAILIFF: Okay. You ready?

THE COURT: Yep, go ahead.

THE BAILIFF: All right. Juror 27, seat 1. Juror 13, seat 2. 29, seat 3. Number 36, seat 4. Number 38, seat 5. Juror 8, seat 6. Juror 2, seat 7. Juror 4, seat 8. Juror 25, seat 9. Juror 51, seat 10. Juror 45, seat 11. And, Juror 48, seat 12.

THE COURT: Thanks, Jason.

VOIR DIRE BY THE COURT

ANSWERS BY POTENTIAL JURORS.

Q All right. Juror 27, did you have any responses to my questions, sir?

JUROR 27: No.

Q Juror 13, did you have any responses to my questions?

JUROR 13: (Responds by shaking head in the negative.)

Q Juror 29, did you have any responses?

JUROR 29: No.

Q Juror 36, did you have any responses?

JUROR 36: (Responds by shaking head in the negative.)

Q Juror 38, did you have any responses?

JUROR 38: No, Your Honor.

Q And, Juror 8, did you have any responses?

JUROR 8: No.

Q Juror 2, did you have any responses to my questions?

JUROR 2: I don't think so.

Q I'm sorry?

JUROR 2: I do not recall all of them, but I don't think so.

Q Okay. Juror 4, did you have any responses to my questions?

JUROR 4: I don't remember all of them, but no.

Q No? Okay. Juror 25, did you have any responses to my questions?

JUROR 25: Yes, with regard to my health.

Q Okay.

JUROR 25: I do suffer from – I hate saying this in front of the public – but anxiety and depression. When put under a lot of stress, I start to shut down, withdraw, (inaudible) problems, concentration's not good. And I've got a doctor's appointment coming up, which I desperately need to see. I do have medication I can take from time to time; I'd prefer not to, because it does zonk me out I guess I can say.

Q Okay. So I – one, thank you for sharing that with me, I appreciate that.

In your opinion – and you know yourself better than anybody – knowing the issues that you've just shared with me, do you feel that you would not be suitable to be a juror in this particular case?

JUROR 25: That is correct.

Q Okay. So thank you. I won't bug you any more, I won't ask you any more questions; okay? Thank you for sharing that. Juror 51, did you have any responses to my questions?

JUROR 51: Just that my dad's a police officer.

Q Okay. Do you talk with him about his work?

JUROR 51: Not usually.

Q Anything about his work or those conversations that would affect your ability to be fair?

JUROR 51: Um-um. (Negative response)

Q Anything else?

JUROR 51: Um-um. (Negative response)

Q Okay. Juror 45, did you have any responses to my questions?

JUROR 45: Just a cousin that's a (inaudible) police officer.

Q I'm sorry, your cousin –

JUROR 45: Just a cousin who's a police officer.

Q Okay. And do you talk with him about his work?

JUROR 45: Very rarely, one incident, but it wouldn't impact my –

Q Okay. So – and none of that is gonna affect your ability to be fair?

JUROR 45: Correct.

Q Anything else?

JUROR 45: No.

Q Okay. Juror 48, did you have any responses to my questions?

JUROR 48: If it was – I believe it was actually if you've heard any talk about this case. I do work in a small office building where there is a lot of chit-chat about it.

Q Okay, so let me just stop you there. Without going into what you may have read or heard in the office, have you formed an opinion about this case?

JUROR 48: Not really, but it's hard to tell without evidence really, but I should be able –

Q Okay. So you can set aside whatever the chit-chat has been and make a decision on the evidence that you see and hear in the courtroom and apply that evidence to the law as I instruct you?

JUROR 48: Most definitely.

Q Okay. So has anybody else heard media about this case? Okay. So let's talk about that. So, Juror 13, without going into what you may have read or heard, have you formed an opinion about this case?

JUROR 13: Yes.

Q And is that an opinion that you can set aside and listen to this evidence with an open mind?

JUROR 13: No.

Q Okay. Who else raised their hand? Juror 29, without going into what you may have read or heard, have you formed an opinion about this case?

JUROR 29: No.

Q So you can set aside whatever you read or heard –

JUROR 29: Yes.

Q -- and make a decision on the evidence?

JUROR 29: Yes.

Q Okay. Juror 38, without going into what you may have read or heard, have you formed an opinion about this case?

JUROR 38: Negative, Your Honor.

Q And can you set aside whatever you read or heard and make a decision just on the evidence that you see and hear in the courtroom?

JUROR 38: I can be biased, 100 percent.

Q All right. Thank you. And, Juror 8, without going into what you may have read or heard, have you formed an opinion about the case?

JUROR 8: No.

Q Can you set aside whatever the media tells you you read or heard and base a decision on the evidence that you hear?

JUROR 8: Yes.

Q Okay. And, Juror 2, did you raise your hand? Without going into what you may have read or heard, have you formed an opinion about this case?

JUROR 2: Yes.

Q And is that an opinion that you can set aside and listen to this evidence with an open mind?

JUROR 2: Probably not.

Q Okay. If you were selected to serve, could you put that opinion aside and listen to the evidence with an open mind?

JUROR 2: No.

Q Okay. Juror 4, without going into it you may have read or heard, have you formed an opinion about this case?

JUROR 4: Yes.

Q And is that an opinion that you can set aside and be fair and impartial?

JUROR 4: No, because of all of the drama I've had.

Q Okay. So that's not something you can – you can't set that aside and listen to the evidence with an open mind?

JUROR 4: No. No, I can't.

Q Okay. Anybody else that's heard media? Okay. Juror 25, without going into what you read or heard, have you formed an opinion about this case?

JUROR 25: I thought I did, but after listening today, no.

Q Okay. So you can set aside whatever you read or heard?

JUROR 25: Yes.

Q Okay. Any of the other three jurors, other than the ones I've talked to?

A (No response or indication from any potential juror.)

Q Okay. And you've heard my description about being sequestered; any of you have any issues with the process that I've described? Okay. Juror 48.

JUROR 48: Well, I mean, my work only pays five days, and I just moved to – I'm living by myself for the first time starting two weeks ago, so I'm just a little worried about paying all my bills, but –

Q Okay. So the court, by statute, pays jurors $80 for the first five days, $80 per day for the first five days of a trial, after which, it goes to $90 per day.

JUROR 48: Okay.

Q Okay? And you don't have to pay for food, you don't have to pay for – the court is paying for all of that other. So does that help you?

JUROR 48: (Responds by nodding head in the affirmative.)

Q Okay. And I saw a couple more hands. Okay. Juror 2.

JUROR 2: Well, I have a teenage daughter that's in high school and

I kind of take care of all of her needs. My husband is out of town a lot. And she's in marching band, and this is literally the height of our marching band season, which I know isn't, in relation to what's going on here, that important, but it's very important to me and I don't want to miss that.

Q Okay.

JUROR 2: And it's also – I work (inaudible) right now.

Q Okay. Thank you for sharing that with me, I appreciate that. And, Juror 4.

JUROR 4: Yeah, my mom just passed, and I've been really depressed lately over it, and I'm in the process of trying to go through everything.

Q Okay. I'm so sorry for your loss. Okay. Thank you for sharing that with me. Juror 25.

JUROR 25: I – besides the medical, I have an animal and I live alone and, you know, my family is states away, and my girlfriend who normally would have taken care of the animal is very sick.

Q Okay. All right. Thank you for sharing that with me. The three of you, anything?

A (No response or indication from any potential juror.)

THE COURT: Nothing? Okay. All right. Mr. McLeland.

MR. MCLELAND: Thank you, Judge.

VOIR DIRE BY THE STATE – MR. MCLELAND

ANSWERS BY POTENTIAL JURORS.

Q Ladies and gentlemen, good morning. This will hopefully go a little quicker the second time. I'm not gonna talk about everything I did the first time, so if there's ever a question that you have about anything I spoke about the first time,

don't be afraid to raise your hand; okay? I want to talk first of all about being sequestered. We talked about some of the issues that some of the people would have. Besides the Judge – who the Judge talked to, is there anybody else that would have an issue about being away from home or work for the next – let's just say the next 30 days? You talked to the Judge and I got those things. Ma'am, what issues do you have? Or you have an issue with being sequestered for 30 days?

JUROR 13: Um-hmm. (Affirmative response)

Q Stuff at work or home?

JUROR 13: Work.

Q And is that gonna be to the point where it's gonna draw your attention away –

JUROR 13: Yes.

Q -- from listening to what's going on in court –

JUROR 13: Yes.

Q -- you're gonna be so worried about what's going on at home?

JUROR 13: I work for a neurosurgeon, so I'm kind of responsible for his day-to-day, running his clinic and taking care of patients, so it would be very distracting.

Q Is there anybody that could take your place?

JUROR 13: There's one person.

Q Okay.

JUROR 13: I trained her and she's fairly new.

Q Sure, sure, sure. Okay. Anybody else have that situation at work or home with kids? I gotta do the numbers, I'm sorry. 51, ma'am.

JUROR 51: Yeah. I have a one-year old that I have to take care of and two kids that I run back and forth to school.

Q Do you have anything set up to – for somebody else to do that if you're picked?

JUROR 51: Normally I would, but she's taking care of her mom, who just had surgery.

Q Okay. So you're kind of stuck in that spot where, if you get selected as a juror, you're not gonna have rides for the kids or caregiving for the young – the one-year old?

JUROR 51: Yeah.

Q Okay. Is that gonna be the to the point where it distracts you from listening to what's going on in court?

JUROR 51: Um-hmm. (Affirmative response)

Q Okay. I have kids, I get it. You're worried about – I have animals, too, I get it. Worried about – we had to do the same thing, get accommodations for those things, but that's something that's gonna weigh on you to the point where, "I'm not focused on what's going on. I'm more worried about what's going on with my kid or who's picking up the other kids." Is that fair?

JUROR 51: Um-hmm. (Affirmative response)

Q Okay. Anybody else? Yes, sir, Number 27.

JUROR 27: I retired a year ago, almost exactly.

Q Okay.

JUROR 27: The reason I retired is because I help watch my grandson and he's autistic.

Q Okay.

JUROR 27: And he's got speech and hearing –

Q Sure.

JUROR 27: -- and the thing is, is I just can't send him to any daycare –

Q Right.

JUROR 27: -- so I watch him in the evenings and on the weekends, so that would be kind of rough in our family right now.

Q And is there any – do you have anybody else set up to watch him if you are selected?

JUROR 27: I help my daughter and she's a single parent.

Q Okay. And so is that gonna be to the point where you're worried about who's taking care of him, instead of focusing on what's going on?

JUROR 27: It shouldn't be though.

Q Okay. So you can set that aside – the Judge has asked a lot of you, can you set that aside and focus on what's going on. Okay. Thank you, I appreciate your honesty. Has anybody sat on a jury before? Sir, Number – let me just make sure I get – Number 38?

JUROR 36: 36.

Q 36? Okay. You're right, 36. You've sat on a jury before? How was your experience with that?

JUROR 36: Well, it was – it's been a while.

Q Okay.

JUROR 36: I'm 73, it was like when I was in my 30s.

Q Okay.

JUROR 36: But, you know, it was difficult, you didn't want to – you

wanted to make sure you had everything – you know, we had serious discussions and, when we went back to the room, we talked and all agreed. But we stayed there for a while, I mean, till we finally came up with something, but we wanted to be fair about it.

Q Was it a guilty verdict or not guilty?

JUROR 36: It was a criminal –

Q Okay.

JUROR 36: -- assault issue and it - but so, but anyway, we got through it.

Q Generally good experience for you?

JUROR 36: Yeah.

Q Okay. We've charged Richard Allen with four counts of murder, as we went over previously, and I just want to focus on the charge of murder itself. And I've got to use the numbers, I hate it, I wish I could call you by your names 'cause it's a little impersonal, but I gotta use the numbers. So I'm just gonna start, miss, Number 8, what do you think about or what comes to mind first when you hear the charge of murder?

JUROR 8: A very serious accusation.

Q Sure.

JUROR 8: Traumatizing on both sides I would think.

Q What kind of evidence would you expect to see?

JUROR 8: DNA, a motive, a weapon of some sort.

Q Okay. Okay. I'm gonna jump around here a little bit. Sir, Number 45, what do you think of when you hear the charge of murder?

JUROR 45: (Clears throat) Excuse me. Taking of a life and some

sort of intentionality to differentiate it from manslaughter.

Q What kind of evidence would you expect to see?

JUROR 45: Well, I guess some that were mentioned before. I wouldn't necessarily need to see all of them. If there was some pieces of evidence, like a weapon or a motive that were missing, but the others were sufficient enough to overcome that. But yeah, some of those were mentioned earlier, eyewitness, photographs. Not necessarily too high of an expectation on DNA. I had actually heard before that there's always that piece in the TV show that doesn't talk about budgets of prosecuting attorneys and the government as far as they can't just really, really do every DNA test you see on TV, so I wouldn't expect that kind of level, but probably some sort of at least initial beginning of (inaudible).

Q Okay.

JUROR 45: But again, that's a variety. I wouldn't need to see all of them, but (inaudible).

Q Okay. Number 29, sir, what do you think of –first, what do you think of when you hear the charge of murder?

JUROR 29: Serious, violent, not something to be taken lightly by whomever's selected.

Q Um-hmm. (Affirmative response)

JUROR 29: Basically, those things.

Q What kind of evidence would you expect to see?

JUROR 29: Whatever evidence you have to prove –

Q Fair enough.

JUROR 29: -- to meet your burden.

Q Fair enough. I mean, it's on me; right?

JUROR 29: Yeah.

Q You show me what you got.

JUROR 29: Yeah.

Q All right. So I want to unpack a few things, I wanted to ask a few people those questions, but I want to unpack some of the things that everybody said and talk about them. I hate the numbers. Number 8, motive, the State's not required to prove motive. Are you okay with that?

JUROR 8: Yes.

Q Are you of the position that, "Hey I have to know why it happened"?

JUROR 8: No.

Q Anybody else feel that way, "I have to know why it happened"?

A (No response or indication from any potential juror.)

Q Okay. You okay with that?

JUROR 8: Yes.

Q Okay. DNA, we talk about DNA. We've all seen *CSI*, and Number 45 brought it up for me, so thank you. Everybody's seen some form of the *CSI*, the *NCSI*, whatever. There's hundreds of them out there; right? Does anybody here expect us to find evidence, charge somebody, and have the trial all within an hour?

A (No response or indication from any potential juror.)

Q Okay. Does anybody expect there to be DNA, conclusive DNA, in every single case, like they have in *CSI*?

A (No response or indication from any potential juror.)

Q So back to Number 8, if there's not DNA – "Look, there has to be DNA for

the State to be able to prove their case in any case I sit on"; who feels that way? Even just a little bit, who feels that way?

A (No response or indication from any potential juror.)

Q I'm gonna pick on you a little bit, 'cause you said DNA. Do you feel that – and it's okay if you do.

JUROR 8: I mean, no, I don't think there will be DNA in every case.

Q Now, I assume, if there was DNA, that would influence you one way or another.

JUROR 8: Yes, of course.

Q Right?

JUROR 8: Yes.

Q I mean, I assume that is with everybody, if there's DNA and it's conclusive, that's gonna influence you one way or the other. 45, Number – sir, have to be DNA? You kind of answered this already, but –

JUROR 45: Yeah, no. Especially if the other pieces of evidence are meeting the burden of proof.

Q Sure, sure. I want to make sure – what else? – oh, weapon, weapon. "In a murder case, I have to see the weapon"; is that you? "I have to see the weapon. I have to be presented with the weapon that did the killing"?

JUROR 8: I don't think – no.

Q Okay.

JUROR 8: I mean, obviously, there was some sort of weapon, whether that's hands or whatever, but –

Q Sure, sure, I mean –

JUROR 8: I mean, no, I don't think I would have to have a weapon

for sure.

Q 29, what about you? Have to be a weapon?

JUROR 29: No.

Q Okay. 45?

JUROR 45: No. I think going in, I can't say have to to any one particular piece of evidence.

Q Sure.

JUROR 45: I could be open to every –

Q Sure. Does anybody here – I mean, I've been picking on these three, 'cause I asked them questions, but anybody here say, "Look, I have to see the weapon"? Number 27, "I have to see it"?

JUROR 27: No, but if you're not gonna have any DNA and you don't have a weapon, then you better have something.

Q It'll be difficult for you?

JUROR 27: Yeah, it's gotta get there.

Q Okay. Fair, fair enough. Fair enough. The evidence we do present we have to use, and you've talked about this, to convince you beyond a reasonable doubt. Now, that's firmly convinced. The Judge is gonna tell you that's the instruction, firmly convinced. It's not beyond all doubt. Who here has to be – in order to render a verdict, the State would have to prove – or a verdict of guilty, the State would have to prove beyond all doubt, have to have a video of the crime happening or something where you can see it with your own eyes? Who believes that, that is the burden to them?

A (No response or indication from any potential juror.)

Q Is everybody comfortable with firmly convinced?

A (No response or indication from any potential juror.)

Q Ma'am, 51, convinced I'm an attorney?

JUROR 51: Yeah. They let you in.

Q That's all you need? They let you in.

JUROR 51: Well, I just have the paper they sent.

Q Right. That's all you need though? The fact that I'm up here is enough for you?

JUROR 51: Well, the Judge said so, too, so –

Q You trust her; right?

JUROR 51: Yeah.

Q She's not gonna let somebody that's not an attorney come up here and talk to all y'all.

JUROR 51: Yeah.

Q Is there anybody that doesn't believe I'm an attorney?

A (No response or indication from any potential juror.)

Q Is there anybody that would need more? My license? My bar license? My college and law school degree? The certificate – I can't even think of what it's called – that says I'm the elected prosecutor? Anybody that would need more?

JUROR 38: I'll take whatever you can give me.

Q Take whatever – okay, fair enough. Do you need more right now as you sit here today?

JUROR 38: At the time and point, no.

Q Okay. Convinced beyond a reasonable doubt?

JUROR 38: Yes.

Q Firmly convinced?

JUROR 38: Yes.

Q Okay. But if I had more, you'd take it?

JUROR 38: I would take it.

Q Fair enough, fair enough. Who thinks the burden is too low? Who thinks for a criminal case – Mr. Rozzi walked through those different burdens of proof that we have in the legal world, and beyond a reasonable doubt is the highest burden, but it's still at firmly convinced. Who thinks that's too low? Who thinks it should be beyond all doubt? Anybody? Everybody happy with the burden that's set on the State or you think it should be higher? Sir, you're kind of nodding your head; what do you think? Number 27, you think it should be higher?

JUROR 27: It better be really good, because you're gonna convict somebody, you gotta live with it; so the evidence better be, like I said, pretty substantial and heavy, because that's a big decision.

Q Sure, sure, huge decision. And if you're selected as a juror, you're in the driver's seat for that decision, the 12 of you. And so you think it should be higher than firmly convinced, you think it should be more towards beyond all doubt?

JUROR 27: Closer to that direction with this type of case, yes.

Q Fair enough. I appreciate you being honest. Anybody agree with Mr. – this gentleman, Number 27? I almost said Mr. 27, even though that's not your – anybody agree with him?

A (No response or indication from any potential juror.)

Q Okay. Talked about presenting evidence, and I want to start – I want to switch up a little bit. Credibility of witnesses, what kind of things are you gonna look for when determining the credibility of a witness? Ma'am, Number 48, what

kind of things are you gonna look for?

JUROR 48: Well, just their body language; if they're looking at other people, how they are; and, you know, I guess just you have to know their relationship with the person and what you're hearing from the parties.

Q Okay. Number 38, sir, what kind of things are you gonna look for?

JUROR 38: I'm gonna end up just sitting back, hearing the side of the story; 'cause the thing is, when you're – the difference between biased and unbiased – personally, me myself, I am not a big fan of the color green, so when I see green things –

Q Glad I didn't wear green.

JUROR 38: -- it's just one of those things where you associate it.

Q Sure.

JUROR 38: On the day-to-day – I can't treat my day-to-day like that. I have to be willing and acceptance of whatever comes at me, and I have to be willing to listen and, you know, make a fair judgment from that.

Q Sure, sure. Sir, Number 36, what kind of things are you gonna look for? You've been through this before, so –

JUROR 36: Yep. Body language, the – it's your – what do you want to call it? – are they nervous? That could be just natural, but just an overall kind of picture of what we're working with here, how they answer the questions.

Q Ma'am, you said you had a daughter; right?

JUROR 2: Yeah.

Q And let's just imagine for a minute your daughter and her best friend are in a room, and you walk in and there's red paint all over the wall and they're both holding red paintbrushes, and they say, "She did it"; who do you believe?

JUROR 2: I have no idea.

Q What kind of things are you gonna look for to see who's telling the truth?

JUROR 2: I'd probably question them. You know, in the moment, I might make an assumption, but I'd (inaudible)

Q I grew up in a family with two sisters, and if we did that, my family just – they punished us all.

JUROR 2: Yep.

Q Anybody else grow up in a family like that? "We're not figuring it out. You're all getting punished."

JUROR 2: Yep.

Q Okay. Fair enough. We talked about or I talked about before the evidence and I used the snowman example, and so I want to ask a few questions about that. Ma'am, Number 51, where were you at where you were firmly convinced that someone had built a snowman? Do you remember the example I gave?

JUROR 51: Um –

Q Let me tell you again; all right? You go on Spring Break – and I'm gonna add a little to it, because the last juror brought it up – you leave on Spring Break and there's snow on the ground, and when you come home, there's a big puddle in your yard. Do you know what happened?

JUROR 51: No, not unless it's wet everyone else, I'd assume it rained.

Q Okay. What if you come home and there's a puddle on the ground and there's two sticks in the puddle?

JUROR 51: (Responds by shaking head in the negative.)

Q What if you come home, there's a puddle on the ground, two sticks, two

pieces of coal? Still don't know?

JUROR 51: (Responds by shaking head in the negative.)

Q Puddle on the ground, two sticks, two pieces of coal, and a carrot?

JUROR 51: Now something happened.

Q What do you think happened?

JUROR 51: Someone took out Frosty?

Q Okay. Firmly convinced?

JUROR 51: Yeah.

Q Okay. I'm gonna go a little bit further, two sticks – is anybody else not convinced yet? Let's start there. Everybody firmly convinced, at this point, what happened?

A (No response or indication from any potential juror.)

Q Okay. Two sticks, two pieces of coal, a carrot, and a scarf; convinced yet?

JUROR 38: What happened to Frosty?

Q Of what happened in general.

JUROR 38: No.

Q Two sticks, two pieces of coal, a carrot, a scarf, and a top hat?

JUROR 38: Still not convinced on what happened.

Q Add all that and the name tag “Frosty”?

JUROR 38: That just tells me who it is.

Q Okay. So you'd need even more than that?

JUROR 38: Whatever I can get.

Q Okay. So you sound like you're closer to you’d need a video of somebody building a snowman and it melting or an eyewitness that said, “Hey, I saw them build a snowman and it melted.” You would need something more?

JUROR 38: I would need something that would help set the scene of what happened in the scenario. I'd end up looking at the forecast to see if something happened there, maybe see what happened in the neighborhood for the day, maybe there's kids running through the neighborhood kicking stuff over.

Q Sure.

JUROR 38: It could have been anything that possibly led.

Q Okay. Fair enough. Going back to credibility of witnesses, is anyone gonna give someone more credibility as a witness simply because of what they do? And I believe – did somebody have a family member that was a law enforcement officer?

JUROR 51: I do.

Q Okay. What – who is your family member?

JUROR 51: Alan Garriott.

Q No, I don't need to know his name. Is it your dad? Brother?

JUROR 51: Oh, it's my dad.

Q Dad, okay. Are you gonna – would you, having that close connection to a law enforcement officer, are you gonna give a law enforcement officer more credibility simply because they're a police officer?

JUROR 51: No, just 'cause of their actual profession (inaudible).

Q Okay. What about if it was a preacher?

JUROR 51: No.

Q Okay. Anybody have a different opinion, that, "Hey, I would give someone – you know, I expect law enforcement to tell the truth. I'm gonna give them more credibility just simply because they're a law enforcement officer"? Anybody agree

with that statement?

A (No response or indication from any potential juror.)

Q Okay. I think this came out a little bit when the Judge was asking you some questions. Jurors sometimes have an issue with passing judgment on others or deciding the fate on a criminal case of someone else. Is there anyone here that, for personal reasons, religious reasons, whatever it may be, that has an issue with passing judgment on someone else? Okay. Number 4, you have an issue with that?

JUROR 4: (Responds by nodding head in the affirmative.)

Q And so even if the State was able to prove all the elements of the offense beyond a reasonable doubt, would you have an issue with entering a verdict of guilty?

JUROR 4: Yeah.

Q Would it be unfair for me to ask you to set that aside and not think about that and just focus on what's happening in court?

JUROR 4: It wouldn't be unfair, but I don't know if I could do it because who am I to, you know, make judgment against somebody?

Q Sure, sure.

JUROR 4: But I don't think I can do that and somehow was caught up in a “judge not, lest ye be judged”, you know, that’s happening.

Q Sure, sure. I appreciate that. On top of everything you have – on top of that and everything that you have going on at home in your personal life, are you gonna be distracted to be able to pay attention to what's going on?

JUROR 4: Yes.

Q Okay. And so safe to say you don't believe you'd be a good juror for this

case?

JUROR 4: No, I probably would be very hard for me to be fair in this case.

Q I appreciate it. I know it's uncomfortable talking about those things, but I really appreciate you being honest with me. We talked about being brutally honest, and I appreciate it. Ma'am, Number 25, same kind of questions: Have an issue with passing judgment on somebody?

JUROR 25: Not if the evidence is beyond a reasonable doubt.

Q Okay. Firmly convinced; right?

JUROR 25: Um-hmm. (Affirmative response)

Q The other issues that you've talked about with the Judge, do you think those are gonna – I mean, only you can tell us.

JUROR 25: Yes, they will.

Q We don't want – you know, we appreciate jury service. And I can't speak for the State or anybody else, but – or for the Judge, but from the State's perspective, this is not supposed to be something that's gonna ruin your life or cause you mental or physical trauma. It's a civic duty that we ask you to participate in. And so only you can tell us, with everything you have going on, the doctor's appointments, the medical issues, is that gonna draw your attention away from being able to pay attention to what's going on in court?

JUROR 25: Yes.

Q 'Cause as the Judge said, there's gonna be some long days and it's gonna carry on for a couple weeks, at least. And so do you feel that you wouldn't be a good juror on this case because of those things?

JUROR 25: That's true.

Q Okay. Okay. Was there other – I might have missed the other hands. Miss, Number 8, have an issue with passing judgment on somebody?

JUROR 8: In a – on a personal level, yes.

Q Okay.

JUROR 8: I don't feel that I have the right to do that.

Q Okay. If the State – if the Court were to order you that if the State meets its element – or if you believe the State meets its element, you should enter a judgment of conviction, can you follow those rules?

JUROR 8: Yes.

Q Even with those personal things you – I mean, is it unfair for me to ask you to set those personal issues aside and just follow the rules?

JUROR 8: No.

Q Now, that may be easier said than done. Do you think you can do it?

JUROR 8: Yes, I do.

Q Okay. All right. Any issues at home or work that are gonna draw your attention away from –

JUROR 8: Not more than anyone else. I mean, I have kids and a job and everything else, but –

Q Sure, sure.

JUROR 8: -- life will go on.

Q I appreciate that. It will. It will, for sure. You know, on that note, does anybody have anything, besides who we've talked to – the jury's gonna be sequestered, gonna be away from home, you're not gonna be able to go home at night, those kind of things, does that present an issue? I know the Judge asked you this already and I know some of you have already spoke up and I don't need

to hear the reasons again, but is there anybody else that says, “Look, that's gonna be a real issue for me to be away from home for weeks or even a month at a time?” Is there anyone that has concerns? Ma'am, I know you said financially. The Judge explained the financial portion of that. Is that gonna alleviate some of your worries?

JUROR 48: There is another thing, I don't really feel comfortable saying to a whole room, but I do struggle –

Q Okay.

JUROR 48: -- (inaudible).

Q So – and I'm not here to embarrass you, so I appreciate you being honest, but there are other things going on that give you some concern? Is that fair?

JUROR 48: Um-hmm. (Affirmative response)

Q Okay. Are those other issues to the point where it's gonna distract you from being able to pay attention to what's the evidence and that testimony that's going on in court?

JUROR 48: I mean, maybe if I'm bothered enough. It's – I'm pretty opinionated, so it's pretty hard for me to get over things when I'm angry. I have a hard time paying attention as it is, so it's hard to say now, when I'm not in the zone, but –

Q Sure.

JUROR 48: -- yeah –

Q Sure.

JUROR 48: -- it can be.

Q Okay. Okay. Is there anyone that's not comfortable being a juror on this case for the reasons that we stated before? Is there anything new – I don't want

to rehash this – I don't want to replow the same ground. Sir, what about you? You feel comfortable? Ma'am, the same things you said before, the stuff with home, with daughter and the marching band and those kind of things?

JUROR 2: Yeah.

JUROR 13 I have severe anxiety, it can sometimes cause anxiety attacks. My chest can hurt, I get real sweaty, so –

Q Are you concerned about that if you serve as a juror?

JUROR 13: Yes.

Q Okay. Are you nervous now?

JUROR 13: Yes.

Q Okay. It's okay. Is anybody else nervous?

A (Most potential jurors respond by raising hands.)

Q Okay. Fair enough. Aren't you a nurse?

JUROR 8: No.

Q Oh, okay. What do you do for a living?

JUROR 8: I'm a school counselor.

Q Okay. You have to deal with kids all the time.

JUROR 8: I do, yeah, all the time.

Q Okay. Any questions that anyone has for me?

A (No response or indication from any potential juror.)

Q There's a question that came up when I was talking to co-counsel: If, during the course of this case, there's some evidence that's excluded or some evidence that the Court won't let you hear or observe, are you gonna be able to accept the Court's ruling and not consider that evidence or are you the type of person that's gonna say, "I gotta know, I gotta know"?

JUROR 13: I gotta know.

Q Who's, "I gotta know"?

JUROR 13: I want to see it all.

Q You want to see it all. Okay. Anybody else feel that way? Ma'am? Okay. Ma'am? Okay. If the Judge says, "Look, you can't consider it," can you do that? Can you set aside that feeling to wanting to know all of it and just consider it? No? Ma'am?

JUROR 25: I can.

Q You can? All right. Number 48, ma'am?

JUROR 48: Probably not.

Q Probably not?

JUROR 48: Yeah.

Q Okay. Just need – yeah, you guys gotta be honest with us, 'cause I don't know. If you don't think you can, if the Judge says, "Look, you can't consider this," you gotta let that go and not consider it. You don't think you can do that at this point? No?

JUROR 48: No. Like there's one thing from the questionnaire that's jumping out at me that I literally cannot move past, so –

Q Are you willing to share that with me?

JUROR 48: Just, like, the occult, like, thing that got brought up, that's just the only thing I probably won't be able to forget, 'cause it was just such a random thing for me to see –

Q Okay.

JUROR 48: -- not knowing anything –

Q Sure.

JUROR 48: -- about this case, it just like, “Huh?”

Q Sure. So it would be unfair for the Court to ask you to set that inside, and not only unfair, but something you don't think you could do?

JUROR 48: (Responds by nodding head in the affirmative.)

Q Okay. All right. I appreciate you being honest. Anybody else in that boat for anything they've seen or heard about the case?

A (No response or indication from any potential juror.)

MR. MCLELAND: Okay. How much time do I have left, Judge?

THE COURT: Four minutes.

MR. MCLELAND: Okay.

THE COURT: Five minutes, I'm sorry.

Q Sir, we talked about it, Number 38, sir, we talked about that you would need more – in the snowman example, you said you’d need more. What kind of evidence – we talked a little bit about what kind of evidence. What evidence would you expect to see in a murder charge?

JUROR 38: Timeline –

Q Okay.

JUROR 38: -- behind the timeline of past experiences on like where they have been in life. And I know in some situations, some situations can be stressful to the point to where they can make people do things to achieve a certain goal and they can also strive a person to do something else to achieve another goal, one that's good or bad, but it really just depends. Obviously, if there's evidence and everything that's presented at the time of the (inaudible), I am – how am I the person to deny that evidence if it's given, you know, or the reasoning behind it?

Q Sure. Is there one thing we talked about, DNA, weapon, is there one thing that you have to see in a murder case? Talked about motive a little bit.

JUROR 38: No. I believe with murder – any case in general, every case would be a little bit different.

Q Sure.

JUROR 38: It's one of those things where you go into a case and you could expect to get one thing and, obviously, you're not gonna get that, you kind of have to make your – you have to make your decision, your best outcome, with the evidence and everything else that you've got. You know, you're – just because I want to pay a bill on time doesn't mean that I have the funds to do it, you know, I have to be able to allocate my sources –

Q Sure.

JUROR 38: --and make sure that I got what I need to get that done.

Q Do you agree there's different forms of evidence that could firmly convince you of something?

JUROR 38: Yes, sir.

Q And if the evidence firmly convinces you, are you willing to enter a verdict of guilty?

JUROR 38: If the evidence is there that proves that the person is guilty, then I am able to render my decision of guilty; but if I believe that the person is innocence beyond, you know, guilty –

Q Sure.

JUROR 38: -- then I will stand my ground and I believe that person's innocent.

Q And that's all we want.

JUROR 38: Yeah.

Q We just don't – I don't want you to hold the State to a higher burden than what the Court directs you, that's the only thing.

JUROR 38: No, sir.

Q And so if you're firmly convinced, the evidence has firmly convinced you, you're able to move forward?

JUROR 38: Yes, sir.

Q Okay. Ma'am, what about you, what kind of evidence would you expect to see? I've only got a few minutes here, probably only one minute.

JUROR 51: Whatever you have. You can't focus on any one thing.

Q Okay.

JUROR 51: Depends on the crime and what it is.

Q There's no one thing that you say, "I have to have this"?

JUROR 51: No.

Q Okay. Okay. If we present enough evidence to firmly convince you, are you willing and able to put in a verdict of guilty?

JUROR 51: Yeah.

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

THE COURT: Mr. Baldwin.

MR. BALDWIN: Thank you, Judge.

VOIR DIRE BY THE DEFENSE – MR. BALDWIN

ANSWERS BY POTENTIAL JURORS.

Q I want you guys to look at this guy right here, this is our client, Rick Allen. Is it really possible that he is innocent in this – of this crime? I need you to look at your hearts and your minds, 'cause this is serious business. You heard the

mini-openings, where there's talk of confessions and all that kind of stuff –

MR. MCLELAND: Judge, could we approach?

THE COURT: Yeah, come on up.

(Sidebar conference conducted.)

MR. MCLELAND: Judge, I think he's trying to condition the jury, and that's when he's asking if he could have really have done this.

THE COURT: Um-hmm. (Affirmative response)

MR. MCLELAND: I think he crossed the line in the State's mind.

MR. BALDWIN: No, I don't – well, I'll move on, but I don't think – I mean, I do this everywhere I go.

THE COURT: Not in front of me.

MR. BALDWIN: Okay. Well –

THE COURT: No. That's improper.

MR. BALDWIN: What's improper about it?

THE COURT: The purpose of voir dire is to ask them questions about their qualifications and to explore biases, not to try to gain sympathy for your client.

MR. BALDWIN: That's not what I'm doing, but that's okay.

THE COURT: But that's what it seems like you're doing.

MR. BALDWIN: Okay. Well, I'm telling you it's not true, that's not what I'm doing.

THE COURT: Okay. Move on. Thank you.

MR. BALDWIN: Thank you.

MR. MCLELAND: Thank you, Judge.

(Sidebar conference concluded.)

Q He's sitting over here, you've heard the mini-opening; is it really possible that this guy is innocent?

MR. MCLELAND: Judge, can we approach?

THE COURT: Come on up.

(Sidebar conference conducted.)

MR. BALDWIN: I didn't – is that a problem? I'm trying to –

MR. MCLELAND: You can't ask the jury –

THE COURT: It's conditioning.

MR. MCLELAND: -- "Is this guy guilty?"

THE COURT: It doesn't have anything to do with their qualifications. That's what you need to focus on –

MR. BALDWIN: All right.

THE COURT: -- their qualifications.

MR. BALDWIN: Okay. Appreciate that.

THE COURT: Okay. Thank you.

(Sidebar conference concluded.)

Q Who was bothered by the talk of the confession? I guess look in your heart about that. But that's where I'm concerned about that is can you overlook that that was talked about on the mini-opening; okay? And, I mean, I'm sorry I'm nervous, but that's what – you know, we want fair jurors, and I want fair jurors for them, as well. Who here is bothered by that and doesn't – if they think, "That's a concern of mine"? And I really need you to look in your hearts and in your minds. Is anybody like, "I can't overcome when I hear that type of talk, I'm not going to be able to overcome that as a juror"? Is anybody among you? Juror Number 45?

JUROR 45: No, especially when there's always more details, you know. There's, you know – I don't personally know, but, you know, we all hear stories, shows, whatever, but there's an early confession and it doesn't end up to be the case, and so it would be only fair for me to wait and see all the circumstances and evidence before I render a verdict.

Q Do you – I'm sorry to interrupt. Do you really believe that in your heart?

JUROR 45: Yes. I mean, I know enough people that have been under duress and sometimes, not in a court of law, but, you know, may recant something or tell something just to get the tension and anxiety situation over with in just a family dispute, and so I can't go in with that kind of pre-presumption without seeing all the details. It's the only – it's what they're asking me to do, and I think it's only fair for me.

Q And you think you can do that?

JUROR 45: Yeah.

Q Is it – that gives me – like, that makes me feel good, like we can get a fair jury out of here. Is it – everybody else feel that way? Is there anybody – you're not the only one of you that doesn't feel differently?

A (No response or indication from any potential juror.)

Q No? I thank you for your answer. 'Cause I was gonna spend more time talking about that, but if you – I just gotta believe that you're telling me all the truth and I appreciate it. Juror Number 27, I know that you're a caregiver for somebody special in your life.

JUROR 27: My grandson.

Q Yeah. Is that something that you – are you gonna be able to get away for a month?

JUROR 27: He's not gonna be real happy, but I'll be okay.

Q Will you be okay?

JUROR 27: Yeah.

Q Will he be okay?

JUROR 27: Yeah, he will be. He's 9, so he'll understand.

Q Okay.

JUROR 27: I mean, he understood I was coming here today, so –

Q Okay. I'm gonna tell you a story, we had an attorney down in Greenwood, Indiana – anybody ever been to Franklin or Greenwood, Indiana?

A (No response or indication from any potential juror.)

Q You ought to come down to Franklin, it's a nice little town. But the – I was in a courtroom with this guy, I saw him try divorce case, had a suit on, said the right things, looked the right way. Guess what? Anybody? What do you think?

JUROR 36: He lost.

Q What's that?

JUROR 36: He lost.

Q Well, he lost. He lost because he wasn't a lawyer.

JUROR 36: Oh.

Q He was practicing in the courts that I practice in and he wasn't a lawyer. Now, was – would that surprise you, Juror Number 6 – or, I'm sorry, Juror Number 8, that somebody was wearing a suit, getting in front of a judge, and making arguments, and he wasn't a lawyer?

JUROR 8: I mean, yeah, that would be a surprise, yeah.

Q The reason I'm asking is I bet people would have thought, if they were asked if they were firmly convinced, that they were, and they would have been

wrong; right? Does that kind of highlight what proof beyond a reasonable doubt, why it's such a high standard, Juror Number 29?

JUROR 29: Yes.

Q Because if that was the guy that was up here asking those questions, you all would have been wrong, and – because life isn't, as Juror Number 45 said I think, life is not that simple, things aren't as they always appear. And I want to – the State always focuses on – not just Mr. McLeland, but all over the state, they focus on the phrase "firmly convinced", but I want to read to you the entire jury pattern instruction on proof beyond a reasonable doubt, 'cause it's quite a bit longer. The burden is upon the State to prove beyond a reasonable doubt that the Defendant is guilty of the crime charged. It is a strict and heavy burden. The evidence must overcome any reasonable doubt concerning the Defendant's guilt, but it does not mean that a defendant's guilt must be proved beyond all possible doubt. A reasonable doubt is a fair, actual, and logical doubt based upon reason and common sense. You like common sense? A reasonable doubt may arise from either from the evidence or from a lack of evidence. Reasonable doubt exists when you are not firmly convinced – there's that language – of the Defendant's guilt or after you have weighed and considered all the evidence. A defendant must not be convicted on suspicion or speculation. It is not enough for the State to show that the Defendant is probably guilty. Before I move on, does that surprise you, Juror Number 51? If you think that somebody's probably guilty, that's not enough to convict them?

JUROR 51: No.

Q Why not?

JUROR 51: Well, 'cause you probably think something, you don't

for sure know.

Q Okay. Is there anybody – Juror Number 27, do you think that that – you could find somebody –

JUROR 27: No. Like it could probably rain today, too.

Q Okay.

JUROR 27: You know, you need some proof.

Q What about you, Juror Number 29, could you find somebody guilty or not guilty if you think that, "Eh, they're probably guilty"?

JUROR 29: No.

Q Why not?

JUROR 29: Like he said, I mean, probably's not enough. You need some evidence.

Q What about you? Do you believe that?

JUROR 36: I come with a blank face and just start learning as it goes along. I don't – I can't make a decision on anything.

Q Okay. So you've not made – formed any opinions right now?

JUROR 36: No, no, no.

Q Very good. Oh, I'm not done reading, it's still going on. The proof must be – the State must prove each – hold on, I'm sorry. There are very few things in this world that we know with absolute certainty. The State does not have to overcome every possible doubt, and they should not have to, because you're never gonna know; okay? And I think we – do we all agree with that? The State needs to be treated fairly. The State must prove each element of the crime by evidence that, again, firmly convinces each of you and leaves no reasonable doubt. The proof must be so convincing that you can rely and act upon it in this

matter of the highest importance. If you find that there is a reasonable doubt that the Defendant is guilty of the crimes, you must give the Defendant the benefit of the doubt, the benefit of the doubt, and find the Defendant not guilty of the crime under consideration. That's the entire pattern. It is not just firmly convinced. Is that – it's pretty weighty stuff. I mean, Juror Number 38, how do you just – how do you, just as a regular person sitting on – sitting there in front of me, how would you say you're – what's your definition, as a human being, of reasonable doubt?

JUROR 38: My definition of that would be firm belief of let's say – how should I say? – firm belief of no doubt at all –

Q Okay.

JUROR 38: -- knowing that it's the right thing that's going on, that you – with your decision that you're gonna make, that you're not gonna have that feeling of, "Did I do the right thing?"

Q That feeling. That feeling. Can you give somebody the benefit of the doubt it talks about? Juror Number 6, would you – if you think again, "Probably not enough" – I'm not saying you're even gonna find probably, I'm not getting into all of that, but if you did say, "I don't know, probably guilty, but I have this feeling in my stomach," would you be able to acquit somebody?

JUROR 8: Me?

Q Yes.

JUROR 8: Oh.

Q I'm sorry, Juror –

JUROR 8: I'm 8.

Q -- 8. I'm sorry, I'm looking at your – you're seat number 6.

JUROR 8: I know you were looking at me. Yes, I agree with him completely.

Q Okay.

JUROR 8: Yeah, I agree with what he said, and, yeah, I mean, I have to live with the decisions that I helped make.

Q It's very serious business, it says it in the instruction, it's a matter of the highest importance. Juror Number 51, you know I've got – I'm gonna have some issues with you. You know that? Should I – this is what I want to get into: Should I have issues with you that your – I think your father or stepfather is an officer, and then you're married or your partner's a CSI; is that what –

JUROR 51: No.

Q Investigator?

JUROR 51: Oh, yeah, that's just a security guard.

Q Oh, okay. I'm sorry.

JUROR 51: (Inaudible)

Q I'm sorry, I misunderstood your thing. But your dad is an officer and, my goodness, I should just be fearful of you I would imagine, that – no? Why not?

JUROR 51: No.

Q I mean, I would presume that you're gonna believe police officers.

JUROR 51: No. They're not all equal, just like anyone else.

Q You think so?

JUROR 51: Um-hmm. (Affirmative response)

Q You really believe that?

JUROR 51: Yeah.

Q Juror Number 25?

JUROR 25: Yeah, I believe that, too.

Q Do you?

JUROR 25: All equal, and they can make mistakes, it's split-second decisions on things.

Q I was – you had said that you came in with one kind of conception of what was going on here and maybe you've changed your mind a little bit; is that fair?

JUROR 25: I didn't fully – I thought I recognized something by watching TV, and I came in and saw something different, I guess I'll be – where Mr. Allen was concerned.

Q Okay.

JUROR 25: Watching TV, I was scared and he had a scary look to him in the beginning of the filming and some of the things. I'm sorry, Mr. Allen, but that was the way it was. Seeing him today, it's a different person. So I would have initially thought, (inaudible), "Oh, yeah, probably guilty." Come in today and go, "Well, maybe not. I don't know."

Q Okay.

JUROR 25: Evidence would be more – would be important.

Q I appreciate everything you just said, and even just knowing – I know you're nervous, aren't you? Are you –

JUROR 25: Pardon?

Q Are you nervous like –

JUROR 25: I'm not feeling well.

Q Okay.

JUROR 25: And again, the stress of being in this environment is –

Q Do you think that – with everything that you said earlier, do you think that

you – it seems to me like you might be an actual – you're willing to listen.

JUROR 25: I can't put myself through that. I had to work for four years where I had a lot of stress. It ruined quite a bit of my health. I retired and I've focused on keeping peace around me and away from as much stress as I can, it's not always easy. And this isn't easy saying all this, it's very vulnerable –

Q Sure.

JUROR 25: -- to me to have to say this, so –

Q It's not – this might not be the right situation for you based upon your stress levels; is that right?

JUROR 25: That's correct.

Q Okay. And I wouldn't want to put you through that, but is it just too much maybe?

JUROR 25: Yeah.

Q Okay. Well, thank you, but I do want to thank you for keeping an open mind when you came in here, appreciate that. I've got like seven more topics to go through and I'll try to go through them. Speaking of police and what I was talking to you about, I think you heard me say on the mini-opening that we plan on very – being very critical of the State, the police, and I don't want to – we would do that respectfully, but forcefully. Does that bother you, Juror Number 48?

JUROR 48: I'm sorry, what was the question?

Q If we, the Defense, are, you know, taking the police and the law enforcement to task for what we think was not a very good job, but we do it respectfully, but forcefully, will you hold that against the Defense?

JUROR 48: No. I think everybody that is included should be asked

and considered. Like we were talking about earlier, they're not above anyone just 'cause of their job, so I think it's reasonable to ask them.

Q And just because we're defense lawyers doesn't mean that we don't like police or don't support police. His whole family, Brad's whole family, are police. Yet we will, you know, do our job, and I really need – 'cause there are people that they're just police people and they want to believe them every step of the way, and I understand that. And if you're one of those people, I just need you really to speak to me right now about that. Is there anybody here that thinks, "I'm gonna hold the Defense a little bit – I'm gonna be a little bit angry at them if they are being forceful in their cross examination of the police"? Juror Number 29?

JUROR 29: No.

Q I can't get a read on you for anything. Do you play poker?

JUROR 29: No.

Q What were you gonna say? I'm sorry, I interrupted.

JUROR 29: I wouldn't be critical of you if you were –

Q Okay.

JUROR 29: -- challenging the police.

Q Do you mind telling me what you do for a living?

JUROR 29: Construction.

Q Okay. And you can get off – away for a month?

JUROR 29: I'm – yeah, I guess.

Q Do you think you'd be a good juror in this case?

JUROR 29: Maybe.

Q Is anybody – do you – maybe? Why do you say maybe?

JUROR 29: I don't know.

Q Don't know?

JUROR 29: Yeah. I've never been a juror, so I don't know.

Q Okay. Is this what you thought it would be?

JUROR 29: Yeah.

Q Is it about what you thought? Okay. The – sir, you – Juror Number 36, you were – you did find somebody guilty in another case, I think.

JUROR 36: Yes.

Q Do you mind telling me what kind of case that was?

JUROR 36: It was assault, so broke into a home and assaulted a woman.

Q How long ago was that trial?

JUROR 36: Gosh, it was a long time ago. I was in my 30s.

Q Okay. So about five years ago?

JUROR 36: Yeah, that's right, five years ago. I'm 73 now.

Q We gray beards know each other a little different. So do you remember the facts? Like was that an easy decision when you went back there? Was there contention?

JUROR 36: It wasn't – you know, there was questions, but, you know, that we didn't – I didn't get answers from, and we talked and we talked. We was in there for a while.

Q Were you?

JUROR 36: Yeah, we were.

Q Was it a good experience?

JUROR 36: I don't think it was a great experience. I don't like doing that but, I mean, we had to do what we had to do.

Q You had to do what you had to do? Were you a follower or a leader in there?

JUROR 36: No. I mean, I brought my concerns up and somebody else had their concerns, somebody said, “I'm getting tired, I'm gonna go,” and we just – but I think we made the right decision.

Q Okay.

JUROR 36: Of course, you don't want to make the wrong decision and walk out and say, “Well, the heck with that,” you know. Same thing with this.

Q Same thing? I 'm gonna go through and ask each of you are you a – if you were in the jury room – and boy, this is gonna be different, sequestered with all these people. You guys are gonna know each other – whoever ends up making this jury, they're gonna know each other for the rest of their lives, I'd imagine. How is that going to be, I'm wondering, but I guess I'll make – are you more of an opinion person that's gonna throw your opinion out there or are you more of a listener and who's gonna wait? What do you think, sir?

JUROR 27: I'm more of a listener. I want to get all the facts before I say anything.

Q Okay. So you're not gonna maybe offer your opinion right off the gate?

JUROR 27: No.

Q Okay. Ma’am, what about you?

JUROR 13: I'm more of a listener.

Q More of a listener.

JUROR 13: I need to have all the facts and all the evidence before I really put my opinion out there.

Q Very –

JUROR 13: I need to have everything laid out in front of me first.

Q Very good. What about you, sir?

JUROR 29: Opinion.

Q Opinion. Thank you. I was gonna say, if we get through here and it's all listeners, I'm just gonna have to be skeptical of that, but okay. So opinion. And how quickly – you know, juries actually get – I think the Judge will instruct you on this, they get to talk all the way through when they're all together. Do you think you'd be voicing your opinions early on?

JUROR 29: Maybe not early on.

Q Okay. Sir, what about you?

JUROR 36: I would, yeah.

Q I'm sorry?

JUROR 36: I'd voice my – what issues that I had.

Q I would –

JUROR 36: I wouldn't be a listener, I mean, I –

Q You would not be a listener, okay. More of an opinion guy. What about you, sir?

JUROR 38: In my position, I've actually been trained to be the listener, and I'm part of a leader, so it's one of those things where you have to get all the facts and everything to form your own opinion. And you just don't want to sit back and not have an opinion, because then you're not weighing in on any part of the decision.

Q Very good. What is it – if you don't mind me asking, what do you do for a living?

JUROR 38: I am – I work for a Fortune 500 company, and I'm a supervisor in that company that manages over 200 employees, and I have about 60 employees that I manage every day.

Q Wow. I bet that is trying to figure out who's –

JUROR 38: It's challenging, but it's fun. It's one of those things where you see it and you have to want to be that person.

Q Okay. What about – thank you. Thank you. What about you, ma'am? Opinion?

JUROR 8: Definitely a listener.

Q Listener, okay. All right. We've got some listeners, opinion people. What about – I already heard from you on this topic, but tell me again.

JUROR 48: I mean, I'm a listener until, in my mind, I've heard enough (inaudible). Then I'll have my opinion and I'll – it'll probably be hard to stray from it.

Q Okay. Very good. What about you, sir?

JUROR 25: Initially, a listener, because, you know, we're waiting to get the evidence, I don't want to draw to a conclusion too early. But if I see that the group is heading in the wrong direction or if there's something that I think is vital, I'll speak up early. As far as the process and as far as my opinion in the case, I'll be a listener.

Q Okay. All right. Ma'am, what about you?

JUROR 51: I'm a listener.

Q A listener? Okay. All right. Very good. What about you?

JUROR 25: Listener.

Q Listener. A lot of listeners on this group. What about you?

JUROR 4: Listener.

Q Listener. Okay. Last?

JUROR 2: Listener, but I also have my opinions, so –

Q Okay. All right. Appreciate that. Let me get through here a little bit more. Ah, here's one, kind of a hot-button item maybe. Are you more emotionally based, 'cause there can be – in a case like this, you can imagine there's gonna be people on the stand getting up crying and, understandably so, and can you get caught up and swept up in that emotions to the point that you're not thinking logically or rationally? Nobody wants to admit that, by the way, I understand that, but look at your hearts and look at how you operate as a human being and tell me that. Is that "I could get swept up with that emotion" or "No, I think I'll be fine. I 'll listen for – and listen and do the best I can"?

MR. MCLELAND: Judge, can we approach again, please?

THE COURT: Sure.

(Sidebar conference conducted.)

MR. MCLELAND: Judge, I think we're teetering on that line of conditioning the jury. "There's gonna be witnesses that are gonna get emotional." I think in that context – I think, by that context, he to the point of conditioning the jury again.

MR. BALDWIN: I'm just trying to find out if they're – if they can be a fair juror when there's emotional testimony.

THE COURT: Then just ask that.

MR. BALDWIN: Okay.

(Sidebar conference concluded.)

Q Will you all be fair, continue to be fair jurors and look at the case logically

and reasonably, even in the face of emotional testimony and other evidence that might come up? That's what I'm trying to find out. Juror – sir?

JUROR 27: I'm fine with that.

Q You feel that way?

JUROR 27: I can be objective and just go and – you're gonna have a little drama anyway, depending on what – how close they were to the victims and everything else, so you just look at the big picture.

Q Okay. Very good. Ma'am?

JUROR 13: I don't think I would be well.

Q Okay. I appreciate that.

JUROR 13: I'm an emotional person, and then having to see certain things that I've never come across before might also kind of affect my emotions, as well, as far as evidence, as far as some of the photos, and that kind of stuff.

Q Thank you, I appreciate that. Sir, what about you?

JUROR 29: I think I could stay impartial.

Q Okay. You an emotional guy?

JUROR 29: Not really.

Q Okay. Again, you're hard to read. All right. What about you, sir? Good?

JUROR 38: I'll be fine. I manage a bunch of employees every day, I have to hear their ups and downs, you know.

Q Okay. Thank you. What about you, ma'am?

JUROR 8: I'm pretty emotional.

Q Okay.

JUROR 8: Struggle with that sometimes, yeah.

Q Okay. Do you think you can be fair in light – to both sides?

JUROR 8: Yes.

Q Are you – okay. I'll just ask generally, 'cause I'm probably running out of time. In the back row, is there anybody that feels like, "I'm more of an emotional" – just raise your hand if, "I'm more of an emotional person"?

JUROR 51: (Responds by raising hand.)

JUROR 4: (Responds by raising hand.)

JUROR 2: (Response by raising hand.)

Q Thank you. One, three – one, two, three, okay. And nobody else over here? The three of you that raised your hands, can you overlook that or do you think that's gonna be an issue?

JUROR 2: No idea.

Q It's hard to know, isn't it? These are unfair questions, I get it. I'll move on to a different topic. Here's one that I like to ask is: How – I'm worried about a jury that is taking in things that aren't in the witness box, but are things going on out here. How are we getting along? How is we getting along? How is – what's he supposed to do, by the way, when people take the stand, Rick, what's – when there's people up there? He's – you know, he's innocent until proven guilty. He's over here, innocent man. Is he supposed to look at him? I'm worried about these things. Do you think, Juror Number 45, that that has any place? Are you – in –

JUROR 45: I think it's really hard to judge somebody, how they're gonna react, how I would react in his position, or how you guys interact with each other. I haven't been in those positions. You know, I'm sure everybody's different, you know. And I would hate to ever pass judgment on somebody just 'cause I didn't like their lawyer, you know, that would be totally unfair and I

wouldn't be able to live with myself afterwards, so I can't let that play a factor and I wouldn't.

Q Thank you. Juror 29, what about you? Does that – do you think you would be looking at the – kind of the environment over here and –

JUROR 29: The room?

Q Yeah.

JUROR 29: No, I don't think so.

Q All right. Not a problem. What about you, sir?

JUROR 36: (Responds by shaking head in the negative.)

Q No? Okay. These are things that – I'm a worrier, we worry – we lawyers worry about stuff and that's all I'm getting into. I just want to let you know I'm a worrier. We're getting through.

MR. BALDWIN: How much time do I have? Five minutes? No?

THE COURT: You have four minutes.

MR. BALDWIN: Four minutes, okay.

Q There's gonna be experts, expert witnesses, battle of the experts, you guys ever hear about that? Does anybody here think – have any thoughts on experts or when they hear how you – when you hear the word "experts", does that cause any reaction in anybody?

A (No response or indication from any potential juror.)

Q No? As a construction guy, are you kind of a – you deal with a lot of probably different types – are you like a general contractor?

JUROR 29: Like a road builder.

Q Oh, road builder. So engineering type of stuff? Okay. You deal with experts in your job?

JUROR 29: Yeah.

Q Some of them better than others?

JUROR 29: Sure.

Q Okay. All right. I think, believe it or not, I almost got through everything, but here's the last one – famous last words, we lawyers always say that and then it never ends up being true, but I want it to be true. The biggest worry I have is – one of the biggest worries, I should say, is can you wait. Can you wait? Because we have the story – we have our story to tell and our defense to bring, but they get to go first, and that's the way that it is – should be. And if you're the type – I want to find out, are you the type of person that cannot wait? "I'm gonna hear the first thing and then I'm gonna believe it." I mean, I'm a defense lawyer, I'm driving down the road the other day, I've done this for 30 years, and I see a guy on the side of the road with his hands behind his back, and the first thing I think is, "Oh, he must have done something. I wonder what he did." And I'm a defense lawyer; okay? I didn't wait. Might have been nothing there. So I want to find out who here knows this about themselves, again, looking in your heart on the serious matter, "I don't know if I can wait"? This is a long trial, there's gonna be a lot of evidence from the prosecution coming out of the trial before we even get to put on our own evidence. "I don't know if I can wait that long, I'm worried about that, me, as a juror, a potential juror, I'm worried about that." What about you?

JUROR 27: I don't have any problem with waiting, because the Defense is going to be putting out all their facts and everything, and then you're gonna have your chance to poke all them holes in it.

Q Okay.

JUROR 27: So if you go too quick, you might say, “Wow, I was totally off.”

Q Okay.

JUROR 27: You might as well just wait and look at the big picture.

Q Thank you. What about you?

JUROR 13: I mean, with everything I've seen in the media, I don't think I'd have to wait.

Q Okay.

JUROR 13: My mind is pretty made up.

Q I appreciate that, I appreciate that. I mean, back here, she had a different opinion after she came in here on the media, but I appreciate you saying that. What about you, can you wait?

JUROR 29: I can wait.

Q Okay.

JUROR 36: I'm gonna – I’ll wait.

Q You'll wait.

JUROR 36: Can I ask –

Q Yeah, yeah. What?

JUROR 36: I gotta use the restroom.

Q Oh. You know what?

THE BAILIFF: We're almost done.

Q How about I help you out and I'll just sit down. Will that help you out or do you need to go right now?

JUROR 36: No, you can talk to them.

THE COURT: There's a restroom right through this door.

JUROR 36: Thank you.

Q Yeah, it's been a long morning, huh? You know what? In honor of that, I will sit down. And I do thank you for your honest answers and I appreciate it very much. Thank you.

THE COURT: Counsel may approach when you're ready.

(Sidebar conference conducted.)

THE COURT: Okay. You all agree for cause on seat 2.

MR. MCLELAND: Seat 2?

THE COURT: Seat 2, which is – she clearly gave you cause; you agree on cause on seat 7, who also gave you cause; and agree on seat 8, who also gave you cause. Defendant is asking for cause on seat 10.

MR. ROZZI: She's the one that was talking about how her anxiety was gonna get the best of her, she couldn't overcome that.

THE COURT: No.

MR. MCLELAND: No, that was 9. That's the one –

THE COURT: You agree on cause on 9.

MR. ROZZI: Oh, no, it was a childcare problem –

THE COURT: So I'll take 9 for cause.

MR. ROZZI: -- a hardship.

THE COURT: So you're asking for cause on 10?

MR. ROZZI: 9 is cause?

THE COURT: Right.

MR. ROZZI: I don't think I asked for 9 on our sheet. He did. Is that right?

THE COURT: You did.

MR. ROZZI: Okay. I did?

THE COURT: Yeah.

MR. ROZZI: All right.

THE COURT: But you're also asking for cause on 10.

MR. ROZZI: Yeah, yeah, yeah, okay. I think 10 was the hardship on the kids.

THE COURT: She didn't say she couldn't do it.

MR. MCLELAND: Yeah, Judge, the State doesn't agree with that for cause.

THE COURT: Do you want a perempt on her?

MR. ROZZI: Let me check my notes real quick.

THE COURT: Sure.

MR. MCLELAND: Are we gonna take a short break after this?

THE COURT: I think we're gonna have to.

MR. MCLELAND: I'm gonna have to have some kind of a drink of water. I didn't bring any water with me, so I apologize.

THE COURT: Oh, we've got water, we've got bottled water, if you need it.

MR. MCLELAND: (Inaudible)

MR. ROZZI: I'll withdraw that. I think it was just a mistake, I think I just entered the wrong –

THE COURT: Do you want a perempt on her?

MR. ROZZI: No.

THE COURT: Oh, okay.

MR. ROZZI: We're good.

THE COURT: Okay. And then, the State is also asking – we talked about 9. The State's asking for cause on 12.

MR. MCLELAND: Yeah, Judge. I asked her questions about what she wrote on the questionnaire and asked if she could set that aside. She said she wouldn't be able to set that aside and that she couldn't be fair about it, and so we're asking that she be struck for cause because of those answers to those questions.

THE COURT: First, she started with financial and then said, "Oh, I'm okay."

MR. MCLELAND: Yeah.

THE COURT: And then veered into "stuff I've heard", which I appreciate that you kind of cut her off.

MR. MCLELAND: I did, but I didn't – I could have gotten into it more, but I didn't want to taint the jury with anything she says. She said, "I can't put it out of my mind and it's not fair if you ask me to put it out of my mind. I won't be able to set it aside."

MR. ROZZI: With all due respect, I can only hear half of what they're saying from over here.

MR. MCLELAND: Sure.

MR. ROZZI: I mean, it is hard to hear.

THE COURT: It is. It is, but yeah, she was giving – gave him cause.

MR. ROZZI: She was all over the place. I'm just gonna take a no-position on it.

THE COURT: Okay. I'll take her for cause. Okay. And then, the State is striking seat 1 and seat 5; and you accept the balance. So you're up to

four.

MR. MCLELAND: Yes.

THE COURT: Okay. And the Defendant is striking seat 3; and you accept the balance? Mr. Rozzi?

MR. ROZZI: So I have the balance being 4, 6 –

THE COURT: You have four strikes so far. So the balance is – we've all accepted and appreciate seat 4, seat 6, seat 10, and seat 11.

MR. ROZZI: That's what I've got.

THE COURT: Okay. So we're all in agreement on those.

MR. ROZZI: How many did we get last time total?

MR. MCLELAND: Six.

THE COURT: Six. So you're up to ten now. So these are your strike sheets, just draw a line underneath. I think – does he need to take a break? Do you need to take a break?

MR. ROZZI: He hasn't said anything. I think, obviously, everybody else did.

THE COURT: Oh, yeah, the whole group that got up and –

MR. ROZZI: Let me just go ask him.

THE COURT: We can go ahead and take a break, because we don't have everybody back yet to go into the second round – or the third round.

MR. ROZZI: You want me to take these back?

THE COURT: You take those back. Just draw a line underneath it, so that you can – that way, I know that you're striking – okay. And I'll do it the same as I did before.

(Sidebar conference concluded.)

THE COURT: Okay. All right. So, ladies and gentlemen, I'm gonna identify you each by seat and let you know if you have been excused. Again, we're gonna have all of you go into the jury room. There are restrooms on both sides, if you need to use the restroom, but there are restrooms on both side. Those of you that are selected are going to be given instructions, and those that have been allowed to leave will be allowed to leave through that door. So, Juror 27 in seat 1, you have been excused. Juror 13 in seat 2, you have been excused. Juror 29 in seat 3, you have been excused. Juror 36 in seat 4, you have been accepted as a juror. Juror 38 in seat 5, you have been excused. Juror 8 in seat 6, you have been accepted as a juror. Juror 2 in seat 7, you have been excused. Juror 4 in seat 8, you have been excused. Juror 25 in seat 9, you have been excused. Juror 51 in seat 10, you have been accepted as a juror. Juror 45 in seat 11, you have been accepted as a juror. And, Juror 48 in seat 12, you have been excused. So did you get all those? So the gentlemen are going to take you into the jury room. The four of you that have been selected will be given instructions, and the balance of you will be free to go. All right. Folks, we're gonna have to take a quick break. So those of you that are here for jury duty, one of the officers will escort you out of the room into courtroom 2. Let's take ten minutes.

(Off record at 12:43 p.m.)

(On record at 1:02 p.m.)

VOIR DIRE BY THE COURT

ANSWERS BY POTENTIAL JURORS.

THE COURT: Okay. All right. Juror 34, did you have any responses to my questions?

JUROR 34: I do not.

Q Okay. Juror 54, did you have any responses to my questions?

JUROR 54: I heard media coverage when the case broke.

Q Okay. So without going into whatever you may have read or heard, have you formed an opinion about this case?

JUROR 54: No.

Q Can you set aside whatever you read or heard and make a decision just on the evidence that you hear in the courtroom and the law as I instruct you?

JUROR 54: Yes.

Q Okay. Anything else?

JUROR 54: I don't remember your other questions, but if we're talking about burden, I do have a family and work, like most people, so –

Q You have a family member that –

JUROR 54: If this was the time to share.

Q I'm sorry, say that again.

JUROR 54: I have children and I work. This was the time to share our burdens; right?

Q Right, right, right, yes. Absolutely.

JUROR 54: Yes, okay.

JUROR 34: Well, then I'm gonna go back.

Q Okay. So let's start over then with Juror 34.

JUROR 54: Okay.

Q What's going on?

JUROR 34: Yeah, I'm waiting for two medical procedures to be scheduled.

Q Okay. And if you were selected to serve, would that delay the medical procedures?

JUROR 34: Absolutely.

Q Okay. And are –

JUROR 34: Which would be a problem.

Q And that would be a problem, okay. Thank you. And – all right. Juror 54, you've got children and work?

JUROR 54: Yes.

Q If you were selected to serve, what type of burden would that put on your children?

JUROR 54: Moderate.

Q Okay. And what about work?

JUROR 54: Same.

Q Okay. So if you were selected to serve, not ideal, but you could make arrangements?

JUROR 54: Yeah.

Q Okay. Anything else that we need to talk about?

JUROR 54: No.

Q Okay. Juror 40, did you have any responses to my questions?

JUROR 40: I've heard media coverage, seen media coverage, and I have formed an opinion, not to the point where it would – I could still hear evidence and be –

Q Okay. So the opinion that you have formed based on media, can you set that aside and make a decision just on the evidence that you see and hear in the courtroom?

JUROR 40: I would do my best, yes.

Q Okay. And any other concerns that you have?

JUROR 40: Well, being away from family for a month, yes. I have kids, I've never been away from them for a month.

Q Okay. So if you were selected to serve, you could make arrangements for your family? Not ideal, and we get that.

JUROR 40: Not ideal, but I could, yes.

Q You could do it, okay. Thank you. Juror 37, did you have any responses to my questions?

JUROR 37: Yes, I do. I am a subcontractor, I'm a commission-only sales rep. I only have one income, so it would be a burden for me to go.

Q So if you were selected to serve and you would be away from work for potentially 30 days, would that be an extreme financial hardship for you?

JUROR 37: It would be, yes.

Q Okay. Any other concerns?

JUROR 37: There is no concerns, but I do have a cousin that is a – was a police officer and then he was a detective, now he's an attorney.

Q Okay.

JUROR 37: There's no concerns there. I did have an uncle that was murdered in 1972, he was a police officer, also.

Q I'm sorry. Okay.

JUROR 37: So –

Q And all of the folks that you know that are in law enforcement, do you talk with them about their work?

JUROR 37: No.

Q Okay. Anything about their work that would affect your ability to be fair?

JUROR 37: No.

Q Okay. And your family member that was murdered, is there anything about that situation that would interfere with your abilities?

JUROR 37: No.

Q Okay. Anything else that we need to talk about?

JUROR 37: Besides media coverage?

Q Media coverage. Without going into anything that you read or heard, have you formed an opinion about this case?

JUROR 37: No.

Q So you can set aside whatever you heard in the media and make a decision on the evidence, not what the media says?

JUROR 37: Yes.

Q Okay. Anything else?

JUROR 37: No.

Q All right. Thank you. Juror 9, did you have any responses to my questions?

JUROR 9: Just the media.

Q Okay.

JUROR 9: But I haven't formed an opinion.

Q You haven't formed an opinion. So can you set whatever you read or heard aside and make a decision on the evidence that you see and hear in the courtroom?

JUROR 9: I believe so.

Q Okay.

JUROR 9: I just have issues with my memory.

Q Okay.

JUROR 9: I have memory issues. I mean, if – I would have to write down, take a lot of notes.

Q Okay. Well, we do give you the ability to take notes and we'll furnish you with paper and pens for that purpose; will that help?

JUROR 9: That would help.

Q Okay. Anything else?

JUROR 9: (Responds by shaking head in the negative.)

Q Any concerns about being sequestered, other than the normal concerns, obviously?

JUROR 9: Yeah.

Q Okay. Juror 14, did you have any responses to my questions?

JUROR 14: Yeah. I'm supposed to have a consult for surgery next week and, depending on the outcome of the appointment, I may have surgery followed-up after that.

Q Okay. So if you were selected to serve, would you be able to reschedule that consult?

JUROR 14: Possibly. I really don't know, this is my first consult regarding it.

Q Okay.

JUROR 14: It's kind of like the next step in treatment.

Q Okay. Any concerns about being sequestered?

JUROR 14: A little bit, just family kind of issues, mental health kind of issues, without going into a whole lot of detail.

Q Okay. So if you were selected to serve, would you be able to make arrangements?

JUROR 14: Possibly.

Q Okay. Anything else that we need to talk about?

JUROR 14: No, I don't believe so.

Q Okay. Juror 43, did you have any responses to my questions?

JUROR 43: Yes. This is all my co-workers talked about at work was the case.

Q I'm sorry?

JUROR 43: My co-workers, that's all they talked about at work is the case.

Q Oh, okay, was this?

JUROR 43: Yeah.

Q Would you be able to set aside all of those conversations and discussion and make a decision on the evidence that you see and hear in the courtroom and not on those conversations?

JUROR 43: I don't believe I could.

Q Okay. So you can't set that aside and be fair and impartial?

JUROR 43: No.

Q Okay. Thank you, sir. All right. Juror 44, did you have any responses to my questions?

JUROR 44: Just as it relates to the hardship.

Q Okay.

JUROR 44: I am currently the only pediatric hematology/oncology pharmacist in Fort Wayne, and so I care for roughly 30 children that are going

through cancer treatment; and so being away from my clinic for a month, I would be concerned for their care and safety, since I'm the only one that could do my job.

Q Okay. So if you were selected to serve, is there anybody that you could contact to cover for you?

JUROR 44: We've tried to put plans in place. I've tried to give co-workers a crash course, but that still doesn't make me feel comfortable with leaving them without a pharmacist.

Q Okay. And any other concerns that we need to talk about?

JUROR 44: I have a great-aunt who's currently on hospice with stage 4 pancreatic cancer and she's been given less than three months to live.

Q Okay. I'm sorry.

JUROR 44: So I'm just afraid that if I was to serve on the jury that I would lose what time I do have left with her.

Q Okay. And anything else that we need to talk about?

JUROR 44: That is it.

Q All right. Thank you. And, Juror 7, did you have any responses to any of my questions?

JUROR 7: I'm the sole person that takes care of everything in the household, I'm the only one that has a job, so it would be a big, huge financial problem.

Q Okay. Would it be an extreme financial hardship if you were selected to serve?

JUROR 7: I'm sorry, one more time again.

Q I said would it be an extreme financial hardship for you?

JUROR 7: Yes.

Q Okay. Anything else that we need to talk about?

JUROR 7: No.

Q Okay. Thank you. Juror 3, did you have any responses to any of my questions?

JUROR 3: Yes. I am a pharmacy manager and a staff pharmacist for a behavioral health hospital, and it would be difficult to find a reliable pharmacist to cover for me. And also heard from the media about it.

Q Okay. So as it relates to work, if you were selected to serve, would you be able to make arrangements for coverage?

JUROR 3: Yes, but difficult.

Q But difficult, okay. And the media that you – without going into what you've read or heard in the media, have you formed an opinion about this case?

JUROR 3: No.

Q Okay. So you can set aside whatever the media said and make a decision on the evidence, not on what the media says?

JUROR 3: Correct.

Q Okay. Thank you. Juror 5, did you have any responses to my questions?

JUROR 5: No, I don't think I could be impartial. I already have a judgment.

Q Okay. Can you set that opinion aside and make a decision on the evidence that you see and hear in the courtroom?

JUROR 5: No, I cannot.

Q Okay. Thank you, sir. And, Juror 52, did you have any responses –

JUROR 5: Oh.

Q -- to my – I'm sorry.

JUROR 5: Sorry. I've got a note from my doctor.

Q Okay.

JUROR 5: And I was told to wait till I got up here.

Q Okay. Reed, could you get that for me, please.

THE BAILIFF: Yes, ma'am.

THE COURT: Thank you.

Q Thank you, Juror 5. And that – we'll mark that as a confidential court record; okay?

JUROR 5: Thank you.

Q Thank you. All right. Juror Number 52, did you have any responses to my questions?

JUROR 52: Yes, the media, and I have formed an opinion.

Q Okay. So you've read or heard – without going into what you've read or heard, you have formed an opinion about this?

JUROR 52: Yes.

Q Can you set that opinion aside and make a decision on the evidence that you see and hear in the courtroom, not on media coverage?

JUROR 52: I think I could.

Q You can?

JUROR 52: Yeah.

Q Okay. Do you have any concerns about being sequestered?

JUROR 52: Not really, no.

Q Okay. All right. Thank you.

THE COURT: Mr. McLeland.

MR. MCLELAND: Thank you, Judge.

VOIR DIRE BY THE STATE – MR. MCLELAND

ANSWERS BY POTENTIAL JURORS.

Q Good morning.

THE COURT: Oh, hang on.

MR. ROZZI: Trying to be –

MR. MCLELAND: Sorry, Judge. Can we approach?

THE COURT: Yeah, yes.

MR. ROZZI: Yeah, may we approach?

(Sidebar conference conducted.)

MR. ROZZI: I'm just trying to be kind of efficient here. We've got like five or six people here that are causes and, at least in my mind that's – from listening to you or – and I think my point is, is if we have that many, can we just send them home and fill the seat again, so we're not talking to a bunch of people for no reason?

THE COURT: Well, that depends on who you are agreeing on and whether I agree with you or not.

MR. MCLELAND: The ones I have for cause are the ones that can't set aside (inaudible) and medical reasons.

MR. ROZZI: Okay. You want to try to rehab them? Fine.

THE COURT: Oh, okay.

MR. ROZZI: I'm not (inaudible)

THE COURT: Okay. All right.

(Sidebar conference concluded.)

THE COURT: Go ahead, Mr. McLeland.

MR. MCLELAND: Thank you, Judge.

Q Sorry, folks. I gotta – don't want the court reporter to be upset. Okay. Good morning. This'll get shorter as we go. I don't want to rehash a lot of things that I've already talked about, I don't want to bore you, and I get tired of saying the same thing. So I want to start first with talking about some of the issues that people have with being away from home and sequestered for a month. And I've got to use your numbers, I don't like that, but sir, Number 34, you talked about some health appointments that you had. If you were to miss those – I don't want to put your health in dire straights.

JUROR 34: Right.

Q That's not what I want to do.

JUROR 34: Sure.

Q I don't think anybody wants that. Would missing those appointments, would it do that?

JUROR 34: Well, it would have a definite influence on my quality of life. If you want to know what the appointments are, I'd be happy to share –

Q No, I don't want to get into that. I mean, that's your own –

JUROR 34: I mean, we're talking potential surgery and –

Q Yeah.

JUROR 34: -- so do I want to prolong that? I don't.

Q Okay. Okay. And so you have concerns that, by prolonging that, it could affect your health –

JUROR 34: Absolutely.

Q -- in a serious way. And then. also perhaps, if you were to sit as a juror, your mind may be focused on that, instead of what's up here; is that fair?

JUROR 34: And it's painful, as well.

Q Gotcha. Thank you for that, I appreciate that. And then I'm gonna jump around. Number 14, you talked about you had a health I think consultation you said.

JUROR 14: I have a consult for potentially having surgery. It's not a life-threatening thing, but it's a – it hurts, I'd like to get it fixed.

Q Sure, sure. If you were chosen as a juror and you were – you had to miss that consultation, is it gonna put your life in dire straights, is it gonna –

JUROR 14: Put my life in danger? No.

Q Okay. But is it gonna be painful?

JUROR 14: Yeah.

Q Okay. Got it. Okay. Let me see, Number 37, sir, you talked about a financial hardship. If you were picked as a juror, had to be sequestered for a month where you couldn't go – I think you said sales; is that right?

JUROR 37: (Responds by nodding head in the affirmative.)

Q Are you the only income in the household?

JUROR 37: I am.

Q Do you have kids?

JUROR 37: No.

Q Okay.

JUROR 37: Not at home.

Q Not at home? Okay. Does the household rely on your income to be able to pay bills, mortgage, car payments, whatever you have?

JUROR 37: All of it.

Q The Judge told a previous juror earlier that I think it was $80 the first