Appellate Case No. 25A-CR-00591

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| 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

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**The Transcript**

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MR. ROZZI: It kinds of goes to the ultimate issue.

MS. DIENER: Ultimate –

THE COURT: Yeah.

MS. DIENER: -- question.

MR. ROZZI: It's a good question. I'd be asking that question if I were them. That's what they're here for; right?

THE COURT: "Does he understand right and wrong?"

MR. ROZZI: I'm okay with –

MS. DIENER: But the –

MR. ROZZI: –- well, wait a minute, I think that's the same as the last; right? We already asked – it'd tend to belabor –

THE COURT: Well, that's would the test be (inaudible).

MS. DIENER: They're wondering about the test.

THE COURT: The test.

MR. ROZZI: Yeah, I know, but it's kind of just the ultimate issue. I guess my contention is it's such a broad question.

THE COURT: So no?

MR. ROZZI: I'd say that's a no.

THE COURT: Well, because – yeah, but then you get into the insanity defense where –

MS. DIENER: Yeah.

THE COURT: -- they're going and –

MS. DIENER: Makes sense.

THE COURT: Yeah. "In an early-on interview with Richard Allen and the police officer, Mr. Allen became confrontational and defensive" – so this

is the October 2022, the second one –

MR. ROZZI: Okay.

THE COURT: -- "did you watch that video pertaining to your opinion that Mr. Allen avoids confrontations?"

MS. DIENER: Very good question.

MR. ROZZI: Yeah.

THE COURT: So do I just ask, "Did you review videotapes of his interviews?"

MR. ROZZI: Yeah. I don't – I think the notes were (inaudible)

THE COURT: Okay. "Did you watch –

MR. ROZZI: I don't care.

THE COURT: -- the videos of his interviews?"

MS. DIENER: If they didn't, then we can't really ask the second part of it.

MR. ROZZI: Yeah.

THE COURT: Right.

MS. DIENER: Yeah.

THE COURT: Pertaining to that, yes. "Did you watch the police interview videos?" So if she says yes or no. Did she?

MR. ROZZI: I think she's gonna say no.

MS. DIENER: If she did, then ask, because I don't know that they were on the list.

THE COURT: "Did you watch the police interview videos?" "If someone has depression or anxiety as a child, would that cause them to commit crimes as an adult or become a sex addict?"

MS. DIENER: Oh, goodness. It's a fair question based on her evidence.

MR. ROZZI: I object to that.

THE COURT: Okay. "If someone is a slow thinker, is it possible that they can commit crimes because they aren't thinking fast enough to be able to control their action?"

MS. DIENER: Oh. She talked about the –

MR. ROZZI: Yeah, his cognitive abilities during –

MS. DIENER: She said slow cognitive abilities.

MR. ROZZI: Yeah, I think that's a wild (inaudible). It just seems so general.

MS. DIENER: It seems as slow as you claim him to be --

THE COURT: Well, because she was talking about him being a slow thinker as a result of his incarceration. I don't think she –

MR. ROZZI: Not at the time he was –

THE COURT: She did not talk about his prior –

MS. DIENER: Right.

THE COURT: -- there was nothing about anything prior.

MS. DIENER: Yes, I agree.

MR. ROZZI: That be a typical TV question.

THE COURT: Oh, that's great way to put it, a TV question, I like that.

MS. DIENER: A TV question.

MR. ROZZI: Somebody's watching too much television.

MS. DIENER: Yeah.

THE COURT: "You said that Mr. Allen had fears of leaving his room because of threats throughout the prison. If Mr. Allen has the common sense to be afraid for his safety, would he have common sense to fake his mental state?"

MR. ROZZI: That's not a bad question.

MS. DIENER: Fair question.

THE COURT: Do you want me to put it in the context, you said –

MR. ROZZI: Sure.

MS. DIENER: Same context and –

THE COURT: "With your extensive background, do people with Mr. Allen's mental health history display physically violent behavior towards themselves or others?"

MR. ROZZI: I don't think it's relevant, because she's asking about other people.

MS. DIENER: Well, she says him in his situation –

THE COURT: That's kind of character.

MS. DIENER: -- but yeah.

THE COURT: So no?

MR. ROZZI: No.

THE COURT: And then we'll take a break after that.

MR. ROZZI: Let me just say that that's a very nice suit.

MS. DIENER: Thank you.

MR. ROZZI: I like that.

MS. DIENER: My daughter picked it out. I said, "I'm wearing the Jackie Onassis suit today." She said, "I'm gonna want one."

THE COURT: The Jackie Onassis suit, this is awesome. I see we've

got several "no"s, but –

MR. ROZZI: At least they're paying attention.

MS. DIENER: Yeah.

MR. ROZZI: That's good. We've reached (inaudible) –

MS. DIENER: I'm really impressed with –

MR. ROZZI: -- I'm barely paying attention.

MS. DIENER: -- the jury, yeah, very impressive.

MR. ROZZI: All right, Jackie.

MS. DIENER: Okay.

MR. ROZZI: Okay. Thank you.

THE COURT: Now I've got that in my head.

(Sidebar conference concluded.)

THE COURT: All right. Sorry, Doctor.

THE WITNESS: That's okay.

THE COURT: A lot of questions.

**JUROR QUESTIONS OF DR. POLLY WESTCOTT**

QUESTIONS OF THE JURY, READ BY THE COURT.

Q Okay. You stated Mr. Allen had fears of leaving his room because of threats throughout the prison. If Mr. Allen has the common sense to be afraid for his safety, would he have common sense to fake his mental state?

A That's a really good question. So the comment that I made about fearing to leaving his cell was actually made – those comments were made before the point in time where I was saying the psychosis came on. So there were early symptoms I mentioned that I was concerned about in the records where he pulled back, had that slowed thinking, that was more towards December and March –

through March, and during that period of time was where he was making more clear statements of – he was reporting, you know, other people were calling him baby killer, he was afraid 'cause people were threatening his life, those kinds of things. They weren't statements that were made during that period of time during psychosis time.

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

MR. ROZZI: No.

THE COURT: Ms. Diener?

MS. DIENER: No other questions.

Q If someone has depression or anxiety as a child, would that cause them to commit crimes as an adult?

A That's a great question I feel I could give a whole lecture on. It really depends. I mean, everybody has – it's more about personality features than the presence of mental health issues. Plenty of people can commit murders that don't have mental health issues. People who commit murders also have mental health issues. If you're looking at just bare bones in terms of statistics and research, if you're looking at somebody who's more passive and they're more subdued and they're afraid of people, you're not usually looking at somebody who tends to be aggressive or hurtful, that's also consistent with things that I ask in my evaluation to try to understand the circumstance and how resilient they might be in a stressful situation.

THE COURT: Mr. Rozzi?

MR. ROZZI: No.

THE COURT: Ms. Diener?

**FOLLOW-UP EXAMINATION OF DR. POLLY WESTCOTT**

QUESTIONS BY MS. DIENER.

Q So knowing if Mr. Allen is capable of engaging in aggressive or threatening behavior would be relevant, would it not?

A Well, we're talking about in terms of his childhood behavior?

Q No, as an adult.

A While I would say that those are questions that I ask, I would have to know, if you're talking about aggressive behavior, if it was during a psychotic episode would be different versus in his typical life when he was functioning fairly well.

Q So your experience with him caused you to describe him as passive?

A I would say on his personality test, the objective personality tests, there were components that look at whether he's passive or aggressive, and he tends to be more passive, which is also consistent when I'm asking questions to him and also his wife about his history and how does he interact with people, what was his life like growing up. He tends to be less confrontational and more passive and submissive.

Q And so what if the aggressive or violent behavior is outside of a psychotic episode, but after incarceration?

A Can you reword the question?

Q Yes. What if he's not in a psychotic state, but he's acting aggressively or threatening?

A I would want more information. Like, for example, I know he was aggressive towards himself during periods of time both before incarceration and also after incarceration in terms of hurting himself, that would be a different type of aggression than acting towards someone else.

MS. DIENER: Okay. Thank you.

**JUROR QUESTIONS OF DR. POLLY WESTCOTT**

QUESTIONS OF THE JURY, READ BY THE COURT.

Q Again, if someone has depression or anxiety as a child, would that cause them to become a sex addict as an adult?

A I wouldn't say that I would necessarily equate those two things, no.

THE COURT: Mr. Rozzi?

MR. ROZZI: No, no questions.

THE COURT: Ms. Diener?

MS. DIENER: No question.

Q Mr. Allen was interviewed by the police in October of 2022, did you watch the police interview on video?

A I did not.

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

MR. ROZZI: No.

THE COURT: Ms. Diener?

MS. DIENER: No questions.

Q Is it your opinion that Mr. Allen's diagnosis is major depressive disorder with psychotic behaviors or that he has a full diagnosis of a psychotic disorder?

A So they're two very different things. He has a diagnosis of major depressive disorder with psychosis, that means that he had major depressant – depression, and when that major depression gets to a severe level with external stressors or stressors in his environment, then he ends up having this psychosis. A psychotic disorder is something you typically think of more in what's called schizophrenia, so they're having psychotic episodes and that's outside of the context of feeling

really depressed, so they're having hallucinations and delusions and the depression doesn't necessarily need to be there.

THE COURT: Mr. Rozzi?

MR. ROZZI: No question.

THE COURT: Ms. Diener?

**FOLLOW-UP EXAMINATION OF DR. POLLY WESTCOTT**

QUESTIONS BY MS. DIENER.

Q So would it be fair to say that someone who is psychotic has a lifelong diagnosis of a particular feature, whereas major depressive disorder with psychosis is a period in time?

A Not necessarily, because what we know is that when people have their – if they have a major depressive disorder and then they have a psychotic episode or psychosis is part of that major depressive disorder, they're actually 25 percent more likely to have psychotic episodes going forward, so it hits a threshold and then they're more likely to have subsequent psychotic episodes going forward. So it could be that once they have that psychotic episode, they could have continual psychotic episodes if they hit a period of extra stress later in life, too.

Q But again, it's an episode, it's not the other diagnosis you were referring to that was a person diagnosed as psychotic; correct? We're talking about an episode?

A Well, again, in the DSM-V, it's called a – it's major depressive disorder with psychosis, and so it's not – there's not a start point and an end point in the DSM-V.

Q But is that person in a constant state of psychosis?

A It can ebb and flow going forward depending on – if you treat the

depression, that's usually what ends up improving symptoms of psychosis going forward, but even if you treat the depression and the psychotic symptoms decrease, they still have a potential of returning back at some point in time.

MS. DIENER: Okay.

**JUROR QUESTIONS OF DR. POLLY WESTCOTT**

QUESTIONS OF THE JURY, READ BY THE COURT.

Q Can objective testing be interpreted multiple ways?

A I would say no. I mean, again, it kind of depends on what you're talking about. If you're talking about the personality test and the cognitive tests that we're using, there's a pattern that you see on cognitive tests and personality tests that are very well accepted in the field; in fact, we have kind of cookbooks that help us interpret personality tests. And not to get too technical, but there are codes that come up with each one of the personality tests; so if you're looking at the cookbook, the cookbook's kind of telling you exactly what those features mean. So there's not typically a lot of variation amongst psychologists who are looking at personality tests.

THE COURT: Mr. Rozzi?

MR. ROZZI: No questions.

THE COURT: Ms. Diener?

MS. DIENER: No question.

Q Did your medical records prior to incarceration include any objective testing by the mental health providers who would have prescribed medications?

A I'm gonna say generally no. The only thing that you see is when – there was a point in time when he actually was in-patient and they give – but it's more self-report, I would say, than objective. They're asking him questions about

symptoms, they're having him rank his symptoms, and so you see really small scales; but I'll tell you, on those scales, they don't have factors like we were talking about, is this truthful, is this exaggeration, it's just a way that they kind of marked things as treatment goes by to know is treatment helping or are symptoms improving. So you'll see like a 1 through 10 kind of scale of depressive symptoms or anxiety symptoms, but I would not call those objective; they're typically seen as more subjective, even though there are numbers on the scales.

THE COURT: Mr. Rozzi?

MR. ROZZI: No questions.

THE COURT: Ms. Diener?

MS. DIENER: No question.

Q And what is the difference between delusions and delirium?

A Another good question. Delusions are, again, just – it's a symptom. Delusions mean that someone has a false belief about something and there can be lots of different types. It can mean that they feel like they – I come in and I say, "I'm the President of the United States" and I'm telling you all about how I'm President of the United States, but you know I'm not the President of the United States, it's a false fact. It could mean that they have delusions like in this case, where you feel very, very guilty about something, and it could be guilty that's based on something that you know is not a fact. I mean, it's a false belief. Delirium is something that's very different. It really refers more towards someone who doesn't have an idea of where they are, who they are, time of day, they're confused, they have poor attention. It's – I used a little bit of that funhouse analogy. They don't know top from bottom and can't really have the accurate perception about what's going on in the world around them.

THE COURT: Okay. Mr. Rozzi?

MR. ROZZI: No questions.

THE COURT: Ms. Diener?

MS. DIENER: Judge, may we have a sidebar?

THE COURT: Sure.

(Sidebar conference conducted.)

MS. DIENER: So she said, "Like in this case, when you have a false belief," and I've got the (inaudible) statement of the Defendant with regard to the confessions, since that's (inaudible). I don't want to make a big deal of it in front of a jury, but I would like to ask about if she is insinuating that the false belief is related to whether this confession is true or not, because she can't speak to that.

THE COURT: No, she can't. And we can't –

MS. DIENER: I know.

MR. ROZZI: Put the toothpaste back in the –

THE COURT: Yeah.

MS. DIENER: Tube.

MR. ROZZI: I mean, it was her question.

THE COURT: Yeah.

MR. ROZZI: I just think we just let it go. I think they're gonna be less likely to –

MS. DIENER: It was not my question, it was –

MR. ROZZI: Well, a juror's question.

MS. DIENER: -- a juror question.

MR. ROZZI: Yeah. Sorry.

MS. DIENER: I said, "When you said false belief" (inaudible)

MR. ROZZI: Well, I mean, it was –

MS. DIENER: It's a problem.

MR. ROZZI: We shouldn't be trying to fix a question that she answered because she was asked it by the Judge. I mean, you know –

THE COURT: And it's a juror question.

MR. ROZZI: Yeah. I'm like, I don't – I think we're gonna draw more attention to it than we already –

MS. DIENER: Okay. Yeah.

MR. ROZZI: And I appreciate that, but –

(Sidebar conference concluded.)

THE COURT: So, Ms. Diener, any questions?

MS. DIENER: No.

THE COURT: All right. Well, thank you, Doctor. You may step down.

THE WITNESS: Thank you.

THE COURT: Well, ladies and gentlemen, this is an appropriate time for us to take a quick break, give you an opportunity to get up and move around a little. While you're outside the courtroom, please, keep your minds open. Please don't form any opinions or conclusions about anything. If you do discuss the evidence, please, only do that if all 15 of you are present in the jury room at the same time and, please, don't deliberate. Gentlemen.

THE BAILIFF: All rise.

(Jury out at 11:10 a.m.)

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

the record.

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

(On record at 11:29 a.m.)

THE COURT: All right. We are back on the record. Are we ready to proceed?

MS. DIENER: Yes, Judge.

MR. ROZZI: Yes, Judge.

THE COURT: Can we get a sidebar real quick, please.

MR. ROZZI: Yep.

(Sidebar conference conducted.)

THE COURT: I just want to kind of get an idea of where, are we doing something with the videos again?

MR. ROZZI: Yeah, I think we're gonna finish. We condensed 20 hours down to an hour and a half.

THE COURT: Oh, okay.

MR. ROZZI: And I'm gonna click through that like I did the other day, so it's not an hour and a half.

THE COURT: Oh, okay.

MR. ROZZI: That went faster.

THE COURT: Okay. Well, I would just – I mean, there are six members of the media clearly able to see your laptop, the screen of that.

MR. ROZZI: I appreciate that. I had the screen down, like, you know, the – 'cause I was cognizant of that and I actually had it turned a little bit, I had the screen down, I didn't – I was trying to not allow that to happen, but I didn't know. I heard about that a couple – two days ago. So I'm sorry, I'm doing

the best – I can't hardly see it, 'cause I've got it that way, so I'm doing the best I can.

MR. MCLELAND: I guess I've got an objection, but I didn't – I guess I don't – if you're gonna play the videos, one was, I guess, five hours long that's been condensed, the other one was two hours long and, I don't know, are you gonna fast forward it or –

MR. ROZZI: Yeah. So I said the other day, like for example, one of the videos is like 2 to 5 p.m., and when we took the screen grabs off and we put them like in double time so that it – you could play them quicker and it doesn't skip or anything, you know what I mean, how if you speed it up too much, it'll skip on you –

THE COURT: Um-hmm. (Affirmative response)

MR. ROZZI: -- so we were trying to fight that battle, but – we were able to accomplish that, and so I plan on handling this exactly the way I did the other day.

MR. LUTTRULL: So these are showing –

MR. MCLELAND: So I'd have the same obj – I'm sorry.

MR. LUTTRULL: And they're April and May?

MR. ROZZI: They're April to May of 2023.

THE COURT: (Inaudible)

MR. ROZZI: Yeah, these are in-cells.

THE COURT: And this is not in-cell, so (inaudible) six hours of stuff.

MR. ROZZI: Yeah. I'm – we're not – like I said, it's – we've got it pared down. The total time is like an hour and a half, and I'm not even gonna

show – I'm gonna ask you for permission to move this along, you know, so I'm gonna narrow that way down. Yeah, that's why I'm trying to accommodate what your rule was the other day.

MR. MCLELAND: Will you show our same objection. I don't functionally know how, if you're putting it – you're fast forwarding this – are you gonna have the jury back in to watch the whole thing at some point or is this just – basically, he's skipping along to the part that he wants to show. The jury's not seeing the whole thing. I'm not suggesting I want the jury to see the whole thing, I don't want them to watch five hours, but I don't know how that's gonna function with the jury not –

THE COURT: Well, that's – yeah, he's asking to skip and Jodie has to keep track of that. That's gonna be extraordinarily difficult to do, to see that where she is. And it may be you're gonna delineate that request, because I can't monitor that, Jodie can't monitor it, you may have to put that into the record, you know what I'm saying?

MR. ROZZI: Yeah, yeah.

MS. DIENER: Controlled, yeah.

MR. ROZZI: I don't know any other way on planet Earth to do this.

THE COURT: No, no –

MR. ROZZI: It's – you know, with all due respect, this is their information that they were gathering and using, and I'm just trying to put it in this palatable form, I mean, you know. If they have a problem with what I'm showing and they think it's misrepresenting it, then, I mean, I don't know –

THE COURT: Well, they could play the whole thing.

MR. ROZZI: Yeah. I mean they gave it to me.

MS. DIENER: The point that Jim brought up is, is I don't know which videos you're showing and what the content is, but if there's a part in there when he's interacting with someone else, like maybe washed in the shower, if you play it at fast speed, it makes it look like they're being rough with him when, in reality, they're not being rough with him, so –

MR. ROZZI: Yeah, I don't think there's any of that. But it's like in double, it's –

THE COURT: This is from in-cell.

MS. DIENER: This is the in-cell stuff?

MR. ROZZI: Yeah, yeah.

MS. DIENER: Okay. So he's just by himself?

MR. ROZZI: It's all in-cell.

MR. MCLELAND: It looks like it's (Inaudible) I don't know if I've got the right one, but yeah, Judge, I guess it's (Inaudible) I think it's all on them to calculate 10 minutes they believe –

MS. DIENER: Would be indicative.

MR. MCLELAND: All the rest is the same.

MR. ROZZI: No.

THE COURT: Well, If that's what we get to –

MR. ROZZI: Yeah.

THE COURT: -- I'd ask that for you stop it and we have a sidebar.

MR. ROZZI: I mean, he did spend two years in solitary confinement.

THE COURT: No, I understand that.

MR. ROZZI: How else am I gonna demonstrate –

THE COURT: No, no, no, I understand.

MR. ROZZI: -- how cumulative his life was, you know what I mean, like –

THE COURT: Yeah. No, I get it.

MR. ROZZI: I mean –

THE COURT: And that's why I gave you the ability to play the videos you really (inaudible)

MR. ROZZI: Yeah, these are definitely different circumstances.

MR. MCLELAND: Note our objection, Judge.

THE COURT: I will.

MR. MCLELAND: And I'm making a continuing objection. Thank you.

(Sidebar conference concluded.)

THE COURT: All right. So thank you for the sidebar. Just – I mean, again, the State's objection to what is going to be coming in is a cumulative objection. I overruled it on Saturday and allowed all of the movement video to be shown; but to the extent that this video starts becoming cumulative, I'll ask for a sidebar and we'll have a further discussion on the State's objection. Are we ready to bring the jury back in?

MR. ROZZI: Yes.

MR. MCLELAND: Judge, I guess just for I guess scheduling, is the plan to play the video and then break for lunch and do cross after lunch? Is this gonna be the last time you're gonna use Mr. Baker for testimony? We didn't really talk about that, Judge, so –

THE COURT: I don't know if Mr. Baker's planning on – I think after the videos, yes, you would have the opportunity –

MR. MCLELAND: Okay.

THE COURT: -- to cross him. If they're putting him back up for other reasons, you can deal with it then.

MR. MCLELAND: Okay. Thank you.

THE COURT: Okay. You ready?

MR. ROZZI: Yes.

THE COURT: Bring them in.

THE BAILIFF: All rise.

(Jury in at 11:38 a.m.)

THE BAILIFF: Thank you. You may be seated.

THE COURT: All right. Mr. Rozzi, you may call your next witness.

MR. ROZZI: We'd re-call Max Baker, Your Honor.

(Witness sworn.)

**DIRECT EXAMINATION OF MAX BAKER**

QUESTIONS BY MR. ROZZI.

Q What's your name?

A Max Baker.

Q All right. Max, we offered up some video a couple days ago of the movement video; you recall that?

A Yes.

Q And is there a second set of video that exists from Westville that we've extracted and kind of condensed and combined?

A Yes.

Q And tell the jury what that is.

A That is the video inside of Richard Allen's cell that's recorded and kind of

sent to the observation room, where they can – a set of guard is watching – guards are watching at all times.

Q Okay. And is that video video that we received from the – through the State from the DOC?

A Yes.

Q The IDOC record, if you will?

A Yes.

Q And is the in-cell video – is it accurate that that video doesn't have audio, it's just silent video?

A Yeah, there's no audio.

Q Okay. And in terms of trying to condense this, again just for context, are there date and timestamps actually with this video?

A Yeah, they're within the video themselves.

Q Okay. So it's just like you would expect to see on a video, there would be a – kind of a date or a time at the bottom of it?

A Yes, sir.

Q Along the drag bar or close to the drag bar?

A Yeah.

Q All right. And – but explain to the jury how this was condensed so that we're – you know, so that we wouldn't all be here for months and months and months.

A Yeah, absolutely. So yeah, I – obviously, today – I had generated about 20 hours of video to show the jury. We've had some complications and I've, you know, reduced it to save time and, you know, for everyone, and these were the two videos I thought were most important. And then, when it comes to the videos

themselves, when these were given to us by the State, they were given to us in five-minute chunks. Now, this wasn't true of all of the video, some days had 24-hour chunks, some didn't; but basically, the way it worked is you would have the native format and you would have to drag each five-minute chunk into the format once the previous five minutes was up, and so it was just super time consuming and hard to present cleanly for a jury like this. So with the help of Steve Bour, me and him kind of cleaned this up and made it so it's just one contiguous video.

Q So you just took a bunch of small files and connected them so that it's a continuous stream?

A Yes, basically what I said, we dragged and dropped the files in and then screen reported our screen –

Q Okay.

A -- so we just recorded that process. You will see in the video a cursor moving and dragging the file into it every now and then.

Q And then, with this particular exhibit, III –

MR. ROZZI: May I approach?

THE COURT: You may.

Q -- is this a thumb drive that has the two videos on it that we've reduced this down to?

A Yes.

Q Now, are those videos from April 12th, 2023, from 2 to 7 p.m. in the cell?

A Yes.

Q And the second one from May 25th, 2023, from 8 a.m. to 10 a.m. in the cell?

A Yes.

Q Now, for example, with the April 12th, 2023, video, it's a five-hour block; right?

A Yes.

Q It's 2 to 7 in real time?

A Yes.

Q But is this even – is that even condensed down?

A Yes. I fast forwarded the video, so we're not sitting here for five hours.

Q Okay.

A So it is sped up, yeah.

Q And did – were you making an attempt to do that to the point where it wasn't skipping, we weren't going so fast that it was skipping, but yet, we were – we could show more – we could show five hours in a much smaller period of time?

A Yeah. So basically, me and Steve Bour accelerated the video to the point where it wouldn't corrupt the video. There's a point of negative return when you're speeding up these videos to where you're getting less of the frames and it's just kind of skipping across and it makes it look bad, so we kind of sped it up until we kind of subjectively decided it wasn't ruining the video and it was still – you were able to see everything.

MR. ROZZI: Move to admit I –

Q Does the video accurately reflect what you've seen in the actual raw video that we have?

A Yes, it does.

Q And we have a year's worth of this raw video; right?

A Yes.
Q Maybe more.
A Actually, I think less.
Q Okay.
A From Westville, yeah.
Q Oh, from Westville.
A Yeah.
Q How much would you estimate we've got?
A I don't – I mean, I – like – I've worked off and on on the case. The last I saw of the discovery, we had up until like July-ish of –
Q Okay.
A -- in-cell security video.
Q Okay. Of 2023?
A Yes.
Q That's the last you saw?
A Yes, yeah, yeah.

MR. ROZZI: Your Honor, I move to admit III.

**DEFENDANT'S EXHIBIT III OFFERED**

MR. MCLELAND: Judge, just note the State's objection that we discussed at the sidebar and that is a continuing objection.

THE COURT: I'll note the continuing objection and admit III over objection with the proviso that we may have a sidebar. You may.

**DEFENDANT'S EXHIBIT III ADMITTED**

MR. ROZZI: Should I just give this to –

THE COURT: Yes.

MR. ROZZI: Thank you.

Q So, Max, the first video is April 12th, 2023, 2 to 7 p.m.; is that correct?

A Yes.

Q And this video technically, in total, is a hour and 12 minutes; right?

A Yes.

**DEFENDANT'S EXHIBIT III PUBLISHED BY PLAYING**

MR. ROZZI: May I advance two minutes?

THE COURT: You may.

MR. ROZZI: Judge, I'm gonna keep doing this just to try and move through this.

THE COURT: Okay.

MR. ROZZI: I appreciate the Court's patience in that regard.

THE COURT: Okay. Just let us know where you stop and start.

MR. ROZZI: I will, I'll – yeah. 3:07. May I advance two minutes?

THE COURT: You may.

MR. ROZZI: 5:51. May I advance two minutes?

THE COURT: You may.

MR. ROZZI: 8:23. May I advance two minutes?

THE COURT: You may.

MR. ROZZI: 10:54. May I advance two minutes?

THE COURT: You may.

MR. ROZZI: 13:18. May I advance two minutes?

THE COURT: You may.

MR. ROZZI: 15:47. May I advance two minutes?

THE COURT: You may.

MR. ROZZI: 18:13. May I advance two minutes?

THE COURT: You may.

MR. ROZZI: 20:32. May I advance two minutes?

THE COURT: You may.

MR. ROZZI: 22:55. May I advance two minutes?

THE COURT: You may.

MR. ROZZI: 25:25. May I advance two minutes?

THE COURT: You may.

MR. ROZZI: 27:51. May I advance two minutes?

THE COURT: You may.

MR. ROZZI: 30:17. May I advance two minutes?

THE COURT: You may.

MR. ROZZI: 32:42. May I advance two minutes?

THE COURT: You may.

MR. ROZZI: 35:05. May I advance two minutes?

THE COURT: You may.

MR. ROZZI: 37:38. May I advance two minutes?

THE COURT: You may.

MR. ROZZI: 40:17. May I advance two minutes?

THE COURT: You may.

MR. ROZZI: May I advance two minutes?

THE COURT: You may.

MR. ROZZI: 47:23, my apologies.

THE COURT: Thank you.

MR. ROZZI: May I advance two minutes?

THE COURT: You may.

MR. ROZZI: 49:46. May I advance two minutes?

THE COURT: You may.

MR. ROZZI: 52:16. May I advance two minutes?

THE COURT: You may.

MR. ROZZI: 55:12. May I advance two minutes?

THE COURT: You may.

MR. ROZZI: 57:39. May I advance two minutes?

THE COURT: You may.

MR. ROZZI: One hour, six seconds. May I advance two minutes?

THE COURT: You may.

MR. ROZZI: One hour, two minutes, 30 seconds. May I advance two minutes?

THE COURT: You may.

MR. ROZZI: One hour, four minutes, 59 seconds. May I advance two minutes?

THE COURT: You may.

MR. ROZZI: One hour, seven minutes, 27 seconds. May I advance two minutes?

THE COURT: You may.

MR. ROZZI: 1:09:52. May I advance 30 seconds?

THE COURT: You may.

MR. ROZZI: 1:11:03. Again 30 seconds?

THE COURT: You may.

MR. ROZZI: 1:11:52. May I continue with Mr. Baker?

THE COURT: Yes.

Q Mr. Baker, the second video, is it May 25th, 2023?

A Yes.

Q And is this 8 a.m. to 10 a.m. in real time?

A Yes.

Q And again, this has been condensed, just like the first one?

A Yes.

MR. ROZZI: Move to publish May 25th, 2023, 8 to 10, Your Honor.

THE COURT: You may.

Q This is a much shorter video, 26 minutes; right?

A Yes.

**DEFENDANT'S EXHIBIT III PUBLISHED BY PLAYING**

MR. ROZZI: Move to advance two minutes.

THE COURT: You may.

MR. ROZZI: Three minutes on the video, three minutes. Move to advance two minutes.

THE COURT: You may.

MR. ROZZI: Five minutes, 36 seconds. Move to advance two minutes.

THE COURT: You may.

MR. ROZZI: 8:26. Move to advance two minutes.

THE COURT: You may.

MR. ROZZI: 11:17. Move to advance two minutes.

THE COURT: You may.

MR. ROZZI: 14:08. Move to advance two minutes.

THE COURT: You may.

MR. ROZZI: 16:51. Move to advance two minutes.

THE COURT: You may.

MR. ROZZI: 19:25. Move to advance two minutes.

THE COURT: You may.

MR. ROZZI: 21:56. Move to advance one minute.

THE COURT: You may.

MR. ROZZI: 23:32. Move to advance one minute.

THE COURT: You may.

MR. ROZZI: 24:53. May I continue?

THE COURT: You may.

Q Max, you testified earlier, you had 18, 20 hours of this video – what was your testimony? I don't remember.

A Yeah, I – when it comes to the in-cell video, me and Steve Bour have worked to compile video similar to ones the jury just saw, about 18 to 20 hours worth of that video.

Q During the months of April, May, and June of 2023?

A Yeah. Well, some of them were leading up to that, as well.

Q Okay. But we've cut all that out –

A Yes.

Q -- right? In the interest of time?

A Yes.

Q And are – in terms of the April, May, and June videos that you cut out, would they be kind of similar as to what we saw today?

A Yeah, yeah.

Q The conditions of the cell and the circumstances surrounding the detention?

A Yes, yeah.

MR. ROZZI: I don't have anything further, Judge. I don't know how you want to handle this monitor before Mr. McLeland crosses.

THE COURT: We can move it back.

MR. ROZZI: Move it back?

THE COURT: Move it back.

THE WITNESS: Do you want me to help with that?

THE COURT: Yes, if you would, please. Mr. McLeland.

MR. MCLELAND: Thank you, Judge.

**CROSS EXAMINATION OF MAX BAKER**

QUESTIONS BY MR. MCLELAND.

Q Mr. Baker, in the video that we saw today, Mr. Allen is in the cell by himself; is that correct?

A Yes.

Q And he's got a cell to himself; is that right?

A Yes, sir.

Q And do you believe that it's safer for Mr. Allen to be in a cell by himself, as opposed to general population?

MR. ROZZI: I'm gonna object to outside the scope. We laid the foundation with this, put this video in. Max did not render an opinion about Mr. Allen's mental circumstances or his physical circumstances, he just – it's foundational only.

THE COURT: Sustained.

Q How many hours of video have you watched with your involvement in this case?

A Probably hundreds. I've watched some video multiple times. I mean, obviously, I've not seen every video. He was being recorded 24 hours a day, every day, that would be inconsumable, in my opinion, but I've seen a significant portion of it.

Q And the other day when you testified, I believe it was Saturday, you chose 15 of the movement videos to play; is that right?

A Yes.

Q And then today, there were two videos that you chose to play.

A Yes.

Q And at least today in your testimony, you testified you chose those two 'cause they were most important; correct?

A Yeah. I mean, I can expand on that if you want.

Q Sure. Why do you think, out of all those hours of video – well, let's back up. Out of all those hours of video that you reviewed, why did you choose the 15 camcorder videos to play for the jury?

A Well, they showed different aspects of Rick's life in the prison, so him going to the nurse; to where he meets with Dr. Wala; to, you know, getting X-rays in one of the videos; to what the showers look like; to the incidents of him being tazed in prison. I just wanted to record all the different times he was being taken out of his cell and being taken to other places, but I did not get all of it.

Q So there are other videos within those that show him showering, showing him being taken out of the cell, but you chose these 15 specifically. Why did you want the jury to see these 15 specifically?

A 'Cause they also, I think, give an accurate impression of his mental state at the time.

Q To curry sympathy with the jury for Mr. Allen; right?

A If that's how you want to interpret it.

Q To show him in what you view as the worse conditions that he's in in Westville; right?

MR. ROZZI: Judge, I'm gonna object again to outside of the scope. I mean, this is –

THE COURT: Overruled. He said he picked the ones he thought were most important.

MR. ROZZI: Well, what he said was "we picked the ones" is what he said.

THE COURT: Overruled.

A Can you repeat the question again, I'm sorry.

Q Sure. You picked these 15 – let's focus on the camcorder videos, you picked those 15 videos to show to the jury.

A Yes.

Q And I assumed you'd picked those because you wanted to show Richard Allen in what you believed were the worst conditions he suffered in Westville; is that true?

A I could have picked a lot more videos and shown a lot more and it would have been just as bad.

Q But you –

A I wanted to show more.

Q But you did that to try to convince the jury that Richard Allen's the victim;

right?

A Well, just as you objected to me showing your videos –

Q No, no, hold on.

MR. ROZZI: Well, Judge, let him answer the question.

MR. MCLELAND: He's not answering the question, Judge.

MR. ROZZI: Well, he's not answering it the way Mr. McLeland –

THE COURT: Okay. Stop, stop, stop.

MR. ROZZI: -- wants him to answer the question.

THE COURT: Answer the question.

THE WITNESS: I apologize, Your Honor.

A Can you rephrase your question again.

Q Sure. You showed the jury those videos to try to imply to the jury that Richard Allen is the victim here by being incarcerated at Westville; is that true?

A I don't think I was trying to victimize him. I think I was trying to give an accurate representation to the jury of what the video looked like.

Q But you picked the worst videos, in your mind, to show the jury, to give them your accurate representation of his time in Westville?

A Correct me if I'm wrong, I said the most important –

Q Is that correct?

A -- not the worst. No, it's not.

Q Okay.

A I said the most important, not the worst.

Q Richard Allen's not the victim in this case, is he?

A No.

Q A.W. and L.G.; right?

MR. ROZZI: I'd object to relevance at this point.

THE COURT: Sustained.

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

THE COURT: Mr. Rozzi.

**RE-DIRECT EXAMINATION OF MAX BAKER**

QUESTIONS BY MR. ROZZI.

Q Did you pick some of those videos to show these people the truth?

A Yes.

MR. ROZZI: I have no further questions.

THE COURT: Mr. McLeland.

**RE-CROSS EXAMINATION OF MAX BAKER**

QUESTIONS BY MR. MCLELAND.

Q That's the truth as you see it though; right? Because you could have shown them other videos and you chose not to?

A And you could have not objected. You – I wanted to show more.

Q Hold on –

A I have 20 hours –

Q -- hold on –

A -- worth of video to show.

Q -- hold on. The 15 videos you picked you thought were the most important out of the movement videos; right?

MR. ROZZI: Asked and answered.

THE COURT: Sustained.

Q The two camcorder videos you picked today, why do you think those are most important?

A Do you mean the in-cell videos, not the –

Q The in-cell videos, correct.

A Well, 'cause they depict events that have been referred to throughout this trial, Rick eating his own feces and banging his head against the wall, those – that was the main reason.

Q And you think those are events where Richard Allen was put in a bad situation?

MR. ROZZI: I'm gonna object –

A That's a simplification –

MR. ROZZI: -- to outside the scope –

THE COURT: Sustained.

MR. ROZZI: -- of direct at this point.

Q And you think those events were important for the jury to see?

MR. ROZZI: Obj – asked and answered. Objection: Asked and answered.

THE COURT: Sustained.

Q You didn't pick to show the jury other in-cell videos?

MR. ROZZI: Objection: Asked and answered.

THE COURT: Overruled.

A Yes. And as far as I can tell, you didn't either.

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

MR. ROZZI: I have no questions.

THE COURT: Does anybody on the jury have any questions for Mr. Baker? Would counsel approach.

(Sidebar conference conducted.)

THE COURT: "Since you work for the Defense, could you confirm if the defense attorneys prompted you to choose the worst videos?"

MR. ROZZI: Yeah, I'm okay with that.

MR. MCLELAND: I'm good.

THE COURT: Okay. And then we're gonna break for lunch.

MR. ROZZI: That's fine.

(Sidebar conference concluded.)

**JUROR QUESTIONS OF MAX BAKER**

QUESTIONS OF THE JURY, READ BY THE COURT.

Q Since you work for the Defense, could you confirm if the defense attorneys prompted you to choose the worst videos?

A I was given discretion to choose these videos. I had viewed more of them than the defense attorneys had and they kind of trusted my judgement on that.

THE COURT: Mr. Rozzi.

**FOLLOW-UP EXAMINATION OF MAX BAKER**

QUESTIONS BY MR. ROZZI.

Q Max, did you compile videos from December, January, February, March, where there was nothing going on except him in the cell?

A Yes. And up until last Saturday, I was ready to present those to this jury.

Q Stuff where there's just nothing; right?

A Yes.

Q Him just walking back and forth?

A Yes.

MR. ROZZI: I have nothing further.

THE COURT: Mr. McLeland.

**FOLLOW-UP EXAMINATION OF MAX BAKER**

QUESTIONS BY MR. MCLELAND.

Q During the phone call – were you in court when we played the phone calls of his confessions?

A Yes.

MR. ROZZI: I'm gonna object again to outside of the scope. We're talking about -

MR. MCLELAND: It goes to the reasoning why he picked the certain videos he did, Judge.

MR. ROZZI: This is based off of a jury question.

THE COURT: Well, I understand that, but he's allowed to ask. Go ahead.

Q Were you able to hear the phone calls that we played in court with his confessions?

A Yeah, I was in court.

Q Were any of the videos that you played from any of the dates he made those confessions?

A I don't have the dates in front of me right now, so I can't say with a hundred percent certainty either way.

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

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

THE WITNESS: Thank you, Your Honor.

THE COURT: Well, ladies and gentlemen, we're gonna go ahead and break for lunch. While you're outside the courtroom, please, keep your minds open. Please don't form any opinions or conclusions about anything. If

you discuss the evidence, please, only have all 15 of you present at the same time and, please, don't deliberate. Gentlemen.

THE BAILIFF: All rise.

(Jury out at 12:21 p.m.)

THE COURT: You may be seated. All right. Is there anything we need to do outside the presence of the jury, Mr. McLeland?

MR. MCLELAND: Judge, could we discuss a few I guess witness issues that I anticipate coming in this afternoon? I don't know if this might be a good time to address this.

THE COURT: Sure.

MR. MCLELAND: If you'd rather address it after lunch, Judge, that's fine.

THE COURT: No, we can address them now.

MR. MCLELAND: Could we have a sidebar?

THE COURT: Oh, a sidebar, okay, sure.

(Sidebar conference conducted.)

MR. MCLELAND: Are you gonna call Steve Mullin today?

MR. BALDWIN: Yes.

MR. MCLELAND: And Steve Mullin, is that just to address the issue with the police report?

MR. BALDWIN: Yeah, plus something else that he said. We're gonna introduce the other Ford Focus –

MS. AUGER: Information.

MR. BALDWIN: -- Ford Focus information that we had talked about, try to get the Blocher report in that we talked about. He had said on his

direct –

MR. MCLELAND: I mainly – you don't have to tell me anything –

MR. BALDWIN: Okay.

MR. MCLELAND: -- I mainly just wanted to address the Blocher report.

MR. BALDWIN: Oh, okay.

MR. MCLELAND: I was able to find some case law and I think some stuff that's applicable –

MR. BALDWIN: Okay.

MR. MCLELAND: -- to that. I was gonna give it to you now, so you can review it.

THE COURT: Oh, okay, so I could at that over lunch.

MR. MCLELAND: Yeah.

THE COURT: I'm sorry, what is the Blocher report?

MR. BALDWIN: The famous – I'll go grab one for you, Judge.

MR. MCLELAND: Yeah.

THE COURT: Okay. So this has to do with –

MR. MCLELAND: There's a police report from Steve Mullin and it's got statements from – you'll get – has Jennifer got it?

MS. DIENER: Well, I can handle this (inaudible) what's going on?

MR. BALDWIN: This is – the highlight was the way we received it, FYI.

THE COURT: Okay.

MR. BALDWIN: So this is a report that –

MR. LUTTRULL: Jodie? Did Jodie take it?

MR. BALDWIN: No.

MR. LUTTRULL: 'Cause you showed it to Steve.

MR. BALDWIN: I don't remember.

MR. LUTTRULL: Okay.

MR. MCLELAND: This is a report from Steve Mullin, from that report it's got testimony from a Master Trooper Blocher, deceased. The Defense moved to admit it under I think 803(6) –

MR LUTTRULL: 803(6).

MR. BALDWIN: 803(6).

MR. LUTTRULL: 803(6), yeah.

MR. MCLELAND: And so we're just – our concern is I think the police report can be admitted through that, but all the things in that that are hearsay, it still has to meet the exception to the hearsay. So if they're gonna move to admit, based upon this case all the hearsay stuff, there has to be an exception to that stuff, the hearsay rules still apply, so that's the State's objection.

MR. BALDWIN: Yes.

MR. MCLELAND: And that case, that's that *Myers* case.

THE COURT: Okay.

MR. BALDWIN: I have a hearsay exception.

THE COURT: Okay. Is this yours?

MR. BALDWIN: Yes.

THE COURT: Okay.

MR. BALDWIN: Go ahead, I'm sorry.

MR. MCLELAND: No, that's okay, go ahead. There's exceptions?

MR. BALDWIN: There's a – in the March 18th, I believe it was in the contempt hearing, the State – we objected to a hearsay statement, you said course of investigation, and the Court overruled our objection and sustained it, so we would say this is in the course of an investigation, that's why this is going in.

MR. MCLELAND: I guess I don't know what exception that would apply to. I just don't know what exception that would fall under. Judge, I don't – these are his statements, I can't cross examine, and they're asserting it's for the truth of the matter or what they're saying is true. There is no exception that it falls under.

THE COURT: So your exception, you're saying, is course of investigation?

MR. BALDWIN: Correct.

THE COURT: Course of investigation that Steve Mullin was conducting?

MR. BALDWIN: Correct.

THE COURT: Based on this report from an officer?

MR. BALDWIN: Correct.

MS. AUGER: It's his – it's Mullin's report.

MR. BALDWIN: It's Steve Mullin's report and what he did was, in order to continue to investigate, he dispatched Mitch Blocher to assist him in trying to ping these phones and that's – and then, Mitch Blocher did ping those phones.

MS. AUGER: That's – no –

MR. BALDWIN: Yeah, go ahead.

MS. AUGER: That's not quite – they sent the – they had dispatch send the pings, email evidence of the pings to Blocher, who was a member of the ISP, and so he looked at –

MR. BALDWIN: Yeah.

MR. MCLELAND: (Inaudible)

THE COURT: Okay.

MR. MCLELAND: That speaks for itself.

THE COURT: Okay. All right.

MR. BALDWIN: Yeah.

MR. MCLELAND: So –

THE COURT: I've got the case law, I got the report.

MR. MCLELAND: And the next issue is, is Kevin Murphy gonna be called?

MR. BALDWIN: Yeah. He's not Odinism. He's being asked one question and that – well, I mean, there'll have to be some lead-up questions, but -

MR. MCLELAND: I assume it's gonna be about how many people –

MR. BALDWIN: Yep.

MR. MCLELAND: -- he thinks are involved.

MR. BALDWIN: Yes.

MR. MCLELAND: His opinion.

MR. BALDWIN: Yes.

MR. MCLELAND: How is his opinion relevant and his theory relevant to this case?

MR. BALDWIN: It's not his theory, it's what he heard, you know,

that Unified Command said. He can testify, "I heard Unified Command say, for the first, you know" –

THE COURT: And we've had multiple witnesses testify that they believed at the beginning of the investigation it was multiple –

MR. BALDWIN: That was –

THE COURT: -- and they then have since narrowed it when your client was arrested, so that's in evidence, multiple people came in and testified to that (inaudible).

MR. BALDWIN: I think they said two – he's going to say that it was a very specific number, it was either two to three up to five to six, that was the repetitive drumbeat was two to three up to five or six, and what we heard from the others is just, you know, it was more than one person.

MR. LUTTRULL: It's his opinion. He's not an expert witness or skilled witness capable of offering opinion.

MR. BALDWIN: He's stating what others – at the Unified Command meetings in the morning, this is what they said.

MS. DIENER: Then, that's hearsay.

MR. LUTTRULL: I'm sorry to interrupt you,

MR. BALDWIN: No, no, you're fine.

THE COURT: It's hearsay. It's already in, we've had multiple witnesses testify.

MR. BALDWIN: Okay. I might – we haven't done this yet, 'cause it's awkward and I don't like the jury – like the other day, I was amazed that we haven't had this happen, the jury being out all day the other day or being out while we w were debating stuff. I would like to have – I would like to just put

him on the record maybe at the end of the day, after the jury's gone. It'll take five minutes just for an offer of proof.

THE COURT: Well, you can offer proof of that verbally.

MR. BALDWIN: Okay.

THE COURT: Absolutely.

MR. BALDWIN: Okay.

THE COURT: I mean, that would be the issue. I mean, you can make your offer to prove –

MR. BALDWIN: I was gonna do – I'm sorry.

THE COURT: No, I mean, if your offer to prove is different than the cumulative evidence that we've already heard, then –

MR. BALDWIN: I believe it is. I understand why you're saying that, so I will offer it –

THE COURT: Okay.

MR. BALDWIN: -- verbally.

THE COURT: Okay.

MR. BALDWIN: Another thing is – I don't know what to do about this – while we're here, is we've successfully served Elvis Fields, and I know that that would not be done in front of the jury, he is not here, I've been looking out in the hall. I would ask for a warrant for his arrest for not coming in, so I'll – I don't know if you want to do that here or on the record.

THE COURT: Yeah, we can do that on the record.

MR. BALDWIN: Okay. All right.

THE COURT: So we're done, then –

MR. BALDWIN: Yes.

THE COURT: -- we're breaking for lunch?

MR. MCLELAND: Yes, Judge.

THE COURT: Okay.

(Sidebar conference concluded.)

THE COURT: Okay. It's 12:30, so why don't we recess for lunch and be back here at 1:30. Thank you very much. Jodie, you can go off the record.

(Off record at 12:29 p.m.)

(On record at 1:34 p.m.)

THE COURT: Okay. We are back on the record. Are we ready to proceed?

MS. AUGER: Yes.

MR. BALDWIN: Yes, Your Honor.

THE COURT: Is that State ready?

MR. MCLELAND: Yes, Your Honor.

MR. LUTTRULL: Yes, Your Honor.

THE COURT: I had the chance over the lunch break to review the report that was submitted by counsel. While it does fall under the hearsay objection of the police report, there is what I would characterize as totem pole hearsay contained therein, so unless you can site exceptions to each individual hearsay, the report can't come in. And was this yours? Did you give this to me?

MR. BALDWIN: Yeah. I mean, yes.

THE COURT: Let me give that back to you, so I don't lose it in my pile of stuff up here. Okay. So are we ready to bring the jury back in, folks?

MR. MCLELAND: Yes.

THE COURT: Okay. Gentlemen.

THE BAILIFF: All rise.

(Jury in at 1:37 p.m.)

THE BAILIFF: Thank you. You may be seated.

THE COURT: Thank you, gentlemen. All right. Ms. Auger, you may call your next witness.

MS. AUGER: Thank you, Your Honor.

(Witness sworn.)

**DIRECT EXAMINATION OF JAIME JONES**

QUESTIONS BY MS. AUGER.

Q Jaime, I'm gonna tell you right now, you're gonna have to speak up a little bit, so that we can all hear you; okay?

A Okay.

Q I couldn't hear that.

A Okay.

Q Okay. Thank you. And can you tell us your name, please.

A Jaime Jones.

Q How do you spell Jaime?

A J-A-I-M-E J-O-N-E-S.

Q Jaime, are you related to Rick Allen?

A I am his sister.

Q Are you a full sister or –

A We have different dads.

Q Do you have the same mother?

A Yes.

Q Okay. And how do you and Rick compare age wise?
A There's about a little over five years.
Q Who's older?
A He is.
Q I can ask that because it's a man; right? Okay. Did you and Rick always live together during your childhood?
A Yes.
Q Okay. And how old was everyone, if you remember, when you and Rick kind of moved out of the house and went out on your own?
A He left pretty early, he went to basic training, so he was out of the house around 18, and then he got married shortly after he got back.
Q How long was he out in the Army?
A He was gone twice for that and then he did the weekend thing for a long time.
Q Reserves?
A Huh?
Q Reserves?
A Yes.
Q Okay. And I'm just gonna ask you, Jaime, did Rick ever molest you?
A No, he did not.
Q Did he ever touch you in any kind of sexual manner?
A No, he did not.
Q And do you love your brother?
A I do.
Q Would you lie for him?

A No.

MS. AUGER: Nothing further.

THE COURT: Mr. Luttrull.

MR. LUTTRULL: Thank you, Your Honor.

**CROSS EXAMINATION OF JAIME JONES**

QUESTIONS BY MR. LUTTRULL.

Q So a little over five years younger than your brother, Rick Allen?

A Yes.

Q There were lots of neighborhood children at the time you were growing up in Mexico; is that correct?

A Correct.

Q And I'll just ask you if these names are familiar to you: Chris?

A Yes.

MS. AUGER: Your Honor, objection: Outside the scope.

THE COURT: No response? It is. Sustained.

MR. LUTTRULL: No further questions.

THE COURT: Ms. Auger.

MS. AUGER: Nothing, Your Honor.

THE COURT: Does anybody on the jury have any questions for Ms. Jones?

(No response or indication from any juror.)

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

MS. AUGER: Thank you, Your Honor.

(Witness sworn.)

**DIRECT EXAMINATION OF BRITTANY ZAPANTA**

QUESTIONS BY MS. AUGER.

Q Brittany, can you tell us your full name, please.

A Brittany Zapanta.

Q Okay. And how do you spell that?

A Z-A-P-A-N-T-A.

Q How do you spell Brittany?

A B-R-I-T-T-A-N-Y.

Q Okay. And you're gonna have to speak up a little bit, try to reach your voice to me. How are you related to Richard Allen?

A He's my father.

Q And who is your mother?

A Kathy.

Q Kathy Allen?

A Um-hmm. (Affirmative response)

Q Okay. You also have to answer out loud "yes" or "no"; okay?

A Okay.

Q All right. And did you live with both of your parents, Rick and Kathy, your entire childhood?

A Yes.

Q And when did you move out?

A It would have been around 2015.

Q Why?

A For a job.

Q Where do you work?

A I work at an urgent care.
Q Okay. And prior to moving out and starting your job, did you also – were you also gone for a period of time for school?
A Yes.
Q Okay. Where was that?
A I was at Ball State for a year, and then I was in Indianapolis for about 14 months.
Q When you left to go to Ball State, how old were you?
A I would have been 18.
Q Okay. Graduated from high school?
A Yes.
Q All right. And, Brittany, I'm sorry to ask you this, but did your father ever molest you?
A No.
Q Do you love your father?
A Yes.
Q Would you lie for him?
A No.

MS. AUGER: Nothing further.

THE COURT: Mr. Luttrull.

MR. LUTTRULL: Thank you, Your Honor.

**CROSS EXAMINATION OF BRITTANY ZAPANTA**

QUESTIONS BY MR. LUTTRULL.
Q Mrs. Zapanta – did I say that correctly?
A Yes.

Q -- did you and your father go to the trail often?

MS. AUGER: Objection, Your Honor: Outside the scope.

THE COURT: Sustained.

Q Did you and your father go on the Monon High Bridge?

MS. AUGER: Objection: Outside the scope.

THE COURT: Sustained.

Q Did your father's appearance – between the time you left for Ball State or so until 2022, did it pretty much remain the same?

A Yes.

Q Just generally, his height, weight, and his hair, and facial hair that he had, did it pretty much remain constant?

MS. AUGER: Objection, Your Honor: Outside the scope.

MR. LUTTRULL: I'm trying to clarify the previous question, Your Honor – the answer to the previous question.

THE COURT: Okay. Overruled.

Q Regarding the appearance of your father, ma'am, I want to show you four photographs, State's Exhibits 306, 307, 308, and 309, and ask you if those are fair representations of the way he looked soon after you left for college and then up until 2022.

MS. AUGER: Your Honor, may we approach?

THE COURT: Yes.

(Sidebar conference conducted.)

MS. AUGER: Your Honor, the only relevant time as to what he looked like was February of 2017. We've already been through this, so to the extent that his appearance has changed, his hair has grown, those are not

relevant and could be prejudicial. So if he wants to ask her about February, 2017, I don't have any objection to that.

MR. LUTTRULL: She just stated that his appearance from the time she left for college until 2022 had been the same, she already said that, so this is following-up on that and seeing if these are a fair and accurate representation of how he looked, if he stayed the same.

THE COURT: What's the time period?

MR. LUTTRULL: 2015 to 2022, and 2017 was in that time.

MS. AUGER: Except those aren't the same.

THE COURT: What do you mean those aren't the same?

MS. AUGER: Those pictures don't look the same. His hair is different, his facial hair's different.

MR. LUTTRULL: Remarkably similar.

THE COURT: (Inaudible) in that timeframe.

MS. AUGER: Well, in the timeframe of that – the thing is, it's prejudicial, it's (inaudible)

MR. LUTTRULL: She's indicated his appearance didn't change and it covers that.

THE COURT: (Inaudible)

(Sidebar conference concluded.)

Q Mrs. Zapanta, I'll just show you these four photographs again that I stated for the record; if you would look at those and tell us whether that's how your father generally looked in the years that you described, 2014 or so until 2022.

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

THE COURT: You may.

MS. AUGER: Thank you. Brittany, Exhibit 306, do you know what year that was taken?

A No.

MS. AUGER: Exhibit 307, do you know what year that was taken?

A No.

MS. AUGER: Exhibit 308, you know what year that was taken?

A No.

MS. AUGER: Exhibit 309, you know what year that was taken?

A No.

MS. AUGER: Do you know if this looks like what your father looked like February – in February of 2017?

A Yes.

MS. AUGER: Okay. And Exhibit 306, is that what he looked like in February of 2017?

A Yes.

MS. AUGER: Exhibit 307?

A Yes.

MS. AUGER: Exhibit 308?

A Yes.

MS. AUGER: And if these pictures look different, was that from different times in 2017?

A Yes.

MS. AUGER: Okay. And do you know when in 2017 these might have been taken or what he looked like?

A No.

MS. AUGER: Your Honor, we renew our objection.

THE COURT: Mr. Luttrull.

MR. LUTTRULL: Your Honor, she's testified to the foundation adequately, and even more concretely now.

THE COURT: Then, I will show 306 to 309 have now been admitted over objection.

**STATE'S EXHIBIT 306 THROUGH 309 ADMITTED**

Q I'm gonna show you a few more photographs, State's Exhibit 315, 316, and 317.

MS. AUGER: Your Honor, these are outside the scope of direct. These are the questions that were – go to the questions where our objection was previously sustained.

THE COURT: I don't know what they are, so I don't know whether I should sustain or overrule your objection, I'm sorry.

MR. LUTTRULL: I can –

MS. AUGER: May we approach?

THE COURT: Sure.

(Sidebar conference conducted.)

MR. LUTTRULL: I'll just concede to the extent that she objected to the question, so I concede that point. I was just gonna ask her what they are, if those are on the trail.

THE COURT: Okay.

MR. LUTTRULL: She did object to that question. That was outside the scope, so I concede that.

MS. AUGER: Thank you.

(Sidebar conference concluded.)

THE COURT: I'll sustain the objection.

MR. LUTTRULL: Thank you, Your Honor. I have no further questions, but would like to publish to the jury the admitted photographs, 309 – I'm sorry, 306 through 309 inclusive.

THE COURT: You may.

**STATE'S EXHIBITS 306 THROUGH 309 PUBLISHED**

THE COURT: Ms. Auger.

MS. AUGER: Nothing further.

THE COURT: Does anybody on the jury have any questions? Would counsel approach, please.

(Sidebar conference conducted.)

THE COURT: "Did you ever witness any type of domestic abuse when he's been upset?"

MS. AUGER: No.

MR. LUTTRULL: I have no objection.

THE COURT: "Did you visit the High Bridge in your teens?"

MR. LUTTRULL: Other than being outside the scope.

MS. AUGER: Yeah.

THE COURT: So you're okay with asking this one?

MS. AUGER: Yes.

THE COURT: Okay.

(Sidebar conference concluded.)

**JUROR QUESTIONS OF BRITTANY ZAPANTA**

QUESTIONS OF THE JURY, READ BY THE COURT.

Q Ms. Zapanta, did you visit the High Bridge in your teens?

A Yes.

THE COURT: Any follow-up, Ms. Auger?

MS. AUGER: No, Your Honor.

THE COURT: Mr. Luttrull?

MR. LUTTRULL: Yes, Your Honor.

**FOLLOW-UP EXAMINATION OF BRITTANY ZAPANTA**

QUESTIONS BY MR. LUTTRULL.

Q And did you cross the High Bridge?

A Yes.

Q And did you do that with your father?

A Yes.

Q And were you scared?

MS. AUGER: Objection, Your Honor. I think this is now outside where the question is.

THE COURT: Overruled.

Q Were you scared on the High Bridge?

A I was scared of the bridge, yes.

Q But you and your father would frequently cross the High Bridge despite that; is that correct?

A I had only crossed it maybe once or twice.

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

THE COURT: Thank you, ma'am. You may step down. You may call your next witness, Mr. Baldwin.

MR. BALDWIN: Call Shelby Hicks.

(Witness sworn.)

**DIRECT EXAMINATION OF SHELBY HICKS**

QUESTIONS BY MR. BALDWIN.

Q I'm gonna stand over here, so –

A Okay.

Q -- kind of speak up if you could. State your name for the record, please.

A Shelby Hicks.

Q And seems pretty easy to spell, but just in case I'm wrong, how do you spell both those.

A It's S-H-E-L-B-Y H-I-C-K-S.

Q And how old are you?

A I'm 30 years old.

Q How old were you in 2017?

A Um –

Q You didn't know you were gonna have to do math today.

A Yeah. No, what, 25 –

Q Seven years ago.

A Yeah, 23.

Q Twenty-three?

A Yeah.

Q Just very briefly tell the jury a little bit about yourself. Where are you from?

A Yeah. I'm from Monticello area, born and raised, grew up there.

Q High school?

A Yeah, high school.

Q What high school did you go to?
A Twin Lakes. Twin Lakes in Monticello.
Q And what do you do for a living now?
A I'm a realtor with Keller Williams now.
Q Oh. And where is that?
A In Lafayette.
Q Oh.
A Um-hmm. (Affirmative response)
Q Very good. Let's get right to it: Do you remember February the 13th, 2017?
A Vaguely, yeah.
Q And what were you doing – tell the jury what were you doing, if you remember, on February 13th, 2017.
A I had my – I just bought a new car, so I had to take my car to get fixed down in Lafayette at Twin City Dodge, the company, car company, and so we got that fixed. And when I came back, it was a beautiful day, so I went and stopped at the trails with my boyfriend to go hiking.
Q And what was the name of your boyfriend?
A Daniel Pearson.
Q That was then?
A At the time, yeah, um-hmm.
Q And so when you say "trail", what are you talking about?
A The High Bridge trails.
Q Okay.
A Yeah.
Q The trails here in Delphi?

A Yes, um-hmm.
Q Had you ever been there before?
A I have, um-hmm.
Q Had you ever seen the High Bridge before?
A Yes, um-hmm.
Q So what time is it, do you believe, that you arrived at the trails?
A I believe it was around 2:30.
Q Could it be a little bit later than that?
A It could have been, yeah.
Q You think it could be earlier than that?
A Could have been.
Q What makes you think that 2:30 is about the right time?
A Two things I know: My car was done around – well, I took my car in around 12:40, and also, when I was at the trail, my dad called me and I had timestamps of it at that time around the 2:30 mark.
Q And what time – oh, I'm sorry, where did you park, if you remember?
A It was the trail connector, I believe that's what they call it, it's a little pathway for the vehicles in between the bridge where the highway is and the High Bridge.
Q Was there anything across the street from this trail, if you remember?
A I believe a house, like a farm, older house/farm.
Q Have you ever heard it called the Mears connector?
A I haven't, um-um, no.
Q Okay. Well, can you describe for the jury, just so that we know we're all talking about the same thing, what that connector parking lot area kind of looked

like. Where would you go after you would leave to get to the trails?

A So I believe there was a gate you parked in front of, you walked around, and then you had two option – like the trail went to the highway and to the bridge, so we came to the middle of the pathway.

Q Okay.

A Um-hmm. (Affirmative response)

Q Very good. Were there any vehicles that you remember parked at the parking lot of the trailhead area?

A I don't remember sitting here today. I believe there was, but I don't remember.

Q Would it help – I know it's been a long time. Do you remember taking a deposition?

A Yeah.

Q Do you think it would help your recollection to be refreshed if I handed you your deposition and pointed you to a specific page where you may have remembered that?

A Yeah, um-hmm.

MR. BALDWIN: May I approach, Judge?

THE COURT: You may.

MR. BALDWIN: Thank you.

Q Page 17, lines 21 through 25. Page 17, 21 through 25. Tell me when you're done reading.

A I do say that there was other cars there, but I do not remember how many.

Q Okay. Thank you. And do you recall, when you got – you know, if you go down that connector, if this is where you parked and you were just walking

down, you can turn this way – (indicates) – or that way – (indicates); correct?

A Um-hmm. (Affirmative response)

Q What goes that way?

A The highway.

Q All right. Well, is that –

A The High Bridge.

Q The High Bridge, okay.

A Um-hmm. (Affirmative response)

Q Which way do you turn when you get there?

A I believe we went towards the highway first.

Q Okay.

A Um-hmm. (Affirmative response)

Q How long, do you know, roughly, did you – well, strike that. You then walked that way, to the right –

A Yeah.

Q -- toward the highway?

A Probably five to ten minutes down –

Q Okay.

A -- that way.

Q And then what happened?

A Then we went towards the High Bridge.

Q All right. How far do you think you had gotten when you stopped and turned around and walked toward the High Bridge, if you know?

A Pretty far to the end. I don't re –

Q Would it help refresh your recollection? I'm sorry.

A Yeah.

Q Page 19 –

MS. DIENER: Judge, if I could, the first time, she just read what she had in her deposition. If he could take it away and ask if her recollection is refreshed, I would appreciate it.

MR. BALDWIN: I can do that.

Q So when you're done, just stop and I'll grab it –

A Gotcha.

Q -- okay? Then I'll ask you if that refreshes your recollection. Page – I'm sorry, page 19, lines 20 through 25.

A All right.

Q Okay?

A Um-hmm. (Affirmative response)

Q Does that help refresh your recollection?

A Yes.

Q And the question was, I think, that you – that was being refreshed was how far did you go when you turned right toward the highway?

A I believe half way to the highway, so the middle part.

Q Okay.

A So not completely to the highway –

Q Okay.

A -- halfway towards the highway.

Q Very good. And then, once you turned around and headed toward the High Bridge, how long do you think it'd take you to get there?

A Probably 10 to 15 minutes, yeah.

Q Did you see anybody on your walk to the bridge?

A I remember seeing another gentleman out there, yes, and then two other friends from school I saw, as well.

Q And was there anybody else that you saw –

A Not that I can re –

Q -- on the trails?

A Not that I can remember.

Q I know it's difficult, I'm sorry to do this. Would you mind if I refreshed your recollection?

A Okay, yeah.

Q Thank you. This is on page 23, line 15 through 25.

MS. DIENER: Mr. Baldwin, would you identify the date of the deposition –

MR. BALDWIN: Yes.

MS. DIENER: -- for the record.

MR. BALDWIN: It's April the 4th, 2024.

Q That was page 23. You can go back as far as you want for context if you need it. Does that help refresh your recollection?

A Um-hmm. (Affirmative response)

Q It does?

A Yes.

Q Thank you. So having refreshed your recollection, how many people, roughly, do you remember seeing on your way as you walked toward the High Bridge?

A So the two girls from school, the older gentleman, and a couple other kids.

Q Do you remember the sex of the kids?
A I do not.
Q Very good. The older gentlemen as you walked towards the High Bridge, do you remember anything about him?
A Just that he had a camera.
Q Well, let's talk about your friends; what were their names?
A Cheyenne Holguin and Shelby Duncan.
Q Okay. Now, do you remember when you saw them in relationship to when you – were they already at the High Bridge, if you know, or were they – did you see them as you were going away from the High Bridge?
A I saw them on the High Bridge.
Q Okay. Were you there first or –
A I don't remember. I think I was.
Q I'm sorry to do this to you.
A Um-hmm. (Affirmative response)
Q May I refresh your recollection?
A Yes.
Q Deposition page 24. You can go back to 23, if it helps give you context. Page 24, lines 1 through 5 would probably help refresh.

MS. DIENER: Which lines?

MR. BALDWIN: 1 through 5 on page 24.

MS. DIENER: Thank you.

Q So the ques – does that help refresh your recollection?
A Yeah.
Q So who was there first at the High Bridge, you or your friends?

A I was there first on a threshold little lever – platform on the bridge.
Q Okay. So when you were on the platform of the bridge, who did you see, if anyone, walking toward the bridge?
A Shelby and Cheyenne.
Q All right. Who are Shelby and Cheyenne?
A They are friends from my high school, same age.
Q From Twin Lakes High School?
A Twin Lakes, yeah.
Q Was that a – something that was unexpected or was that arranged?
A It was unexpected.
Q Tell the jury, if you remember, about that interaction, what it consisted of, how long it took, that kind of stuff.
A It was quick, it was just saying hi to each other, that's all I can remember.
Q And what did they do, if you noticed, as you sat on this platform?
A They walked to the other side of the bridge.
Q Who was on the platform with you?
A Daniel.
Q And was that – which platform was that on the bridge? The first? Second? Third, if you know?
A I don't.
Q Do you feel like you were on the right side of the – as you're headed toward the end of the High Bridge, were you on the right-hand side on the platform, on the left-hand?
A I was on the right side.
Q Right side, okay. Did you watch your two friends all the way to the end?

A I watched them go in that direction, but I can't remember if I watched them to the very end of the bridge.

Q When you saw the old man with the camera, was that as you were approaching the High Bridge?

A I believe so, yeah.

Q So he was coming from the High Bridge, walking toward you?

A What I remember, I think we were walking to the High Bridge and I looked back and saw him, but he was facing the High Bridge, he wasn't walking.

Q Was he taking photographs at that time?

A Yes.

Q Okay. Once – and you said, as you sit here right now, you don't remember whether Cheyenne – you watched them go all the way across the bridge?

A Right, yes.

Q Would it help refresh –

A Correct.

Q -- your recollection if I gave you your deposition?

A Um-hmm, yeah.

Q Page 27, lines 4 through 8. Does that help refresh your recollection about whether you watched them walk across?

A Yes.

Q And what is the –

A I did watch them walk to the other side of the bridge.

Q I wanted to get back to the old man with the camera. Do you really remember if he passed you on your way in or you passed him on –

A I do not.

Q Okay. You just remember that, at some point in time, you turned around and you saw him taking photographs?

A Yes.

Q Okay. What about the two – the kids that you saw? Do you know – do you remember where they were or where they were walking to?

A I do not.

Q Did you ever – at some point in time – you were on there long enough that, from your testimony, to see your friends go all the way to the end of the bridge. Did you – how much longer, if you know, did you stay on that platform with Daniel?

A Probably ten minutes or so.

Q Okay. And what happened after that ten minutes or so? What then did you do?

A We walked back towards my vehicle.

Q And did you go straight to the vehicle? Did you do pit stops? Anything like that?

A Just straight to the vehicle.

Q And do you remember if any – were there new cars at the – you said you remembered cars when you got there; is that correct?

A Yeah.

Q Do you remember, were there cars when you returned?

A I don't remember.

Q When you were on the bridge, how long – like on the platform I guess, it's not technically on the bridge I guess – would you consider that being on the bridge?

A Yeah. I don't know. It's off of it.

Q Just so we're all talking the same language, I mean, when you were on the platform or on the bridge, how long do you think you were on the bridge?

A Probably 15 to 20 minutes.

Q Would it help refresh your recollection if I handed you your deposition? Sorry to do that again. Page 29, line 6 through 11, 29, 6 through 11. Did that help refresh your recollection?

A Yes.

Q How long do you – now that you have your memory refreshed, how long do you think you were on the bridge on that platform?

A Less than 30 minutes.

Q Okay. Could be as much as 30 minutes?

A Yes.

Q But no more than 30 minutes?

A Right.

Q All right. So once you got to the place where your car was parked, what then happened, if you remember?

A We drove around the Amish community in Camden and then we drove back to my vehicle.

Q At some point in time, did you think that you might have information that was important to law enforcement?

A When did we, sir?

Q Just if you did. At some point in time, did you ever think, "I might have information that might be important for law enforcement in the investigation of two missing girls"?

A The day – the next day, Daniel wanted to go speak to people to just tell them everything we saw, um-hmm.

Q And so what happened then?

A He – we stopped at the station and he went in to talk to them, but they had asked him to come at a later time, so we went to work, and then they took him from work and he answered some questions then.

Q Did you also answer questions?

A I did later on that evening, yes.

Q Before I forget, this is a kind of important question.

A Okay.

Q When you were on the bridge for 30 minutes or less –

A Yeah.

Q -- did you hear anything that caused you alarm?

A No.

Q How many times do you think you met with law enforcement on this case related to what you may or may not have observed or heard?

A It was two times and then – yeah, two times about everything, and then, of course, when we met here recently –

MS. DIENER: Objection, Judge. May we approach?

THE COURT: Yeah.

(Sidebar conference conducted.)

MS. DIENER: Is she gonna talk about the deposition? About (inaudible)?

MR. BALDWIN: I'm guessing she's about to, the deposition, but I'll just –

MS. DIENER: Yeah.

MR. BALDWIN: -- draw a distinction.

MS. DIENER: Okay.

(Sidebar conference concluded.)

THE COURT: Go ahead.

MR. BALDWIN: Thank you.

Q Do you remember the first – you said you met with law enforcement a few times; correct?

A Yes.

Q Is that still up to this day, law enforcement? Not talking about lawyers.

A Right, right, just two times.

Q All right. The first time was how soon after the girls went missing?

A I believe the 14th, so February 14th, so the day after the bridge.

Q Do you remember roughly when that second time was?

A A couple months later I would say, I think I said March.

Q Just would it help – we're almost done refreshing you, I think.

A Yeah.

Q One more time, if that's okay.

A Um-hmm. (Affirmative response)

Q I left the page number behind at the table.

A Okay.

Q So I'm asking the second time that you met law enforcement, and that would be page 11, lines 9 through 11.

A Um-hmm. (Affirmative response)

Q Does that help refresh your recollection?

A Yeah.
Q So were you correct when you said March?
A Yes, March.
Q March of what year?
A 2017.
Q All right. So you met once in February with law enforcement and then once in March of 2017, with law enforcement?
A Yes.
Q And then, as you sit here today, you've not met them another time since then?
A Correct.
Q Do you remember if the phone ever – if the police ever took your phone to download information or extract information from it?
A No.
Q You don't remember or you don't know?
A Oh, I – they did not take my phone.
Q Would you have given your – the phone to them if they asked?
A Yes.
Q Do you know where that phone is today?
A I do not.

MR. BALDWIN: Thank you, I appreciate it. No other questions.

THE COURT: Ms. Diener.

**CROSS EXAMINATION OF SHELBY HICKS**

QUESTIONS BY MS. DIENER.

Q Ms. Hicks, do you remember who your cell phone provider were – was back

then?

A Sprint.

Q And you were interviewed by police on February 14th and March 1st. Did you have the benefit of having those documents with you at your deposition in 2024? Were you able to refer to statements you had previously made when you were deposed?

A I don't remember.

Q Okay. When you are on the High Bridge with Daniel, sitting on the platform, can you see the far end of the bridge, where your friends were walking toward?

A Where they went to the other side?

Q Yes.

A Can I see the end of it with the trees?

Q Well, have you ever been to the other end of the bridge?

A No.

Q Okay. So you have never walked across the High Bridge?

A No.

Q Did you pay attention to them walking to the end to know whether you could see them on the other end or not?

A No.

Q Did you watch them walk back?

A No.

Q Did you leave the platform before they returned?

A Yes.

MS. DIENER: No other questions.

THE COURT: Mr. Baldwin.

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

THE COURT: Does anybody on the jury have any questions for Ms. Hicks? Okay. Counsel, approach.

(Sidebar conference conducted.)

THE COURT: "Was the man with the camera old?"

MR. BALDWIN: Yeah.

THE COURT: "If you arrived at the trails at 2:30, walked toward the bridge, which took 10 to 15 minutes, would you say you were at the bridge around 2:55 or close to three o'clock?"

MR. BALDWIN: Yeah.

MS. DIENER: Can we ask just that bottom part –

THE COURT: Yes.

MS. DIENER: -- without all the other stuff?

THE COURT: Would you say you were at the bridge – yeah, just clean that up.

MS. DIENER: High Bridge. Okay.

(Sidebar conference concluded.)

**JUROR QUESTIONS OF SHELBY HICKS**

QUESTIONS OF THE JURY, READ BY THE COURT.

Q Ms. Hicks, was the man with the camera old?

A Yes.

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

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

THE COURT: Ms. Diener?

MS. DIENER: No.

Q Would you say you arrived at the High Bridge around 2:55 or close to three o'clock?

A Could have been, yes.

THE COURT: Mr. Baldwin?

MR. BALDWIN: No.

THE COURT: Ms. Diener –

**FOLLOW-UP EXAMINATION OF SHELBY HICKS**

QUESTIONS BY MR. BALDWIN.

Q Could have been earlier than that, if you know?

A Could have been.

Q Could have been later than that?

A Could have.

MR. BALDWIN: Yep. No other questions.

MS. DIENER: No question.

THE COURT: Thank you, Ms. Hicks. You may step down. You may call your next witness.

MR. BALDWIN: Call – re-call Steve Mullin, Investigator Mullin.

(Witness sworn.)

THE COURT: You may proceed.

MR. BALDWIN: Thank you, Judge.

**DIRECT EXAMINATION OF STEPHEN MULLIN**

QUESTIONS BY MR. BALDWIN.

Q Investigator Mullin, do you remember, I think it was on direct for the State's case that you turned over information related to 2016 Ford Focuses; do

you remember that a few days ago?

A Yes.

Q Okay. And do you remember that there were other similar body-typed Ford Focuses – ell, what year did you say this – the Ford Focus hatchback had the same body, the Generation 3?

A 2011 to 2018.

Q Okay. I'm gonna hand you what will be marked as Defendant's JJJ and ask you if this looks familiar to you.

A I believe so.

Q Okay. What is that?

A This is the list from the Bureau of Motor Vehicles of Ford Focuses SEs that were registered in White, Cass, Carroll, Howard, and Tippecanoe Counties in 2000 – I'm sorry, from – up – from 2011 to 2017 models.

Q Okay. So those are similar body-modeled Ford Focuses that existed in the surrounding counties, including Carroll, in February of 2017?

A Correct.

Q All right. And do you know, among all of those, how many were hatchbacks? Do you know what the codes for the hatchbacks are?

A Yes, I do.

Q And tell me what the codes are – tell the jury what those are.

A The code in the VIN number is P3K, and the P3K stands for SE and hatchback.

Q Okay. Same for the P3L?

A As I understand, that's correct, too.

Q G3M?

A I do not know.
Q G3N?
A I don't know.
Q All right.
A I was only interested in the P3Ks.
Q Right. Well, and that's because you wanted that car to be Rick's Allen, Rick Allen's car; correct?
A I don't want it to be that.
Q Well, then why didn't you want the jury to see all these other similar-bodied cars?
A That wasn't the question they asked.
Q I'm sorry?
A That wasn't the question they asked.
Q What are you talking about?
A We were responding to the question that they asked.
Q Okay. Do you think it's important for the jury to have the – all the models that look like the Ford Focus that are the Generation 3 from 2011 to 2017?
A It would be I suppose.

MR. BALDWIN: Move to admit JJJ.

**DEFENDANT'S EXHIBIT JJJ OFFERED**

MR. MCLELAND: Can I see it, Judge? I don't know –

MR. BALDWIN: Oh, I'm sorry.

MR. MCLELAND: That's okay. Judge, this doesn't have the certification with it, and so without that, I'm not gonna be in a position to consent to the admission of that. If they – I can get the certification letter for them, or if

they have it, but I'm not willing to agree to the admission. I'm gonna object without a certification. That's a certified business record, Judge.

THE COURT: Okay. Without a certification, I'm not gonna admit it.

MR. BALDWIN: Did you not certify the ones you handed us? Were they all certified or just the ones is what I'm trying – were they all certified or just the ones –

MR. MCLELAND: We're gonna do this right now, Judge, in front of the jury? Or do you want to take a break, Mr. Baldwin?

THE COURT: Well, if there's no certification, then it doesn't come in, so –

Q Do you know how many hatchback Ford Focuses were on JJJ that were in the area, owned by people in the area, on February of 2017?

A I'm sorry, I did not research that.

MR. MCLELAND: Wait a minute, wait a minute, Judge, I'm gonna object. Is the question is, "How many hatchbacks were in the area on February 13th, 2017?" Is that the question?

MR. BALDWIN: I'll rephrase.

THE COURT: Rephrase it, please.

MR. BALDWIN: Thank you.

Q From JJJ, do you know how many people owned similar-bodied Ford Focus hatchbacks in the area?

A I'm sorry –

MR. MCLELAND: Judge, I'm gonna object to the question. What does "within the area" mean?

MR. BALDWIN: Carroll County and surrounding counties.

THE COURT: I'll overrule the objection.

Q Do you know how many hatchbacks, Ford Focus hatchbacks, if that's even what that vehicle is on the video, were owned and registered in Carroll County and surrounding counties in 2017 that featured similar body type?

A I don't. I don't have that information off that sheet. I didn't research that.

Q Do you remember talking about missing evidence when you and I were talking a couple of days ago or last week?

A Yes.

Q Do you remember you telling me that you did create a log of the missing videos of people that were interviewed; do you remember that?

A I did remember that, yes.

Q Okay. As you sit there right now under oath, is it your testimony that logs were created that would memorialize the people whose interviews are missing from February and March of 2017?

A We had created what we believed was a list of individuals that we had interviewed that were lost.

Q Okay. You're under oath right now. Is that your testimony?

A Yes.

Q Do you remember testifying March 18th motion that was held in front of the Court in Fort Wayne?

A Yes.

Q Would it help refresh your recollection if I handed you the substance of that testimony?

MR. MCLELAND: Judge, I'm gonna object. He asked him if he

remembered testifying, he said yes. What are we using this to refresh his recollection for?

THE COURT: I don't know.

Q So your testimony today and the testimony last week was that you did create a log of the missing evidence; is that correct?

A We attempted to catalog the names of persons that were interviewed.

Q I'm gonna hand you your deposition and have you look at page 68, lines 1 through – it's not a deposition, I'm sorry – the transcript of the motion held on March 18th, 2024, ask you to review lines 68, 1 through 7, and 70, 15 through 17.

MR. MCLELAND: Judge, I'm gonna object. Is there a question that we're using it to refresh is recollection about?

Q That's not what you told the Court back in March 18th –

MR. BALDWIN: I'm sorry, I apologize.

THE COURT: Thank you. Is there a question?

MR. BALDWIN: There is now.

Q That's not what you told the Court back March 18th of 2017 [sic], is it?

A I'm not certain if remember exactly what I said then.

Q Turn to page 68, lines 1 through 7, and 70 – you can go all the way, if you want, 68 all the way to 70.

A Pages 68 you say?

Q 68, 69, and 70, that would be the context you'd need.

MR. MCLELAND: Mr. Baldwin, do you have another copy of that – I don't have that document available to me at the moment – so I can follow along.

MR. BALDWIN: Here's my copy.

MR. MCLELAND: Okay. Thank you.

A You said to 70; is that right?

Q Correct.

A Okay.

Q You told this Court last March, or this past March 18th, that there was no logs, we don't know who was interviewed, who was even doing the interviewing.

A I did say that, yes.

Q Okay. So that's different than what you said today; correct?

A It would be different.

Q From what you said last week under oath, as well; correct?

A Yes.

Q So there was no log created of who was interviewed among these lost interviews from February and March of 2017?

A Is there a question?

Q Answer the question.

A I'm sorry, what was the question?

Q So there are no logs?

A Are you asking the question?

Q Yes, I'm asking the question: So there are no logs of the missing interviews from February and March of 2017; isn't that correct?

A Oh, thank you. That is not correct. There is a log of the interviews that were done early on, as best that we can tell, that was in the filing cabinet scans that you were given.

Q So you just read this, your testimony from March 18th, last – this past year, you said there were no logs?

A I may have said that, and that's true, but since then, I have gone through the logs or through the filing cabinet scans and found that there was a list of interviews that were done, so I'm telling you the truth here.

Q Oh. In the same hearing, you said there were no logs for the April 28th through June 2nd videos that have no audio; is that correct?

A That would be correct.

Q That's not what you testified to last Friday or Thursday, whenever it was.

A I don't believe that's true.

Q Did you ever learn, in the course of your investigation, that L.G.'s phone was either no longer in the area or no longer in working condition?

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

THE COURT: Yep.

(Sidebar conference conducted.)

MR. MCLELAND: Judge, I think this goes to what Mitch Blocher did and so I would object to hearsay.

MR. BALDWIN: He can answer yes or no. I mean, I can ask him –

MR. MCLELAND: But you're trying to get into the Blocher statements.

THE COURT: (Inaudible)

MR. BALDWIN: All right.

(Sidebar conference concluded.)

THE COURT: And I'll sustain the objection.

Q You heard State Trooper Harshman testify, you were in here when he testified about the van; were you in here when that happened?

A Yes.

Q And did you hear Trooper Harshman say that there was no social media, Twitter, Facebook, Instagram, Reddit, where a van or a white van was talked about? Did you hear him say that?

A I don't – sorry, I don't remember that exactly, but –

Q Well, do you know if Dr. Wala was a fan of looking at the Delphi sites that talked about the case? You've heard that testimony; correct?

A Heard something to that effect, yes.

Q And therefore, I would presume – tell me if I'm wrong – that it would be important for you to find out whether or not there were social media sites, Reddit, Instagram, Twitter, and all those, where a van were discussed to determine whether or not she knew that information when she was taking care of Rick. That would be important to know whether she could be feeding him information about a van; right?

A Oh, yes.

Q Okay. So when you looked at social media between 2017 and 2022, when Richard Allen was arrested, did you see anything on social media about a van or a white van?

A I did not.

Q Did you even look?

A I did not.

Q Do you know if Harshman looked?

A I don't recall.

Q Would it surprise you that there's dozens of these out there, dozens of mentions of vans from 2017 to 2022 on social media, vans –

MR. MCLELAND: Judge, I'm gonna object. It calls for speculation. He said he didn't look, he doesn't know. He can't answer that question, Judge.

THE COURT: Sustained.

Q You don't know what Dr. Wala said to Richard Allen when she was taking care of him, did you?

A No.

MR. BALDWIN: No other questions.

THE COURT: Mr. McLeland.

MR. MCLELAND: Thank you, Judge.

**CROSS EXAMINATION OF STEPHEN MULLIN**

QUESTIONS BY MR. MCLELAND.

Q Investigator Mullin, when Richard Allen made the admission about the van in the statement to Wala, is that the first that you had information that a van may be key to the investigation?

A That is correct.

Q And after that is when you proceeded to interview Mr. Weber about the van; is that correct?

A Yes, it was.

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

THE COURT: Mr. Baldwin.

MR. BALDWIN: No questions. Thank you.

THE COURT: Does anybody on the jury have any questions for Mr. Mullin? Okay. Would counsel approach.

(Sidebar conference conducted.)

MR. BALDWIN: All I've got left is Weber, so we're gonna have an

early day.

THE COURT: Before I forget, we need JJJ back.

MR. BALDWIN: Thank you.

THE COURT: Okay?

MR. BALDWIN: Yes.

THE COURT: 'Cause, I mean, you left one.

MR. BALDWIN: Yes.

THE COURT: "Why would anyone discuss the van prior to Richard Allen's confession that a van scared him?"

MR. BALDWIN: I don't have a –

MR. MCLELAND: That's a good question.

THE COURT: Okay.

(Sidebar conference concluded.)

**JUROR QUESTIONS OF STEVEN MULLIN**

QUESTIONS OF THE JURY, READ BY THE COURT.

Q Why would anyone discuss the van prior to Richard Allen's confession that a van scared him?

A I'm sorry, could you repeat that question once more, please.

Q Certainly. Why would anyone discuss the van prior to Richard Allen's confession that a van scared him?

A That was the reason why we looked into this, because we had no information about it being a van that was on the trail or the path back to Mr. Weber's house.

THE COURT: Mr. Baldwin?

**FOLLOW-UP EXAMINATION OF STEVEN MULLIN**

QUESTIONS BY MR. BALDWIN.

Q Was there any other stories out there that – or interviews involving, on February 14th, a suspicious white Ford cargo van with no windows about a half hour from Delphi, a thin white male in his late 40s to early 50s, asking kids at a bus stop if they wanted candy? Did you ever hear that?

A Could you repeat the events you're talking about, because I'm sorry –

Q Yeah. Did you ever hear, in the course of your investigation or through looking at social media, about whether there was a – about a suspicious white Ford cargo van with no windows about a half hour from Delphi and a man in his – thin white male in his late 40s to early 50s, asking kids at a bus stop if they wanted candy, has that ever been talked about among the people that are investigating this case?

A I don't recall.

Q Has it ever been talked about in social media, if you know, about a white van being near –

MR. MCLELAND: Judge, I'm gonna object. It calls for speculation. It's the same question he asked before.

THE COURT: Sustained.

Q You ever hear, in the course of your investigation or in – through your look of social media about a white work van, being driven by a man named Aaron –

MR. MCLELAND: Judge, this is outside the scope of the jury question. I'm gonna object to the question.

THE COURT: Sustained.

MR. BALDWIN: No other questions.

THE COURT: Thank you, Mr. Mullin. You may step down.

THE WITNESS: Thank you.

THE COURT: You may call your next witness.

MR. BALDWIN: Judge, will you – may we approach?

THE COURT: Yes.

(Sidebar conference conducted.)

MR. BALDWIN: Just a – so without (inaudible), we have – we'll have two experts coming in tomorrow – here's what I'm – bottom line: We only have one more witness and that's Brad Weber, who's gonna take maybe – I don't know how long, 45 minutes, something like that, maybe an hour. Then we don't have any more witnesses, because tomorrow we've got two experts and then – that's if doesn't get back until –

MR. MCLELAND: Your two experts, plus our two experts; is that right?

MR. BALDWIN: Sounds about right.

MR. MCLELAND: Grassian, Warren, Eldridge, Bunner, Cecil –

MR. BALDWIN: Yes.

MR. MCLELAND: And?

MR. BALDWIN: And Betsy Blair. I'm just letting you know.

THE COURT: So you want to take a break? Is that what you're –

MR. BALDWIN: Well, I didn't know if you wanted to, because this'll be the last witness that we have, since our experts couldn't get here until tomorrow.

THE COURT: Forty-five minutes, is that –

MR. BALDWIN: Oh, it's probably not that long. I mean, I don't think – between us, I don't know.

THE COURT: Well, let's just finish it.

MR. BALDWIN: Yeah. Okay. We're good to go, then?

THE COURT: Yeah.

MR. BALDWIN: Okay.

(Sidebar conference concluded.)

THE COURT: You may call your next witness.

MR. BALDWIN: Thank you. Call Brad Weber.

(Witness sworn.)

**DIRECT EXAMINATION OF BRAD WEBER**

QUESTIONS BY MR. BALDWIN.

Q State your name for the record, please.

A Brad Weber.

Q How do you spell Brad?

A B-R-A-D.

Q And Weber?

A W-E-B-E-R.

Q When we last were talking, you kind of got upset with me. Do you remember why you were upset?

A Yes.

Q Why were you upset?

A I was upset because you were trying to tell me what I did.

Q And particularly what?

A What I did when I got off work.

Q Okay. And you testified on the stand that you went directly home from work; is that correct?

A That's correct.

Q That's not what you told Agent Pohl and Christopher Gootee when you met with them on February 19th, 2017.

A Okay. Who are those guys?

Q Law enforcement officers.

A Okay.

Q Do you remember meeting with law enforcement officers?

A Multiple times.

Q Okay. I'm gonna hand you one of their reports and ask you to read the second par – you can read all of it, it's not very long – read the second paragraph. Tell me when you're done.

A I'm done.

Q You told these officers after you got off that you went to your various ATM machines that you own and performed routine service; is that what you told them?

A I don't recall that.

Q Okay. But that's what that says?

MR. MCLELAND: Judge –

A That's what this says.

MR. MCLELAND: Judge, I object. That's improper impeachment. He's given it to him, he says he doesn't recall that. That's the end of the impeachment, Judge.

THE COURT: Sustained.

Q The week before February 13th, 2017, where were you?

A I don't know.

Q Do you remember being in Arizona and visiting your folks?
A Not a week before. I went on a three-day trip to Arizona.
Q Okay.
A Not a week.
Q Okay. That's fair, that's fair. And you got back when?
A Sunday.
Q Okay. How often in 2017 – well, strike that. We need to talk about your ATM business. Tell the jury about your ATM business.
A I have ATMs.
Q Well, what are ATMs?
A Money machines.
Q All right. What does it stand for, if you know?
A I don't know.
Q Okay. And back – what do you do, I mean, do you use these machines to make money?
A Yes.
Q How do you make money with the ATM machines?
A Surcharge.
Q Okay. Tell the jury a little bit about that surcharge.
A The – when someone takes money out, they get charged a surcharge.
Q And so you –
A I get the surcharge.
Q You get the surcharge. And –
A After I pay the people that own the business.
Q So we see these where we push a button and there's a, "Are you willing to

pay a dollar for the surcharge", sometimes I see that; is that what you're talking about?

A Yes.

Q All right. And how many of those machines, back in 2017, did you have?

A I don't know.

Q Would it help refresh your recollection by looking at the deposition?

A I guess. I – at one time, I had 30-something, and this day, I have maybe 15.

Q Okay.

A Does that help?

Q It kind of does, but I really need you to kind of bear down on 2017. If you would look at page 6, lines 5 through 7. How many – I'm sorry, are you done?

A Yeah.

Q How many, back in 2017, did you have?

A I don't know. This says a estimate.

Q Okay.

A Do you want a estimate?

Q Sure.

A Thirty-five.

Q Okay. Thank you. So – and how often, in 2017, would you be attending to your 35, roughly, ATM machines?

A I don't know a answer to that. It's on a need basis. If they start to run out of money, I will put money in it.

Q Would it help refresh your recollection by looking at your deposition?

A It – sure.

Q Page 8, lines 5 through 7. Does that refresh your recollection?
A I don't – okay. I don't – I guess I don't remember the question.
Q How often would you be attending to your ATM machines in 2017?
A I do something with ATMs every day.
Q Okay. What would you do every day with these ATM machines? What kind of maintenance do they require, if any?
A No maintenance. I look up on the computer to see where they sit money wise.
Q Okay.
A So that – I can sit at home and look on the computer and tell where they're at.
Q Okay. You got to go to – how do the money machines get money in them? Who puts the money in there?
A Me.
Q How does the money machine get the receipt tape in there?
A I put it in.
Q Okay. How does the money machine get money taken out of it?
A I don't know.
Q Are you – oh. Where do you get the money from?
A I get the money from the bank.
Q Okay. So you –
A I don't take money out of the ATM machine, I put money in it.
Q Good to know.
A A customer takes it out and pays a surcharge.
Q Okay. And then who – the surcharge goes directly to the bank?

A It goes to the network.

Q All right. So what happens when the money runs out, the machine runs out of money, what happens?

A It has a screen that doesn't let it go – doesn't let it dispense any more money.

Q Are you making money when the machine runs out of money?

A No.

Q What about the receipt, when there's no receipt?

A That – it don't – that don't bother me.

Q Okay.

A I mean, yes, I put the receipt paper in there. When the machine gets low on money, I go to the bank and get money and I take it to the machine.

Q Where do you go to the bank? What bank did you go to back in 2017?

A Oh, I really don't know. I'm guessing – if I had to guess, I would guess Regents, but I'm not sure.

Q Okay. And so you would go get – would you have to give them like a check or how would you get the money out?

A Okay. So you take money out of a ATM, a hundred dollars –

Q Um-hmm. (Affirmative response)

A It takes that money out of your account, along with a surcharge, and puts it in my account.

Q I'm talking about the cash that you put in there.

A I get it from the bank.

Q Okay. And you have to maintain those machines by putting cash in there on a regular – the 35 machines from 2017; correct?

A Yes.

Q And where – what kind of places were these ATM machines? Like were they in banks? I'm gonna guess not, but I could be wrong. Where were they?

A Gas stations.

Q Gas stations.

A Taverns, restaurants.

Q What geographic area were these 35 machines in 2017? Where were they?

A In Indiana.

Q Okay. From – give the jury an idea of where though in Indiana.

A From –

MR. MCLELAND: Judge, I'm gonna object at this point. I don't know how this is relevant. I don't know how this line of questioning is relevant, Judge.

THE COURT: How's this relevant?

MR. BALDWIN: Trying to establish that he has to maintain his 35 machines, including on the day in question, February the 13th, 2017.

THE COURT: Well, could we narrow it to that date, then, 'cause this is really not relevant.

MR. BALDWIN: I'm starting with the broad scope and then I move down into that.

THE COURT: Okay. Well, then let's move down into that.

Q What would necessitate the need to attend to any of your 35 machines, ATM machines, in 2017?

A Lack of money or lack of paper.

Q And you had been out of town for at least three days prior to this; is that

correct?

A That's correct.

Q Okay. Would you use your van to service ATMs?

A Usually not.

Q You used your blue Subaru?

A I don't have a blue Subaru.

Q What did you have back in 2017?

A I had a black Subaru.

Q Black Subaru, okay. Just so the jury understands, where in 2017, in February of 2017, where were the – I think – 'cause I don't think this question had been answered – where were the ATMs geographically in February of 2017?

A Central Indiana.

Q Okay. How close to – were they to the bank that you were using in February of 2017?

MR. MCLELAND: Judge, I'll object again. I don't know how this is relevant.

THE COURT: Overruled.

A Where – I used multiple banks.

Q Okay. Now you used multiple banks?

A I – Regents, but I don't always go to the same branch –

Q Okay.

A -- if that's what you're talking about.

Q So if the bank was closer to one of these 35 ATM machines back in February of 2017, you would go to that bank closest to the machine, the place where you were going to work on the machine or fill it with cash?

A No.
Q Okay. Then what –
A I would have to call the bank and order the money.
Q Okay.
A So it wasn't always the same branch. It's usually branches in Lafayette, does – if that helps.
Q All right. Did law enforcement ever ask you about – let's say Gootee and Pohl that you talked to, did they ever ask you, "Hey, can we see your phone records about what banks, if any, that you called to order up this cash"? Did they ever ask you that?
A I don't remember.
Q Did you tell Pohl and Gootee that you went?
A I don't remember. I don't even know who those – they are. I mean, I talked to –
Q But –
A -- a lot of people.
Q But your memory today is, after – that you went straight from work to your house; is that correct?
A I went from – on the day in question, I went – when I got off work, I went straight home.
Q And you normally work till 2:30; correct?
A If I'm on day shift, yes.
Q And on that day, you got off at 2:02 p.m.
A That's correct.
Q Now, is – was that to service your ATM machines?

A No. Subaru's not gonna let me off any time special because of my side business.
Q Well, they let you off special that day, 2:02.
A They chose for me to leave, not me.
Q So you had a phone call with somebody in August of this year, asking you to come to the police station; is that correct?
A No.
Q That's not correct?
A No.
Q So nobody from the law enforcement called you and said, "Hey, we want to talk to you"?
A They did say that.
Q They did?
A Yeah.
Q What were you saying no to?
A You asked if they asked me to come to the police station, and they didn't.
Q Well, what did they ask you?
A They asked me to come to a different location.
Q Okay. That's fair. And then, after that phone call, you then told them – and who was the person that called you, if you remember?
A I don't remember. You should have it.
Q Yeah. You remember Steve Mullin?
A It could be him. I've talked to him on the phone, yeah.
Q Was it him or not? I can find it in your deposition.
A I don't know. I don't remember.

Q Okay. Would it help refresh your recollection?
A It could have been him.
Q Okay.
A Sometimes I got texts.
Q Page 18, I'm gonna – is it okay to refresh your recollection?
A Is it up to me? I don't know what you're asking.
Q You know, that's a valid question. I'm asking you would you mind refreshing your –
A Yeah.
Q And again, it's page 18, lines 25 – the very bottom of page 18, the top of page 19. The bottom of page 18, top of page 19.
A Okay.
Q So the question was: Who called you to come in and talk to them from the law enforcement?
A It says, "Probably Steve." I don't really remember. It was either text or call.
Q But whoever it was, you said Steve?
A It says, "Probably Steve"; right?
Q Okay. Is that Investigator Mullin?
A Probably.
Q Okay. But you call him Steve?
A I don't know. That's what they typed up. I don't – where's that from?
Q Remember when we had the deposition?
A When you subpoenaed me?
Q Yes.

A Yes.

Q Okay. So did you call the guy you met with Steve?

A I don't talk to him. I mean, that's his name. I don't know.

Q After that phone call with Steve, you came in and told them that you drove directly from work in a van; is that correct?

MR. MCLELAND: Judge, objection. It's a leading question.

THE COURT: Sustained.

Q What did you tell – thank you. What did you tell?

A That on that day, I drove a van to work, dropped off a trailer; when I got off work, I drove home.

Q Is that different than you told any other law enforcement in the past?

A I don't know.

Q Okay.

A Not to my knowledge.

Q What vehicles did you have back then and when would you use them back in 2017?

A To my knowledge, I just had the Subaru and the van, and the only time I used the van was when I was pulling a trailer.

Q So nine out of ten times, you'd be using the Subaru?

A Yes. More than that.

Q You first – did you first tell law enforcement that you drove the Subaru on February 13th?

A I believe so, but I don't remember. I – normally, I drive the Subaru.

Q Was your memory better in 2017 than it is now?

A I'm getting older, I guess. I don't know what the – I don't know.

Q How long – what did you do when you got home from work that day?
A Took a nap.
Q Okay. Do you know how long?
A Nope. Until I got woke up.
Q Did you go right to sleep when you got home or did you wind down first?
A Probably smoked a cigarette and relaxed a little bit, but pretty much went straight to sleep.
Q What time did you wake up, if you know?
A I believe it was around 5.
Q How did you wake up?
A Someone knocked at the door.
Q What did you do after the officer was there?
A Went back to sleep.
Q What did the officer – what was that conversation with the officer?
A He informed me that they were looking for a couple missing girls and that, you know, asked about the bridge.
Q Have you – you're familiar with that – where the Deer Creek is; correct?
A Yes.
Q And your house is kind of up here and the creek is down here; is that fair to say?
A Yes.
Q And you're on the south side of the creek; is that correct?
A Yes.
Q Have you ever been on the north side of the creek, on that property north of the creek?

A Yeah. I am right now.

Q What do you mean?

A I'm on the north side of the crick right now; right? Or am I on the south?

Q I think you're on the south side.

A Okay.

Q The opposite side of where you are, have you ever been on that side of it?

A Yes.

Q Do trespassers come onto your property?

A Yes.

Q Did they back in 2017?

A Yes.

Q Would you ever confront those trespassers about getting –

A Yes.

Q Would you have been able to hear, from your house, if anybody was screaming?

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

THE COURT: Sustained.

A It would depend if I was inside or outside. Yes, if I was outside, I could.

Q You did not hear any screaming on February 13th when you got home, did you?

A I didn't.

Q Now, if you got home at 3:30 – well, strike that. You heard no screaming on February 14th, did you?

MR. MCLELAND: Objection –

A No.

MR. MCLELAND: Oh, sorry, Judge.

Q Who had access to your parents' property in 2017?

A Me.

Q And what about your brother?

A Like – it's land, I don't know what you consider access.

Q Who visited your – the house at your parents' property in 2017?

A I can't list all the people that visited, I don't know how to answer that.

Q Well, and that wasn't –

A A whole year time? You want to know all the people that came to my house?

Q No, that's fine. I do think we need to clear up one thing: That's not your property; correct?

A That's correct.

Q Where – you – how many houses did you own back in 2017?

A I think one, but I don't know.

Q Okay. Did you – you had a house in Lafayette then?

A I believe it would be in between Rossville and Delphi.

Q Okay. Did you live in a trailer, as well, at some point in time in 2017?

A Yes. I don't know.

Q Okay.

A I believe so.

Q If you were driving on that lane – I'll call it a lane – the driveway off of 625 past the Liebert house – can I call that a driveway?

A Sure.

Q Is that fine? – and you're looking to your left, would you – in February of

2017, would you have been able to see anybody that was in the area to your left in the woods?

A If I was looking that way, I probably would have.

Q When was the last time you were on the other side of the creek, the north side of the creek?

A This summer.

Q How many outbuildings are at your property?

A Five maybe.

Q Okay. How many stories is your house, one or two stories?

A Two.

Q Two stories. Did you give law enforcement permission to go into your outbuildings?

A Yes.

Q I'm gonna ask you to refresh your recollection, if that's okay, page 85, lines 4 through 5, page 85, lines 4 through 5.

MR. MCLELAND: Judge, again, what are we impeaching here?

THE COURT: Do not know.

MR. BALDWIN: I'm not impeaching, I'm – refresh – I asked if it would refresh his recollection about did he give law enforcement permission to go into the outbuildings.

MR. MCLELAND: He answered the question, Judge. There's no need to refresh his recollection.

A Okay. Go ahead.

Q Okay. Did you give permission to –

MR. MCLELAND: Judge, Judge –

A Yes.

THE COURT: Hold on, sir. Go ahead.

MR. BALDWIN: All right.

Q So today your –

MR. BALDWIN: Do you want me to go ahead?

THE COURT: Well, is that correct?

MR. BALDWIN: I'm gonna now impeach him. That is not correct according to his deposition.

A Are you saying on the 13th? And before you said did I give law enforcement. Yes, I did. They searched my house. It wasn't on the 13th.

Q Okay.

A But yes, I did give them.

MR. BALDWIN: Do you want – I don't want to overstep. Am I good to go or –

THE COURT: Well, I don't know where you're going. He's answered your question.

MR. BALDWIN: Yeah.

Q On the 13th, did you give law enforcement permission to go into your outbuildings?

A No.

Q That's what I wanted. Thank you. Where did you park your vehicles back in February of 2017?

A I don't know. I believe the van was in the grass and I believe the Subaru was in the driveway.

Q Okay. I'm gonna hand you a photograph that was I think taken in

February, the 19th or 17th, of your garage, and ask you to identify it. And again, the question I just asked was where did you park your vehicles. This is KKK – oops, thank you for that, appreciate that. Does that look familiar to you?

A That looks like my garage, yes.

Q Okay. Is that what it fairly and accurately looked like back in February of 2017?

A Yeah.

Q Is that – what is the vehicle there parked in the car – in the garage?

MR. MCLELAND: Judge, I'm gonna object at this point. Can I see what he's showing him? Is there a date stamp on it, showing what date it's from?

Q I'm just – do you know what vehicle that is in the garage?

MR. MCLELAND: Well, hold on a minute, Judge –

A I don't –

THE COURT: Hold on, hold on.

MR. MCLELAND: I object to this line of questioning, one for relevance; two, Judge, he hasn't established when this picture was taken or who even took it.

MR. BALDWIN: He says that it fairly and accurately depicted what his garage looked in February of 2017.

MR. MCLELAND: He didn't say February, 2017. What I heard was 2017.

MR. BALDWIN: No, I said February.

MR. MCLELAND: Okay.

THE COURT: Okay.

MR. BALDWIN: I move to admit KKK.

**DEFENDANT'S EXHIBIT KKK OFFERED**

MR. MCLELAND: State's gonna object to relevance, Judge. I don't understand the relevance of this line of questioning.

THE COURT: How's this relevant?

MR. BALDWIN: There's sticks on the ground or the floor there of the garage.

THE COURT: I – again, I cannot rule on an objection and I don't have the proper information. Okay. So the objection is relevance. And when was this photograph taken?

MR. BALDWIN: According to our – February 19th, 2017.

THE COURT: Okay. So I'll show – this is on February 19th of 2017?

MR. BALDWIN: Yeah.

THE COURT: Okay. I'm not sure how it's relevant, but I'll admit it over the State's objection.

**DEFENDANT'S EXHIBIT KKK ADMITTED**

MR. BALDWIN: Move to publish.

THE COURT: You may.

**DEFENDANT'S EXHIBIT KKK PUBLISHED**

MR. MCLELAND: Judge, while that's being published, could we have a sidebar, please?

THE COURT: Yes.

(Sidebar conference conducted.)

MR. MCLELAND: (Inaudible) used to – he hasn't established any third-party, and so that may be a danger now if he asks any more questions about the sticks and what he does with the sticks, but it's (inaudible)

MR. BALDWIN: He said that nobody – he didn't give permission to use his outbuildings or for the police to go in there. I don't have to accuse him – yeah, I don't have to accuse him of it, I can say somebody walked in there and dropped sticks. It could be them together. By the way, Judge, he had a gun that was not excluded. He lives right across the way. He's told different stories about his direct route home.

MR. MCLELAND: So he's (inaudible).

MR. BALDWIN: Well, I think I have the right to do it.

MR. MCLELAND: If you can meet the nexus.

MR. BALDWIN: Well, and also anybody that was in the area could have used his outbuilding to hide the girls until and –

MR. MCLELAND: It's the State's opinion that that was (inaudible)

THE COURT: We're not doing that.

MR. BALDWIN: Not doing what?

THE COURT: We're not going any further with this line of questioning.

MR. BALDWIN: Okay. That's fine.

(Sidebar conference concluded.)

Q I just wanted to clarify that, when I asked you about the outbuildings, you said there were five, and the number of stories on the house, and you said there were two, we're talking about the property off of Deer Creek there; correct?

A I believe so, yeah.

Q Okay. I just didn't want the jury confused that it was somebody else's – your property in Lafayette there.

A Oh. Okay. So I guess there would be three in '17. There's five now.

Q Oh, okay. Thank you for clarifying. Three outbuildings in 2017?

A I believe so.

MR. BALDWIN: All right. No other questions. Thank you.

THE COURT: May I have the exhibit, please. The court reporter – thank you. Mr. McLeland.

MR. MCLELAND: Thank you, Judge.

**CROSS EXAMINATION OF BRAD WEBER**

QUESTIONS BY MR. MCLELAND.

Q Mr. Weber, good afternoon. There was a question by Mr. Baldwin about your memory being better in 2017, and generally, would you agree that your memory would be better in 2017, or closer to February 13th, 2017, about what happened on that day?

A I would agree with that.

Q Okay. And you testified to this, but you talked to law enforcement several times; is that correct?

A That's correct.

Q Do you recall talking to law enforcement on February 17th of 2017, just a few days after the girls went missing?

A I – like I don't know the date, but they stopped me coming home a few times.

Q Sure. Do you remember talking to – you probably don't remember the officers' names, but do you remember talking to an Officer Shane Burnhart and Indiana State Trooper Brian Kubiak?

A I don't know. I got stopped on 625 and they searched my car and searched my house and talked to me and gave me a lie detector, gave me –

Q Let's back up a little bit. On February 13th, 2017, you were at home taking a nap and a police officer woke you up; is that right?
A That's correct.
Q And he asked you to look around your property; is that correct?
A He asked if he could.
Q If he could look around your property?
A Yes.
Q And you told him, "Sure, go ahead"?
A Yep.
Q At that point, did he ask you to look in any of your outbuildings?
A No.
Q Okay. Later on, law enforcement did ask you to look in your outbuildings; is that correct?
A Yes.
Q And you did let them do that?
A Yes.
Q You let them search your house, even?
A Yes.
Q After you were awakened or woke up by the officer on the 13th at 5:30, do you remember the very next time you spoke to law enforcement?
A At 8.
Q Okay.
A Around 8.
Q Did you ever talk to law enforcement on February 17th, a few days later?
A I talked to them every day for quite a while.

Q If I were to show you a police report from February 17th of 2017, would that help you remember whether or not you talked to law enforcement on that day?

A If it's the day that I'm thinking, it's when they stopped my car going home, I believe that was the 17th, but I'm not sure.

Q If I showed you this document, would it help?

A Maybe.

Q Okay. I want to draw your attention to the date on there; do you see the date?

A Yes.

Q Okay. And then I want to draw your attention – so let me start here: Do you remember talking to law enforcement this day?

A I remember talking to them. I don't remember this particular guy.

Q Okay. That's okay. And when you talked to law enforcement that day, you told them that you got off work at 2:02 p.m.; is that correct?

A That's correct.

Q And you told them you went straight home; is that right?

A That's correct.

Q And that you got home right around 2:30; is that correct?

A That's correct.

Q And that you were awakened at around 5:30 by a sheriff's deputy; is that right?

A That's correct.

Q Again, this is on February 17th of 2017; correct?

A Yes.

Q Okay. Now, when – I want to fast forward to 2024. When you got a phone call or a text to come back in and talk to law enforcement, you said you didn't remember if it was a phone call or a text?

A That's correct.

Q Okay. Would it be common in the area where you live to not receive phone calls?

A It's – or lose them or drop them.

Q And so is it common for people to text you?

A That's correct.

Q Because texts come through better than phone calls?

A Yeah. They're – yes.

Q Okay. And during that text or phone call, did the officer that contacted you, did they tell you what they wanted to talk to you about?

A No.

Q They just said, "Come into the building. We'd like to talk to you, ask you a few questions"?

A Yes.

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

THE COURT: Mr. Baldwin.

**RE-DIRECT EXAMINATION OF BRAD WEBER**

QUESTIONS BY MR. BALDWIN.

Q But you told Officer Gootee and Robert Pohl something different, didn't you, about your –

A I believe a lot of the – I believe so, according to you.

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

THE COURT: Mr. McLeland.

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

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

(Sidebar conference conducted.)

THE COURT: "How far in advance do you have to order cash for the ATMs?"

MR. BALDWIN: Fine, yeah.

MR. MCLELAND: Yeah.

THE COURT: "What is the process for you to clock out of work?"

MR. MCLELAND: I'm fine with it.

MR. BALDWIN: That's good.

THE COURT: "The report indicates E-EXIT-RD-02"; what does that mean?"

MR. BALDWIN: I don't know what report they're talking about.

MR. MCLELAND: I didn't know. I'm gonna object, we don't know what report.

THE COURT: Okay. "What driveway do you use to access your home?"

MR. BALDWIN: That's fine.

THE COURT: "Do you drive under the High Bridge and did you use that route on February 13th, 2017?"

MR. BALDWIN: Good question.

THE COURT: "Do you know if the ATMs were photo or video of – do you know if the ATMs with a photo or video of when you would be servicing them?"

MR. BALDWIN: Yep.

MR. MCLELAND: I don't know, Judge. There's something about that question, I don't think it's relevant.

MR. BALDWIN: If he knows.

THE COURT: I mean, we're getting into the weeds here. This is not even close to relevant.

MR. BALDWIN: Could – hold on. I'm sorry, Judge, with respect, I mean, they're trying to figure out whether or not he was working on his ATM machines and if there's a camera that could prove that he did or didn't, so I think it's relevant for sure.

THE COURT: Okay. So if they ask if there is a camera, we don't have that because nobody got that.

MR. BALDWIN: He'll either know or he won't know.

THE COURT: So I'll ask that over the State's objection. "On February 13th, 2017, would you have went home after work to map out what machines needed filled after (inaudible)?" Because he said he went home and went to bed.

MR. MCLELAND: Yeah.

MR. BALDWIN: I don't care one way or the other.

MR. MCLELAND: (Inaudible)

THE COURT: We're just marching down a path of –

MR. BALDWIN: That's fine.

THE COURT: "Do you typically go home after work at Subaru before servicing your ATM?"

MR. BALDWIN: That's good.

THE COURT: Okay.

(Sidebar conference concluded.)

**JUROR QUESTIONS OF BRAD WEBER**

QUESTIONS OF THE JURY, READ BY THE COURT.

Q Mr. Weber, do you know if the ATMs would have photo or video of when you would be servicing them?

A The ATM itself wouldn't, but some of the locations did.

THE COURT: Okay. Any follow-up, Mr. Baldwin?

MR. BALDWIN: No, Judge. Thank you.

THE COURT: Mr. McLeland?

MR. MCLELAND: No, Your Honor.

Q How far in advance do you have to order cash for your ATMs?

A Okay. So the problem's not getting cash, it's getting twenties, 'cause the ATMs I have, all they have is twenties, all they dealt with. And at Regents, it's usually a week, order it a week out.

THE COURT: A week. Okay. Mr. Baldwin, any follow-up?

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

THE COURT: Mr. McLeland?

MR. MCLELAND: No, Your Honor.

Q What is the process for you to clock out of work?

A When you go through the turnstiles, it – you use a badge and that's what clocks you in and out.

Q Your badge, okay.

A Yeah.

THE COURT: Mr. Baldwin, any follow-up?

MR. BALDWIN: None, Your Honor. Thank you.

THE COURT: Mr. McLeland?

MR. MCLELAND: Yes, Judge, just briefly.

**FOLLOW-UP EXAMINATION OF BRAD WEBER**

QUESTIONS BY MR. MCLELAND.

Q So, Mr. Weber, just as you're leaving, you flash your badge at the turnstile and you walk out?

A It releases the turnstile to allow you out.

MR. MCLELAND: Okay. Thank you, Judge. Nothing else.

**JUROR QUESTIONS OF BRAD WEBER**

QUESTIONS OF THE JURY, READ BY THE COURT.

Q What driveway do you use to access your home?

A The driveway right by Lieberts', the driveway that goes underneath Monon High Bridge.

THE COURT: Mr. Baldwin?

**FOLLOW-UP EXAMINATION OF BRAD WEBER**

QUESTIONS BY MR. BALDWIN.

Q So you never use your other driveway? Well, isn't there another way in and out of your –

A Yes, there's another way. I could get in and out without using the driveway.

Q Okay. And do you do that sometimes?

A I have, yes.

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

THE COURT: Mr. McLeland?

MR. MCLELAND: No, Judge.

**JUROR QUESTIONS OF BRAD WEBER**

QUESTIONS OF THE JURY, READ BY THE COURT.

Q Do you drive under the High Bridge and would you have taken that route on February 13th of 2017?

A I would have and yes.

THE COURT: Mr. Baldwin?

MR. BALDWIN: No questions.

THE COURT: Mr. McLeland?

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

Q And do you typically go home after work at Subaru before servicing your ATMs?

A Typically, I don't, no.

THE COURT: Okay. Mr. Baldwin?

MR. BALDWIN: No questions.

THE COURT: Mr. McLeland?

MR. MCLELAND: No, Your Honor.

THE COURT: All right. Thank you, Mr. Weber. You may step down. And it is my understanding that the Defendant has no further witnesses for today.

MR. BALDWIN: That is correct, Judge.

THE COURT: Well, all right. Well, ladies and gentlemen, we're

gonna call it a day. While you go on about your own business the rest of the afternoon and the evening, please, remember what I've told you about not talking about the case amongst yourselves or with others, as you will be in the company of the bailiffs. Just go ahead and leave all your materials there and Jodie will collect those and have those available for you. Please have a safe and a peaceful evening. Gentlemen.

THE BAILIFF: All rise.

(Jury out at 3:31 p.m.)

THE COURT: All right. You may be seated. My understanding, Mr. Baldwin, is that you wish to make an offer of proof.

MR. BALDWIN: Oh, thank you, yes. I – we had intended to call Kevin Murphy, who used to be a state trooper, worked on the case from 2017, all the way up to 20 – I believe it was 2021. Would – should he have testified, he would have said that the entirety of his time working on the investigation of this case, when he would listen to Unified Command's kind of daily updates, that they always said that there was two to three people that the Unified Command believed were involved in the commission of the crimes, possibly as many as five to six, and that was consistent, and what was never stated was that there was only one person involved. And Kevin Murphy, who was here earlier, had he been able to testify, that's what he would have talked about, Judge.

THE COURT: And I believe the State objected to Mr. Murphy's testimony.

MR. MCLELAND: Yes, Your Honor.

THE COURT: Did you want to –

MR. MCLELAND: Oh, Judge, just –

THE COURT: -- get your objection on the record?

MR. MCLELAND: We've heard other testimony about what Unified Command thought prior to the arrest of Mr. Allen. I don't know that Mr. Murphy was in a place to even testify, he wasn't part of Unified Command, he didn't have daily contact with them. I don't think that his – I thought his testimony was gonna be speculation, at best, and again, we've already heard from other officers what Unified Command thought prior to that, so the State objected to him testifying.

THE COURT: Is there anything additional on your offer of proof?

MR. BALDWIN: Just ask – I think this has really been done: We would ask that his – that Mr. Murphy's prior testimony at the August 1st hearing or – I think it was August 1st, the series of hearings on July 30, 31, and August 1st be incorporated into our offer of proof.

THE COURT: Okay. All right. And I did sustain the State's objection on cumulative, as there is evidence in the record that supports what you are arguing. Is there anything else from the Defense?

MR. BALDWIN: Judge, while we're – I mean, since we're ending early, I could – I have an offer of proof that I could work with Mr. Holeman as it relates to certain questions. It won't take very long, five to ten minutes I think.

THE COURT: Okay. And of –

MR. BALDWIN: And I can have a sidebar, if you want to talk about it, but –

THE COURT: I'm sorry, we – I don't know what the nature of your offer of proof –

MR. BALDWIN: It's related to the third-party suspect. It's a new

way of making an argument based upon the questions I'm about to ask for the record for the Court of Appeals.

THE COURT: Okay. So the – all right. Does the State have a – I'm not sure exactly what we're talking about here.

MR. BALDWIN: I'll tell you what the questions are and then you can tell me. If Richard Allen had told police that – had asked law enforcement, "If my spit is found on one of the girls, but I have a good reason for it," would that evidence be used in this trial? And then a series of those types of questions.

THE COURT: If the Defendant told Mr. Holeman that?

MR. BALDWIN: I'm – that's what I would be – I would be asking Lieutenant Holeman – it could be Investigator Mullin, either way – a series of questions along those lines, whether the things that I attribute to Brad Holder and Elvis Fields, were those things to be found in Richard Allen's social media or statements made, would they have – would they, law enforcement, have used those pieces of evidence in a trial, that's – the series of questions would be along those lines.

THE COURT: Okay.

MR. MCLELAND: Judge, what he's doing is using the evidence that he believes is evidence against Elvis Fields and he's implying that to Richard Allen, then asking the officer would that be used in trial. That calls for complete speculation. If it was just that evidence alone that we had against Richard Allen, he wouldn't even be charged. That's why Elvis Field [sic] is not charged. That is not enough evidence to tie anyone to the crime. Would it be used in conjunction with the other evidence against Richard Allen, that's complete speculation and that would be at the prosecutor discretion of what evidence to use at trial, not

Mr. Holeman.

MR. BALDWIN: Another question, just for the record, that would be asked is if there were a faked crime scene photo in Richard Allen's computer or on his Facebook page that showed two young girls with sticks on them lying on the forest floor, would that have been used against him in trial, I think that would be a question that I should be able to ask Lieutenant Holeman.

THE COURT: Well, I guess I understand where you're going, and again, we've – I've already ruled on third-party suspects and the fact that you have no evidence that connects any of those individuals to the crime. There's no DNA – we've had this discussion a thousand times. There's no evidence that connects those folks. And whether Trooper Holeman would use that evidence in a trial, he would not use that evidence in a trial, that's not his position. He stays in his lane. That's the elected official's authority to use that type of evidence, and you can't put Mr. McLeland on the stand to ask him those questions.

MR. BALDWIN: I could – Judge, I could ask Lieutenant Holeman if he would find that incriminating against Richard Allen.

THE COURT: So you want to put him on the stand or you want to just complete your offer to prove orally?

MR. BALDWIN: If – I can do that orally, Judge. I mean, I think – and, with all due respect, I don't agree that there's no evidence of these third-party suspects. I think there's plenty of evidence, but that's – we've gone on –

THE COURT: No, no, no, you misunderstand, Mr. Baldwin. The nexus –

MR. BALDWIN: I believe that –

THE COURT: -- you don't have the nexus.

MR. BALDWIN: I believe there is more than a nexus under the law. I've not actually heard the Court explain what its view of a nexus is, so I'm not really sure. I just hear the phrase "nexus", I don't know what that means to you, Judge, as the judge, but that's fine. I mean, you've made your ruling and I re – that's fine.

THE COURT: Okay.

MR. BALDWIN: So I think I've made my record.

THE COURT: Anything else, then, that we need to discuss outside the presence of the jury, Mr. McLeland?

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

THE COURT: Okay. All right. Then, we will be in recess until 9 a.m. tomorrow morning. Thank you.

MR. BALDWIN: Thank you.

(Off record at 3:39 p.m.)

(On record November 5, 2024, at 9:01 a.m.)

THE COURT: All right. Well, good morning, ladies and gentlemen. We are back on the record in *State of Indiana versus Richard Allen*, 08C01-2210-MR-1. I'll show that the Defendant's here in person with counsel. The State's here by the Prosecutor and his deputies. The jury has reassembled and is awaiting our direction. Are we ready to proceed?

MR. BALDWIN: We are, Judge.

MS. DIENER: Judge, I have an issue prior to bringing the jury in. We filed a motion in limine regarding Grassian's testimony today –

THE COURT: Yes.

MS. DIENER: -- and I didn't know if it would be pulled through, since the court staff was not here, so I have a copy.

THE COURT: I – they – somebody printed it off for me.

MS. DIENER: Perfect. So that request is that a limiting instruction be issued regarding Dr. Grassian's testimony to admonish the witness not to testify as to opinions concerning intent, guilt, or innocence of the Defendant, the truth or falsity of the allegations, whether a witness has testified truthfully, or legal conclusions, specifically the truth or falsity of the Defendant's statements. I do have a case for the Court's consideration, I've provided one to defense counsel, as well, it is *Jimerson v. State*, found at 56 N.E.2d 117.

THE COURT: Thank you. What is the Defense position?

MR. ROZZI: Judge, thank you. Just a couple things: One, you know, this thing just landed on my desk, obviously, this morning, although I don't think it's overly complicated. I guess I have some reservations about the timing of these things. Mr. Grassian has been on the plate of the State, they've been well aware of him for months and months, and all of a sudden now, you know, on the doorstep of him walking into the courtroom, we get these filings. I just feel like there's a little bit of fair play that the Court needs to recognize here and not put us in a tough spot in that regard. The second issue is that the requests that are in the pleading, as I understand them are, number 1, that Mr. Grassian shouldn't be able to testify about a conclusion of law. I mean, that's an evidentiary rule that the Court would deal with, obviously, in any – in the course of anyone's testimony, and you can make those decisions based on objections while that testimony's ongoing. If you're filing a motion in limine and you've done discovery of a witness and you know that the witness has an opinion

and that that's A or B or C, then you file a motion in limine and ask for a limiting instruction because you already know what the witness is gonna say; but when you don't know, it's not fair to handcuff, in this case Mr. Allen, in terms of his presentation of the evidence to the extent that he follows the rules. And then second, the second request is that, you know, one witness can't testify about the truth or veracity of another witness, I mean, I acknowledge that that's generally the law. I do think one witness could testify about whether or not that witness disagrees with another witness's opinion; you know, that's just a credibility issue to be determined by the Court. So again, I think these are really just things that you would deal with in the normal course. They're not looking to limit any particular statements, and so I don't think the Court should issue any instructions. I think what you should do is just wait until the testimony is offered up and then, you know, we would react accordingly. I think that's the appropriate way to handle it. Thank you.

THE COURT: Ms. Diener.

MS. DIENER: Judge, I would agree Indiana Rule of Evidence 704(B) has been in existence long enough for both of us to understand what it means and where it applies. The reason I'm filing this is that yesterday, when Dr. Westcott testified, there was a response to a question where she made a comparison about a principle that she was testifying about and then related it specifically to Mr. Allen with regard to the truthfulness of his statement. So I don't want to go there today with Dr. Grassian and then have to make an objection after the statement's been made and try to put the genie back in the bottle. So she was an expert, she's testified in lots of situations, I would have expected her to know better. I'd like to make sure that Dr. Grassian knows what

the parameters are. I don't know if he is familiar with Indiana courts. He has a broad experience and has testified in lots of different settings, so I want to make sure there's familiarity with the restrictions in Indiana with regard to expert testimony. So that was the basis for the request and we'd ask the Court to go ahead and give that limiting instruction.

THE COURT: And what is the limiting instruction specifically that you're asking for?

MS. DIENER: To admonish the witness not to testify as to opinions concerning intent, guilt, or innocence of the Defendant, the truth or falsity of allegations, whether the witness testified truthfully, or to legal conclusions, specifically the truth or falsity of the Defendant's statements.

THE COURT: Mr. Rozzi.

MR. ROZZI: I think it's a – she's asking for a broad-based limiting statement on evidence that she doesn't even know exists at this point, again because there's not been any discovery done to ferret any of this out to figure out what he has to say. So I'm willing to follow the rules of the Court, but I just have – you know, the evidentiary rules, I should say, excuse me – I'm sorry that that didn't resonate well. I'm willing to follow the rules in terms of, you know, the rules of the evidence and where the parameters are, but just to say you just – you're handcuffing me from asking him questions about information that's not been elicited is just – it's like putting the cart before the horse; right? I just – I have a problem with that procedurally.

THE COURT: Well, I understand that and you make a valid point, but I trust that the witness has been informed what Evidentiary Rule 704(B) is. I trust that he has been told that he may not testify concerning intent, guilt or

innocence, truth or falsity of allegations, whether a witness has testified truthfully, or legal conclusions.

MR. ROZZI: That is correct.

THE COURT: He has been told that?

MR. ROZZI: Yes, he has.

THE COURT: Okay. So as long as he's been told that and he is not going to testify about his opinion as to whether or not the testimony of another witness is truthful or untruthful and that he's going to comply with evidentiary rules, then we shouldn't have to worry about having to put the genie back in the bottle.

MS. DIENER: Correct. And, Judge, I would just advise the Court that again with Dr. Grassian, there was no report prepared, so as he indicates that the State has not made an effort to address what his actual findings are, short of taking a deposition of him there was no report to review, so we are in that circumstance.

THE COURT: Okay. Well, and, I mean, clearly the Defendant is not required to provide a specific written report, and that's the route that the Defense has chosen to pursue I see.

MS. DIENER: That's acknowledged, yes, Judge.

THE COURT: Okay. All right. Well, just as long as it's clear: If he steps over the line, we'll be having an argument outside the presence of the jury and I'll have the jury excused and we will have a much-harsher conversation about what has just happened, if it happens.

MR. ROZZI: As a matter of professional courtesy, I'm gonna walk back out over there and tell him again what you just instructed me, even though

I have told him currently two or three times that those are the parameters.

THE COURT: Okay. That would be great.

MR. ROZZI: I will do that. I mean, I'm not looking to run afoul of any of these parameters.

THE COURT: And could we just have a brief sidebar about something not related to this, please.

MR. ROZZI: Okay, yeah.

(Sidebar conference conducted.)

THE COURT: I know we've had issues with seating.

MR. ROZZI: Um-hmm. (Affirmative response)

THE COURT: But the seating in the well of the courtroom, I trust that, from all the (inaudible) in my position, that the only members in the well of the courtroom should be your staff members, don't have anybody other than staff in the well of the courtroom. I know there's a woman sitting right behind Mr. Allen. I've not seen her before, I don't know who she is –

MS. AUGER: Your Honor, we lost some of our seats, that is – for some reason, the media's in them. That is my sister who's sitting behind us.

THE COURT: Not in the well of the courtroom.

MS. AUGER: Okay.

THE COURT: I don't –

MS. AUGER: So she'll have to move.

THE COURT: I cannot be responsible for her safety.

MS. AUGER: Okay. That's fine.

THE COURT: She's too close to the inmate guards, she's too close to Mr. Allen.

MS. AUGER: Can we have one of our seats back?

THE COURT: The Defense was allocated ten, the State was allocated ten, the media was allocated 12. Apparently, somebody took two of the media seats, whether it's Defense or State, and it appeared that the Defense had (inaudible) media seats. I mean, it didn't appear the media that they were given 12 seats, so I don't know, and I haven't counted.

MS. AUGER: Yeah.

THE COURT: And then, there are seats reserved for the State on the State's side of the courtroom, and there are seats reserved for the Defendant on your side of the courtroom, so I don't know who took things off, because we're (inaudible) –

MR. ROZZI: I'm not paid to try to figure this out.

THE COURT: I am not either. I'm not in charge of the seating.

MR. ROZZI: Yeah, I mean –

MR. MCLELAND: This is a (inaudible)

MR. ROZZI: Can we just maintain the status quo until lunch and then we'll take care of it?

MS. AUGER: Can I scoot her down?

THE COURT: Yes, move her.

MS. AUGER: Yeah. I'm sorry, that's my fault.

THE COURT: I don't want her that close to –

MR. AUGER: No, I agree.

THE COURT: I mean, we've had some issues with Mr. Allen. I don't want to be responsible for her safety, as well.

MS. AUGER: That's fine.

THE COURT: Just have her move down.

MS. AUGER: Thank you.

MR. MCLELAND: While we're here, just to give you guys a quick update on this Lani Olani [sic] character, she's now moved to harassing witnesses as they leave the courtroom.

THE COURT: Yes.

MR. MCLELAND: And so she posted a video of Brad Weber leaving yesterday, where she's hollering at him and accusing him and all these different things, so this is a heads-up to your witnesses. I don't know what she's capable of, but she's standing out here and she's filming it and posting it.

MR. ROZZI: She's not in the courtroom today?

MR. MCLELAND: I don't know. I did not look.

MR. ROZZI: Is this the one with kind of the salt and pepper hair?

MR. MCLELAND: Well, the girl that we've had –

MS. DIENER: Yes, she's sitting right there.

MR. MCLELAND: Okay.

MR. ROZZI: Can't we just tell her to get the hell out of here if she's gonna be harassing people?

MR. MCLELAND: Well, she's around and she's harassing people, so I just to give everybody –

THE COURT: She's doing it on – she's doing it outside.

MR. MCLELAND: Yeah. She's –

MR. ROZZI: Public property?

MR. MCLELAND: Yes, from the sidewalks out here. She's not going within the barriers.

MS. AUGER: How does she know who anyone was?

THE COURT: She's sitting right over here.

MR. MCLELAND: Yeah.

THE COURT: I've been in communication with the security detail outside and told them to – "If she's being stupid – is being stupid and loud and she fails to comply with the directives, then that's your problem. It's outside of my hands, that's your problem." (Inaudible) includes exclusion from the property (inaudible). I was forwarded the video by the security detail that she has harassing –

MR. MCLELAND: Still better telling everybody to know what I know, so that's what I did, so I'll try to keep everybody updated.

MR. ROZZI: Make up a couple new rules and get her out of here, I don't care.

MS. DIENER: (Inaudible)

MR. ROZZI: Yeah, I know.

MR. MCLELAND: Just keeping everybody updated.

MR. ROZZI: So she's in here now for sure? This woman is here today, you're saying?

THE COURT: Is she in here?

MR. MCLELAND: I don't know.

MR. ROZZI: Is she on that side?

MR. MCLELAND: I'm sorry, Judge?

THE COURT: I was just asking whether she was in here.

MS. DIENER: Yeah, she's here. (Inaudible)

THE COURT: Oh, yeah, I see her.

MS. DIENER: (Inaudible)

MS. AUGER: And that's her mom?

THE COURT: There's four of them that have just been absolutely (inaudible)

MR. MCLELAND: One of them is Rick Snay, who got in a fight –

MS. DIENER: Yes.

MR. MCLELAND: -- at Fort Wayne on the courthouse grounds.

MR. ROZZI: The same people?

MR. MCLELAND: Yeah.

THE COURT: It's the same (inaudible)

MR. MCLELAND: So just want to keep everybody aware, just, you know, we haven't had any threats, but – yeah.

MR. ROZZI: Okay.

THE COURT: The work is hard enough with all this.

MS. AUGER: Yeah. Thank you, Judge.

(Sidebar conference concluded.)

THE COURT: All right. So, Mr. Rozzi, did you wish to step outside and briefly speak with your witness before we bring the jury in?

MR. ROZZI: Thank you for that, yes, but Mr. Baldwin's calling our first witness, so –

THE COURT: Oh, okay.

MR. BALDWIN: I'm sorry, what? I'm sorry, I wasn't listening. You called me?

THE COURT: So are we ready to bring the jury in and –

MR. ROZZI: Yes.

THE COURT: Okay. All right, gentlemen.

THE BAILIFF: All rise.

(Jury in at 9:16 a.m.)

THE BAILIFF: Thank you. You may be seated.

THE COURT: Well, good morning, ladies and gentlemen. It's nice to see you back this morning. Give you a couple of seconds there to kind of get settled back in for the morning's proceedings. I hope you had a pleasant evening. I know that you had the opportunity to access your electronic devices for purposes of contacting family and friends and for checking your work email. So to that end, ladies and gentlemen, have you read, seen, or heard any media accounts concerning this case?

A (All jurors respond in the negative.)

THE COURT: Have you discussed this case with anyone?

A (All jurors respond in the negative.)

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

A (All jurors respond in the negative.)

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

A (All jurors respond in the negative.)

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

A (All jurors respond in the negative.)

THE COURT: All right. Again, ladies and gentlemen, I appreciate your continued compliance with the Court's orders. We are ready to proceed. Mr. Baldwin, you may call your next witness.

MR. BALDWIN: Thank you. We'd call Betsy Blair.

(Witness sworn.)

THE COURT: You may proceed.

MR. BALDWIN: Thank you, Judge.

**DIRECT EXAMINATION OF ELIZABETH BLAIR**

QUESTIONS BY MR. BALDWIN.

Q Good morning, Betsy.

A Good morning.

Q I know you've done this already one time, but could you state your name and spell it for the record.

A Elizabeth Blair, E-L-I-Z-A-B-E-T-H B-L-A-I-R.

Q Thank you. Betsy, how many questions did the prosecution ask you about the car you observed at the CPS building on 2/13 when we were here earlier in this trial?

A The prosecution did not ask.

Q Okay. We're gonna talk about that, the car you observed; is that okay?

A Yes.

Q All right. First of all, before we get to that, let's kind of remind the jury how many times and approximately what times did you go to the trail that day; could you remind the jury of that information.

A I went to the trail two times. The first time I walked for a while and I left for about a half hour, and then I came back and I walked again.

Q Okay. And then you came back a second time?

A Right.

Q And then, do you know approximately what time you got to the trail the

second time?

A So the second time, I would have gotten to the trail about quarter till 2.

Q Okay. And what time do you think that you left, roughly, the trail after going on your walk around?

A I believe it was about quarter after 2.

Q Quarter after 2, give or take? Give or take a few minutes?

A Approximately.

Q Thank you. When you left, can you tell the jury, first of all, how many cars were in the – what we call the Mears lot, you call the NICHES I think.

A Yes.

Q How many cars were there when you left, do you remember?

A Just mine.

Q All right. And when you left, which route did you travel? When you – well, which route did you travel?

A When I left the lot, I turned left onto 300 North.

Q Okay. And what buildings, if any, do you know that you pass if you're headed left on 300 North?

A There's a business on the north side, and there's a house on the left side kind of at the corner where you turn, and then there's the empty government building that was there near the trail parking lot, and then there's the entrance to the Anderson's grain facility.

Q Okay. Now, that government building, what was that known by back in those days in 2017?

A I have no idea.

Q Did you ever hear it called the CPS lot?

A Other people have called it that since then.
Q Okay. But that's – you passed this – what other people would call the CPS lot?
A Yes.
Q Okay. And when you passed that lot, what did you observe in terms of any vehicles?
A I saw one vehicle in that lot.
Q Okay. And what, if anything, caused you to notice that vehicle in that lot?
A The reason I remembered it is because it was not parked how other people park when they go to the trail to walk, it was parked near the empty building and it was turned around so that the front was towards the county road and the back was towards the new highway.
Q Okay. Kind of like somebody had backed in for maybe a quick get-away or something or just a get-away a little bit so they don't have to back up?
A It was backed in.
Q Backed in, okay. And what else, if anything, did you notice about that vehicle that stood out?
A Just the overall shape of it and it looked to me like it had sharp angles. It was a – looked like a four-door sedan.
Q Okay. Did it remind you of any vehicles that you had seen in your time on this earth?
A Yes. After I thought about it later, it reminded me of a car that my father had had years ago that was a 1965 Ford Comet.
Q What color, if any, do you remember that car being?
A I don't really remember the color, but I remember talking about what it

wasn't, which it wasn't a bright color, I believe I said it wasn't red, it wasn't yellow, but I didn't really know what color it was.

Q Did you also say that it was not a black car?

A I don't recall that.

Q Would it help refresh your recollection if I provided you a transcript of a prior statement from April of 2019?

A Yes.

Q Thank you.

MR. BALDWIN: May I approach, Judge?

THE COURT: You may.

Q I'm handing you a statement from April the 2nd, 2019, and I'd ask you to turn to page 7, at the bottom, I think it's line 25 particularly.

MR. DIENER: Which statement are you referring to, Mr. Baldwin?

MR. BALDWIN: April the 2nd, 2019.

Q Tell me when you're done reviewing that, Betsy. Ready?

A Okay.

Q Does that refresh your recollection as to whether or not you said that the car was black?

A So in 2019, when I was speaking with the investigators, I said it was a non-descript color –

MS. DIENER: Judge, may I object. Proper use of the transcript would be to have her read it, see if it refreshed her recollection, then take it back, and he has not done so.

THE COURT: Correct.

Q Thank you. Does that refresh your recollection as to whether you said the

color of the car was black or not?

A In 2019, I said it could have been black.

Q You said – I'm sorry?

A In 2019, in – at that time, I said it could have been black.

Q It could have been?

A It could not have been black.

Q Oh, could not have been. Okay. Thank you. All right. Was – did that car look like a hatchback to you?

A I did not see the back of the car, I saw the side of it, but it looked like a four-door sedan to me at the time.

Q Did you ever draw for law enforcement the profile of the vehicle that you saw?

A I did.

MR. BALDWIN: Judge, may I approach?

THE COURT: You may.

Q I'm handing you Defendant's Exhibit LLL and ask you to look at that for a second, tell me when you're done.

MS. DIENER: Mr. Baldwin, may I have a copy?

MR. BALDWIN: Oh, sorry.

MS. DIENER: Thank you.

A I'm done.

Q Does that document fairly and accurately depict what you drew for the police?

A This is my drawing, yes.

Q As to the – and can you describe for the jury what it is.

A It's a basic outline of the top of the car.

MR. BALDWIN: Move to admit Defendant's LLL.

**DEFENDANT'S EXHIBIT LLL OFFERED**

MS. DIENER: No objection.

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

**DEFENDANT'S EXHIBIT LLL ADMITTED**

MR. BALDWIN: Move to publish.

THE COURT: You may.

**DEFENDANT'S EXHIBIT LLL PUBLISHED**

THE COURT: You may proceed.

MR. BALDWIN: Thank you, Judge. I have no other questions.

THE COURT: Ms. Diener.

MS. DIENER: Thank you, Judge.

**CROSS EXAMINATION OF ELIZABETH BLAIR**

QUESTIONS BY MS. DIENER.

Q Ms. Blair, do you recall that you also spoke with police in 2017, on February 17?

A Yes, I did.

Q And I provided you with copies of all your statements –

A Yeah.

Q -- long before trial; is that correct?

A Correct.

Q And so you've had those to look at?

A Yes.

Q Do you remember, on February 17 of 2017, telling officers that you noticed

the car because it was closer to the building, backed in slightly at an angle, you found it kind of odd that they would park there, and it was not a bright color, nondescript sedan, not new, not real shiny, nothing really stood out?

A Yes.

Q And after some discovery, did I again contact you to tell you that another witness said they saw an older-model vehicle pulled off the road between the corner, the sharp left-hand turn, and the CPS building; do you recall that?

A Yes.

Q And I told you it was an older-model vehicle that might be similar to the one you described?

MR. BALDWIN: Judge, I'm objecting –

A Yes.

MR. BALDWIN: -- to this testimony. She's basically – is she a witness or is she an attorney on the case?

MS. DIENER: Judge, I shared with the witness conflicting testimony to ask her if it changed her recollection, that's the purpose of the question.

THE COURT: Overruled.

MR. BALDWIN: Well, Judge, do I have an opportunity to put the prosecutor on the stand to ask her what – about that conversation?

THE COURT: Certainly.

MS. DIENER: May I continue, Judge?

THE COURT: Yes, you may.

Q Mrs. Blair, I asked you if it would change your recollection about the vehicle that you saw; is that correct?

A You did.
Q And did it have any impact on your memory of what happened on February 13 of 2017?
A I feel certain that that's the shape of the car I saw at that time.
Q And you feel certain that it was at the CPS building?
A I couldn't quite hear that.
Q It's okay. You feel certain that it was at the CPS building; correct?
A Yes, it was absolutely at the building.
Q Okay. And how was your vision back in 2017? Did you have any corrective lenses or anything like that?
A I wear contact lenses and I have them on all the time.
Q Terrific.

MS. DIENER: No other questions.

THE COURT: Mr. Baldwin.

MR. BALDWIN: No, thank you, Judge.

THE COURT: Does anybody on the jury have any questions for Ms. Blair? Counsel, approach.

(Sidebar conference conducted.)

THE COURT: "Is it possible the car parked in the CPS lot belonged to someone inside of the building working?"

MS. DIENER: I think she'll describe it as abandoned, but yeah.

THE COURT: Okay.

MS. DIENER: Who knows?

THE COURT: "Do you know if anyone checked to see if it belonged to an employee?"

MS. DIENER: I'm fine with those.

MR. BALDWIN: Yeah. Thank you.

(Sidebar conference concluded.)

**JUROR QUESTIONS OF ELIZABETH BLAIR**

QUESTIONS OF THE JURY, READ BY THE COURT.

Q All right. Ms. Blair, is it possible the car parked in the CPS lot belonged to someone inside of the building working?

A The building looked abandoned and I believe it had been abandoned for some time.

THE COURT: Okay. Mr. Baldwin?

MR. BALDWIN: No questions, Judge.

MS. DIENER: No questions.

Q Do you know if anyone checked to see if it belonged to an employee?

A I don't know if anyone did.

THE COURT: Mr. Baldwin?

MR. BALDWIN: No questions, Judge. Thank you.

THE COURT: Ms. Diener?

MS. DIENER: No questions.

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

MR. ROZZI: Dr. Stuart Grassian.

(Witness sworn.)

MR. ROZZI: May I?

THE COURT: You may.

**DIRECT EXAMINATION OF DR. STUART GRASSIAN**

QUESTIONS BY MR. ROZZI.

Q All right, Doctor, go ahead and tell the jury your name.

A My name's Dr. Stuart Grassian.

Q And could you spell that for us a little louder, too, so the court reporter can hear you.

A Sure. It's S-T-U-A-R-T, Stuart, and Grassian is G-R-A-S-S-I-A-N.

Q All right. And where do you live generally?

A Right outside of Boston in the Chestnut Hill section.

Q And tell the jury what do you do for a living.

A I'm a psychiatrist.

Q All right. And what's your – just kind of generally, what's your educational background?

A Well, my undergraduate degree's from Harvard University. I have a master's degree in sociology from Brandeis. My MD degree is from New York University Medical Center, where I also did an internship in medicine and then went on to Harvard Medical School, the Beth Israel Hospital in Boston, where I did a residency in adult and adolescent psychiatry. Became board certified in psychiatry in 1979, and also have a JD degree that I got in 1986 at night school.

Q And JD meaning you have a – basically a law degree?

A I have a law degree, yeah.

Q Many, many years ago; right?

A Many years ago.

Q Okay. All right. And are – do you also teach or have you taught just kind of on the academic side or something?

A Yes. I mean, I was on the clinical faculty at Harvard Medical School for

about 25 years and I had to stop doing that 'cause of some significant family medical issues, but I still give lectures and seminars and such from time to time.

Q Okay. And then, just real quickly in terms of – you know, I don't want to get into all of this, but just in terms of like board certifications, is there some kind of board that psychiatrists are on that's, you know, important to your profession or required?

A Yeah. Well, the official board that recognizes the specialty certification is the American Board of Psychiatry and Neurology, and I've been board certified since 1979.

Q Thank you. You're gonna have to keep speaking up, 'cause you're kind of trailing off. Sorry. I don't think moving that close is gonna help.

A No.

Q You just gotta speak up. And so, are you in good standing, so to speak, with the board –

A Yes.

Q -- of your profession?

A Fine, yes.

Q Okay. All right. And in the course of your – how long have you been a psychiatrist now?

A A long time. I completed my residency in 1977.

Q Okay. And during the course of your career dating back to '77, has there been any particular area of psychiatry that you've taken a special interest in?

A Well, yes. As I – as you're aware, I've become kind of a – well, a well-known expert regarding the psychiatric effects of solitary confinement. I also have done some research and work regarding memory, memory of traumatic events, and

false memories.

Q Okay. And have you testified in courtrooms like this one around the country over the course of your career?

A Yes, quite a number of times.

Q Okay. Can you just tell the jury, just give them some context as to why you would be called into a courtroom, what kind of things you've talked to jurors about over the course of your career.

A Well, God, there's such a wide variety. Often, it has to do with things like the psychiatric effects of a person having been in solitary; sometimes people commit bad acts, crazy acts, and it's important to understand the mental state the person was in at the time of the act. People have been in solitary and have suffered terribly and for no good reason, and courts have found, you know, malicious prosecution and awarded – well, recently awarded quite significant damages, in the millions, for that.

Q Did you testify – I mean, are you one of those guys that only testifies for one side or the other or how does that kind of work in your industry?

A I – my testimony regarding solitary confinement is basically always about the psychiatric effects of solitary confinement, but that can take all kinds of different forms; like, for example, one time I was hired by the federal defender for a case involving an accused terrorist, the Millennium Bomber, and my work really was in – was very much in cooperation with a very senior FBI guy who's involved with behavioral analysis. It was – basically, the way they were treating him in solitary, it was cause – he had been cooperating and helping the government, and then they started treating him harshly with solitary, and he just shut up, and we were able to turn that around for a while.

Q So you kind of work on both sides of the aisle?

A Yeah.

Q Real – last question I'm gonna ask you about your background is: Do you have any particular – have you spent time studying larger groups of people as it relates to solitary confinement, like prison studies or anything of that nature?

A Well, I've been involved in both individual and also class-action lawsuits involving solitary confinement and, you know, have been involved in testifying in legislatures and stuff. All together, I've probably evaluated, well, several hundred people who were in solitary or had been in solitary, a number of hundreds.

MR. ROZZI: May I approach?

THE COURT: You may.

Q I'm gonna hand you what's been marked as Exhibit MMM, and just take a quick look at that, if you would.

A Okay. That looks pretty familiar.

Q Is that a copy of your CV or your resume, curriculum vitae?

A Yes. I typed it myself.

Q Okay. And does this highlight a lot of things that we've talked about, plus others?

A Yes, yes.

Q Is one of the additional sections of information on here about literature that you've published in this particular area?

A Yes.

Q And so you've done that on a number of occasions, too?

A Yes. My first publication in this area was in the American Journal of Psychiatry and it really created quite a change in things.

MR. ROZZI: Move to admit MMM.

**DEFENDANT'S EXHIBIT MMM OFFERED**

MS. DIENER: No objection.

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

**DEFENDANT'S EXHIBIT MMM ADMITTED**

MR. ROZZI: May I publish?

THE COURT: You may.

MR. ROZZI: Thank you.

**DEFENDANT'S EXHIBIT MMM PUBLISHED**

THE COURT: You may proceed.

MR. ROZZI: Thank you, Judge.

Q So just tell the jury what you do on a daily basis, like what you do as your Monday through Friday in terms of your profession.

A Sure. I have a clinical practice in my home. I used to do work in hospitals, as well, but I don't any longer, just in my own home. And in addition, I do get involved in forensic cases, many of which have to do with the psychiatric effects of solitary confinement involving class-action lawsuits, individual lawsuits. I do work pro bono for a governmental organization in New York state in which I've helped review mental health files of patients – inmates who had mental health problems to see whether they're getting adequate treatment. You know, as I said, I give lectures at the Harvard Medical School Center on Bioethics, other places, as well, Harvard Law School on those particular issues.

Q Okay. So you see patients?

A Yes.

Q Okay. Did there come a time when I reached out to you to assist in this

case?

A You did.

Q Yeah. Just tell the jury kind of what you remember about that and what the – I guess the demand, if you will, or the request was on our part.

A I can't say I remember it in detail, but I understand that Mr. Allen had made some potentially or seemingly incriminating statements while he was in solitary confinement and there was a question of whether his conditions of confinement, his mental state, may have had an important impact on the statements that he was making.

Q Okay. And did I offer you up information to review at some point –

A Yes.

Q -- in order to – before we really started talking?

A Of course, yes.

Q Okay. Just tell the jury what, generally, you recall of that information.

A Sure. There was Dr. Westcott's INE report, there was medical records and other records from the jails that he was in, videos of – especially of that time when he was most deranged, and a bunch of other records, as well.

Q Okay.

A I don't remember as I sit here, maybe you could refresh my memory.

Q Well, do you recall listening to some audio of phone calls?

A Oh, yes, of course, that's right, and transcripts of interviews of corrections officers who – not just corrections officers, also inmates who had been companions and had heard him make statements and were then interviewed by investigators.

Q Okay. And was there a general timeframe that was associated with the

information that I gave you?

A Yes. It was from – what was it? – November of '22 to April, May, a little bit of June of '23.

Q Okay. Did I also provide you some information earlier this year, in I think January or February maybe, from Wabash Valley?

A Oh, yes, yes, up to about February of '24, I think, or March '24, I recall that.

Q Okay. And in the course of reviewing that information, was there anything that stood out to you in terms of these incriminating statements that were being made by Mr. Allen?

A Yes. I mean, there's no doubt that Mr. Allen was in a –

MS. DIENER: Judge, may we approach?

(Sidebar conference conducted.)

MS. DIENER: Judge, I thought we discussed that he could not discuss an opinion specifically about Mr. Allen. He could talk about the effects of solitary confinement, he can talk about the possible results of solitary confinement, but not about Mr. Allen specifically, and he was about to say it is clear to him that Mr. Allen – and that is an opinion about Mr. Allen himself.

MR. ROZZI: Well, I don't know what he was about to say, honestly. I don't know that any can predict what he was about to say, but –

THE COURT: It's troubling that you don't know what your own witness is going to say, Mr. Rozzi.

MR. ROZZI: Well, I do think I know what he was going to say.

THE COURT: Okay. And he was going to say?

MR. ROZZI: He's gonna say that he heard Mr. Allen say things that

were clearly not consistent with the facts in the case.

MS. DIENER: He doesn't know the facts of the case.

THE COURT: No.

MR. ROZZI: Yeah, he does. He's reviewed all kinds of stuff.

MS. DIENER: He didn't include any police reports in that list of things he said read.

MR. ROZZI: (Inaudible)

THE COURT: Okay. Well, he needs – he can't say –

MR. ROZZI: It's okay, I'm listening.

THE COURT: No, I mean, he can't testify – he can testify to the effects of solitary confinement or the psychiatric thought process and the fact it's not healthy. But you're staying away from him testifying about what Mr. Allen said, if it's a confession or not, that's for a jury to determine.

MR. ROZZI: I understand.

THE COURT: So he can educate the jury about the effects of solitary confinement (inaudible) effects of solitary confinement in general terms.

MS. DIENER: Even if he knows what the charges are, he can't say that he made a statement inconsistent with the facts of the case.

THE COURT: No.

MS. DIENER: He cannot say that.

MR. ROZZI: He – I don't understand how he can't testify to something that we all know is patently false.

MS. DIENER: No, we don't all know that.

THE COURT: That's for the jury to decide.

MS. DIENER: That's for the jury to decide.

THE COURT: That's for the jury to determine.

MR. ROZZI: Well, the fact that he – the girls weren't shot it patently false; right?

THE COURT: Well, yes. So I don't know how you're gonna parse those things out.

MR. ROZZI: I'm trying to get this right. I'll tell you what, I'll get to the scientific stuff.

MS. DIENER: Yeah, get to the science.

MR. ROZZI: All right.

(Sidebar conference concluded.)

MR. ROZZI: May I continue?

THE COURT: You may.

MR. ROZZI: Thank you.

Q So, Dr. Grassian, let's talk about solitary confinement; okay?

A Sure.

Q That's what you're here to talk about. Tell the jury – explain to the jury what that phrase even means in a clinical sense or in a professional sense.

A Well, basically solitary confinement is the confinement of an individual in a small cell, roughly 80 or 90 square feet, with minimal opportunities for perceptual stimulation, there's very limited opportunities for any kind of meaningful social interaction, and no real opportunities for occupational stimulation. So it's an enormously lonely, helpless environment and is very toxic to mental functioning. People cannot function for any extended period of time with continuing inadequate levels of stimulation. They can't maintain an adequate state of alertness. And in the worst cases, of course in the most severe

cases, they can become psychotically delirious, confused, disoriented, engaging in really regressed, bizarre kind of behavior, like I believe folks have seen here in the videos –

MS. DIENER: Objection, Judge.

A -- that were presented.

THE COURT: Sustained.

Q Okay. Did you – when you reviewed those videos, did you find the conditions that Mr. Allen was enduring as meeting those conditions that you just associated with solitary confinement?

A Totally. And his –

MS. DIENER: Judge, may I ask a preliminary question?

THE COURT: You may.

MS. DIENER: Dr. Grassian, what is your familiarity with the conditions of Mr. Allen's confinement?

A What I read in the notes from Dr. Wala, from other sources, that he was in a – basically in a small cell, very barren, had very little to do except read the Bible –

MS. DIENER: Did you ever visit –

A -- was on a –

MS. DIENER: Excuse me, I'm sorry –

A -- was laying on a mattress on the floor, there was sometimes mice droppings. I've never visited the facility, no, but I've –

MS. DIENER: Okay.

A -- visited so many that it doesn't seem – unfortunately, all that is similar from other facilities I have seen.

MS. DIENER: So you know that he's in a one-man cell?

A Yes.

MS. DIENER: But you never visited WCU?

A Not that particular facility, no.

MS. DIENER: And can you distinguish between the circumstances that you learned from say someone like Dr. Wala versus information provided to you by another inmate?

MR. ROZZI: Judge, I'm gonna object. This seems like more of like cross examination at this point.

THE COURT: Yeah. Is there a basis for the objection?

MS. DIENER: Well, he said he learned it from a lot of different sources and I'm just wondering if those would be considered reliable sources, since he never visited the prison.

MR. ROZZI: They're the same sources that Officer Harshman testified that he gathered information and generated –

THE COURT: We're not getting into comparing different witnesses back and forth. Finish your foundational questions for your objection.

MS. DIENER: Okay. So, Dr. Grassian, you saw video provided by the Defense; is that correct?

A Yes.

MR. DIENER: And you're familiar with what a one-man cell might look like; is that fair?

A I'm also familiar with what the video shows itself.

MS. DIENER: Okay. No other questions, Judge.

THE COURT: Okay.

MR. ROZZI: May I continue?

THE COURT: You may proceed.

Q What are the international standards for solitary confinement and who regulates that?

A Well, unfortunately, they're not regulated by any international body. The United Nations considers anything more than 15 days of solitary confinement to be a form of torture because of its –

MS. DIENER: Judge, I'm gonna object –

A -- toxic effect.

MS. DIENER: -- to this line of questioning. The international standards for solitary confinement does not have any applicability to the WCU or the Indiana Department of Corrections; if we could limit it to that area.

MR. ROZZI: Judge, this is opinion testimony by a expert who has laid a foundation that he's had a career in this business of solitary confinement, and the fact that there are different standards in different areas of the world has a tendency to prove that the standard that is being used here may or may not be excessive. That's the jury's determination, but –

THE COURT: Okay. But he's testified there are no international standards, so I'll sustain the objection. Move on.

Q Does –

A I may have mischaracterized –

Q Hold on.

THE COURT: Hold on, sir.

A -- my testimony.

Q Yeah, that's all right. Does the United Nations recognize solitary

confinement as a phrase of art?

A Yes.

Q Okay. And do they have policies and standards through the United Nations regarding solitary confinement?

A They do. I mean, obviously, what I was trying to indicate is they have no authority to impose those on any particular jurisdiction.

Q Okay. But the 15 days is their standard?

A That is their standard and it's the standard in many jurisdictions.

Q Okay. You talked about some of the symptoms that one might suffer from solitary confinement, you just started to touch on. Would you briefly identify those for the jury.

A Well, in the most severe cases, people become overtly delirious, they become disoriented, confused. Their memory for events disappears very typically. In fact, when a person recovers from delirium, one of the frightening things they experience is they have no memory for what happened during the period of time that they were delirious. Their behavior regresses to a point of – that's really kind of grotesque. Smearing feces, unfortunately, is one of the more common things that happens to people in delirium; but, you know, acting out sexually, being naked, smearing themselves, you know, throwing things all over the ground and not knowing what they're doing, where they are. That's about as bad as it gets, of course. In that context, of course, there are situations where people have seriously injured themselves or killed themselves. But, you know, even people who tolerated the solitary confinement better than that will find they have difficulties with memory, with concentration, with thinking, they become hyperresponsive to stimulation, they can't stand stimulation at all, they become

obsessional, a lot of really awful things happen. Very high rate of suicide associated with solitary confinement, roughly seven to nine times as great as it is in general population.

Q And you mentioned the word "delirium", there was a question about that earlier in the trial. Can you just tell the jury kind of clinically what delirium is. I think you've kind of touched on that.

A Well, yeah, delirium is the inability to maintain an adequate state of alertness, so the person becomes mentally confused, can't think straight, can't remember things well. It – you know, when it really gets bad, it's like you have this huge fog or this thick soup in your head and everything just floats by and nothing makes any sense at all, just a total bewilderment.

Q What causes delirium?

A Well, it can be caused generally by two types of factors, one is internal factors, the internal activating system is deranged; for example, people in severe sepsis, people in severe congestive heart failure, respiratory failure, other organ system failure can develop delirium. And other thing that can cause it is inadequate levels of external stimulation, so we see it in people, for example, in medical situations, eye-patched patients have developed it, poliomyelitis patients in the past who were in iron lungs, you know, who are sort of confined to these iron lungs, that was a major problem for them. We also have things called ICU psychosis, intensive care unit psychosis. I recently had cataract surgery, spoke with my ophthalmologist, he's really familiar with the whole problem with eye-patched patients and visually impaired patients developing hallucinations and sometimes becoming overtly confused and delirious; so it was interesting that he had had that experience, as well.

Q So it could be caused by medical conditions or just external stressors?

A Or external – the deprivation of external stimulation, like an eye-patch patient.

Q Okay.

A A patient in an iron lung, they have very little in the way of external stimulation.

Q And so in – well, did you get a chance to listen to phone calls that were – that I sent you of Mr. Allen and various people?

A You – yes, I did.

Q Okay. And in listening to those phone calls, without getting into what was said, did you see any indicators of this onset of delirium or existence? I don't want to put words in your mouth.

MS. DIENER: Judge, I would object to him relating it to Mr. Allen's phone calls specifically. He can talk about the phenomenon and how it could be brought about by his environment, but not with respect to Mr. Allen specifically.

MR. ROZZI: Judge, again, he said he's reviewed an INE, 130 – 26 page INE, videos, audio, transcripts, and that he's listened to the audio of these phone calls. I think he's got a proper foundation to generate an opinion about whether he sees symptoms consistent with delirium. I'm not asking him if he –

THE COURT: As long as that's how the witness limits the answer.

MR. ROZZI: Okay. I can't, you know – I appreciate that. May I continue?

THE COURT: As long as you limit the answer, yes.

Q Did you see symptoms consistent with this delirious state? Yes?

A Absolutely, yes. The inability to remember and then becoming very

frightened by his inability to remember what just happened, like asking his wife –

MS. DIENER: Objection, Judge –

Q Okay. You can't talk about what he's saying.

MS. DIENER: -- he's about to testify to a statement of opinion.

THE COURT: Sustained.

Q Was there any doubt in your mind that this state of mind existed when you heard all this?

A This was absolutely classic, there was no doubt in my mind.

Q Okay. And let's talk about false memories; okay? Do you recognize that phrase?

A Yes.

Q Tell the jury just again clinically what that means to you.

A Sure. You know, in studying memory, you come to realize that many people in many circumstances develop memories that are untrue, but they experience them as being true. And I did a study with one psychologist – well, actually a few psychologists, in which we – we realized that a false memory, after it's reviewed and reviewed and reviewed by the patient, by the individual, starts looking very much like a memory. So we went back and tried to understand how the memory developed, and what we saw was that false memories don't start as images, images, real memories, they start as beliefs. So may people with a false memory will say, "I think I did it" or "I think I saw it"; and after a while, they work on it, they work on it in their mind, and visual or, you know, perceptual images start to develop that become memories. You know, in fact, if you were to try to remember something that happened a long time ago, what you actually

end up remembering is the last time you thought about it, the last time you saw it, so your memory can shift over time like the game of telephone, if you're familiar with that. So that's basically what we discovered. So when a person starts having, quote/unquote, memory by saying, "I think I remember seeing this" or "I think I did this," that's not the way memories are – really emerge, but that's really the way false memories emerge.

Q And in reviewing the information in this case, did you find some hallmarks consistent with that concept?

A Perfectly consistent. I mean, again, very classic –

Q Okay. That's enough.

MS. DIENER: Objection, Judge –

Q That's enough.

MS. DIENER: -- he's getting into a –

THE COURT: Sustained.

MS. DIENER: -- evaluation of Mr. Allen.

THE COURT: Sustained.

Q Is the answer yes or no?

A Yes.

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

THE COURT: Ms. Diener.

**CROSS EXAMINATION OF DR. STUART GRASSIAN**

QUESTIONS BY MS. DIENER.

Q Dr. Grassian, when you were just talking about the study on false memory and you said you provide a person with something and they review it and review it and review it and it becomes a memory, what did you provide them to review?

A I didn't provide them anything to review. This is studies that were done by other researchers, like Elizabeth Loftus, for example, is quite famous in this area. Our work involved people who had a long period of time when they had – when they stated they had no memory for sexual abuse and then –

Q I guess –

A -- memories started –

Q May I be more specific?

MR. ROZZI: Well –

A What?

Q Sorry, we're getting off on a –

THE COURT: Yeah.

Q -- tangent.

MR. ROZZI: But she doesn't want to hear what he has to say. I mean –

MS. DIENER: I'm trying to be very specific about my question and I'm making an effort –

THE COURT: Then, narrow your question down so that he knows what it specifically is –

MR. ROZZI: Thank you.

THE COURT: -- that you're asking him about.

Q Yeah, I'm sorry, Dr. Grassian. I just want to know what is it that the subject reviewed and reviewed and reviewed that then became a false memory – was it a document? Was it a picture? – in the study.

A No. You're confused, because that is not my – our study. Our study was of people who had a long period of time of no memory for a traumatic event and

then developed a memory and some of whom ended up retracting, recanting the memory; and we tried to sort out what was the difference between those folks who ended up recanting and, clearly, in fact in some cases they were inevitably false because they were facts that were inconsistent with reality, and comparing that with people who seemed to have recovered real memories. What we found was that the people who recovered real memories, when they recovered the memory, it would be enormously perceptual, you know, I mean a smell, a sight, a sound, whereas the people who ended up recanting, you found that, at the beginning, what they talked about was a belief and then a vague perception and that gradually, over time, the perception became more clear.

Q So let me ask you about when you found the real memory. Would a real memory be detailed, chronological, logical?

A I'm not –

Q The real memory versus the false memory.

A Real memories are extremely perceptual is what I would say.

Q Perceptual?

A Right.

Q Like they would –

A I'm not sure what your question –

Q Yeah. They would include insight maybe by the person telling the story?

A Insight?

Q Insight. You know, relating events to feelings.

A That's not intrinsic to it, but I supposed it's – would be common that that would happen, but that's a different subject, different –

Q Okay.

A -- question.

Q Okay. So I guess the question of whether a real memory would include insight of the person telling the story or maybe a reflection about how the events in the story made them feel, that does not lend itself to making it a true memory?

A I'm sorry, I'm really confused by your question.

Q Okay. I'll move on. Are you aware of critical factors that are used in the prison setting when a decision is made to place a person in safekeeping?

A I'm somewhat aware of it, but I don't consider myself as an expert on prison –

Q Okay.

A -- administration.

Q In your study of solitary confinement, do you distinguish solitary confinement for corrective or punishment purposes versus one-man cell confinement for safety?

A Well, what I concern myself with are the conditions of confinement. There are people, for example, who are in protective custody but are allowed to have conjoint recreation, conjoint activities with a small group of people who are safe.

Q Okay.

A So what we can – what I'm concerned about is the situation that the individual has, the conditions they experience, whatever the reason is that the administration caused the person to be in that type of confinement.

Q But you acknowledge there's a difference between solitary confinement and one-man cell for safekeeping to protect a person confined; would you agree?

A In terms of the psychiatric impact, it would depend on the conditions that were imposed.

MS. DIENER: Okay. Thank you. No other questions.

THE COURT: Mr. Rozzi.

**RE-DIRECT EXAMINATION OF DR. STUART GRASSIAN**

QUESTIONS BY MR. ROZZI.

Q Regardless of how somebody is labelled, would putting them in solitary confinement impact their brain?

A Again, if the conditions of confinement are the defining factor, then independent of why – what the justification was for putting them in solitary confinement, it's about the conditions they experience.

MR. ROZZI: I don't have anything further.

THE COURT: Okay. Ms. Diener.

MS. DIENER: Nothing further, Judge.

THE COURT: Does anybody on the jury have any questions for Mr. Grassian – I'm sorry, Dr. Grassian? All right. Would counsel approach.

(Sidebar conference conducted.)

THE COURT: "Observing Mr. Allen daily in the courtroom, he has not seemed to be delirious or psychotic physically. Is this related to be because he is no longer in solitary confinement?"

MR. ROZZI: I don't think you should ask that –

MS. DIENER: That one leads back –

MR. ROZZI: -- 'cause there's not enough facts in evidence to really –

THE COURT: "Do you believe a completely normal person can become psychotic after spending 6 to 12 months in solitary confinement?"

MR. ROZZI: That's obviously a good question.

THE COURT: "Do you believe psychotic behavior can go back to normal behavior after being removed from solitary confinement?"

MR. ROZZI: Yeah, that's fine.

THE COURT: "Dr. Westcott's report states that Richard Allen functions with a cognitive ability that is 2 to 5% with his age and education, specifically impaired executive function. How would a person with this cognitive ability be affected by solitary confinement?"

MS. DIENER: How –

MR. ROZZI: That's another phrase of art.

THE COURT: "How would a person who is cognitively impaired be effected by solitary confinement?"

MR. ROZZI: I kind of think –

MS. DIENER: That's really specific.

MR. ROZZI: -- you're asking him – I mean, you're asking him to draw an opinion about things that you really didn't want him to testify about.

THE COURT: "What relativity does an objective personality test provide into your diagnosis?"

MS. DIENER: He doesn't – he didn't talk about doing any testing.

MR. ROZZI: Yeah, outside the scope.

MS. DIENER: Yeah.

THE COURT: So no. Okay. So this is all no. "Does someone being diagnosed with major depressive disorder with psychosis mean that any statements made cannot have any truth in them?"

MR. ROZZI: I say no. I just don't – I think he's not – I mean, I wanted him to testify about some of this stuff, but I don't think that was what

he was allowed to do.

THE COURT: No.

MR. ROZZI: So –

THE COURT: So these two, then.

(Sidebar conference concluded.)

**JUROR QUESTIONS OF DR. STUART GRASSIAN**

QUESTIONS OF THE JURY, READ BY THE COURT.

Q Doctor, do you believe psychotic behavior can go back to normal behavior after being removed from solitary confinement?

A Generally, the answer to that is yes, and of course, in some cases – we know that Mr. Allen had a psychotic –

MS. DIENER: Objection, Judge.

Q No, sir, just limit it to the question, please.

A Okay. Yeah, but the answer's generally yes.

THE COURT: Okay. Mr. Rozzi, any follow-up?

MR. ROZZI: Just one second. No, no follow-up.

THE COURT: Ms. Diener?

MS. DIENER: No follow-up.

Q Do you believe a completely normal person can become psychotic after spending six months to a year in solitary confinement?

A Absolutely. I've seen it happen.

THE COURT: Mr. Rozzi, any follow-up?

MR. ROZZI: No.

THE COURT: Ms. Diener?

MS. DIENER: No follow-up.

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

THE WITNESS: Thank you.

MR. ROZZI: Judge, if you'd just give me just a minute here to kind of stage.

THE COURT: Okay.

MR. ROZZI: I'm gonna get my notes out. I'm just gonna usher him out.

THE COURT: Okay.

MR. ROZZI: Call Dr. Eric Warren, Your Honor.

(Witness sworn.)

**DIRECT EXAMINATION OF DR. ERIC WARREN**

QUESTIONS BY MR. ROZZI.

Q All right, Dr. Warren, I'm now realizing I didn't make copies of your CV, so let's tell the jury what your name is.

A My name is Eric Warren. That's spelled E-R-I-C, last name is W-A-R-R-E-N.

Q Okay. And tell the jury where you live just generally.

A So I live near Memphis, Tennessee.

Q All right. And what do you do for a living?

A So I own my own company, it's called SEP Forensic Consultants, so S-E-P Forensic Consultants, where I routinely provide, as the name suggests, consulting in various areas of forensics, to include firearm and tool mark identification, as well as crime scene reconstruction and shooting-incident reconstruction.

Q Okay. And what's your highest level of education? Just tell the jury how

you were educated.

A So I have a bachelors degree in molecular and cellular biology with a minor in chemistry and I have a doctorate in biochemistry and molecular biophysics, both of which are from Vanderbilt University.

Q And in terms of your work experience, just give the jury some idea of kind of the evolution of your employment circumstances since you got out of college.

A So after I earned my doctorate degree, I was hired – applied to and hired by the Tennessee Bureau of Investigation or the TBI. During my tenure there, I was a special agent forensic scientist. That entire time, I was assigned to the firearm and tool mark identification unit, and so part of that, that initial two years, was an on-the-job training program set forth by the guidelines of the Association of Firearm and Tool Mark Examiners, which I call AFTE, A-F-T-E, for short. After I completed that successfully, I was signed off on independent casework, where I continued to do that until I left to start my own company. In addition to that, I was assigned to the Violent Crime Response Team or VCRT, where I would routinely leave the laboratory and actually go respond to a scene when law enforcement agencies had a particularly violent crime scene that they needed assistance with in either tracking down leads or solving that particular crime.

Q So you worked for the State of Tennessee; right?

A Yes, I did.

Q And was – is that like you work for law enforcement?

A Yes, I was law enforcement, I was sworn during that entire time.

Q Okay. And then, just – well, tell the jury why you left, I guess.

A So my background through my academics was all research-based, looking

at the effects of external things on our body and how they led to things like cancer. And so when I transitioned to forensic science, looking at how external things, but now like bullets, how they would have effects on the inside of our body really piqued my interest to do research; and unfortunately, when you're in a crime-laboratory environment, like I was, the majority of your time has to be focused on just working evidence and getting cases out the door. I missed that. It wasn't con – the work environment wasn't conducive to be able to adopt that research approach the way I wanted to, so I chose to leave so that I could pursue more freely both work that I'm here today to talk about, as well as the research aspect.

Q And so you mentioned the American Firearms Tool – American Federation of Firearms Tool Mark Examiner, AFTE; right?

A AFTE, yes.

Q Okay. Are you active with AFTE?

A Yes. So I am a distinguished member with AFTE, I'm also certified them in firearm and tool mark identification and I'm – serve on the Board of Directors, as well, and among other duties that I have, I'm also an assistant editor with our scientific journal.

Q Okay. So is that – is your association with AFTE something that takes a lot of your time because you're on the board?

A It does. In fact, I leave next week to go to a board meeting for that.

Q Okay. And then, in terms of outside work with other law enforcement agencies, tell the jury what you're doing and what you have done in the recent past that's relevant to this case.

A So I have testified for both the state and the defense around the US on

very similar matters, whether it's a firearm identification type case like this or some other shooting reconstruction case. I also do civil work, where I will represent firearms companies or the individual suing firearms companies due to some type of perceived negligence or a dropped fire or things like that.

Q Okay. Do you also do training in the area of firearms identification?

A Yes, I do. So I both take continuing education training – so I've received training over the years from the alphabet soup of government agencies – and then I also provide training to other law enforcement agencies. When I was in graduate school, I participated with Vanderbilt's Center for Teaching in a mentorship program where I mentored undergraduates and taught them research design and, you know, how to properly perform scientific research. And that kind of carried over again, just like the research aspect, the mentoring aspect really inspires me and that's something that I enjoy doing, so I am contracted to train other crime laboratories, both in all these different areas that I'm talking about, putting on workshops that I'm an expert in, as well as training new examiners. So when they hire new people to come in, again going back to that concept of our focus, when you're at the crime laboratory, is usually getting cases out the door, they don't have time to take individuals off of that casework to have them train the new people, so a lot of times, they will hire in outsourced contractors, like myself, and then I will, basically, during that – across the two-year period, train their examiners and get them competent in doing the same type of work.

Q Are you doing that for other countries at this moment?

A Yes, I am.

Q What country are you working on right now?

A So I was – I just arrived back from Morocco a couple of weeks ago, where we have a strategic relationship with them through our military and the State Department, and so I was abroad – they had five new firearms examiners – to help get them trained and also prepare them for their assessment so that they can be accredited.

MR. ROZZI: May I approach, Judge?

THE COURT: You may.

Q I'm slightly unprepared here. I'll hand you NNN, Exhibit NNN, let you take a look at that. Let me know when you looked at that.

A Okay. I've looked at that.

Q What is it?

A That appears to be a 6-page true and accurate copy of my CV.

Q Okay. All right. Your resume; right?

A A fancy word for resume, yes.

MR. ROZZI: I'm gonna move to admit NNN and I'm gonna ask to publish – assuming it's admitted – later. I thought I had copies of this.

**DEFENDANT'S EXHIBIT NNN OFFERED**

MR. LUTTRULL: Just one moment. No objection.

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

**DEFENDANT'S EXHIBIT NNN ADMITTED**

MR. ROZZI: May I continue?

THE COURT: You may.

Q Dr. Warren, I used the phrase "critical community" in the past in talking with you; do you recognize that phrase?

A Yes, I do.

Q Okay. Tell the jury – let me ask you this simply: Is there a critical community, so to speak, in your industry as it relates to the legitimacy of firearms identification?

A Yes, there is. So the critical community, as we've discussed is generally professionals that aren't necessarily firearm and tool mark examiners, but are in some type of related or adjacent field, so that could be engineering, mechanical engineering, it could be psychology or human factors, these types of things. And there are individuals, again professionals in those areas, that have certain opinions that are critical of the firearm examiner and our ability as a professional to do what we claim we can do.

Q Okay. And is that something you've been dealing with throughout your time in this industry?

A Yes, it is; and, in fact, I have testified on a couple of occasions in hearings defending the science and defending our processes and procedures for what firearms and tool mark examiners can do against those individuals.

Q All right. Do you know what PCAST is –

A Yes, I'm familiar with it.

Q -- what that organization is?

A Yes, I'm familiar with that.

Q Okay. And the NAS; is that right? Or the NSA?

A The NAS, the National Academies of Science, yes.

Q Are those two organizations that have been critical of your – the firearms identification business at times?

A So they are two groups or organizations that have – they will contract a number of professionals in the legal field and the statistics field, again this

critical community of people, and they have them review very critically, not to overuse that word, basically our publications and our research and then form opinions based on what that review reveals to them.

Q What's PCAST stand for?

A So PCAST is the President's Council of Advisors on Science and Technology.

Q Okay. And is that like the President of the Unites States that we're talking about?

A Yes, it is. It came out in 2016 and was for President Obama at the time.

Q In your time as an AFTE board member, have you found that this critical community to actually be helpful in advancing the firearms industry?

A Yes. So whenever you have a constructive dialogue play out and you can discuss these things, it's essentially what's called peer review. So you have a situation where experts have a scientific discussion, they can bring, you know, different perspectives into play, and to be able to discuss that, discuss those opinions on both sides, and it, generally, will push any scientific endeavor, but in this case specifically forensics and firearm and tool mark identification forward as a field because we are able to take what – those critiques that are being leveraged and design research to address those types of questions to, essentially, improve our field and to prove that we can do what we say we do.

Q Did I, in the course of this case, ask you to review some materials specifically regarding this matter?

A Yes, you did.

Q And just tell the jury, to the best of your recollection, what it is that you would have reviewed.

A So I was basically asked to review the examiner for the state crime lab, so ISP, that was Ms. Oberg, to review her work product, to review her conclusions that were expressed in her report, and to determine if the documentation and – essentially, to evaluate whether the basis for her opinion was properly and sufficiently documented; and so, accomplish that, I needed to review her case file, and I actually had three different reports and associated case files that I reviewed for this case, as well as the microphotographs, so photographs that were taken on the microscope, where she was comparing two different items together at the same time. It included other types of supporting documentation, such as I reviewed a transcript from a deposition that she gave earlier this year.

Q Okay. And was the information that you received from me – in your opinion, was that adequate enough or was it enough information to generate some opinions?

A Yes. Everything that I asked for to be able to review I was provided.

Q Okay. Is there anything that you didn't get that you would normally suspect to be present in a case like this?

A No, nothing that comes to mind right now.

Q Okay. And you mentioned that –

MR. ROZZI: Judge, may I approach up here to grab a couple exhibits?

THE COURT: Yes, of course.

MR. ROZZI: Thank you.

Q Dr. Warren, you mentioned that you reviewed some photographs, the microphotographs or microscopic; is that fair?

A Yes, microphotographs or microscopic photographs, either would be fine.

Q And are those the things that you would normally see in a case file in a situation like this?

A Yes, they would be.

Q Okay. Tell the jury, from a procedural standpoint, what the significance of is or the purpose for those photographs when you do these – when you – as a firearm examiner, when you engage in this process.

A Sure. So photographs are one aspect of documentation. Documentation is very important for multiple reasons. First of all, the examiner, it may be years between when I worked the evidence or when an examiner works the evidence and when the trial goes – when the case goes to trial, if it does, and so the first aspect of documentation is to refresh my recollection when I'm told, "Hey, this is going to trial, you need to be at such-and-such location on a particular date." Another aspect of it is for laboratory accreditation. So there are requirements for the work process and product to be properly documented such that another qualified examiner could review your documentation and understand and be able to determine why you reached the conclusions that you reached. And then, I would say probably the most-important part is to be able to illustrate to other people, such as yourselves, specifically what was observed. So just like on a math test where you have to show your work, you can't just put down an answer and say, "Trust me, I got this the correct way," you have to show what you did and what your process was and what you actually observed on the microscope that led you to form those particular conclusions.

Q There was some testimony in the courtroom earlier about this is like a movie when you view it. Can you – are you generally familiar with that concept in your business?

A Yes. So generally, the way I hear it is people say it's – the photograph is a 2-D representation of what I saw in three dimensions. That's not correct. Actually, calling it a movie is slightly more correct. A microscope generally has a very narrow depth of field, which means you're getting a projection from the light of a very, very thin slice of whatever is in focus underneath the microscope, and so as an examiner is looking at it, they are constantly seeing that two-dimensional image being projected into their eyes. And so in a movie situation, you can move the bullet or the cartridge case under the microscope and see multiple surfaces, multiple areas of focus throughout the course of your examination, but generally – so documentation through photography has been very, very well accepted within our field since the 19th century. The importance of it has been recognized not only to, again, show your work and refresh my recollection of what I observed at that time, let's say two years ago, but also to be able to show others, hey, here's the proof, this is what I did, this is what I observed, and these are the reasons that back up my conclusion. All the standard textbooks that we read when we're in training from the 1920s, '30s, all the way to the '60s, all of them talk about the importance of photography and documentation for this very reason. So I would not want to discount it and say, "Oh, it's just a movie." I have – basically have all the time that I need when I'm examining evidence to get the lighting just right, the angles just right, the focus just right to take the best photograph that is representative of what I observed at the time that I did that examination.

Q Thank you for that. Is there – are you familiar with the phrase "subclass"?

A Yes, I'm familiar with that.

Q Okay. Just briefly, in laymen's terms, tell the jury – well, let me ask you

this: Is the identification of subclass characteristics important in your business?

A Yes, it is very important.

Q Okay. Tell the jury what that means, just because it's been some time since we heard this.

A Okay.

MR. LUTTRULL: Excuse me, Your Honor, I'm – I don't know what "that" is.

Q Okay. What subclass means –

MR. LUTTRULL: Thank you.

Q -- because it's been some time. Thank you.

A So briefly, before I get into subclass, there's essentially three types of characteristics that examiners look at, so if you think about kind of an inverted pyramid, the top – or your food pyramid, so you've got the top, the big level, this is class characteristics. Class characteristics are gonna be features that are common to multiple different firearms, just like for vehicles if I said an SUV, that's a class characteristic. There are gonna be lots of different make/model SUVs. It doesn't really give you a specific idea of something in particular, it gives you a general idea of what you're looking for. It may help you narrow down the pool of possibilities. On the very, very tip of that pyramid, you have what are called individuals characteristics. These are fine, microscopic scratches, we call them striations, that are generally found to be individual or unique to a specific firearm. In between there, you have what are called subclass characteristics, so these are features that are generally more gross, and when I say gross, I mean larger than the individual characteristics, and they help you reduce the pool of possibilities more than class characteristics, but they can't point you to a specific

one tool the way individual characteristics can. And so an example of a class characteristic that's not firearms related, if you've got like a buck pocketknife and you're whittling some wood or something, you use it to pry open – or you use it as a screwdriver, 'cause you don't have one on you at the time, and you cause that blade to chip or get some type of damage. Well, anything that you were to cut with that knife blade after that would show this gross feature in the cut, on wood or wax or whatever it might be, and so that would be a subclass characteristic that would happen when firearms are being manufactured. The tool itself that is cutting the firearm or shaping it may get a particular chip in it and the technician that is operating that machine doesn't realize that the blade has some damage to it, and so there'll be all these scratches across multiple different firearms that were made before the shift changed and that tool damage was recognized and then changed out.

Q Did you – speaking of – you prompted my memory. Did I show you a copy of a quick – like a five-minute video of the Sig Sauer plant where the –

A Yes.

Q -- guns were being manufactured?

A Yes, I saw two videos to that extent.

Q What's – in watching that, what's the relevance of that video, if any, to this particular examination and the circumstances in this case?

A So I didn't see any relevance between either of the videos, neither discussed the specific tooling for the tools or the tool marks that were left on the cartridge ca – the cartridge, excuse me, in this particular case.

Q Okay. In fact, was there a spot in one of the videos where they said, "Hey, we can't talk about the details"? Do you recall that?

A Yes. So the videos were focused on the two major components that were manufactured, the slide, the upper part of the firearm, and the frame, the part that has the grip and the serial number. Whenever it go to the details for the internal components, which would be things like the extractor and the ejector that would be pertinent to this case, those items were not mentioned.

Q Okay. Because are these trade secrets and all that kind of stuff; right?

A That's one reason, yes.

Q Okay. Have there been recent circumstances where laboratories have been shut down because of this inability to distinguish between subclass and individual characteristics?

A Unfortunately, yes.

Q Okay. Tell the jury when the last time you were aware of that happening in this country.

A Most recently, the Rhode Island state crime laboratory had to suspend its firearm and tool mark operations, in part because of some issues with recognizing subclass, and then, just before that, just a couple of months before that, the Wyoming state crime lab also had to suspend its operations.

Q Did – when was the Rhode Island one generally, if you know?

A I want to say it was maybe two – well, so it first hit the news maybe a month and a half ago, but it happened, I want to say, two or three months ago.

Q Okay. So this is all very recent?

A Yes, it is.

Q Okay. Let's talk about cycled rounds versus fired rounds; okay?

A Okay.

Q Are you familiar with the distinction and the significance of that in this

case?

A Yes, I am.

Q Okay. And tell the jury – can you explain to them what your knowledge of that is so that we're all on the same page.

A So when we talk about an unfired cartridge that has been cycled, that's specifically going to be in a semiautomatic firearm, so not a revolver. A semiautomatic firearm has multiple tools that, if it were to be fired, would extract the just-fired cartridge case or brass out of the chamber and eject it, so that the next live round can be automatically loaded, the trigger can be reset, pulled, and the whole process can repeat. If the firearm is not fired and one of those cartridges – so the live rounds – is fed into the chamber, the operator does not need to pull the trigger and shoot the firearm; instead, they can decide not to and, if you remove the magazine and pull the slide back, that extraction and ejection will still happen to clear the unfired round out of the gun to make it safe. The process of that may leave some of those tool marks from the action of the extractor and ejector on that cartridge, even though it has not been fired, and that would be separate from a cartridge case, which is the same brass piece but after it's been fired and that once-live round has been disassembled through the firing process. And when a cartridge case has been fired, it's experiencing a lot higher pressure and forces in the interaction between the extractor and the ejector on that cartridge case, because you've, essentially, just had a explosive reaction happen inside of that firearm.

Q Okay. And so in this case specifically are you generally familiar with item 16?

A Yes, I am.

Q Okay. And do you know that item to be the unfired cartridge case or cycled, unfired round that is – that was collected at the scene of where the girls were found?

A Yes, that is what I'm familiar with.

Q All right. And are you familiar with several firearms that were collected in this case by the law enforcement and taken to the lab?

A Yes, I am familiar that several firearms were collected and taken to the crime laboratory for processing and comparison.

Q Okay. And specifically, is one of those what is now numbered item 315, or at least it is in the reports, which is a Sig Sauer handgun?

A Yes, that is correct.

Q Okay. And if I told you that that's the handgun that was taken from Mr. Allen's house, do you know that?

A I do not know that, I was not there when it was collected, but that is my understanding is that the ISP item 315 was the firearm that was collected from Mr. Allen.

Q Okay.

MR. LUTTRULL: Excuse me, Your Honor, I think he misspoke. 315 – I assume it wasn't intentional, 314.

MR. ROZZI: 314, I'm sorry, maybe I'm – that's fine, 314. Yeah, 315's the test fire. Sorry about that.

MR. LUTTRULL: 315 is not the test fires.

MR. ROZZI: Geez, sorry, Jim. It's one of the closet rounds, that's right. Sorry. Thank you.

MR. LUTTRULL: It's the –

MR. ROZZI: Winchester –

MR. LUTTRULL: -- memory box round, yes, the Winchester.

MR. ROZZI: May I continue?

THE COURT: You may.

MR. ROZZI: Thanks for that clarification.

Q So – well, I've lost my train of thought. Oh. Getting back to this distinction between cycled and fired rounds; okay? Is it appropriate in the tool mark ident – the firearm identification business to take – to examine a cycled round with a test-fired round; in other words, kind of comparing the two differences. Is that an appropriate process?

A It is a process that is done. It really depends on what is – I guess what – the question that is needed to be answered is. So generally, due to those differences in pressure of a fired versus an unfired cartridge – a fired cartridge case versus an unfired cartridge, I'm sorry. You've got those differences in pressures. You've also got a difference in the amount of time with which those tools are in contact with that item. So generally, I would expect to see what I would say apples to apples, not apples to oranges. So if you're looking at the - mimicking the tool mark on an unfired cartridge, I would want to compare that to another unfired, cycled cartridge. So there's been research, I want to say starting back in 2010, the University of Ames in Iowa started doing some research looking at the effect of the angle and the pressure of tool marks and the types of markings that they leave, and that research was continued in 2014 by NIST, N-I-S-T, which is the National Institute of Standards and Technology, and it's been performed by other people, even in the Netherlands, that even just a 15 degree difference in a tool can change the appearance of the tool mark. So if

they made a tool mark at one angle and then changed the angle by just 15 degrees and made another tool mark, you couldn't identify the two as coming from the same source. Similarly, they found that differences in pressure can change the type of markings that are left by a tool. And so when you're thinking about that, you want to compare apples to apples, that's why crime laboratories, including my lab, we have a large reference collection of ammunition, a reference collection of different firearms, because you want to be able to make sure that you get the closest thing that you can find to the evidence that you have in front of you that you're examining.

Q In this case, Ms. Oberg was unable – are you aware that she was unable to cycle a dummy round and create marks that were sufficient enough to compare to item 16?

A So she did –

MR. LUTTRULL: Objection, Your Honor. I don't believe that – I think he's misstated the evidence, that's not what she testified to.

THE COURT: Sustained.

MR. LUTTRULL: She's testified she used both the test-fired and the cycled rounds and did acknowledge that the test fires were more prominent than the cycled rounds, but that she used both.

MR. ROZZI: May I ask the –

THE COURT: Sustained. Yeah.

Q Did – you reviewed her report; right?

A I did review her report and her case files.

Q Did she use the cycled test round to draw her conclusions about item 16 and the gun?

A No. So the notes indicate that – her notes indicate when she compared test fires from Mr. Allen's firearm to the cartridge in item 16 that – it wasn't dummy rounds, but it – they were live rounds from the reference collection – that when those were hand cycled, the marks that were on them weren't prominent, if they were reproduced at all. And so in order to affect a final conclusion, the majority of what was relied on for that opinion were the fired cartridge cases from that firearm.

Q Okay. And are you generally okay with that process, the idea that you're taking a fired cartridge case and extrapolating?

A No. So the AFTE – generally accepted in our field and expressed in AFTE, as well as the ISP protocols, are that, in order to form an identification, you have to first prove that the tool marks are both repeatable and reproducible. There were – we spoke of some of the other guns. There was one firearm in particular, I think it was item 101, where the discussion in the notes was very clear that the markings were both repeatable and reproducible across both the fired and the unfired cartridges, so I'm gonna clarify, both the fired cartridge cases and the unfired cartridges. In this particular case with item 314, that was not the case. So the reproducibility and the repeatability for that apples to apple comparison had not been established, so that would not be something I would rely on.

Q Do you – are you familiar with the phrase "error rates"?

A Yes, I am.

Q Okay. There's been some discussion about that in the courtroom, not today, but previously. Are there any error-rate studies that are based on comparing a cycled, unfired round with a fired round?

A No, there are not that I'm aware of.

Q Okay. Let's get back to subclass and Ms. Oberg's findings; okay?

A Okay.

Q All right. What are – tell the jury, what are the three tools here that are really in play in her examination.

A So the three tool marks that were – that are in play, to use your terms, are the extractor, the ejector, and the – what she calls the chamber face, I generally call the barrel hood.

Q Okay. And let's start with the ejector. What is your opinion about the possibility existence of subclass characteristics with the ejector?

A So the ejector is –

MR. LUTTRULL: Objection, Your Honor. If I may ask a preliminary question?

THE COURT: You may.

MR. LUTTRULL: You indicated to the jury that you were familiar with item 16, 0-1-6; correct?

A Yes, that's correct.

MR. LUTTRULL: You've never seen it before though, have you?

A I have not seen any of the evidence in this case in person, no.

MR. LUTTRULL: And therefore, you really can't answer the question that was posed to you, since you hadn't specifically seen or examined the evidence in question; correct?

A No, that would be incorrect.

MR. LUTTRULL: That's all I have, Your Honor.

MR. ROZZI: Can I ask a couple of foundational questions to educate the jury?

THE COURT: Sure.

Q First of all, did you review Ms. Oberg's case file, the 14-page report that has all the details in it?

A Yes, I did.

Q And did you look at the photos of the – of item 16?

A I looked at the photos of item 16, that is correct.

Q The microscopic photos?

A Both the macroscopic, taken with the regular like point-and-shoot camera, as well as the microscopic photographs, as well.

Q And in the course of your industry, your profession, is that adequate enough for you, in your opinion, to draw conclusions?

A For the conclusions I am drawing in this case, yes.

Q Okay. So the question is with the ejector, the first tool, was there – what was your opinion about the possible existence of subclass characteristics?

A So Ms. Oberg, in her case file, documented the ejector quite well. She took photographs of it, of the ejector directly, as well as of the ejector marks that were left on the unfired cartridges and the fired cartridge cases. When those were then compared to the cartridge in item 16, she also noted that the machining surface on the ejector had a high potential for subclass and, based on her photographs, I would agree with her. So again, if you go back to subclass characteristics, typically when an item is molded, it's stamped, or it's CNC-machined. CNC stands for computer numerically controlled. Essentially, it's a fancy way of saying you put it in a big box and a computer controls all the machining operations. These have the highest propensity for leaving subclass marks. So you think about that chip in the knife blade and they – you cannot

rely on those for an identification and that is something that, in her documentation, Ms. Oberg notes, as well.

Q And then with regard to the extractor mark, what did she document regarding the potential for subclass and how well was that documented?

A So there was no documentation of any evaluation for subclass in the extractor itself. Research – so there's – there are probably in excess of 20 particles specifically relating to subclass on extractors, and the general consensus among these articles across different firearms, the types of machinings that occur on extractors lend themselves to subclass marks. But again, there was no documentation of this type of research and certainly no direct examination of the extractor itself like there was done with the ejector.

Q And then, with regard to the barrel hood, same two questions: What did you find in terms of subclass documentation and – well, let me ask you that.

A So the barrel hood or chamber face, depending on which term you want to use, has even less research regarding it. Because that's not a typical tool mark that is used, it's actually a tool mark that I've never heard be used until this particular case, there's just not any research out there on it to determine specifically the types of machining operations that occur, whether there's a potential for subclass like there are for the more common tools that are usually relied on, like the extractor and the ejector or even the breech face and the firing pin impression.

Q So just to kind of try to maybe summarize: Is – in your opinion, is there a potential for subclass characteristics with regard to all three of those tools in this case?

A Yes, there is certainly the potential for subclass on all three tools.

Q So is that – is it accurate to say, then, that you can't make any identifying – specific identifying characteristics because of the potential for subclass?

A So –

MR. LUTTRULL: Objection, Your Honor.

Q Is that – oh, I'm sorry.

MR. LUTTRULL: When he –

MR. ROZZI: Can I rephrase my question?

MR. LUTTRULL: When he – I'm sorry?

MR. ROZZI: Can I rephrase the question, then?

MR. LUTTRULL: Sure.

MR. ROZZI: I think it – I agree with you, we're talking so –

Q Is it possible in your opinion, based on what you've seen from her work, to draw conclusions about individual characteristics in this case?

A So it – no, you can't draw conclusions about individual characteristics unless you have done the appropriate research and determined what the differences are, so which markings are individual and which ones are subclass. Once you have done that, if you – if there are individual characteristics, once the subclass characteristics have kind of been subtracted from the equation, then you could make a – potential a conclusion regarding that.

Q Okay. And was that done here?

A Only for the ejector.

Q Okay. And – so let me –

MR. ROZZI: May I approach, Judge?

THE COURT: You may.

Q Let me hand you what's been marked previously as Defendant's Exhibit

OOO, if you would just take a look at this first then before I ask you a question about it. All right. Are you familiar with that – the exhibit –

A Yes, I'm –

Q -- or that photograph?

A So I reviewed – specifically for this report and the associated case documentation, I believe there were 13 or 14 photographs that I reviewed and I recognize this as one of them.

Q Okay. And just tell the jury what that tool mark is that they're seeing, that triangular tool mark.

A Yes. So the triangular tool mark is – would be the ejector mark. So if you were looking zoomed out, the primer of the cartridge would be down here, that circular part that the firing pin strikes –

MR. LUTTRULL: May I – Your Honor, may I approach so I can see what –

THE COURT: Yes, you may.

MR. LUTTRULL: -- he's talking about?

A So the triangular portion would be the impression from that ejector as the cartridge is being drawn rearward under the pressure of pulling that slide back – or the force of that slide being pulled back. And the ejector's essentially a stationary pin, so as that slide is being drawn back, the cartridge case is being pulled rearward with the extractor, it strikes that stationary ejector, which causes it to pivot and come out of the gun. And so what you're looking at is the impression that is left as that cartridge is being pulled rearward and striking the ejector.

Q So just to orient the jury again, is this the hairline down the middle here

that kind of separates the image on the right and the image on the left?

A Yes. So on a comparison microscope, we have what's called a dividing line and that, basically, is what separates what is on the left portion of the microscope from what is on the right portion of the microscope. So generally, you'll see in photographs that whatever is being examined in that particular photograph will be lined up between the two sides, right at that dividing line.

Q All right. And so the right side of this line is labeled 314 T1; is that correct?

A The – yes. So what that – what the labeling indicates is that on the right-hand side of that black prism line, we are looking at test fire 1 from item 314; and on the left-hand side, what you're looking at is item 16.

Q Okay. And so when I look at this, I mean, I'm seeing these lines that cross over the hairline that are in similar locations; do you see those?

A I do see those.

Q They're kind of lighter than the rest?

A Yes.

Q Okay. Tell the jury what that is.

A So what happens in these microphotographs, we use oblique lighting. So if this is the surface, the top surface of that cartridge, there is a light up here, not directly shining at it 90 degrees, but it's shining obliquely coming at it. So what you see with the light areas, those are the mountains if you think of this surface as being a microscopic contour. The high areas show up as light, white areas, because the light is coming in and striking those. The valleys are the dark areas in between. And if you look closer, you can also see some finer stuff, some finer striations, they're just not quite as light because most of the light that is coming in is being obscured by this taller mountain peak, if you will. And so

what is being illustrated here, subclass characteristics generally appear as, like I said earlier, gross marks or the larger marks, in this case the brighter marks, and it's – they also generally have a uniform spacing. So if you notice, the spacing between here and here is very uniform. Both of these together are hallmark examples of what is subclass. And so if I were going to do this evaluation, I would, essentially, subtract out these lines and look at those finer striations in between that might be individual in nature and, when you do that, you notice that the one on the left doesn't have all of the same marks as the one on the right that I would expect if I was going to form an opinion that there was sufficient agreement of individual characteristics, which is the standard to affect an identification.

Q So even though these marks are very, very similar, these white marks, that's just – that could be from the same tool, same lot, it's subclass?

A So the potential for subclass is certainly reminiscent with these, they're – or indicative of, these are indicative of what I would expect to see for subclass, and it would be the other stuff in between, the other striations, that would potentially be the individual characteristics.

MR. LUTTRULL: That was OO, Mr. Rozzi?

MR. ROZZI: Yes, OO, Jim.

MR. LUTTRULL: Are you gonna be showing other items like that?

MR. ROZZI: I'm not sure. I'm not sure. I'm trying to finish up here.

Q So with the crime labs that you talked about like Rhode Island being recently shut down, is it accurate that they were having problems distinguishing between these grosser marks and the finer marks?

A So the report that was generated in that particular evaluation –

MR. LUTTRULL: Objection, Your Honor. I don't see how the Rhode Island event has anything to do with us here today. They brought it out, they've said it was a problem over subclass. Getting into the details of the Rhode Island event, which he was not a part of, is irrelevant for this case.

MR. ROZZI: I think comparing Rhode Island's circumstance and our circumstance has a tendency to prove that these characteristics here that you see with the naked eye can be deceptive. And these are Ms. Oberg's photos.

THE COURT: Which the ISP lab has not been discredited, as the Rhode Island lab has, so I would sustain the objection on relevance.

MR. ROZZI: Thank you.

Q Was the – well, strike that. Tell the jury was CMS is.

A So CMS stands for consecutive matching stria or consecutive matching striations.

Q And what is the relevance of CMS in your field?

A So we talked about those – the body of critical experts earlier. One of the critiques is that the standard currently, as it's written and accepted and practiced in the field, is that a particular examiner has to observe sufficient agreement of those individual characteristics. CMS is an attempt, again, to answer those critics, to provide a threshold or a numerical objective value. So it was re – the research was first published in 1959 in California and it has been continued to be expounded upon. Another landmark publication was in 1970, and it continues to be published in law books that are pertaining to the modern scientific evidence and what experts might testify to. And what that is, is it's a numerical criteria that says when you examine these types of striations, in order to obtain a conclusion or to reach a conclusion of identification, you have to have

either two runs of three consecutive striations or at least one run of six consecutive striations.

MR. LUTTRULL: Your Honor, at this time I would object and ask leave to ask a preliminary question.

THE COURT: You may.

MR. LUTTRULL: Dr. Warren, are you aware the Indiana State Police does not use CMS methodology?

A Yes, I am aware of that. So C –

MR. LUTTRULL: You are aware that most laboratories do not use – firearm/tool mark laboratories do not use CMS?

A So –

MR. LUTTRULL: You're aware of that, are you not?

MR. ROZZI: Can he answer the question first?

THE COURT: Well, it's a – yes. Yes or no, is he aware.

A So I am aware that there is a subset of crime laboratories that do not use this, but I need to clarify that CMS is not a different examination. The foundation of finding striations is the exact same. The difference in policy and methods –

MR. LUTTRULL: Your Honor, that's not answering my question.

THE COURT: Answer the question, sir.

MR. LUTTRULL: Mr. – Dr. Warren, the question is: Most laboratories, firearm/tool mark examination, do not use a CMS criteria; correct?

A So again, as I just testified, I would say I know that some do not. I do not know that I could qualify it as most.

MR. LUTTRULL: And you do not, do you?

A No, sir, I do use CMS.

MR. LUTTRULL: And when have you been trained on CMS?

A I was invited by John Murdock to California in the beginning – it was either the end of 2022 or the beginning of 2023, he invited me out to help him teach a course in California and be his guest out there.

MR. LUTTRULL: I didn't see that on your CV, Dr. Warren.

A Yes, sir. I believe that's under list of training.

MR. LUTTRULL: I have no further questions at this time. Thank you.

THE COURT: Would counsel approach, please.

(Sidebar conference conducted.)

THE COURT: I'm sorry to interrupt, but (inaudible) needs a break.

MR. ROZZI: We're almost – I'm almost done. I'm in the last three or four questions.

MR. LUTTRULL: And I apologize, I forgot –

MR. ROZZI: Apology accepted. Give me five minutes. I don't want to say I'm asking three questions and then I ask four and I'm getting –

THE COURT: All right. So five minutes (inaudible)

MR. ROZZI: You know – I am, pretty much.

THE COURT: Okay.

(Sidebar conference concluded.)

Q Is the –

MR. ROZZI: Oh, I'm sorry.

THE COURT: Go ahead.

MR. ROZZI: Now I'm trying to move on hastily.

Q Is the – is this CMS process, the subjective process, is that a process that

AFTE has adopted – I'm not sure if that's the right word – if they've adopted or they recognize maybe is a better word.

A Yes, so CMS is recognized by AFTE. It is not addressed in the AFTE theory of identification, and that's what I testified to earlier, the standard is just that there's sufficient agreement. CMS takes that one step further to try and set an objective criteria that, since 1959, has been established.

Q Okay. So it's kind of like a score sheet; right? It's supposed to take the subjective – subjectivity of all this out?

A It is minimizing the subjectivity, that is correct.

Q All right. Has that been the biggest, one of the biggest critiques on this discipline is that one examiner can have a different opinion than the next, the subjectivity?

A Yes, that is one of the major critiques.

Q And did you apply your own – well, let me ask you this – strike that. In terms of working through the CMS process, what information do you have to have to do that effectively?

A So with CMS, you generally take a photograph of what you see on the microscope and then, out next to it, you will tabulate individual striations that you observe to be in agreement and count that consecutiveness.

Q Okay. And did you have – are the photographs the biggest part of that process, making sure that you have adequate photographs?

A Yes, that is a prerequisite for the method.

Q Okay. And in this particular case, did you apply the CMS standards to what you saw in Ms. Oberg's work?

A Yes, sir, I did.

Q And what were your findings based on your experience and that CMS process?

A So the extractor itself I believe had one run of four, which does not meet that threshold. The barrel hood or chamber face, depending on the terminology, I did not find any consecutive runs. I found multiple runs of one. And the ejector, if you ignore or subtract out the potential for subclass, again, I did not find any consecutiveness.

Q So would you – based on that objective scoresheet, would you have made – drawn a conclusion that there was sufficient agreement or insufficient agreement?

A No, so there would be insufficient agreement.

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

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

THE BAILIFF: All rise.

(Jury out at 11:08 a.m.)

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

(Off record at 11:09 a.m.)

(On record at 11:28 a.m.)

THE COURT: All right. Mr. Luttrull, are you ready to conduct your

cross?

MR. LUTTRULL: Yes, Your Honor. Mr. Rozzi indicated to me he had an omitted question.

THE COURT: Oh, okay.

MR. ROZZI: Yeah, Judge. It's just really based on the question we got from a juror earlier, so I'm gonna ask him when they come in and maybe kind of clean that up.

THE COURT: Okay, sure. All right. Gentlemen.

THE BAILIFF: All rise.

(Jury in at 11:31 a.m.)

THE BAILIFF: Thank you. You may be seated.

THE COURT: Mr. Rozzi.

MR. ROZZI: Thank you, Judge. Just a couple of omitted questions to address a jury question earlier.

Q Dr. Warren, you recognize what a slide is on a handgun?

A Yes, I do.

Q Okay. We're talking about the mechanism across the top of specifically the Sig Sauer that slides back and then ejects – and then the cartridge ejects; right?

A Yes.

Q 'Cause we're talking layperson's terms.

A Yes.

Q What – do the firearms manufacturers – I'm trying to think of the right word – do they pay particular attention to the amount of force that is necessary when they construct these guns, the force that's necessary to slide or rack that

slide?

A Yes, they do. So, I mean, that's one of the blueprint, if you will, characteristics that the manufacturers will have to work out before they even start manufacturing, so that force is generally dictated by the recoil spring and so there would be calculations and measurements that would be for manufacturing that spring that would give us particular tension or require a particular force to rack that slide.

Q Okay. And so are there – is there actually research focused on the integrity of that slide as it's used over time? In other words, how does that force change?

A No, there's – so there's not any research. I mean, generally with firearms is you break them in. The mating surfaces, they tend to become smoother and the spring, over time, can potentially get weaker, so it would lead to a slightly lowered force to rack the slide, but generally, there's not specific research for measuring or determining the amount of force to –

Q But is that a circumstance that you can observe by inspecting a firearm in terms of whether or not the veracity of that slide has changed over time?

A So, I mean, you can look at the tool surfaces on the slide themselves. There have been studies called persistence studies that look at the change of the tool surfaces as the firearm is used and fired, but not of the force required to rack the slide.

Q Oh, I see. Okay. So you're actually looking at the metals in this case and the change in those metal surfaces as the firearm is used over time?

A Yes, correct. So there are several studies that will take a – say a machine gun, for instance, because you can rapidly fire a whole lot of rounds and compare, you know, test fire 1 to 10 to 100 to 1000 and , generally, the research

shows that those marks are persistent across, you know, up to 10000 rounds in some cases. It's also been done in pistols, not just machine guns, I do want to clarify that. So yes, the – generally our tool surfaces, the marks that they leave do have persistence to them.

Q Okay. And so is a Sig Sauer – how would you describe a Sig Sauer as a brand in terms of the quality of handgun they make?

A So Sig Sauer is generally perceived as a high-quality handgun. I would say it's in the, you know, upper tier or at least in the higher of the mid-range firearms.

Q Okay. And would you expect the integrity of that slide in a gun like this, item 314, to maintain itself over lots and lots of use?

A Yes. So the exception to that would be if there was some type of use or abuse or corrosion that wasn't present on the photographs that I observed that Ms. Oberg had taken, either the macroscopic or also the microscopic of the internal working components, the ejector and the barrel face/barrel hood specifically.

MR. ROZZI: Pass the witness.

THE COURT: Mr. Luttrull.

MR. LUTTRULL: Thank you.

**CROSS EXAMINATION OF DR. ERIC WARREN**

QUESTIONS BY MR. LUTTRULL.

Q Dr. Warren, you have used the term or phrase of "mechanical fingerprint" to describe a tool mark that a firearm can leave on a bullet, a cartridge, or a cartridge case; is that correct?

A Yes, I have used that term previously.

Q And that's what you were – you learned that term, you applied it at your experience with the Tennessee Bureau of Investigation; correct?

A Yes, that is correct.

Q You have no written report in this case; is that correct?

A That is correct, I do not have a written report.

Q Why is that?

A It just was not something that came up in this particular case.

Q You were just talking about the persistence of a firearm's leaving individual characteristics, and that's been very well documented, as you indicated, absent some type of damage or gross misuse of a firearm in the intervening times; is that correct?

A Yes, that is correct.

Q In fact, those studies show that the first bullet fired by a gun can be compared with the 10,000th bullet fired satisfactorily; is that correct?

A Yes, that – there are tests that have shown it, you know, up to probably 10,000 or even 20,000.

Q And you would absolutely expect a decently maintained semiauto pistol, a Sig for example, it's individual tool marks to persist over a period of five years, even if it had been frequently used?

A Yes, I would, and that's actually a great distinction. We – these persistence studies are specifically for individual characteristics that we would be looking at.

Q Let's look at subclass characteristics; is that a new concern in the field of firearm examination?

A No, sir, it is not.

Q It's been studied for over 90 years; correct?

A Maybe 90 years, yeah. So originally, they were known as family characteristics, I'll say in the early days. I don't know that it's been 90, but it's probably been close to that.

Q So the subclass or family characteristics is a way of breaking down or getting to the small part of that upside-down triangle; correct?

A Yes, sir, that is correct.

Q At the top of the triangle, we have all firearms, and then we have class characteristics that can eliminate a number of firearms; correct?

A Yes, that is correct.

Q What would be a class characteristic in this case?

A So the – a class characteristic in this case would – actually, the main one will be the relationship of the extractor to the ejector; and so, if you think about looking at a clock face, you would normally describe it – so you describe it from the position of the operator, so it's almost like an inverse clock face, but the extractor would be in roughly a three o'clock position and the ejector is generally in the seven to eight o'clock position, so that relationship between the two and those orientations would be considered a class characteristic.

Q Sir, when we talk about subclass characteristics, we're talking about the manufacturing process, the same tool, with approximately the same state of wear, operating on the other tool; correct?

A Yes, that is correct. So subclass, as you stated, is due to that type of damage on the blade is one example, it's the easiest example to discuss, and it can persist for 10, 100, 1,000 different firearms that were made by that same tool.

Q But the point is regarding firearms is different tools manufacture different

tools within the firearm; correct?

A It can. So with the advent of CNC machining that I mentioned earlier, a lot of times the same tools can work on multiple pieces of the firearm; so, for instance, that Sig video that we watched described the different CNC machines that have multiple axes and all the operations can be performed on those two major components using the exact same tools.

Q But we were talking about an ejector. A different machine makes that ejector than makes the extractor; correct?

A I don't know if that is correct for the Sig. I would guess that, yes, that is correct. So sometimes these parts are stamped, so it'd potentially be the same machine, just a different die, but yes, my expectation would be that the – in this case, the extractor and the ejector were made by two different tool mechanisms.

Q And the chamber face or the – you call it the barrel hood, that's made by a different machine, as well, is it not?

A Again, so different from the extractor and the ejector, yes, but potentially the exact same as the slide and the frame.

Q And this firearm is assembled – generally speaking, these firearms are assembled by an individual reaching into a bucket and pulling out an ejector or extractor and assembling it on the firearm; correct?

A Yes, that is correct. So as the parts come off the line, the assembly or the manufacturing line, they are typically stored in some type of bin in the assembly station and the individual that is doing the assembling is just reaching into a bin of that particular lot of tools that are made at that time to assemble the firearm.

Q But that lot may come from a whole different company, but the – that the

company is – has contracted with to make an ejector or make an extractor; correct?

A Yes, that is correct. So the –

Q Thank you, sir, I appreciate that. Once you are talking subclass, if we think of – I'll use the word "funnel" instead of triangle. Once we're down to a funnel, we're way down towards the bottom of that funnel by the time we're distinguishing between subclass and individual characteristics; isn't that correct?

A No, I would not say that is correct in every case. It will depend on the manufacturing technique potentially. It could be anywhere. It's not a linear continuum we'll say. So it could fall anywhere between the top of the pyramid and the very bottom of the pyramid or funnel.

Q In fact, even sequentially – even sequential serial numbers on a firearm may vary in terms of their subclass characteristics and may not share subclass characteristics; isn't that correct?

A Yes, that could be correct. Again, that's why the documentation of the evaluation of that subclass potential is so important.

Q You were a firearm examiner for TBI for – once you finished your training, for six years; correct?

A Six, going on seven, yeah, somewhere in there.

Q You were one month beyond six years; isn't that right, sir?

A No, I believe it was more than that. Maybe it was close, maybe two or three months over.

Q You said you started in August of 2009, with your training program? Is that what your CV says?

A Yes, that's what my CV says, and that is correct.

Q And you left TBI in October of '17; correct?

A Yes, that's correct also.

Q A trained, experienced firearm and tool mark examiner would always consider the potential for subclass; correct?

A Yes, that is also correct.

Q And in the report that Ms. Oberg documents, she indicated she had concerns about subclass on the ejector and pursued that further; correct?

A Yes. After she documented that her concern was present, she did do additional investigation into the ejector specifically.

Q And she did not articulate in her report any concern about the extractor or the chamber face for subclass characteristics; is that correct?

A Not entirely. So there's no documentation that it was even considered at all, so we don't know if she –

Q You didn't answer my question, Dr. Warren. I apologize for interrupting you, but would you answer my question. Did she –

MR. ROZZI: Judge, can we, please –

Q Did she articulate –

MR. ROZZI: -- allow Mr. Warren to answer the question?

THE COURT: Well, let him ask the question that he wants to ask and him answer.

Q Did she articulate any concern, Dr. Warren, about subclass characteristics on the extractor and the chamber face?

A There was zero documentation of any evaluation, so there is no way to know if there was a concern regarding the presence of subclass on these other

tool faces.

Q I'm gonna ask that question again, Dr. Warren. I would ask you answer my question. Did she document any concern she had for subclass markings on the extractor or the chamber face?

MR. ROZZI: Objection: Asked and –

Q Yes or no?

MR. ROZZI: Asked and answered.

MR. LUTTRULL: It has not been asked or answered.

MR. ROZZI: He said he's gonna ask it again.

THE COURT: Not this one. Overruled.

Q Did she document any concerns, sir?

A There was no documentation on any evaluation or any resulting concern.

MR. LUTTRULL: Your Honor, he's not answering my question, he's giving a speech to the jury that he is – wants to give them. I'm asking the questions. I would like him to answer my question.

THE COURT: It's a yes or no question, sir.

Q Did she document any concerns she had for subclass characteristics on the extractor or the chamber face?

A As I've testified, there was no documentation of any concern or any evaluation –

MR. LUTTRULL: Your Honor, I would ask him to directly answer my question.

THE COURT: Sir, it's a yes or no question. Yes or no.

A And the answer is no.

Q Do you know how many years Ms. Oberg had as a firearm and tool mark

examiner at the time she did this examination in October of '22?

A I do not know how much time she has.

Q She had – would you be surprised to know she had well over the amount of time you've had to be a firearm and tool mark examiner?

A No, that would not surprise me. Time does not factor into it in my mind.

Q You – a good firearm and tool mark examiner would conduct research all the time while they're doing their craft, their discipline; is that correct?

A No. It would depend on what was in front of them. So if it was something that was routine, I would not expect there to be additional research that was performed.

Q But they're always doing research as they're being tool mark examiner; correct?

MR. ROZZI: I'm gonna objection to speculation on what a good firearm examiner would do.

THE COURT: Sustained.

MR. LUTTRULL: We have the board of AFTE here, Your Honor, I think he can – a board member of AFTE, I think he can answer – well, let me rephrase it and he can answer it.

THE COURT: Rephrase it, then.

Q Sir, does AFTE encourage its membership to continue to do research as they're maturing and gathering knowledge on firearm and tool mark examinations?

A No. So AFTE does encourage research by its practitioners. It does not qualify that that research should occur from one case to the next and, in fact, I would disagree that that happens.

Q They encourage them to do to research and gather knowledge; correct?
A Yes, that is correct.
Q Are you suggesting to this jury that Ms. Oberg, after examining the ejector and noting potential for subclass characteristics, forgot about subclass characteristics when she examined the extractor or the chamber face?
A I'm saying that is possible, because nothing was documented regarding that process.
Q And do you always put all of your research and your knowledge that you'd gained in your six years at TBI into a report and document everything about your experience and training that's led to you to your opinion?
A Yes. So in my six years with the TBI and in my 14 years total doing this, if I do research that is specific to my conclusions for a particular case, I make every effort to document all of that to the best of my ability.
Q So everything you rely upon in your examination, everything that you've learned over time, everything you've learned to distinguish subclass from individual characteristics, you actually attach that to your report?
A No. As I testified just a second ago, any time I have to do research for a specific case, something that directly relates to my opinion in that case, I do note it.
Q Ms. Oberg identified three different tools having made tool marks on this particular cartridge, item 016; is that correct?
A Yes, she did determine – actually, the three tool marks were what she based her opinion on.
Q And by basing her opinion on three separate tool marks, that strengthened her opinion that she ultimately came to, identifying the Defendant's Sig Sauer

as having cycled item 016; isn't that correct?

A I don't believe that's –

MR. ROZZI: I object to speculation about what was going on in her mind at the time she made these conclusions. I don't think he's in a position to testify about that.

MR. LUTTRULL: I'll rephrase the question.

THE COURT: Okay.

Q The fact that she notes three different tools that she identified as marking, making specific, distinct tool marks on the cycled cartridge, strengthened the result that she obtained; isn't that correct?

A I don't believe that it strengthens the results. The – there was some – there was subclass agreement noted on the ejector. There was some agreement, which does not meet the AFTE sufficient agreement stated by her and her report, on the extractor. And I didn't see any agreement on the barrel face, so to me, no, they do not strengthen the final conclusion.

Q Ms. Oberg found agreement on the chamber face markings and – of the Defendant's Sig and item 016 though, didn't see?

A She does state that she found some agreement.

Q She found sufficient agreement, didn't she?

A No. So her case file says some agreement.

Q She –

A The report does indicate – at the bottom, there's a stipulation that says when she reaches an identification that is sufficient agreement, but that is not reflected in the notes portion, where she was showing her work and illustrating that basis.

Q The bottom line on the question – the bottom line is a tool mark is a tool mark when you're talking about cycled only versus fired cartridges; isn't that correct?

A No, that's not correct.

Q The task of the examiner is to look at the fired test casing and see if it actually creates the similar markings that are on the question item 016, isn't that correct?

A Yes. As I testified earlier, it's the reproducibility and the repeatability of a particular tool mark that – of a particular tool that needs to be evaluated.

Q So it's not apples to oranges, she's actually confirming – an examiner can confirm that the test-fired – the test fires are appropriate and adequate to compare to the cycled cartridge; correct?

A That is something that can be determined, but specifically in this case, she actually determined that it was not sufficient, that she could not find the agreement from the fired cartridge cases to the cycled cartridges.

Q In fact, she found that she could find that the test fired cartridge was suitable for comparison to 016; correct?

A So that was her conclusion, yes.

Q In fact, you just did that in front of the jury with Defense Exhibit OO; isn't that right?

A You'll have to clarify what that is.

Q You documented for the jury that you could use – that the ejector mark from the test fire was suitable for comparison to 016, the cartridge.

A No, sir, I did not testify to suitability of anything. I simply looked at the photograph itself and pointed out what was visible on that photograph.

Q I asked you earlier if you actively used CMS and you say you do actively use it.

A Yes, sir, I do.

Q And in 2021, you testified in the – two years ago, October of 2021, that you did not use CMS; correct?

A So in – I'm not sure which case you're referring to, but if that was my testimony, it was probably that I didn't use it in that particular case. So with CMS, it is mostly – well, only applicable to striated marks, not impressed marks, so if there's, let's say, a firing pin impression, that would not be something that would be amenable to CMS. The way I teach it to police departments, crime laboratories in this country and in Morocco –

MR. LUTTRULL: Your Honor, I think he's answered the question, so I appreciate his answer, but he's continuing to answer after he's answered my question, so I would object. Just one moment, Your Honor.

Q Would you – and you received training, you indicated, in '22 or '23 on the use of CMS?

A Yes, sir, that's some of the most recent training where Mr. Murdock invited me out, yes, sir.

Q And were you trained to use another examiner's photographs that were created to show one aspect of the firearm in your evaluation of CMS?

A Yes, sir. During the training course itself, that's exactly what is used is the photographs that another examiner had taken.

Q And when you – were you trained that you could go into court and testify on CMS based upon your examination of another examiner's photograph?

A Yes; and in fact, that's – regularly occurs.

Q Are you the Dr. Warren who testified in the case in Flagstaff, Arizona, in 2021, October of 2021?

A I have testified in Flagstaff, Arizona. I will have to take your word if you say it's 2021, I don't recall.

Q And did you indicate, in an interview in that case, that you do not use CMS methodology?

A I don't recall an interview associated with that case, but again, it might have been a situation where it wasn't applicable or, yeah, I didn't use it in that case, if it specifically was asked whether I used it in that specific case, but I don't recall.

Q Do you recall telling – in that matter, telling them that it's a west coast thing, it's not something that you do or that's done in the Midwest or the east coast?

A Yes, that's certainly true. So CMS was started in 1959 at UC Berkeley, and so that is generally where you find the majority of practitioners, it has migrated, you know, across the US, but as I stated earlier, there are some laboratories that do not use it.

Q Have you testified in the past that you cannot come into court and offer a conclusion based upon photographs alone?

MR. ROZZI: I'm gonna object. That's asked and answered.

THE COURT: Overruled.

MR. ROZZI: Thank you.

Q Have you said that?

A Can you repeat the phrase that you used?

Q Have you testified in court that you cannot render a conclusion on a result

by looking at another examiner's photographs alone?

A I – yes, I can image there are situations where the photographs are such that I could not testify to any specific conclusions.

Q And did you say, because you need to look at the exhibits yourself on the microscope and look at it all different phases and possibilities, you would not make a conclusion off of a handful of photographs, were those your words?

A Again, I don't recall the specifics of that. I could certainly imagine that I think in the Flagstaff case. Those bullets were very soft lead bullets fired through a micro grooved barrel, which means they're teeny, tiny marks, so it is possible and – that I would say, along those lines, that yes, in that particular case, there'd be so many different phases and possible combinations and things would be so microscopic that I would need to physically examine the evidence in order to render a conclusion on a source opinion.

Q You did not say that, "In this particular case, I could not." You just said as a general rule you could not render an opinion based upon a handful of photographs. Isn't – aren't those your words under oath?

A Again, that may be my spec – my exact wording, I'm not sure. I can only say that my recollection right now is with that case, in those specific situations, yes, that would be a correct statement is that I could not or would not even look at the photographs and make a source conclusion determination from the photographs.

Q What's the most important – well, let me – we'll withdraw that and ask you – what's the most im – you have your own laboratory; correct?

A Yes, I do.

Q And it's not an accredited laboratory?

A No, we are not accredited.

Q But you have testified you have tried to make it up to the standards that would be required by accreditation?

A Yes. I would say that we meet the standards of accreditation.

Q Of course, the whole concept of accreditation is you not making that decision, an outside party affirming that; isn't that the whole point of accreditation?

A No. The way I understand accreditation is, essentially, you are paying a body – a peer of yours to come into your laboratory and look at your procedures and then look at let's say five cherry-picked cases and make sure that those specific cases that were presented to your peer accurately reflect that you are doing what your policies say.

Q So it sounds like you don't have a lot of confidence in accreditation.

A I do not have a lot of confidence in accreditation; that, in certain circumstances, would be fair. And as an example, the Rhode Island and the Wyoming crime labs are both accredited.

Q What's the most important tool in your laboratory, sir?

A You'll have to be more specific. I have many tools that are very important for specific tasks.

Q What's the very most important everyday tool you use in firearm/tool mark examination?

A In firearm and tool mark examination, the most important tool would be myself.

Q How valuable to you is your comparison microscope when you do examinations?

A So if you are conducting microscopic examinations, then you would need to have a comparison microscope in order to accomplish that.

Q How crucial and essential is that to – if you're going to make an examination, to use your comparison microscope?

A If you're going to do a comparison of the physical items of evidence, then you would need to use the comparison microscope to do that.

Q And why is the comparison microscope so central to firearm/tool mark examination?

MR. ROZZI: Judge, I'm gonna object at this point to relevance. He's just asking broad-based questions that have nothing to do with this case.

MR. LUTTRULL: Oh, it has everything to do with this case, Your Honor, I disagree.

THE COURT: Overruled.

Q Why is your comparison microscope so critical to your examination of the evidence?

A Again, my comparison microscope is one tool that I have, it is one that is necessary according to our accepted practices in order to do a comparison and because that's an accepted tool, that that's something that is necessary to do the job. I'm – I don't know what else I can say about that.

Q So you could either use it or not use it when you do an examination comparing test fires to an unknown piece of evidence?

A Yes, sir, you can use that tool or you can use another tool, like a 3D microscope or – you know, there – again, there are multiple different tools that could be used.

Q You were trained on the AFTE standards training manual?

A So I was trained using the TBI training manual, but it was based on the AFTE training manual.

Q And despite the questions Mr. Rozzi asked you about critics of firearms and tool marks, you strongly endorse the AFTE manual and its methodology; correct?

A So for firearms examiners, I strongly recommend AFTE membership and participation. I don't have a specific strong recommended or whatever your term was for how an agency uses that particular training notebook. It is – they are provided to AFTE members as guidelines and as some type of starting point for the agency to take it and make it their own.

Q So it sounds like the comparison microscope, you can take it or leave it; is that what you're telling us today?

A If you want to look at it that way, sure.

Q The role of a forensic scientist is to let the evidence speak for itself; is that correct?

A Yes. There –

MR. ROZZI: Judge, I'll object again to relevance. We're talking very broadly here.

THE COURT: Sustained.

Q You have used that term yourself in talking about your role in firearm/tool mark examination, that you let the evidence speak for itself; isn't that correct?

MR. ROZZI: Same objection.

THE COURT: Overruled.

Q Is that correct, sir?

A Yes, so those are statements that sound familiar like something that I

would make.

Q And is that something you would take it or leave it or is that something you firmly believe in?

A No, I would firmly believe that as a forensic scientist, or even outside of forensics as a scientist, I'd document the evidence to the best of my ability and then demonstrate that evidence and let it speak.

Q You offer services to individuals or institutions that wish to hire you that you can do consulting, like you've done in this case; correct?

A Yes, sir. So I have a website and an e-mail address and a phone number published, I'm equally available to whoever needs those consulting services.

Q And you – part of that consulting is in reviewing documents and giving your opinion about those documents, that documentation; isn't that correct?

A Yes, that is correct. So I –

Q And – thank you, sir.

A -- routinely review –

Q You've answered my question. I appreciate that. And you also do your own examination on evidence in cases; isn't that correct?

A If that is something that –

Q Yes or no, sir?

A -- is requested, then yes, that is something that I'm capable of doing.

Q So when you were asked by Mr. Rozzi if you had received everything you needed in this matter, that did not include item 016 or the various firearms in this matter, including the Defendant's firearm. You didn't ask for those, did you?

A I don't remember what the discussion with the attorney was regarding that. Again, to – dealing with my – the request to review the documentation, I

did receive all the documentation and would not need the bullet or the cartridge case or guns in order to review that documentation.

Q Not only your website, sir, but you yourself expressed to the Defense that you could actually test these specific items; correct?

A Again, I do believe that was a discussion that occurred in –

Q Thank you, Mr. Warren.

A -- this particular case, but I'm – I couldn't say for certain.

Q You believe that you did?

A Yes, sir, I do believe I did.

Q And you know that whole process, how an order is sent to the court to obtain the evidence from the Indiana State Police and it's appropriately shipped to you in your laboratory, where you can examine under your comparison microscope, should you choose to do so, these – this evidence and test fires that you yourself would take; correct?

A I'm not familiar specifically with the process in this state, but generally what he – what was just described is the most common occurrence whenever I do physically examine evidence.

Q And did you ask the attorneys for that opportunity?

A Again, I don't remember. This was over a year ago where these discussions probably would have occurred. I do make it a routine to explain all the services that I can offer, physical examination of the evidence using a comparison microscope is one of those options.

Q Regarding that, if you have received these items to compare the Defendant's firearm with 016, create your own test fires and test cycle and compare them to 016, would you have decided to use your comparison

microscope to do that?

MR. ROZZI: I'm gonna object at this point. This calls for speculation.

THE COURT: Overruled.

Q Would you use your comparison microscope if you had been asked to do that and actually had the items?

A If I was asked to perform a physical comparison of items, then yes, that would entail a comparison microscope.

Q You wouldn't have a take it or leave it approach to the comparison microscope in that situation, would you?

A Again, it would depend on what the request was. If it was to examine physical items of evidence together, then I would expect to utilize the comparison microscope.

Q This is the – Defendant's Exhibit OO, that's a static photograph; correct?

A Yes, that is – that – photographs are static.

Q And if you are looking at this image on a comparison microscope, any slight adjustment or movement could change all of these lighting – all the lighting that you testified to the jury about; correct?

A No, sir. So the surface does not change just because you move something back and forth. So you might illuminate things slightly differently, but things that are there are not just going to not become there anymore.

Q But the photograph could look entirely differently if you adjust the image or the lighting; correct?

A It is possible that the photograph could look different if you adjust the lighting or the position, that is correct.

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

THE COURT: Mr. Rozzi.

MR. ROZZI: Yeah. Thank you, Judge.

**RE-DIRECT EXAMINATION OF DR. ERIC WARREN**

QUESTIONS BY MR. ROZZI.

Q Dr. Warren, how long ago would you estimate it was that we first started working together?

A It was over a year ago I would say. So based on my case number in this case, we – it would have been before September of last year, so more than a year ago.

Q Okay. And did I ask you to generate any reports?

A I do not recall that request, no.

Q Okay. Did you make yourself available to the State of Indiana when they wanted to depose you?

A Yes, I did.

Q And approximately when was that?

A It would have been – so I was in Morocco at the time, so maybe three or four weeks ago.

MR. ROZZI: Nothing further.

MR. LUTTRULL: I have no questions.

THE COURT: Does anybody on the jury have any questions for Dr. Warren? All right. Would counsel approach.

(Sidebar conference conducted.)

THE COURT: Okay. Tons of notes. "You stated the change of position and a slight turn of the tools in a handgun can change the marks on a

cartridge. How would CMS or objective testing be useable?"

MR. ROZZI: I don't care.

MR. LUTTRULL: Sure.

THE COURT: "Would removing, disassembling, cleaning, etcetera, change the position of individual striations and, if so, would you have to test a cartridge in all iterations to consider it objective and/or relevant?"

MR. LUTTRULL: Sure.

MR. ROZZI: I don't know the answer to that.

THE COURT: Are you okay with the question?

MR. ROZZI: I'm okay with it.

THE COURT: "Do you know if the manufacturer keeps track of subclass characteristics?"

MR. ROZZI: That's fair.

MR. LUTTRULL: If he knows.

THE COURT: "Would the presence of subclass characteristics only be something to acknowledge in pursuit of individual characteristics?"

MR. ROZZI: I think the answer's clearly yes, but I think it's confusing.

THE COURT: I have no idea, half the time, what I'm reading. "Is there a reason you didn't verify the results in the report by conducting your own analysis, rather than reviewing the pictures and findings of Ms. Oberg?"

MR. LUTTRULL: No objection.

MR. ROZZI: I think that's fine.

THE COURT: "Would doing your own analysis have been more conclusive?"

MR. ROZZI: Fair.

THE COURT: "Do you believe that using two runs of three or one run of six would be the gold standard to observe sufficient analysis and would you have done this to come to any conclusions about the items?"

MR. ROZZI: Kind of loaded.

MR. LUTTRULL: Yeah.

THE COURT: Is that okay?

MR. ROZZI: It's somewhat consistent with the testimony, I guess.

MR. LUTTRULL: (Inaudible) it's fine.

THE COURT: Okay. "Would individual marks be lighter or darker depending who is manually cycling the cartridge due to the force?" They tried to get into that a little.

MR. ROZZI: Yeah. I'm not gonna object.

THE COURT: "Do you look at the subclassification marks on the cartridge?"

MR. LUTTRULL: Yes.

MR. ROZZI: Yes.

THE COURT: "What is the relevance of the cartridges having similar subclass characteristics?"

MR. ROZZI: Oh, geez, they must not have been here for the last –

THE COURT: (Inaudible)

MR. ROZZI: (Inaudible)

THE COURT: Okay.

MR. LUTTRULL: Oberg was (inaudible)

THE COURT: "Are sequential serial numbers to guns made within

the same lot, assuming there isn't a change in lot numbers?" Wow, we're in the weeds.

MR. ROZZI: I don't think he really talked about –

THE COURT: You didn't.

MR. ROZZI: -- serial numbers though, did we?

THE COURT: He didn't. You didn't really.

MR. LUTTRULL: I asked him a question about the machines –

MR. ROZZI: Yeah, the tooling.

THE COURT: Okay. So no?

MR. ROZZI: That just goes to the (inaudible) and the frame.

THE COURT: Yeah.

MR. LUTTRULL: The video talked about it.

THE COURT: So yes?

MR. ROZZI: Sure, ask it. I don't care.

THE COURT: This one's real weedy. "Can you speak to the 1.5 percent false positive and 2.8 false negative percentages in consecutively made tools?"

MR. ROZZI: Sure.

THE COURT: (Inaudible)

MR. ROZZI: It's not – that's not really – actually, that question, is just entirely wrong. It's conflating two totally separate issues.

THE COURT: I thought we were into separate –

MR. ROZZI: He talked about error rates, but not in –

THE COURT: Not in this.

MR. ROZZI: -- in the course of making tools.

THE COURT: Okay. So no on this one. Okay. Thank you. That was my memory, as well. "Ms. Oberg cycled numerous dummy cartridges through Mr. Allen's gun with the same characteristics/markings. Are you saying these are false findings?"

MR. LUTTRULL: She didn't do any dummy.

THE COURT: Um-um. (Negative response)

MR. ROZZI: Plus, it's not a true statement, so –

THE COURT: Okay. So no on that.

MR. ROZZI: So that tells us she doesn't know what's going on.

THE COURT: "Are you a certified firearm and tool mark examiner?"

MR. LUTTRULL: Yeah.

THE COURT: "Have you completed proficiency testing and black box studies?" Oh, nice, somebody was paying attention.

MR. LUTTRULL: Paying attention, yeah.

THE COURT: So okay on that one?

MR. ROZZI: I'm okay with that one. I don't know that those – those things are really mutually exclusive. Proficiency testing and black box studies are not –

THE COURT: So no?

MR. ROZZI: They're not related.

MR. LUTTRULL: He could answer it.

MR. ROZZI: I don't think it's –

MR. LUTTRULL: It's kind of mixing the two.

THE COURT: Okay, so no on that . (Inaudible) "Are you aware that the ejector from Mr. Allen's firearm had a recessed portion which caused

individual characteristics on the cartridges and dummy cartridges similar to the cartridge found February 13th, 2017?"

MR. ROZZI: That's pretty intuitive.

MR. LUTTRULL: I'm sorry?

THE COURT: "Are you aware that the ejector from Mr. Allen's firearm had a recessed portion which caused individual characteristics on the cartridges, similar to the cartridge found" – I'll strike the "dummy cartridges". Okay. "Is it normal" – oh my God, they won't stop. "Are you aware that Ms. Oberg's finding's were verified by a separate party, and this party or identifier agreed?"

MR. ROZZI: That's fine.

MR. LUTTRULL: She testified about that.

THE COURT: She did.

MR. ROZZI: About going through the verification.

THE COURT: Verified by a second party. "Is it normal practice for you to not issue a report when conducting examinations or consultations –

MR. ROZZI: Well, he didn't do an examination.

THE COURT: Well, it said, "when conducting examinations or consultations, as you did for this case". "If not, please elaborate why a report was not included in this case?"

MR. LUTTRULL: Why what?

THE COURT: Why a report was not. So both of those are okay?

MR. ROZZI: Yeah, I think they're fine.

THE COURT: And "What are the chances that the cartridge found at the scene would have the same subclass markings as the Indiana State Crime

Lab test round?"

MR. ROZZI: That's very intuitive.

THE COURT: Wow. Okay. And then, we break for lunch.

MR. ROZZI: Okay.

(Sidebar conference concluded.)

**JUROR QUESTIONS OF DR. ERIC WARREN**

QUESTIONS OF THE JURY, READ BY THE COURT.

Q Okay. Lots of questions.

A Yes.

Q Okay. You stated that the change of position and slight turns of the tools in a handgun can change the marks on a cartridge. How would CMS or objective testing be usable?

A So the CMS or the standard pattern matching would still apply the same way. The question would just become does it meet that examiner's sufficient threshold or does it meet that CMS threshold. And what the study showed is, like I said, with just a minimum of 15 degrees the surface contour would change enough that it no longer met that threshold.

THE COURT: Okay. Mr. Rozzi?

MR. ROZZI: No questions.

THE COURT: Mr. Luttrull?

MR. LUTTRULL: No questions.

Q Okay. Would removing, disassembling, cleaning, etcetera, change the position of individual striations and, if so, would you have to test a cartridge in all iterations to be considered objective and/or relevant?

A No. So just cleaning or disassembling and reassembling the firearm would

not change the individual characteristics unless some damage had occurred. So if you take the gun apart and say dropped a piece onto the asphalt or something rough, there's the potential that that could change. If that occurred, you would have to do testing – hopefully, you'd have the testing from before the disassembly occurred and then you'd also have to test after the reassembly occurred to determine if that damage actually did effect the individual characteristics or not.

THE COURT: Mr. Rozzi?

MR. ROZZI: No questions.

THE COURT: Mr. Luttrull?

MR. LUTTRULL: Briefly, Your Honor.

**FOLLOW-UP EXAMINATION OF DR. ERIC WARREN**

QUESTIONS BY MR. LUTTRULL.

Q As it relates to the extractor in this case, there was no photograph of the extractor; correct?

A That is correct, there was no direct photograph of the extractor. I mean, the extractor is visible in some of the macroscopic photos of the whole firearm, but to actually see the tool working surface, there was not a photograph.

Q You'd have to disassemble the firearm; correct?

A Yes, you would.

Q And that could be – lead to problems if there ever was another examiner deciding to test that firearm after you disassembled it; correct?

A No, sir. So again, as – only if it had been dropped and damaged; but prior to that point, you would have tests made before it was then disassembled and evaluated.

MR. LUTTRULL: I have no further questions.

**JUROR QUESTIONS OF DR. ERIC WARREN**

QUESTIONS OF THE JURY, READ BY THE COURT.

Q Do you know if the manufacturer keeps track of subclass characteristics?

A No, manufacturers don't keep track of that kind of thing. It's all microscopic that pertains to what we do, not so much to what they do.

THE COURT: Mr. Rozzi?

MR. ROZZI: No questions.

THE COURT: Mr. Luttrull?

MR. LUTTRULL: No.

Q Is there a reason you didn't verify the results in the report by conducting your own analysis, rather than reviewing the pictures and findings of Ms. Oberg?

A So in that particular case, that's what I was testifying to earlier. That was a discussion that, for whatever reason, we decided or it was requested of me to evaluate the documentation to see if there was even sufficient documentation to support a particular conclusion that was reached. So my role, as I saw it and was discussed, is to both educate the attorney on what the conclusion was and then to explain if the documentation supported that conclusion or not.

THE COURT: Mr. Rozzi?

**FOLLOW-UP EXAMINATION OF DR. ERIC WARREN**

QUESTIONS BY MR. ROZZI.

Q I mean, is that something you do on a pretty routine basis in your line of work?

A Yes, this is a pretty common process.

MR. ROZZI: Okay. Nothing further.

THE COURT: Mr. Luttrull?

**FOLLOW-UP EXAMINATION OF DR. ERIC WARREN**

QUESTIONS BY MR. LUTTRULL.

Q You made it clear you could do an examination and the Defense did not ask you to do so; correct?

A Yes, I would say that that was not a request that was made that I recall. It would have – that is something that I could do if it were requested, I guess.

THE COURT: Anything else, Mr. Luttrull?

MR. LUTTRULL: No. I'm sorry, Your Honor –

THE COURT: Thank you.

MR. LUTTRULL: -- no.

**JUROR QUESTIONS OF DR. ERIC WARREN**

QUESTIONS OF THE JURY, READ BY THE COURT.

Q Would doing your own analysis have been more conclusive.

A So it's hard to say without actually doing analysis. It could have – there's the potential that I could have said, "Hey, I agree with her," there's also the potential that I could have gone the exact opposite way and say, "There's absolutely no way this could have happened." So my opinion as it stands is that the documentation does not support a conclusion of same source, but for me to actually give that opinion of same source or a different source, you know, that could be changed by the examination of the physical evidence.

THE COURT: Mr. Rozzi?

MR. ROZZI: No questions.

THE COURT: Mr. Luttrull?

MR. LUTTRULL: No, Your Honor.

Q Do you believe that using two runs of three or one run of six would be the

gold standard to observe sufficient analysis and would you have done this to come to any conclusions about the items?

A So CMS, that – you have the option of either or. So as – in terms of which one's the gold standard, they are both, they're equal – on equal footing, either at least two runs of three or one run of six. And I'm sorry, I don't know if that answered the full question, I feel like there was more, but –

THE COURT: Go ahead, Mr. Rozzi.

MR. ROZZI: No questions.

THE COURT: Mr. Luttrull?

MR. LUTTRULL: No, Your Honor.

Q Are you a certified firearm and tool mark examiner?

A Yes, I am.

THE COURT: Mr. Rozzi?

MR. ROZZI: No questions.

THE COURT: Mr. Luttrull?

**FOLLOW-UP EXAMINATION OF DR. ERIC WARREN**

QUESTIONS BY MR. LUTTRULL.

Q Certified by whom, sir?

A Certified by the Association of Firearm and Tool Mark Examiners or AFTE. They're the only ones in the world that offer that certification.

MR. LUTTRULL: Thank you. No further questions.

**JUROR QUESTIONS OF DR. ERIC WARREN**

QUESTIONS OF THE JURY, READ BY THE COURT.

Q Would individual marks be lighter or darker depending who is manually cycling a cartridge due to the force?

A So manual cycling can change both the force and the angle because of the force that is involved in the marking. That's why I mentioned the apples or oranges comparison earlier.

THE COURT: Okay. Mr. Rozzi?

MR. ROZZI: No questions.

THE COURT: Mr. Luttrull?

**FOLLOW-UP EXAMINATIONS OF DR. ERIC WARREN**

QUESTIONS BY MR. LUTTRULL.

Q The greater the force used in the manipulating the slide can make more pronounced – prominent, I should say, marks on the cartridge; correct?

A For the extractor, probably not; it would be more of the speed of which it was done. But for the ejector, because it is more impressed, that is certainly true, it could become more pronounced.

MR. LUTTRULL: Thank you.

**JUROR QUESTIONS OF DR. ERIC WARREN**

QUESTIONS OF THE JURY, READ BY THE COURT.

Q Do you look –

MR. ROZZI: I'm –

THE COURT: I'm sorry, what?

MR. ROZZI: Did I –

THE COURT: You passed? I asked you.

MR. ROZZI: Did I pass? I didn't –

THE COURT: Yeah. I asked you and you said no and I looked at Mr. Luttrull.

MR. ROZZI: Okay. Sorry, I just lost my train of thought there.

Q Did you look at the subclassification marks of the cartridge?

A So the cartridge itself, it is possible for an unfired round to have subclass markings from the manufacturing tools. Actually, in fact, there was a 2016 article that specifically looked at Winchester manufactured ammunition. I – the photograph that was taken of the extractor rim, I can't determine from the photograph if that is that type of subclass manufacturing mark or if could potentially actually be from an extractor, because the tool that is used in that manufacturing process to create the tapered cartridge case is almost the same process as an extractor mark would be.

THE COURT: Mr. Rozzi?

MR. ROZZI: No questions.

THE COURT: Mr. Luttrull?

**FOLLOW-UP EXAMINATION OF DR. ERIC WARREN**

QUESTIONS BY MR. LUTTRULL.

Q You'd have to look at it under a comparison microscope, wouldn't you?

A No. So it could be better documented through photographs and I could evaluate it or I could evaluate it using a comparison microscope, either would be sufficient.

Q Which would be the best?

A Again, it doesn't – it depends on how good the documentation is. If there's good documentation, then I would say they're on equal footing. If there's not, then a comparison microscope would be better if I were going to be opining as to whether or not that source – what the source tool was.

Q So a photograph is just as good as the comparison microscope?

A It can be.

MR. LUTTRULL: Thank you.

**JUROR QUESTIONS OF DR. ERIC WARREN**

QUESTIONS OF THE JURY, READ BY THE COURT.

Q What is the relevance of cartridges having similar subclass characteristics?

A Can you read that again? I'm sorry.

Q What is the relevance of cartridges having similar subclass characteristics?

A So it would depend if we're talking about subclass from cycling or from tools inside of a gun that were cycled or ones that were manufactured, manufacturing marks. So manufacturing marks subclass would just mean that they were – the live round would have been manufactured in a close timeline with that same tool in the same state of wear as another cartridge, unfired round. If we're talking about the subclass on the firearm, again it just indicates you're restricting or you're funneling or pyramiding that – the potential firearms and reducing the pool that could have left those marks.

THE COURT: Mr. Rozzi?

MR. ROZZI: No questions.

THE COURT: Mr. Luttrull?

MR. LUTTRULL: No, Your Honor.

Q Are sequential serial numbers of guns made within the same lot, assuming that there isn't a change in lot numbers?

A So you really can't – you can't associate a serial number with a specific lot, because they do get dumped into the bins, like we talked about, and there could be multiple lines of manufacturing running at the same time. It is generally

accepted that a close-in-serial-number will indicate that the specific parts inside of those were manufactured within some close timeframe, but it doesn't necessarily mean that they were consecutively made or even made on the same line.

THE COURT: Mr. Rozzi?

MR. ROZZI: No questions.

THE COURT: Mr. Luttrull?

MR. LUTTRULL: No questions.

Q Are you aware that Ms. Oberg's findings were verified by a second party and this party or identifier agreed with hers?

A Yes, yes, I'm aware of that. It was – yes. We'll leave it at that.

THE COURT: Mr. Rozzi?

**FOLLOW-UP EXAMINATION OF DR. ERIC WARREN**

QUESTIONS BY MR. ROZZI.

Q Is the – are there many different types of verification processes?

A Yes, there are. So verification can be done non-blinded, where there's essentially a dialogue between the two individuals and that's the least desirable, it's the one that gives rise to the most bias. Then there is a semi-blind type level where there may be minimal communication or maybe policy only dictates that verifications happen in very specific scenarios so that the verifier can already assume what the conclusions were based on how it's done, and that was partly how it took place in this case. And then, of course, there's fully blind, where all markings are removed that the examiner might have put to indicate where they were looking, all the items are kind of put in one big batch, so that they're not previously grouped, so that you give the verifier no context clues, if you will, of

what that initial examiner's opinion might have been.

THE COURT: Mr. Rozzi?

**FOLLOW-UP EXAMINATION OF DR. ERIC WARREN**

QUESTIONS BY MR. ROZZI.

Q Does the verification process involve the verifier looking at the case file, kind of like the report of the original examiner and saying, "Hey, you need to add some more information here" or are you – is that part of that process or not?

A It can be part of the process.

MR. ROZZI: Okay. I have nothing further.

THE COURT: Mr. Luttrull?

**FOLLOW-UP EXAMINATION OF DR. ERIC WARREN**

QUESTIONS BY MR. LUTTRULL.

Q Well, you know, in fact, that this was a verification that took place without the verifier knowing the conclusion that the examiner had reached at the time he's doing the verification; correct? You know that.

A I don't know that. I – there – I believe there was some testimony in a deposition, but there was no direct conversation with the verifier that the results were made known to them, but there was no discussion regarding whether they were grouped together or not, whether those marks were taken off or not, and the policy that is in place in the lab system at the time was all identifications much be verified, eliminations based on individual characteristics must be verified, but everything else was examiner discretion, so there's also context clues that if you're being asked to verify something, it's more likely than not an identification, and so there's that contextual bias there, as well, potentially.

Q But you reviewed the deposition of Melissa Oberg; correct?

A Yes, I did.
Q And she testified that she had all of her – in 2022/2021, she had all of her examinations, whether it was inconclusive or an identification or an exclusion, she had all of her conclusions verified by a verifier; isn't that her testimony?
A That is not my recollection. I believe she said that the lab was moving that direction and that that was what she supported and would try to do, but I don't believe – at least, as I sit here right now, I do not recall her saying that that was done on every single one of her cases.
Q And you weren't here for her testimony before this jury where she said that, in fact, all of her verification – she asked for verification on any conclusion she reaches. You weren't here for that testimony, were you?
A I don't know the context for that testimony and I was not here for it.
Q You are familiar with the name Mark Keesler, the verifier in this case, are you not?
A I am familiar with his name, yes.
Q How do you know who he is?
A So I believe he was and still is potentially the supervisor at one of the ISP crime laboratories and he was also a past president I believe – again, I'm not 100 percent certain on that – and he has also published some articles in the AFTE journal, as well.
Q Past president of who? Of what?
A Of AFTE. I'm sorry if I did not state that.

MR. LUTTRULL: Thank you. No further questions.

**JUROR QUESTIONS OF DR. ERIC WARREN**

QUESTIONS OF THE JURY, READ BY THE COURT.

Q Are you aware that the ejector from Mr. Allen's firearm had a recessed portion which caused individual characteristics in the cartridges and similar to the cartridge found on February 13th, 2017?

A So generally the extractor has a recess. It's essentially a claw, so this – if you were looking down from the top on the gun, this is what the extractor would look like, and there's a groove on the cartridge that it will grab to extract and pull it out when the slide is cycled, whether through firing or manually. So generally, yes, that is the way that it works. The question that is still a question because of the lack of documentation is: Is that surface amenable to individual characteristics or is it like what was observed on the ejector, also having those gross, continuous, uniformly spaced markings that lead to the marks that are present on the cartridges or cartridge cases fired in that – or run through that particular firearm.

THE COURT: Mr. Rozzi?

MR. ROZZI: No questions.

THE COURT: Mr. Luttrull?

**FOLLOW-UP EXAMINATION OF DR. ERIC WARREN**

QUESTIONS BY MR. LUTTRULL.

Q What you can take from the report is that when she saw indications of subclass, she noted them; correct?

A No. When she saw them for the ejector, she noted them, yes, that is true for the ejector.

Q You don't know that she saw them on the extractor or the chamber face, do you?

A That is correct, I do not know because it was not documented.

MR. LUTTRULL: No further questions.

**JUROR QUESTIONS OF DR. ERIC WARREN**

QUESTIONS OF THE JURY, READ BY THE COURT.

Q Is it normal practice for you to not issue a report when conducting examinations or consultations as you did for this case?

A Yes, that is. I would say probably greater than 50 percent of the time, it's – the reports typically occur if I'm doing an actual examination of the evidence, because I will list – just like what all the crime labs do, list the evidence that was examined and what those results were.

THE COURT: Mr. Rozzi?

MR. ROZZI: No questions.

THE COURT: Mr. Luttrull?

MR. LUTTRULL: No questions.

Q What are the chances that the cartridge found at the scene would have the same subclass markings as the Indiana State Crime Lab test results?

A That's a great question. We, unfortunately, don't have statistics for that. There are so many guns that get manufactured and we can only collect so many of them. I would say that because of this idea of the consecutive manufactured parts – so generally, when a firearm manufacturer is making firearms, that manufacturing process occurs, they build up some certain amount of stock, they rap the pallet and send it to a location, and then all of those at least start out their lives in the same general area, so the chance of a – any Sig Sauer in this area is gonna have a higher likelihood of having subclass than let's say guns that got shipped to Florida, at least initially when the firearm starts its life and leaves the factory.

THE COURT: Mr. Rozzi?

MR. ROZZI: No questions.

THE COURT: Mr. Luttrull?

**FOLLOW-UP EXAMINATION OF DR. ERIC WARREN**

QUESTIONS BY MR. LUTTRULL.

Q Dr. Warren, the ejector is made by its own machine; correct?

A Yes, so in order for something to be manufactured, a machine has to do that.

Q And the extractor's made by a different machine; correct?

A Not necessarily no, but it could be.

Q And the chamber face or the barrel hood is made by a whole other machine; correct?

A Again, not necessarily, but it could be.

MR. LUTTRULL: No further questions.

THE COURT: Thank you, Doctor. You may step down.

THE WITNESS: Thank you, Your Honor.

THE COURT: All right. Well, ladies and gentlemen, it's a little bit late, but we are gonna go ahead and break for lunch. While you're outside the courtroom, please, keep your minds open. Please don't form any opinions or conclusions about anything. You may discuss the evidence, but please, only do that if all 15 of you are present in the jury room at the same time and then, please, don't deliberate. Gentlemen.

THE BAILIFF: All rise.

(Jury out at 12:42 p.m.)

THE COURT: All right. Let's be back at 1:45. Jodie, you can go

off the record.

(Off record at 12:43 p.m.)

(On record at 1:46 p.m.)

THE COURT: All right. We are back on the record. Is the Defense ready to proceed?

MS. AUGER: Yes, Your Honor.

THE COURT: Oh. Yes?

MR. ROZZI: Yeah, Judge. I have an exhibit, which think is GGG, that I'm gonna – I've redacted the portion of it that we discussed yesterday, this is the letter.

THE COURT: Oh, okay.

MR. ROZZI: So I'm just gonna publish it, if that's okay with the Court, once the jury gets back in.

THE COURT: And that would be HHH.

MR. ROZZI: Okay.

THE COURT: Yeah, it's the print-out – no, wait, GGG, that's right. GGG is the letter, HHH is the print-out. I did – you didn't admit HHH. And did we – I admitted it as a redacted version. Did you want the unredacted version for purposes of the record?

MR. ROZZI: Yeah. It's already marked, so let's do that, too.

THE COURT: Okay. Okay.

MR. ROZZI: I think I've made some arguments at the sidebar.

THE COURT: You did, you did, but I think we should probably have the unredacted, and if we don't have that – okay, so we have the unredacted version. Okay.

MR. ROZZI: Did you mark the page behind it, also?

COURT REPORTER: No.

MR. ROZZI: Okay. I thought maybe you said she marked it HHH.

THE COURT: No, no, no, it was G – two pages, it was the letter and the envelope.

COURT REPORTER: Yeah.

MR. ROZZI: So that was –

THE COURT: Okay. So you want to – you now have copies for the jury?

MR. ROZZI: Yes, ma'am. This one needs to be marked, 'cause we're gonna mark both of them now that this one's –

THE COURT: That's GGG.

MR. ROZZI: -- submitted and denied or –

THE COURT: No, no, no, I admitted it. I admitted it with the understanding that you were gonna provide a redacted copy –

MR. ROZZI: Oh, okay.

THE COURT: -- to the jury.

MR. ROZZI: I'm sorry, I misunderstood.

THE COURT: Yeah. No, I admitted GGG, but it was the comments that we were having over here about all of the other information in there that was objected to by I think Ms. Diener.

MR. ROZZI: You're just giving me my copy back is what you're doing?

COURT REPORTER: Yep.

THE COURT: Okay, perfect. Okay. So with that understanding,

when the jury comes back in, you'll ask to publish GGG. And then, are we ready to go?

MS. AUGER: Yes.

THE COURT: Are you doing the next witness?

MS. AUGER: I am, Your Honor.

THE COURT: Okay.

MS. AUGER: I just have some exhibits I was going to ask –

THE COURT: Okay.

MS. AUGER: -- to be marked.

MR. MCLELAND: Judge, from the State's perspective, I believe the next witness is gonna be a phone expert and the State would ask for an exception from the separation of witnesses to have Christopher Cecil and Brian Bunner sit in on that testimony for rebuttal purposes.

THE COURT: Any problem with that?

MS. AUGER: Did you ask –

THE COURT: I'm asking Defense generally is there any concerns about that?

MS. AUGER: No.

THE COURT: Okay. So yeah, that's – be fine.

MR. MCLELAND: Okay. I'm gonna bring them in, Judge, before the jury gets in.

THE COURT: Okay. All right. Okay. Are you ready then, Ms. Auger?

MS. AUGER: Yes, Your Honor.

THE COURT: Hey, Mr. Rozzi, do you have an extra copy of the

redacted, so that we can attach that, so if there is a conviction, the Court of Appeals has the opportunity to review the ruling that I made on the redactions? Just give that to Jodie. Thank you.

THE BAILIFF: All rise.

(Jury in at 1:52 p.m.)

THE BAILIFF: Thank you. You may be seated.

THE COURT: Gentlemen. Well, welcome back, ladies and gentlemen. I hope lunch was okay. We are ready to continue. Ms. Auger, you may call your next witness.

MS. AUGER: Thank you, Your Honor.

MR. ROZZI: Judge, can I move – go ahead and publish?

THE COURT: Oh, yes. Hold on. I apologize. Yes.

MS. AUGER: I'll go get her while that's –

THE COURT: Okay. Ladies and gentlemen, we're gonna publish now Defendant's Exhibit GGG.

**DEFENDANT'S EXHIBIT GGG PUBLISHED**

MR. ROZZI: Thank you.

THE COURT: Thank you. I apologize, Mr. Rozzi. Those are the extra copies.

MR. ROZZI: Oh, thanks.

THE COURT: All right, Ms. Auger, you may call your next witness.

MS. AUGER: Thank you, Your Honor. Stacy Eldridge.

(Witness sworn.)

**DIRECT EXAMINATION OF STACY ELDRIDGE**

QUESTIONS BY MS. AUGER.

Q Stacy, can you, please, give us your full name.
A Stacy R. Eldridge.
Q And how do you spell that?
A S-T-A-C-Y, middle initial R, Eldridge, E-L-D-R-I-D-G-E.
Q And I'm gonna apologize, 'cause I think everything I've sent you has had two Ls in Eldridge, so I'm sorry about that. Could you tell us about your education, please.
A Yes. I have a bachelor's of science in computer information management and I have a master's of science in computer information management, as well.
Q After obtaining your master's degree, what did you do for employment?
A Yes, at that time, I was employed with the FBI as a forensic examiner on the Computer Analysis Response Team and I achieved the rank of senior forensic examiner during that time. And while in the FBI, I did continue my education and training by taking additional computer and technology classes specifically related to computer forensics, mobile phone forensics, tablets, iPads, things of that nature, and then I have since continued my education and training since I left the FBI, taking over 110 computer forensic and mobile forensic classes.
Q I am going to show you what I have marked as Defendant's Exhibit PPP, P as in Paul. Can you tell me what that is, please.
A That is my CV.
Q Okay. And does that include all of your education, work experience, training, education?
A Yes, it does.
Q And when was that last updated?
A It was last updated this year in August.

Q Thank you.

MS. AUGER: Move to admit PPP.

**DEFENDANT'S EXHIBIT PPP OFFERED**

MR. MCLELAND: One foundational question, Judge, if I may?

THE COURT: Yes.

MR. MCLELAND: Ms. Eldridge, under the expert witness portion from October of 2011, it looks like it's incomplete there. Do you have the remaining information, United States District Court from the Central District of California, *United States of America versus*, and then it just says Docket 11 dash. Do you have a complete case number or case name for that?

A Unfortunately, I do not.

MR. MCLELAND: Okay. I don't have any other questions, Judge. No objection to the CV being admitted.

THE COURT: All right. I will show that PPP is admitted.

**DEFENDANT'S EXHIBIT PPP ADMITTED**

MS. AUGER: May I publish?

THE COURT: You may.

**DEFENDANT'S EXHIBIT PPP PUBLISHED**

Q May I call you Stacy?

A You may.

Q Okay. I'm gonna give you a copy of PPP for you to refer to for one moment. So your first job after – sorry.

MS. AUGER: May I proceed?

THE COURT: Yes, you may.

MS. AUGER: Thank you.

Q Your first job after obtaining your masters was with the FBI; is that correct?

A I attained my master's while I was in the FBI.

Q Okay. I'm sorry. How long did you work at the FBI?

A For approximately almost 10 years.

Q While you were there, you worked for the Computer Analysis Response Team as a forensic examiner?

A Yes.

Q Can you tell us what that is.

A Yes. That is the personnel within the FBI that are responsible for gathering and maintaining and preserving digital evidence and then we're also responsible for examining that digital evidence. And digital evidence, it's basically anything that can store data. So today it's your laptops, your cell phones, even your smart watches, but sometimes we took stuff off of DVRs and gaming stations and things of that nature.

Q Then, you also worked as a digital evidence instructor?

A Yes, I did.

Q Okay. And what is that?

A That is where I moved up to headquarters and I was responsible for the training program to get new FBI digital forensic examiners up to speed and then I also conducted those training classes, as well.

Q At the time you left the FBI, what was your job title?

A Digital evidence instructor, and then I still maintained my senior forensic examiner title at that time.

Q Do you have any certifications for digital forensics?

A I do.

Q What are those?

A I have several different ones. The two first ones I'd like to share with you come from the International Association of Computer Investigative Specialists, that's known as IACIS. I have their certified mobile device examiner certification and I also have their certified forensic computer examiner certification. And then, I also have another certification from Axiom, which is a forensic software company, and I use their software to conduct my examinations, and so they have me as an Axiom-certified forensic examiner, stating I know how to use their tool appropriately. And then, I also have another computer forensic examiner certification from another independent body known as JIAC. And then, finally, I'm also a licensed private detective in the state of Nebraska.

Q Do you also have a certification for Cellebrite?

A I formerly had a certification for Cellebrite, was in the FBI. I let that lapse since I no longer use it. And then, I was also a former cell phone certified examiner in the FBI, as well.

Q What do you do now?

A I do a couple of different things. The main thing that I do is provide the digital forensic examination and consulting, and then I also am an adjunct professor at two different universities.

Q Have you test – as part of your work as a digital forensics examiner or analyst, have you ever testified before?

A Yes, I have. I've testified three times for the government when I worked for the FBI and then I most recently testified for the defense this year in August in St. Croix.

Q And was all of that testimony concerning digital forensics?
A It was.
Q Now, when you worked for the FBI, did local law enforcement agencies send you phones for extractions or examinations?
A Yes. They would work with a special agent in the FBI to open up an FBI case and then he could bring me the evidence from the local agency to work on.
Q And was that a service that the FBI provided agencies such as the Indiana State Police?
A Yes.
Q And when you perform – well, let me ask you this – I'm sorry – you have – do you have your own business now?
A I do.
Q What is that called?
A It is called Silicon Prairie Cyber Services LLC.
Q And at some point in the last few months, were you contacted to review some materials in this matter?
A I was.
Q And who contacted you?
A You did.
Q All right. And did we enter into an agreement for you to conduct those services?
A Yes. You signed my letter of engagement.
Q And you bill your time?
A I do bill my time.
Q And is that how you earn a living?

A It is how I earn my living.
Q What is your normal hourly rate for digital forensic work?
A My normal hourly rate is $400 an hour.
Q And what are you charging us in the case?
A In this case, it's $300 an hour.
Q In terms of what is usual and customary in the field of digital forensics and expert testimony, do you know where your hourly rate falls?
A Yes. I'm right in the middle, there are some a little higher and some a little lower.
Q And how many hours did you work on this case?
A On this case, I've spent about 65 hours doing the actual examination and then probably about another 15 hours of prep for the testimony.
Q What materials did you review in this matter?
A In this matter, I reviewed the cell phone extraction from L.G.'s iPhone.
Q Now, I think there were a couple.
A There were.
Q Which ones did you review?
A The one I reviewed in detail was obtained in October of 2011 [sic]. I looked at the –
Q I'm gonna stop you for a minute.
A Certainly.
Q Was it 2011 or 2017?
A I'm sorry, 2017.
Q Okay.
A Yes, 2017.

Q And was that an extraction that was completed by Brian Bunner of the Indiana State Police?

A Yes, it was.

Q Did you review any other reports or data as it relates to this case?

A Yes. I also reviewed the Cellebrite reports that they provided from their analysis, their – they had a couple of other reports from a tool known as ILEAP, and then I also reviewed their written reports, as well.

Q By written reports, are you referring to First Sergeant Christopher Cecil's reports?

A I am.

Q And there were some appendixes to First Sergeant Cecil's second report; do you recall that?

A Yes, I do.

Q Did you review those?

A I also reviewed the appendixes.

Q And finally, I believe you also may have reviewed some depositions.

A Yes, I reviewed those as well.

Q And what depositions did you review?

A Just First Sergeant Cecil's depositions.

Q Now, can you explain to us, generally speaking, what kind of information is stored on an iPhone.

A Certainly. There is a lot of different types of information. There's probably the information that you're all familiar with, at least a little bit; right? It can take pictures, so you have your photos and videos. You can have your text messages. You can send and receive phone calls. You can use many different apps to

connect to the Internet and social media. So there's all of that information that the user is used to, you know, playing with and doing things with on their phone, but then there's also more to it than just that. There is the iPhone operating system on that phone, as well, known as iOS, and that is what makes your phone work, so it's kind of the thing under the hood, making sure that your phone is working. And in order to get your phone to work, it's got to log and track all sorts of different information about the things that you're doing on the phone, as well as the things that are happening in the background to make your phone work.

Q Why don't – would you like me to take that from you, so you're not holding onto it?

A Thank you.

Q Now, just generally speaking as kind of an overview, when you conduct an examination, is this just kind of clicking on all the files and reading the content, like if I went through my Word directory?

A No. It is much more complex than that.

Q Can you tell us kind of generally speaking what this involves.

A Yes. So part of a lot of what my examination is is doing more than just like reading text messages and looking at pictures and videos and reading emails. I'm getting, so to speak, under the hood. I'm getting underneath the operating system and I am looking at all of the things that are taking place on the phone and the stuff that the user can't touch, the stuff that the user can't control, and I use forensic software to help me do that just because it is so technical, there's things that are basically encrypted that I can't read with the naked eye, and it's so voluminous, there's so much of it, there's so many, you

know, different files, there's so many records in every file, the only way to get through it in a reasonable time fashion and be accurate is to use forensic software to help us do this.

Q What type of – in reviewing all the extractions and the reports, what forensic software has been used by various people – Indiana State Police, yourself – to view the data from L.G.'s cell phone?

A There has been a lot of different software used. I couldn't even name off the top of my head everything that the Indiana State Police used, but I'm gonna talk about the high-level things that were used the most. So certainly, the Indiana State Police used Cellebrite to get the data off of the phone. They also used it to review that data during the course of their examination and their analysis. They also used Axiom, they used ILEAP, and there's some other software that I did not use, so I couldn't recite those for you off the top of my head. As for me, my primary tool was Axiom, and that's what I used to do the bulk of my analysis; but I also reviewed their Cellebrite reports, their digital reports that I could interact with on the computer, I looked at those, as well, and then I also used two different kinds of database software, one is called DB Browser for SQLite and then the other one is called Forensic Brower for SQLite, and I used those because it's just much easier to work with those database files in those programs, rather than trying to do everything in Axiom.

Q So why do we have a program called Cellebrite and a program called Axiom when we're all interacting with the same data?

A Every tool can do something a little different or it can display the data a little different, and I think it's just part of the, you know, competitive marketplace, choose what you like.

Q Now, in terms of – there – my understanding is digital forensics analysis would include an extraction and an examination; is that correct?

A Yes, those are the two main parts.

Q Okay. Tell us what an extraction is.

A Sure. The extraction is the process where you go about trying to get all of that phone – or, excuse me, get all of that data, get all the information and files off of that phone, and so you're using a tool to do that and then you're gonna save all that information in a special format on a hard drive. And then later, you should make a copy of that extraction for any analysis or examination or viewing that you want to do.

Q Why is it important to do it in that order?

A Because if you just, like, get on the phone to start your examination, you are changing things; and by changing things, you could also start to make things disappear, because sometimes – there's only so much room to hold everything, so old stuff gets deleted off the phone.

Q And you yourself did not perform an extraction; is that correct?

A That is correct, I did not perform an extraction.

Q Everything that you viewed came from the Indiana State Police?

A That is correct.

Q Now, you did, however – well, let me ask you this real quick: The Indiana State Police, one of the programs they used was Cellebrite?

A Yes.

Q Is that a pretty popular program that is used every state, other countries?

A Yes. It's used all over the world. It's hugely popular in law enforcement.

Q And in – are there different types – different categories, different types of

extractions that Cellebrite can perform on different phones?

A There are.

Q Can you explain that.

A Sure. There are three different types and they all get a little bit different data. There is the full file system, which is the one we want as forensic examiners to do our examination, because it's giving us not only the user's information and files, it's also giving us everything from that operating system, all of the logs and databases and preferences that the user can't touch or manipulate. And then, there's two other levels, the next one is advanced logical, that gives you more of just the user's files and some preference files, but it's not gonna give you the database files or the logs that tell more of the story. And then, the final one is just the logical and that's really just sort of the bare bones minimum of files that you can get off of a phone.

Q When you were at the FBI and you were doing extractions, is there a – kind of a best practice?

A The best practice is to always work to try to get that full file system off of the phone first, and you try and try and try to get it off, 'cause sometimes, honestly, it's a phone, it's on, it's live, it's changing. Sometimes you just have to try two, three, four times before you get it to go all the way through. And whatever you're doing, you make sure to document it. If you can't get it off and it fails, you note all of that stuff. If you try again, you note all of that stuff and you write it up in your report.

Q Now, on February 15th, 2017, Brian Bunner of the Indiana State Police did a logical extraction; is that right?

A Yes.

Q Okay. And that's just kind of the over the hood stuff?

A Yep, that's just the basic user stuff, so like text messages, pictures.

Q Do you know, did Cellebrite have the ability to obtain a full file system extraction or a physical extraction of an iPhone in February of 2017?

A Yes. Using the version of Cellebrite listed on the Cellebrite report, it did have the ability to extract that full file system from an iPhone 6S, which is L.G.'s cell phone, running iOS 10.2, which is what – the operating system on her cell phone. The only exception would be is if the person who owned the phone had previously conducted an iTunes backup that was encrypted to their computer, and that just means they made a copy of it, but then they also basically put a password on it so nobody else could see what it was if they had access to their computer.

Q Now, the full file system extraction was not conducted until October 5th of 2017.

A Correct.

Q And did that delay cause any issues?

A That delay did cause issues, yes.

Q What issues?

A Because of the delay and then the phone being shut off and on several times, you know, in February and then again in September and again in October of 2017, every time you turn off a phone and then turn it back on, you're losing information just because of that action of shutting it off, you're losing some of the temporary files. But then, as the phone ages, files get older and some files will start to drop off at, you know, 28, 30 days old. So by the time it got to October, it was – you know, over six months had passed and so I lost some data