Appellate Case No. 25A-CR-00591

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

STATE OF INDIANA,
Plaintiff,

VS.

RICHARD M. ALLEN,
Defendant.

THE HONORABLE FRANCES C. GULL, PRESIDING

The Transcript

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THE COURT: -- through – and you looked at it?

MR. ROZZI: Yes. I just – I don't want to mislead the Court that I'm gonna be able to tell anybody a specific time.

THE COURT: No –

MR. ROZZI: We can just tell whatever the tracker –

THE COURT: Generically, June 8th through June 10th.

MR. ROZZI: Yeah, okay.

MS. AUGER: But we know it's before that.

MR. ROZZI: Yeah.

MR. LUTRULL: Is Max gonna be able to testify on how he got the timeframes?

MR. ROZZI: Well, again, he's looking by the dates that they were modified. You know, that is if to say that if it was modified on April 9th and that's the date we got it, then, clearly, it was provided in that timeframe. We got these discovery dumps in increments chronologically –

THE COURT: Yeah.

MR. ROZZI: -- so, I mean, I'm trying to be, you know, as transparent as I can, but we're working with limited – you know, we're working with what we got. And they were – these were tools that law enforcement was using, too. I mean, I think that's –

THE COURT: I know.

MR. ROZZI: -- kind of relevant.

THE COURT: All right. Are we ready to proceed, then?

MR. ROZZI: So we'll just turn the volume down. And I'm gonna play down to this video here, 'cause again, I've got a September 9th date on this

one that I just don't want to play without us having a chance to look at it.

MR. MCLELAND: So are you gonna –

MR. ROZZI: I'm gonna stop right here, Nick.

MR. MCLELAND: So you're putting Max up – back up and you're gonna stop right here, is that –

MR. ROZZI: Yeah, because I'm – I just want to be clear that this one – that that date is – I'm sure it's still an April, May, June date, but I don't want to play it until we get a chance to look at it over the lunch hour; does that make sense?

MS. AUGER: Thank you.

(Sidebar conference concluded.)

THE COURT: All right. Is counsel ready to proceed?

MR. MCLELAND: Yes, Your Honor.

MR. ROZZI: Yes, Your Honor.

THE COURT: Gentlemen. And, counsel, just so you're aware, Jodie may have to stand up to see so that, in her notes, she can accurately reflect the timestamp on the video to coincide with the playing.

MR. ROZZI: Oh, okay.

THE BAILIFF: All rise.

(Jury in at 11:41 a.m.)

THE BAILIFF: Thank you. You may be seated.

THE COURT: You may proceed, Mr. Rozzi.

MR. ROZZI: Thank you, Your Honor. Judge, we were in the process of admitting some exhibits, and what I'm gonna do, after our discussion with the Court, is offer up XX, which is the thumb drive that contains both the movement

or the camcorder video, as well as the in-cell video with some exceptions. May I start with the movement video?

THE COURT: You may.

MR. ROZZI: So there is an entry here, eight entries down, where it says the IDOC camcorder footage M2U – this is the file number, this is how these things are kind of identified – M2U01014, and that video shows as being modified September 9th of 2024, that's gonna be an exception for now –

THE COURT: Okay.

MS. ROZZI: -- till we have a chance to make sure we looked at that. And then, the second one would be on the second page, it would be the third entry, M2U01164, that's another one of the excepted files. And then, the third one would be M2U01798. I think all those are from the pertinent timeframes, but because of the file marks on them, I want to make sure we can confirm those.

THE COURT: Okay.

MR. ROZZI: And then, I think, Judge, there's a request with the in-cell video, which are reflected on ZZ, the master list, we're just gonna ask the Court – I'm just gonna move to admit those today, because I don't have any intention of playing them today, maybe give us a little bit more of an opportunity to make sure we're complying with the Court's orders –

THE COURT: Okay.

MR. ROZZI: -- as it relates to admissibility.

THE COURT: Okay.

MR. ROZZI: Does that make sense?

THE COURT: Yes.

MR. ROZZI: Do you still want me to give her ZZ, the in-cell list?

THE COURT: Yeah, since it's been offered.

MR. ROZZI: All right. Since I've marked and referenced it? Okay. Thank you. I'm gonna need that thumb drive back here in a minute, so –

THE COURT: You may proceed. Are you done with your direct of him?

MR. ROZZI: Well, I didn't know if the State was gonna respond to the admission, I was waiting to see.

MR. MCLELAND: Oh. Judge, just note the objections we had at the sidebar that the Court's heard and note those and, Judge, we'll have a continuing objection I guess under 403 as cumulative as we get to continued videos, and so the State would like to reserve its right to object once we get past the first video, to make those objections, or the Court could just note the continuing objection, however the Court wants to handle it.

THE COURT: I'll note the continuing objection, unless you have specific objections, you can make those.

MR. MCLELAND: Okay.

THE COURT: So XX, which is the video, the zip drive –

MR. ROZZI: Yes.

THE COURT: -- that you're referring to, has been offered, the State has objected. I'll show it admitted over the State's objection.

DEFENDANT'S EXHIBIT XX ADMITTED

MR. ROZZI: And then, Judge, may I publish this master list for the camcorder, which is YY, so the jury can follow along?

THE COURT: That's – I've already ruled that there won't be audio.

MR. ROZZI: Yeah, I understand that, yeah, we're gonna play it, but

I think it might be helpful, I think Max testified it'd be helpful to assist them in following along.

THE COURT: You may.

MR. MCLELAND: Judge, are – can I – are the videos that aren't being admitted redacted from what's being published to the jury? I don't think it'd be appropriate to publish something to the jury with stuff that's not gonna be – which has not been admitted to this point.

THE COURT: I don't believe those have been redacted, have they?

MR. ROZZI: No, I didn't white them out over the break. I guess I can –

THE COURT: You can do that later, you can publish that later, then.

MR. ROZZI: Okay. All right. We'll just show them in raw form and then – okay, very good.

Q Just because I've forgotten a few of the questions I may have asked earlier, Mr. Baker, so basically, did we compile and combine these camcorder videos while Mr. Allen was at Westville?

A Yes.

Q Okay. And did you make an attempt to keep those limited to the videos that were created in April, May, June of 2023?

A Yeah, mostly.

Q Okay. To the best of your ability, at least based on the information that we were given with the files that we received?

A Yeah.

MR. ROZZI: Okay. I'd move to publish – well, we would just start

with the first video. I'm not gonna refer to the sheet now, because it doesn't –

THE COURT: Okay.

MR. ROZZI: -- it has no meaning.

THE COURT: Would counsel approach just up here real quick.

(Sidebar conference conducted.)

THE COURT: Okay, his answer concerns me, because he said, "Yeah, mostly." I mean, I specifically said April through June of '23, and you asked him that and he said, "Yeah, mostly." So does that – I don't know what that means.

MR. MCLELAND: I've got a follow-up question, too. Are these the complete videos or just portions of the videos? Are they just portions of videos?

MR. ROZZI: I think they're the complete videos with the camcorders.

MR. MCLELAND: Okay. Okay. I can't tell with the times, so I –

MR. ROZZI: Yeah.

MR. MCLELAND: That's part of the concern I had.

MR. ROZZI: You know, I'm trying to be cognizant of the dates and I don't want him to testify to something that's not, you know, accurate.

THE COURT: Um-hmm. (Affirmative response)

MR. ROZZI: Did – would you prefer that we not offer these up and – I mean, I don't know if there's any more – anything else we can do to corroborate the exact date, you know what I mean.

THE COURT: I understand that, but –

MR. ROZZI: We could have some computer scientist come in.

THE COURT: -- his answer though is, "Yeah, mostly."

MR. ROZZI: Okay.

THE COURT: That causes me concern.

MR. ROZZI: Yeah, yeah.

MR. MCLELAND: Is there any way you can narrow it in do – is there any way you could narrow it down to – I'm not telling you what to do, just by asking him questions, any way you could narrow it down?

MR. ROZZI: Yeah. I can do that. I mean, if we go back through and watch all these again, you know, we might be able to be more specific. I'm fine – I know I hate to waste time, but this is – you know, we've spent a ton of time doing this trial to make this simple, and I'm willing to, if the Court would be more comfortable with me looking at this before I offer it up –

THE COURT: I mean, I'm just bringing it up, so if it's not, then we're gonna be stopping it and out we go.

MR. ROZZI: Yeah.

THE COURT: So okay.

MR. MCLELAND: Can I ask him a few questions before we publish it, Judge?

THE COURT: Sure.

(Sidebar conference concluded.)

THE COURT: You have some preliminary questions, Mr. –

MR. MCLELAND: Thank you, Judge.

THE COURT: -- McLeland?

MR. MCLELAND: Mr. Baker –

A Yeah.

MR. MCLELAND: -- how did you determine what timeframe these

videos are from?

A So we received this discovery, I – like end of summer, beginning of fall of 2023, so that was the first place I started, you know, everything had to be before then. And I used kind of events and referred back to, you know, reports and watch sheets to confirm, try and get, you know, an accurate impression of when the dates are. And then, like I said before, in the discovery they already provided us ranges, so the videos would be grouped together in a folder entitled "April, 2023" or something along those lines.

MR. MCLELAND: Did you see any – did you see things in these videos that you were able to confirm that they were from those timeframes?

A Some of them, yes, I was, with the in-cell video, that was –

MR. MCLELAND: What about the – let's focus on the camcorder video, 'cause that's what we're talking about, that's what Mr. Rozzi's moved to publish today. With the camcorder footage, were there events or timestamps within that video that helped you determine when that video was from?

A Yes.

MR. MCLELAND: And you were able to see those or find those in each of the videos that you testified to today?

A Not in every single one of them, no.

MR. MCLELAND: Do you know which videos that you were able to find markers or timestamps in to determine what timeframe the videos were from?

A I apol – can I change my – I answered that last question wrong. I apologize, Mr. McLeland.

MR. MCLELAND: That's okay.

A All of them were based – I mean, I saw the folders at the beginning for all of them; but when you're referring to events in the video, not all of them had events that I was able to corroborate with a report, but I was able to see the folder and the range for all of them, yes.

MR. MCLELAND: But within the videos, were you able to confirm when they were from?

A No, not all of them.

MR. MCLELAND: So you're just basing that on the folder that was labeled as part of the discovery?

A Yes.

MR. MCLELAND: Okay. And do any of these videos that we're gonna watch come before April?

A I don't think so, no.

MR. MCLELAND: Judge, may we approach again, please.

THE COURT: You know what, let's just recess.

MR. MCLELAND: Okay.

THE COURT: Why don't we do that. We're gonna go ahead and take our lunch break a little bit early, give you a chance to get some food. While you're outside the courtroom, please, keep your minds open. Please don't form any opinions or conclusions about anything. You may discuss the evidence that you've heard, but please, only do that if you're all together at the same time and, please, don't deliberate. Gentlemen.

THE BAILIFF: All rise.

(Jury out at 11:52 a.m.)

THE COURT: You may be seated. All right. So we just need to

tighten this up so that we know. I ruled that the video from the in-cell is April to June of 2023. I have ruled that the camcorder, no audio –

MR. ROZZI: Right.

THE COURT: -- because it's his statement and you cannot introduce his statement unless he testifies as a party opponent, April to June of 2023. So with this witness now saying that he's not sure, I'm not willing to let you publish until we know for sure whether or not that's the timeframe that we are referencing. So –

MR. ROZZI: Judge, I appreciate the Court's candor in that regard. We're dealing with what we were given by the State –

THE COURT: I understand.

MR. ROZZI: -- and there are some limitations to that and I'm sorry that we – we've tried to do the best we could to accommodate the Court. I do think some additional time would be helpful, we can go back through and look at the file numbers, because they were chronologically numbered –

THE COURT: Okay.

MR. ROZZI: -- even though there's no time with them and we got the stuff the way we got it and we had no control over it, we might be able to use those chronological numbers also to bookend –

THE COURT: Okay.

MR. ROZZI: -- the dates of these, so I think that that might be a wise exercise before we publish, and I appreciate your allowing us to do that.

THE COURT: Absolutely. All right.

MR. ROZZI: Thank you.

THE COURT: How long – I mean, are we gonna – we're not gonna

be in recess indefinitely. I mean, the jury went out for lunch, they're gonna have their lunch, and we're gonna reconvene at one o'clock. I don't know if you want to just recess Mr. Baker and get him off the stand and do this at another time and proceed with the balance – whatever witnesses you have available, but we need to use the time that we have expeditiously with this jury.

MR. ROZZI: I think that would be the wise thing to do, is just recess with him –

THE COURT: Okay.

MR. ROZZI: -- and then we'll revisit.

THE COURT: All right. So we'll revisit that at a later time and we'll be in recess until 1 for lunch.

MR. MCLELAND: Thank you, Judge.

(Off record at 11:54 a.m.)

(On record at 1:06 p.m.)

THE COURT: All right. We are back on the record. Is the Defense ready to have the jury brought back in?

MR. BALDWIN: We are, Judge.

THE COURT: State?

MR. MCLELAND: Yes, Your Honor.

THE COURT: Okay.

THE BAILIFF: All rise.

(Jury in at 1:08 p.m.)

THE BAILIFF: Thank you. You may be seated.

THE COURT: Welcome back, ladies and gentlemen. I think we are ready to continue. Mr. Baldwin, Mr. Rozzi –

MR. BALDWIN: Mr. Rozzi.

THE COURT: -- you may call your next witness.

MR. ROZZI: Call Brad Heath, Your Honor.

(Witness sworn.)

MR. ROZZI: May I?

THE COURT: You may.

DIRECT EXAMINATION OF BRAD HEATH

QUESTIONS BY MR. ROZZI.

Q Good afternoon, Mr. Heath. State your name, please.

A Brad Heath.

Q Okay. And, Mr. Heath, would you just do your best to speak up so we can all hear you.

A Okay.

Q Okay. All right. Do your best. If I have to remind you, don't be offended by that. Tell the jury generally where you live, not your address, just the area where you live.

A I live just outside of Delphi.

Q Okay. And how old are you?

A Seventy.

Q All right. And are you still working or are you retired?

A I've been retired for about five years.

Q All right. And when you were working five years ago, who did you work for?

A Reliable Exterminators.

Q All right. And what did you do for Reliable?

A I managed the Delphi, Flora, Logansport area pest control.

Q Okay. And was – were you working with Reliable Exterminators back on February 13th of 2017?

A Yes, I was.

Q All right. And at that time in your career, if you will, did you have a certain route that you typically would work or certain customers that you frequented?

UNIDENTIFIED JUROR: (Coughing)

THE COURT: You got a cough drop? Okay.

MR. MCLELAND: Judge, we've got extra water over here, too, if –

THE COURT: Yeah, we've – she's got water. Do you need to take a break? Take your time.

MR. ROZZI: We've also got 20 cops in here to do the Heimlich Maneuver. May I continue, Judge?

THE COURT: Um-hmm. (Affirmative response)

MR. ROZZI: Thank you.

Q All right, Mr. Heath, so at that time – I think the question I asked was, were you frequenting – did you have a route, did you have certain customers that you'd visit routinely?

A Yes. I had several customers on a monthly or bi-monthly basis and I also did individual jobs as they came up.

Q All right. And did you have an occasion to be or visit a customer on February 13th in the area near the Monon High Bridge?

A Yes. I was doing Anderson's Cob Mill. Before I did that in the afternoon, I had a job at – it'd be west of Delphi.

Q Okay. So you were doing – in the morning, you were working west of

Delphi, and then, in the afternoon, did you saw Anderson's?

A I did Anderson's Cob Mill in the afternoon.

Q You – Mr. Heath, if you would just look to your right over here, do you see this exhibit we've got up on the board?

A Yes.

Q I'm – over here on the TV, we have what we've been referring to as State's Exhibit 5, that wouldn't mean anything to you, but can see this map generally?

A Yes.

Q Okay. And do you generally – I know this is the first time you've looked at this. Do you just generally recognize the area where that map is depicting?

A Yes.

Q Okay. If I were to just kind of assist, is it fair to say that this is the Hoosier Heartland here that's kind of running along the left side from top to bottom? (Indicates)

A Yes.

Q And is it fair to say or is it accurate that this bridge would be referred to as the Freedom Bridge? (Indicates)

A Yes.

Q All right. And is it accurate to say that these structures up here, kind of on the top center, top left, this is the Anderson's? (Indicates)

A Yes.

Q All right. And more specifically, there is a warehouse or a pole barn or some improvement here that is just below the larger Anderson's structure. (Indicates) Is that an Anderson's building?

A Yes.

Q Is that a building that you frequented in your course of employment?
A Yes.
Q What'd you call that?
A The small-pack building.
Q Okay. And so on this particular day, February 13th, 2017, did you go to that building?
A Yes, I did.
Q And why did you go there?
A To service the pest stations.
Q Okay. And do you – as you just sit here, can you estimate for the jury about what time it was that you went to that building?
A My first scan was 1:43 p.m.
Q Okay.
A And my last scan was 2:06 p.m.
Q All right. So do you believe that you were in that small-pack building from about 1:43 to 2:06?
A Yes, inside and outside.

MR. ROZZI: May I approach the witness?

THE COURT: You may.

Q Let me hand you what's been marked as AAA now. If you would just take a look at the second and third pages of that, I'm just gonna ask you a couple of quick questions.
A Okay.
Q All right. Are you familiar with those records?
A Yes.

Q And just tell the jury what those records generally represent.

A It's when I scan a rodent station that's got bait for rats and mice, it gives the time I scan it, and then I put notes of was there activity, and that's what I do.

Q Okay. So is this kind of like a – first of all, this was in 2000 – February 13th, 2017; right?

A That's correct.

Q And does that record reflect the activity that you engaged in at work on that day?

A Yes, it does.

Q Did you recover that document or did somebody else recover it?

A I requested it.

Q Okay. And tell the jury why you requested it.

MS. DIENER: I'd stipulate to the exhibit.

MR. ROZZI: Oh.

THE COURT: Okay.

MR. ROZZI: Okay. It's got her affidavit, so –

THE COURT: Okay.

MR. ROZZI: Let me just move to admit it. I move to admit and then publish AAA.

DEFENDANT'S EXHIBIT AAA OFFERED

THE COURT: No objection then from the State?

MS. DIENER: No.

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

DEFENDANT'S EXHIBIT AAA ADMITTED

MR. ROZZI: May I publish?

THE COURT: You may.

DEFENDANT'S EXHIBIT AAA PUBLISHED

THE COURT: You may proceed.

MR. ROZZI: Thank you, Judge.

Q Mr. Heath, I think what I was asking you earlier – I don't think, I know what I was asking you earlier is why did you go get this document, why did you recover it and retrieve it?

A Because of the vehicle I saw that day, to have record. I first saw it at – driving to my first job on the Heartland at 8:45 in the morning, and then it was still in the same location when I went in the afternoon to do the service at the cob mill.

Q Okay. So you were – is it accurate that you were recovering this document to try and help refresh your mem – or confirm the times when you were there?

A That's correct.

Q Okay. And you mentioned the vehicle. I'm gonna refer you back to State's 5 I believe it was, the diagram here. Again, just to kind of orient you, is this – this warehouse up here on the left, that's the small-pack building? (Indicates)

A That's correct.

Q Okay. And are you familiar with this structure that's just to the west – a tick to the southwest across the frontage road there, were you generally familiar with that structure at that time?

A Yes.

Q Do you have a name for that structure or are you just –

A I call it the CPS building.
Q Okay.
A I – been in that location, over 40 years, about 960 times.
Q Okay. About?
A Yeah.
Q Okay.
A Two times a month for 40 years.
Q All right. Very good. So you mentioned a vehicle that you saw that caught your eye; right?
A That's correct.
Q In the morning, tell the jury – well, first of all, tell the jury, if you would, where that vehicle was located relative to that CPS building.
A It was halfway down that road, between the CPS building and where it starts to curve.
Q So if I were to just kind of point in this area somewhere, would that be pretty close? (Indicates)
A That's correct.
Q Okay. And where was it on the road?
A Parked off the road about two feet, pulled off.
Q All right. And which side would it have been? What I would call the east side of the road or the west side?
A Would have been the west side.
Q So the Heartland side?
A Right.
Q So kind of parked in this area? (Indicates)

A That's correct.

Q Okay. And what do you remember about that vehicle, what did you recall about the description of the vehicle when you went by there at 8 – whatever time you said in the morning?

A It was an older vehicle, looked like it was maybe a dark-blue faded, it just looked out of place for somebody to park there.

Q Okay. And so then you went and worked on the west side of town; right?

A Yes.

Q And you came back later in the afternoon?

A Yes, that's correct.

Q All right. And when you came back, which direction would you have entered the small-pack building from, from which direction?

A Well, from the main plant, I drove down – there's a lane that goes right up to that.

Q Okay. So would it have been coming from the north down to –

A Yes.

Q You – would you have been at the Anderson's property – I'm sorry, the – yeah, the Anderson's.

A Yes.

Q Sorry. So you see this road here that kind of comes down to the small-pack building?

A Yes.

Q Is that the direction you would have travelled?

A Yes.

Q Okay. And were you able to observe this area down here where that car

was parked?

A Yes.

Q And did you see the same vehicle?

A Yes.

Q And on your – on this AAA that I'm gonna mark, do you believe that these two circles on the timestamps on page 3 are indicative of the timeframes that you were there?

A That's correct.

Q Okay. So between 1:43 and 2:06; right?

A Yes.

Q And then, at some point, did you – were you contacted by law enforcement in February or March of 2017, to talk about any of this?

A No.

Q How was it that – did you ever talk to law enforcement?

A Yes. I went –

Q About when – oh, I'm sorry.

A I went in about one week later. Once I realized what had happened and what I saw, I thought it could be useful to the case, so I reported it.

Q Okay. And then, did you talk to law enforcement at any point after that regarding the description of that vehicle?

A I talked a few times.

Q Okay. Did you prompt those or did they contact you?

A I did.

Q Okay. At some point more recently, did you have an occasion to see a vehicle that you thought looked like the one you saw back in '17?

A A few times. It took several months, but the most recent one was not too long ago, I was watching the – for some reason, *The Fugitive* movie, the old one, and when I saw the police car Tommy Lee Jones was driving, I thought, "Wow, that's pretty close." I won't say that that's the exact vehicle, but I think that places it in the late 80s. I always thought it was a late-80s or early-90s. I'm not a car person.

Q So did you contact law enforcement and, essentially, report that information?

A Yes, I did.

Q Okay. And at some point – again, this is just more recently; right?

A Right.

Q Then, did you see if the law enforcement –

MR. ROZZI: May I approach, Judge?

THE COURT: You may.

Q Copy of Exhibit BBB.

A I can't recall on that, I can't recall.

Q Okay. You don't – do you recognize that –

A Yes.

Q -- photograph?

A Yes.

Q Okay. Have you ever seen it before?

A Well, you showed me in the deposition or the paperwork, but – and they may have seen it, but I –

Q Okay.

A I just remember it from the movie.

Q All right. Well, let me ask you this: Is this – does this photo look like the vehicle that you saw back in 2017?

A It was similar.

Q Okay. And when you say similar, what about it is similar?

A Just the shape. It was a four-door, older vehicle and it just – blocky looking.

MR. ROZZI: Okay. I move to admit B [sic].

DEFENDANT'S EXHIBIT BBB OFFERED

MS. DIENER: May I ask the witness a question, Judge?

THE COURT: You may.

MS. DIENER: Does he have the – he does not.

MR. ROZZI: Want me to give him one?

MS. DIENER: I just want to show it to him. Good afternoon, Mr. Heath.

A Hello.

MS. DIENER: I'm gonna show you that same exhibit.

A Okay.

MS. DIENER: Does this photograph accurately reflect the vehicle that you saw on the side of the road?

A As close as I can tell.

MS. DIENER: Okay.

A I was 150 to – at least yards away when I looked at it.

MS. DIENER: Okay. No objection.

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

DEFENDANT'S EXHIBIT BBB ADMITTED

MR. ROZZI: May I move to publish?

THE COURT: You may.

DEFENDANT'S EXHIBIT BBB PUBLISHED

Q Do you have any recollection of seeing any vehicles in the CPS lot at any time during that day?

A No. There could have been, but I wasn't paying any attention, because I'm so used to seeing vehicles there. I can't tell you whether I saw anything or I didn't see anything. I just – I wasn't even paying attention to it.

Q So earlier in the day, when you were traveling down the Hoosier Heartland to go to the west side of Delphi, did you get a chance to see the side of the vehicle you talked about earlier that was between the trailhead and the CPS building?

A Yes, you could see it from the road.

Q So you were seeing that vehicle from different angles in the morning than you were in the afternoon?

A Yes.

MR. ROZZI: Okay. Pass the witness.

THE COURT: Ms. Diener.

CROSS EXAMINATION OF BRAD HEATH

QUESTIONS BY MS. DIENER.

Q Mr. Heath, just for clarity, that vehicle was not parked as the CPS building; would you agree?

A That's correct.

MS. DIENER: No other questions.

THE COURT: Mr. Rozzi.

MR. ROZZI: Nothing further.

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

(No response or indication from any juror.)

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

MR. BALDWIN: Defense calls David McCain.

(Witness sworn.)

DIRECT EXAMINATION OF DAVID MCCAIN

QUESTIONS BY MR. BALDWIN.

Q Mr. McCain, I'm gonna be over here; hopefully, you can project your voice.

A Okay.

Q State your name for the record.

A David McCain.

Q Oh, good. Okay. How do you spell McCain?

A M-C-C-A-I-N.

Q Is that a big C or a little C in there?

A Big C, yeah, big C.

Q Okay. Thank you. And where do you reside?

A On Carrollton Road, just north of Delphi city limits.

Q How long have you lived there?

A Oh, for the past – I grew up there, I've lived there for the past 24 years.

Q Have you lived in Delphi long – in the Delphi area your entire life or did you –

A No. I lived out of state, several places out of state, for about 30 years.

Q But you're familiar, generally, with Delphi?

A Yes.

Q In fact, have you been involved in some community type of activity involving Delphi?

A Yeah. I've been involved in a lot of volunteer activity in Carroll County and in Delphi itself.

Q Anything related to the Monon High Bridge or the trail?

A Yes. I was –

Q Tell us about that.

A I was project manager for the development of the trail through the – a non-profit organization, HHI, and I was also a board member of the Deer Creek Township Board during that period, and the township had an interest in the development of the High Bridge.

Q Okay. And so are you – is it fair to say you are very familiar with kind of the evolution of the High Bridge and the Monon trail as it's kind of evolved over the years?

A Well, yes. I mean, as a child, I went out there. And in the – starting about 2013, we started trying to get the trail made, and my brother was involved in the trail development earlier than that.

Q And how familiar are you with the High Bridge itself, the bridge itself?

A Oh, very familiar. I've – you know, we had it investigated by a engineer and then we had the whole business of trying to acquire the High Bridge; it was owned by the railroad, CXS Railroad. And then we developed it, and it was a lot of work to get it to its current state of pedestrian use.

Q Okay. And have you ever been on and walked across the High Bridge?

A Oh, many times.

Q All right. And like when was the last time, if you remember, that you've walked across the High Bridge?

A Well, I haven't been across the full thing since it's had its pedestrian – oh, about a month ago or so, I was out there.

Q Okay. And is it okay if I ask you how old you are?

A I'm 79.

Q And you, at age 79, a month ago, were on that High Bridge?

A Yeah, uh-huh.

Q Okay. Well, do you remember – the reason you're here is because of February 13th of 2017. Do you remember that day?

A Yes, I do remember the day.

Q Okay. Can you tell the jury – well, first of all, did you at all interact with the – it's kind of a lawyer term there, I guess – were you on the Monon High trail that day or on the High Bridge?

A I was on the trail and I was on High Bridge that day.

Q Okay. Do you remember what approximate time you were at the High Bridge? Or let's – strike that. What approximate time did you get to the Monon trail?

A I'm not too sure. I was out there for probably more than an hour sometime in between 2 p.m. and 4 p.m., I'm not sure.

Q Okay. Where would you park typically when you were gonna go on the trail?

A Well, at that time, I'd park at Sherry's lane or across from Sherry's – Sherry Mears's house.

Q Some – I believe – let's see if we're talking the same language here. Has

that ever been called NICHES?

A Well, it would be – it was – at that point, I think perhaps NICHES had also acquired – that would be a rather recent acquisition of NICHES property that Charles Gerard had.

Q Okay. I just want to make sure that we're talking about the same place that you parked. Is it – do some people call it Mears?

A Yeah, you could call it NICHES, yeah.

Q What's that?

A Well, it could be called the NICHES lane or something like that by some people. I didn't call it that.

Q What about the Mears entrance, had you ever heard where you parked called that?

A Well, yeah, I guess it's called Mears entrance. We just called it Sherry's lane. I – Mr. Mears was on the Deer Creek Township Board, as well as I was, and so I talked with him frequently.

Q Okay. So now we have a third name for it, it's called Sherry's lane, but that's where you parked?

A Yes.

Q On the 13th? On the 13th of February, is that where you parked?

A That's right.

Q Okay. Did you ever park anywhere else, like on any other day?

A Well, I was interested in the whole area there, we're talking about 150 acres or so that we were trying to acquire, and I'd park sometimes at the building that was right near the highway, and sometimes what we called the mulberry tree, and then, sometimes, I'd park over on the other side near the centennial

monument.

Q So getting back to the 13th, you said you think you arrived somewhere between 2 and 3 p.m.?

A That's probably right, yeah.

Q Okay. What did you do when you arrived at Sherry's lanes, also known as the Mears entrance?

A Well, I parked. There was no – there were no other cars, I don't remember any other cars at that point. And then I just walked towards the High Bridge first I believe it was.

Q Okay. So – I'm gonna do this again. So if you park at the – Sherry's lane or the Mears entrance and you walk toward the trail, which way would you turn to go to the High Bridge, left or right?

A Left.

Q Okay. Is that the way you travelled?

A Is that the way I travelled?

Q Is that – on that day, is that the way that you went? You went –

A I think so. I might have gone to the right some, but I think it's unlikely. I probably went straight to High Bridge. I honestly can't remember fully.

Q Fully, okay. But at some point in time, you did go to the High Bridge?

A Yes.

Q Okay. And what did you do once you got to the High Bridge?

A I took pictures.

Q Did you get on the High Bridge?

A Yes, I did.

Q And how far – if at all, how far did you walk across the High Bridge?

A Well, the High Bridge is 852 feet long. Most of it, the interesting part, is right over the creek, which is right near the beginning of the bridge, and I probably only went over the part that was over water, and so I didn't – I'm sure I didn't go – I probably would have remembered if I'd gone the whole distance, 'cause that's pretty – kind of exceptional.

Q Okay. That first platform on the right, are you familiar with that?

A Yes.

Q Okay. Is that over – are you over the water when you're on that first platform?

A I believe so, yeah.

Q When you're looking into the water, can you – is it – on a clear day, can you see the water and how clear it is, if it is clear?

A Well, the bridge is 65 feet above the water. Yeah, you can see into the water. If it's – if it hadn't been raining, you can see clearly, you can see rocks in the water.

Q Fish?

A I don't know about that. I don't usually look for fish.

Q Okay. You can see down to the bottom of the creek?

A Well, yeah. I don't remember that day though, whether I was seeing into the water.

Q All right. And what did you do while you were on the High Bridge?

A Well, I just enjoyed the day. It was just – I probably wouldn't haven't been out there – I've been there frequently, but I probably wouldn't have been there if it hadn't been such an exceptionally nice day and I went and took pictures, I just kind of enjoyed myself.

Q Now, most people I think nowadays use their iPhones to take photographs. Were you using your phone or were you using an actual camera?

A I was using an actual camera. I had a camera on my phone, but I still enjoyed the old camera that I was using.

Q Do you remember what kind of camera that was?

A I forget.

Q If you know. I mean, you may not know. Was that – did that use the 8-millimeter – was it a digital camera or –

A It was a digital camera. I liked it because it was exceptionally good at magnification.

Q Okay. And how long do you think you were on the bridge, the High Bridge, taking photographs?

A Well, less than a half an hour.

Q When you walked from Sherry's lane, also known as the Mears entrance, to the High Bridge, did you see anybody when you walked there?

A Well, at some point, I saw two people, it looked like a couple, a man and a woman. I believe I saw them when I was leaving the bridge and coming back towards the parking lot.

Q Okay. So you had been on the High Bridge for maybe as long as a half hour, then you got off the High Bridge and you saw that, a man and a woman?

A Yeah.

Q And they were – were they approaching the High Bridge when you passed them?

A I think that's true.

Q And then –

A Yeah, I honestly can't say that I didn't see them before I got to High Bridge, I don't remember well enough.

Q Okay. That's fine. And when you left and you may have passed this couple, did you see anybody else that you remember?

A I'm not sure. That was seven years ago or more. I kind of rem – vaguely remember seeing some other people off in the distance, but certainly the only people I passed was this couple.

Q Okay. And so just so the jury's clear: When you're – if the High Bridge is here – (indicates) – and you're headed this way, what are you headed towards? If you're walking down the trail and the High Bridge is behind you and you're on the trail, what lays ahead?

A Well, more of the trail generally going west and then there would be – well, the intersection of Sherry's lane with the old township road that goes down to the NICHES prop – Gerard Preserve.

Q And that's where you parked?

A I parked at the – at Sherry's lane, right off the road, right off the County Road 300 North.

Q Okay. And then just – if you kept going on – if you – well, strike that. You then went and got in your car and left; is that what you said? If you know. I don't know.

A I don't quite remember. I spent quite a bit of time taking pictures on the little road that is at that intersection with Sherry's lane and goes down towards Deer Creek on NICHES property, it's now NICHES property, and I was particularly interested in some trees, there was an oak tree there that I like to take pictures of.

Q Okay. Thank you for saying that, 'cause I – again, if I'm coming down the Mears entrance, as we say, and you pass the trailhead, if you go left, you're headed toward?

A Deer Creek.

Q If you go left?

A Oh, you mean coming down Sherry's lane?

Q Right. And if I turn left?

A Turn left, you go towards High Bridge.

Q If you turn right, you head toward?

A Veterans Plaza and the Freedom Bridge.

Q Freedom Bridge, right. And then, if you go straight, where do you go?

A You go into the NICHES property, or at that time, I'm not sure whether NICHES had the property, but it was Charles Gerard's little preserve.

Q And was there a trail there that would take you down to the creek or was that –

A Yes, yes, there is a trail that takes you down to the creek. It's an old township road from the 1840s.

Q And you said – so you spent some time on the High Bridge, on the trail, and then down that trail?

A Yes.

Q Taking photos?

A Yes.

Q Okay. What time – if you were there between 2 and 3, what time do you think you left?

MR. LUTTRULL: Objection. He didn't say he was there from 2 to

3.

THE COURT: Sustained.

A What time did I leave? I'd say before four o'clock.

Q Okay.

A I'm not sure. I wasn't paying much attention to the time.

Q Yeah, yeah, I understand that.

Q What happened after you left? What did you do, if you remember?

A Well, I was surprised at the number of vehicles and people at the parking lot at the Sherry's entrance, and I – but I just quickly got into my car and left, and I don't know, I guess I went home then.

Q Which way did you – so if you're at – here, would you get on 300 North from Sherry's lane?

A Well, yes, 300 North is the county road that's right in front of the Mears's house.

Q Okay. Trying to figure this out. So as you – I'm now in front of State's 5, on – it's on a big screen. Can you familiarize yourself with that and tell me if you can; and if you cannot, I might show you some markers so you can familiarize yourself with it.

A Okay. I think I recognize it pretty well.

Q Okay. Well, let's test, give you a test here. What do you think this is? (Indicates)

A That would be the Mears property –

Q Okay. And what's –

A -- the house and so forth.

Q I'm sorry. Thank you. That's the Mears property. And what's this right

here? (Indicates)

A Well, I guess that's Sherry's lane or what I call Sherry's lane.

Q Okay. And what road is this right here? (Indicates)

A That would be 300 North.

Q All right. So you parked at Sherry's lane right up here, right off 300 North?

A Yes.

Q And when you left, would you have gone to the left or to the right to go home?

A Well, that would be to the left to go back to Delphi.

Q Okay. I shouldn't say that, I don't know that you went home actually, so –

A I don't know exactly what I did after that.

Q Do you think – do you know whether you turned left or right?

A I don't. I – sometimes I'd go right and I like to go down to Wilson's bridge, which is on the creek much farther down.

Q Okay. Did you see anybody walking down this road right here when you left that stood out to you? (Indicates)

A No, I did not.

MR. LUTTRULL: Your Honor, he's pointing to the east end from the Mears farm. The witness has not said they went that direction, so it's suggesting that that's where he said he was on the road and it's not, so I object.

THE COURT: Sustained.

Q When you're at this entrance to the Mears/Sherry's lane and you can either turn left or right, did you see anybody on the road east of –

A I did not see any pedestrians on 300 North. Does that answer your

question?

Q It does. Thank you. At all anywhere?

A No.

Q Okay. But you did see some people here at –

A Right at the – where – there's this – it was a bit of a tiny parking lot at that point. Yes, I did see a number of people and vehicles there.

Q If you went left, you would pass the CPS lot; is that true?

A The – pardon?

Q The C – are you familiar with the CPS lot? Some people call it the CPS parking lot?

A CPS?

Q Yeah.

A No. I –

Q If you're not, that's fine.

A No.

Q Okay. Well, at some point in time, did you hear about missing girls or anything about A.W. and L.G.?

A Well, first, just as I was kind of approaching, going back, there were some people that came off of Sherry's lane, the entrance there, and somebody shouted to me, "Have you see the girls?" or I think they said two girls, I don't know. And I answered back, "No." It was a shout, 'cause I wasn't all that close to the person. It was a man that shouted to me.

Q One thing I forgot to ask you was, when you were on the High Bridge earlier –

A Yes.

Q -- before you got off the High Bridge, did you hear any unusual sounds or noises?

A No.

Q Okay. Did you hear any kind of unusual sounds or noises at all while you were out there and out and about?

A No, I didn't.

Q All right. So after you left the High Bridge and the trails, what's the next thing that you remember?

A And the trails, you mean as I was –

Q After you left, after you'd gone, you'd gotten in your car and you'd gone wherever you'd gone, what's kind of the next thing that you remember?

A Well, I was at home, I suppose. I don't remember that. What I do remember is, you know, that evening, I was at an HHI meeting in the Canal Center and some – an agency people, I don't know what agency they were from, but they came by and they were saying that they were investigating some lost children that – and we all got kind of concerned at that point, and then I was – I was really concerned, too. That was about 7:30 or something like that.

Q Okay. At some point in time, did you – either you go to law enforcement or law enforcement come to you because either they had learned you had been on the High Bridge and on the trail or 'cause you wanted to let them know? Did one of those two things happen?

A I wanted to let them know. I'd heard of the murders and I offered – I think I called the Sheriff's Office and said that I had been out there that day.

Q And did – what happened then after you called them and let them know that?

A Well, I think it was three or four days, it was less than a week, two FBI agents, a – an agent from the State Police, and it might have been a fourth man, I don't know, came to my house and the FBI interviewed me.

Q Okay. And did you give them the information similar to what you've testified to today?

A Yes. I – my memory was better, I was more close to the – and the – I was – I tried to give them as much detail as I could.

Q Did you provide them with any documents or any photographs or anything?

A Yes. I took out of my camera the card or SIM card or whatever it is that records the photographs and gave it to them.

Q And after that, did you ever talk to any law enforcement concerning the things that you saw on the trail?

A Well, probably. Yeah, I was interviewed by the investigation team several times, and almost like two or three years afterwards. I didn't have the pictures anymore, but they – I was called in to – by an investigator wanting to know if I knew a car that was passing by. I was on the NICHES property, I was taking a picture of a fencepost – that sounds curious, I know, but those things interest me – and there was a car that was in the background along 300 North, quite a full distance or a field away, and I hadn't – didn't know that there was a car, that was not my interest, and they asked me about that car, and I said, "I have no idea about that car. It was just passing by and it's in the distance in my picture."

Q And how long ago was that, that interaction with law enforcement?

A I would say two or three years after the incident.

Q Did – okay. So that's – was that – what was the last interaction with law

enforcement that you remember?

A That's it.

Q That's it? So two or three years after the murders?

A Pardon?

Q Did you say two or three years after the murders?

A Yes.

Q Okay. Did you ever get your SIM card back?

A I did not get it back. The FBI agent said I would get it back probably within the week and I never got it back.

Q All right. And did the State of Indiana ever subpoena you to be here for trial?

A No, they did not.

MR. BALDWIN: No other questions.

THE COURT: Mr. Luttrull.

MR. LUTTRULL: Thank you, Your Honor.

CROSS EXAMINATION OF DAVID MCCAIN

QUESTIONS BY MR. LUTTRULL.

Q Good afternoon, Mr. McCain. How are you?

A I'm very good. Thank you.

Q And thank you for being here today. Can I ask you the length of time you believe you were on the trail, understanding it was seven plus years ago, was around an hour, maybe a little longer?

A That's about right.

Q And when you were interviewed by the FBI, did they – were they taking notes?

A Yes, they were.

Q I'm gonna ask you to take a look at this document and just read it to yourself, I'm gonna direct your –

MR. BALDWIN: Judge, I'm gonna object. This is improper. It's not his – well, may I ask some preliminary questions?

THE COURT: Yes.

MR. BALDWIN: Did you write any notes that you handed over to the FBI for their review?

A No.

MR. BALDWIN: Have you ever seen – have they ever handed you any notes –

A No.

MR. BALDWIN: -- to review? This is improper, Judge. I object.

MR. LUTTRULL: It's not improper, Your Honor. You can refresh recollection with any document. He can look at it and tell us whether it refreshes his recollection.

THE COURT: A past recollection recorded is where you're going?

MR. LUTTRULL: Yes, Your Honor. It doesn't have to be his recorded, just past recollection.

MR. BALDWIN: Judge, that's – I don't think that's a proper foundation. And plus, he hasn't said he needed his recollection refreshed.

MR. LUTTRULL: Oh, he certainly has, Your Honor. He stated on direct that his memory was a lot better back then than it is now. I'm just seeing if this document would refresh his recollection, which is totally appropriate.

THE COURT: Overruled.

MR. BALDWIN: Judge, may I make a record on that?

THE COURT: Sure.

MR. BALDWIN: I mean, this is a documentation off of – he doesn't know whether this is accurate or not. I don't even know what this document is, honestly, but it's – you're making – you're asking him to refresh his recollection off of notes from a law enforcement officer who may or may not have provided accurate details in the document.

MR. LUTTRULL: I didn't – I'm sorry –

MR. BALDWIN: That's all. Thank you.

MR. LUTTRULL: And that's totally appropriate, Your Honor.

THE COURT: Overruled.

Q I'm gonna ask you to read the third paragraph to yourself and then let me know – let us know if it refreshes your recollection.

A Well, there's nothing wrong there –

Q Well, my – it's important that you just – let me re-ask the question, in fairness to you. Do you have a memory now of when you arrived approximately and when you left approximately?

A Well, I would hope that the notes that the FBI took – there was one agent who questioned me and the other agent was writing notes. I assumed he was writing notes of – about what I was saying. I would think that would be more accurate than what I remember now.

Q Well, let me ask you this: Do you believe you left sometime around 4 p.m. or shortly thereafter?

A Yeah, I would think so, yes.

Q You believe you arrived and you were there approximately an hour, maybe

a little longer?

A Yes.

Q And as you were about to leave, you heard a man shouting in your direction?

A Yes.

Q Is that right, Mr. McCain?

A Yes.

Q And you were on your way towards your car and towards Sherry's lane?

A Yes, that's what I remember right now.

Q And somewhere, either on Sherry's lane or approaching Sherry's lane, the man shouted at you?

A Yes. I think he was just coming off of Sherry's lane – or, actually, he was – he seemed to be going across the trail onto the NICHES property. I –

Q And physically, was this a pretty large man?

A Well, I – yes, I remember an orange jacket, it was a bright orange jacket, and the man was portly, and I don't know how tall he was.

Q And you –

A I didn't see his face very well at all.

Q And he shouted a question at you; is that right?

A Yes.

Q What was the question?

A It was something to the effect of, "Have you seen two girls?" And I'm pretty clear about that, I'm not sure the words.

Q Something about – but he was shouting?

A Yes.

Q Was there anything about the tone of his voice that you remember other than shouting?

A Well, I had the impression that he was really looking for them.

Q Did he seem concerned to you?

A Well, yeah, just by shouting at me, I think he was – showed his concern.

Q Do you think you arrived at the bridge – when you went onto the bridge a distance, did you arrive there about 3:15 or so?

A Well, that sounds right, but it could be – could have been in – I don't know, it could have been 2:30 or something. I really don't know. Forty-five minutes at that point in my memory – I wasn't paying attention to time.

Q Thank you. Okay. But you were leaving – you were heading towards your car to leave when the man shouted at you, you do remember that?

A Yes. I – yeah, that's the way I remember it.

Q And he was shouting at you, "Have you seen two girls?" Something like that?

A Yes.

Q Did you have a camera, your camera, around your neck?

A Probably. It was – I often carried it in my hand and didn't – it had a case that I could carry around my neck, but I don't – I usually did not use it around my neck, but I could have possibly had that.

MR. LUTTRULL: Thank you.

THE COURT: Mr. Baldwin.

RE-DIRECT EXAMINATION OF DAVID MCCAIN

QUESTIONS BY MR. BALDWIN.

Q I think on direct you said that you thought you were there around an hour;

is that right?

A Yes.

Q Could it be longer than an hour?

A Yes.

Q Could it be shorter than an hour?

A Yes.

Q Okay.

A Most likely, it was – from my memory, it was more than an hour.

Q Okay. Thank you for that. And was one of the officers that met with you and wrote down those notes that you looked at a second ago, was his last name Gootee?

A Oh, I don't remember any names of the agents that interviewed me.

Q Even if I refreshed your recollection with that document, would you be able to remember the name?

A No.

MR. BALDWIN: Thank you very much. Thank you for coming in. I appreciate it.

THE COURT: Mr. Luttrull?

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

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

(No response or indication from any juror.)

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

THE WITNESS: Thank you.

THE COURT: And you may call your next witness.

MR. BALDWIN: Call Chief Darrell Sterrett.

(Witness sworn.)

THE COURT: Go ahead.

MR. BALDWIN: Thank you, Judge.

DIRECT EXAMINATION OF DARRELL STERRETT

QUESTIONS BY MR. BALDWIN.

Q State your name for the record and spell it.

A Darrell Sterrett, D-A-R-R-E-L-L S-T-E-R-R-E-T-T.

Q Okay. And how old are you, sir?

A Fifty-seven.

Q And where did you grow up and where have you lived most of your life?

A I was born and raised in Delphi, worked in the area.

Q Class of?

A Excuse me?

Q Class of what?

A Class of ’85, I’m sorry.

Q Class of ’85, all right. And have you ever moved away from Delphi?

A No.

Q What have you done in terms of a profession during the course of your life, sir?

A I worked 16 years at the stone quarry out in the west side and the past 18 years as a construction maintenance at Camp Tecumseh.

Q All right. Well, I see something on your shirt there that makes me think you’ve done something else, as well.

A Yeah. Thirty-six years with the fire department.

Q All right. And kind of give the jury an idea of your evolution throughout your time on the fire department, where you started and where you've been.

A Started in 1988, as a probationary firefighter; worked my way up through the ranks to training captain, assistant chief, officer, and in – I apologize for not remember the exact year, I believe it was '08 or '09, I was elected as chief officer. I have master certification in fire and arson investigation, master certification in tactics, CFEI certification, technical rescue certification, a lot of training.

Q I think among all that I heard you were the fire chief; is that right?

A Yes.

Q And what year was that?

A I want to say it was '09 to '20 or '21. It was during COVID that there was a change of hands.

Q All right. And therefore, between those years was 2017; would you agree? The year 2017 occurred while you were a fire chief?

A Yes.

Q And that's why we're here today is to talk about a timeframe in February of 2017.

A My understanding.

Q Yeah. And let's start with what do you remember about February the 13th, if you remember anything, 2017?

A So February the 13th, I do remember that that day we had bid reviews for a new fire station. So in the morning, I met with contractors, general – you know, project manager for the project. I was at the fire station from probably 9 a.m. until, oh, probably 3 or 4 in the afternoon by the time we were done with the bid

reviews, and was back on station probably around six o'clock that evening, because we had a training and I was setting up for training or preparing for training or doing something administrative in the – I was there, I don't know. And we had a training event started, I believe it was a CPR/AED recertification and, at some point in the training or after the training, somebody came in – and I don't remember if somebody came on station or if it came through the radio or phone contact, I apologize, it's been seven years ago – somebody came in or word came in that we had two missing juveniles and that we were requested by law enforcement to assist with the search for two missing juveniles, at which point I was requested to go to the joint command, which was at the Carroll County Sheriff's Office. I advised the membership to stand by on station and await direction, find out what was going on, where we were going. At that point, I had no idea.

Q Once you got to the state – I'll have to interrupt every once in a while.

A That's fine.

Q Is that okay? And once you got to – where did you say it was, the – where you went?

A Joint command, which would have been at the county sheriff's office.

Q Thank you. Once you got to the joint command at the sheriff's office, what happened then?

A We kind of sort of tried to filter out where the girls may have been. There was a basketball game that evening. We sent people out to leads, "Well, they're friends with this person," and we – from my standpoint, my end of things, I was at the point of law enforcement, they said, "Hey, they have a friend here," I would send a truck over in that area to search, maybe knock on doors. We searched

the town, the area. We searched a lot of places that we thought that they could have possibly been.

Q What was causing you to think where they might have been?

A Excuse me?

Q What caused you to go wherever it is that you went?

A We were taking direction basically through Dispatch. If there was a – I know in my deposition I mentioned phone pings and then I realized that probably wasn't correct, but there were information coming in, and I don't know, maybe through tips from the community and from Dispatch would say, you know, "We have a tip from here," or whatever, and then we would go out and search that area. In my deposition, I did say it was phone pings, but I feel like that was – I think there were a couple searches maybe based on phone pings.

Q Where they thought – somebody thought the girls' phones might – one of the phones might have pinged?

A My understanding. Again, the information was coming from Dispatch.

Q Okay. I want to get back to the – I call it the command post. What do you call it?

A Joint incident command, command post, yes.

Q What kind of activity was going on there, not – before you went out and actually started searching, what – who was gathered there and kind of what was the conversation generally?

A As I recall, it was myself; Steve Mullins, the, at the time, city chief of police; I believe Tobe Leazenby; a couple of his deputies possibly; dispatchers; jailers.

Q And who was kind of in charge, if there was anyone in charge?

A Between I think Steve and Tobe pretty much directed most of it at that

point.

Q So were they – as chief, were you – was it kind of filtering down, they would tell you, "Hey, here's what we want," and then you would tell your people or –

A Yes.

Q That's kind of the way it went? So were you in communication with your people at the fire station or were they there with you at the command center?

A My firefighters?

Q Right.

A They were waiting at the fire station and then I would contact them via radio or cell phone and say –

Q I'm gonna hand you – is there a way to record who was in and around the firehouse at that point in time, help assisting in all of this?

A Yes. We – yes.

Q Yes? Okay. Thank you. I'm gonna hand you something in a second, it's gonna be Defendant's Exhibit CCC, and ask if you recognize this. Tell me when you've had a chance to review it.

A Yes. This would be the basic run report from that event.

Q From that evening, February 13th?

A Yes.

Q Do you recognize it, that – do you recognize that document?

A Yes, I recognize it.

Q Does it fairly and accurately state what you believe happened that day in terms of who was there and what they were doing?

A Yes.

MR. BALDWIN: I'll move to admit Defendant's CCC.

DEFENDANT'S EXHIBIT CCC OFFERED

MR. MCLELAND: No objection, Your Honor.

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

DEFENDANT'S EXHIBIT CCC ADMITTED

MR. BALDWIN: May I publish?

THE COURT: You may.

MR. BALDWIN: Thank you.

DEFENDANT'S EXHIBIT CCC PUBLISHED

THE COURT: You may proceed, Mr. Baldwin.

MR. BALDWIN: Thank you, Judge.

Q Just for the knowledge base of the jury, I wanted to kind of go through this, so if you'd grab CCC. So on the left-hand side is where it says "Responded" there's a bunch of Xs; can you explain to the jury what that means.

A So basically, this is the roster of the membership of the fire department at that time, and this is our basic run sheet, if you will. So any time there's a training, an incident, any activity involving the fire department personnel, they would – their names would be checked off as attended, responded, whatever the event was. And then, it's just an account of who participated in that particular event.

Q And what particular event are we talking about here, if you know?

A This would be the search for two missing juveniles, as it's dictated on the back under the narrative.

Q Okay. And these are all – it says some of these are officers and some firefighters; right?

A Correct.

Q And then, some are cadets?
A Correct.
Q So just briefly, if you'd distinguish between those categories: officers, firefighters, cadets.
A So just the officers of the department, the first four would be the command officers, the chief staff, then the next four would be – as it's listed – the captains, which are training officers, captains next in rank, and then firefighters listed below.
Q Okay. And what are cadets?
A And cadets, a person of 14 years or older can join on, between the age of 14 and 18, can come on the department as a cadet firefighter. They attend trainings, they have their own cadet trainings, they do tasks geared towards them around the station. It's a way of getting younger individuals involved and start bringing them into the industry, if you will.
Q Okay. And I am sure that – maybe I'm wrong, but I believe that probably not all these people were actually on duty that day. Would that be correct or not correct?
A These are all – we are all volunteers.
Q Oh.
A So as far as on duty, no.
Q You're kind of always potentially on duty, I guess.
A Well, we're on shift 100 percent of the time, it's just whether we're available or not.
Q How would it be that all these people would know to come to the – well, did they come to the station? Is that where they would have started?

A Well, as it was, we were already at the station because of a planned training event.

Q Oh, that's right.

A Had we not been on station, they would have been dispatched through a paging system.

Q But they happened to be there, everybody that is Xed on this left side, they were all just already there probably?

A Correct.

Q Okay. All right. So how long was it – well, strike that. What time do you think it was, and I don't – strike that. I didn't look at the back of the document. What is the back of the document?

A Well, what you're calling the back is actually the front.

Q Oh, okay.

A But that's just me.

Q Apologies.

A So this would be the incident log of what happened during that incident.

Q Okay. And it says it was received at 1901; what does that mean?

A We were notified at – well, 1901 is military time, so we were notified at 7:01 p.m.

Q Paged, what's that mean?

A So Dispatch receives the call, then pages the department, so we were notified and paged basically at the same time, because it was – I believe a walk-on request. I apologize for not remembering.

Q Oh, no, it's been a long time. And what does "on route" mean?

A When we were mobile, in route to whatever the event was. It was written

as 1910, which was the time that I left to go to command post.

Q And how long – okay, you talked about searching like throughout town, like where friends were or you said something about pings, 'cause you thought maybe that there was something about pings there. Was there a point in time where members of your – the volunteer fire department ended up actually at the bridge area where the girls had gone missing?

A Yes.

Q Okay. And what time do you think that was?

A I – I'm gonna say we got to the bridge around 9:30 or closer to ten o'clock in the evening.

Q And I just want to talk about you for a second, your involvement in that search. You think you got there around between 9:30 and 10. And did you drive by yourself or who did you go with? What kind of car did you take? And where did you go? That's a lot of stuff.

A So as I recall it, I took or there was a crew of about six that went with me to the bridge area. Again, whether it was through Dispatch or however that we were summonsed to the bridge area, I apologize. I drove personal vehicle. I always drove personal vehicle, because that left a seat on an apparatus for a firefighter. And I – there may have been one or two firetrucks, I would say probably two apparatus that went, and then my personal vehicle, to the best of my recollection.

Q All right. So you said six people – you have to be careful there –

A Yeah.

Q -- six people, that was the – are you saying those were the people that were with you that went?

A Correct.
Q All right. So where specifically did you drive your personal vehicle, if you remember?
A So I actually drove out there this morning to refresh my memory, because things on a map were not jiving. We entered off of 625 West off of 200 North that evening, the crew I was with, and we went and searched.
Q And just so that I'm – we've talked a lot about 625 over the course of this trial. That a paved road?
A It – 625 is paved and then turns to gravel once it heads whatever direction – east.
Q Okay. And does that seem more like – then, at that point in time, is more like a private road or a lane or how would you describe it?
A So in '17, I'm not even sure that that – the stretch to the east existed, but I cannot speak for that. I drove to the corner or the end of 625, where it turns into a private gravel lane.
Q And did you then go through the gravel lane or did you stay parked at 625?
A I believe I parked my personal vehicle, which is what you were asking of, I parked my personal vehicle on 625, at the end of 625, where it turned to a gravel –
Q Okay. And I believe –
A -- path.
Q I'm sorry to interrupt you. So as you're driving down 625, there – are there just – are there houses on the left as you're driving by there?
A They're on the left.
Q On the left. And then, on the right is like a – is there a neighborhood that

kind of goes off to the right?

A I think it's a bean field.

Q The last house on the left, do you know who owns that house?

A At the time, I thought it was Lieberts. I'm not sure.

Q Okay. Good. And so did you – where, in relationship to that property – I think you're right, by the way, the Leibert property. Where did you park in relation to that?

A I think I parked in their yard.

Q Okay, parked in their yard. And then, what would you have done after you got out of your car? What then happened?

A I met up with the rest of the crew that was coming in by apparatus and we walked – three or four of us began to walking down the lane towards the bridge, and I think I had one squad or rescue truck continue down the lane, in case we needed lights.

Q Okay. So some of you walked toward the High Bridge down onto that private road; is that okay to say that?

A Goat path, whatever.

Q It's a goat path. And you walked and then you made it to the High Bridge?

A I walked to the High Bridge, yes.

Q And just so we're all clear again, I think everybody's starting to figure this out, but that's the – is that the south end of the High Bridge?

A Yes.

Q Is that the end where the girls were abducted, to your knowledge?

A Is that what?

Q The end where the girls – where the video was taken, to your knowledge?

A I have no idea. I cannot answer to that.

Q Fair enough. Why did you go there? What – did somebody give you direction to go there?

A I believe we were requested to go there, whether it was through Dispatch or through the Sheriff's Department I'm sure is why we were directed that way.

Q Okay. Can you see the screen over here?

A Yeah, I can see. I just can't hear.

Q Okay. I'll be loud if that –

A Thank you.

Q Does that help? You're welcome. I did want to finish – several of you walked from the Liebert home to the end of the High Bridge. Did you say another vehicle drove to that end, as well, to the High Bridge?

A Drove that direction, yes. I don't believe they made it all the way to the bridge, because the lane does get sketchy.

Q Okay. And that – you said was it – that vehicle was there to support for light?

A If we needed lighting and it was going to be beneficial.

Q While we're on that topic, do you remember if any of your vehicles or any other vehicles from any other fire station were used somewhere in the area of the High Bridge to help out in the search?

A I do not directly recall.

Q Okay.

A There was police vehicles, I believe, along 625 and, I mean, there was activity.

Q Do you remember if there was any lights near the High Bridge like – you

know, like these big lights that shine and – do you remember if there was anything like at the south end of the High Bridge?

A As far as say security lights or –

Q Could be –

A -- REMC pole lights or –

Q Lights to illuminate. You know, sometimes you see like on – when there's a Hollywood premier, you see these lights going around.

A I don't recall something like that, no.

Q Well, I'm gonna kind of see if I can make this thing – you got any control of this? No. Okay. Let's see if I can be dangerous here. Okay. I want you to kind of look at this, sir, and see if you can – I can help you, if needed, to kind of acclimate yourself, but tell me if you can acclimate on your own before I do that.

A I think so.

Q You think so? Okay. If I tell you this is the High Bridge? (Indicates)

A I'll agree with that.

Q Okay. That's – all right. And so you walked – is what you're saying you walked down this lane – (indicates) – you parked over here and then you walked this way? (Indicates)

A Yes.

Q All the way up to here to the end of the High Bridge? (Indicates)

A Yes. That trail winds around and the goat path, if you will, goes underneath the bridge, the one that we were on.

Q Okay. So this goes under the bridge, this path?

A Yes. I believe what you're pointing at is actually 625, so we were deeper in the woods. The bridge would be over the creek.

Q Oh, okay. So you're –
A Yeah, that's the bridge.
Q I know. Okay. I think that actually –
A That's the railbed.
Q Oh, okay. So you were searching in this area here; is that true? (Indicates)
A That's the creek. We were not in the creek.
Q Okay.
A We were on land –
Q Were you –
A -- south and west of –
Q South is over here; correct? (Indicates)
A Correct.
Q And west is here? (Indicates)
A Correct.
Q And east is here; is that right? (Indicates)
A Yes.
Q Where – let's start with some basic stuff. How many people were involved with you in this search?
A Of that area?
Q Of that area.
A Five to six.
Q All right. And what do you remember about where you started down here in this area? (Indicates) Were you on the west side or the east side when you started, if you remember?
A We started on the west – I'll call it west, yes.

Q The southwest side?
A Southwest side.
Q Okay. And you look like you wanted to ask a question.
A Nope. I'm –
Q So what was the style of the search? How did the five or six of you together search this area?
A So at the time, we were searching for two missing girls, so I ordered a hasty search of the area. I wanted boots on the ground, I wanted area covered. It was February, we had two girls that were out and exposed to the elements and, our understanding, it was two girls that could call out. My thoughts were that they were hunkered down, cold and scared, didn't know where they were at, and they were just waiting for us to find them.
Q Okay. So what then – how did you do it, were you like arm to arm? I've seen that kind of thing where they walk this way and they're that way. (Demonstrates)
A It was not an organized grid-type search. I told the guys to start covering ground, and we began covering to the south, south – more directionally south.
Q Okay. Did you ever go – this is the south side of the creek. (Indicates) Did you ever search on the north side, you?
A I did not.
Q All right. How far apart, if you can say, were the men that you were with, the five or six of you?
A Varied.
Q Very far apart?
A Varied.

Q Oh, varied.
A You could have somebody within three feet and maybe somebody ten feet ahead of you.
Q Okay.
A We were walking through brush, so it was tight.
Q And did you cover – you said you covered the west side of the bridge. Did you ever go on the east side and cover?
A I think we did briefly, but we were concentrated more south and west.
Q Do you remember taking a deposition with me about –
A I do.
Q And I think you told me yesterday you've actually reviewed that deposition.
A I did somewhat.
Q Okay. And do you know if you ever have stated to me in that deposition you only were on the east side a little bit? I don't think you ever said that, did you?
A That we were only on the east side?
Q Searching on the east side a little bit?
A I may have. I – we did not have a map at the time and I was trying to out of memory. It's possible.
Q That you did not – that you, in fact, stated you search about the same on both sides?
A Did I? I could have.
Q Well, I would want you to go by your memory more than anything. Did you – do you feel you were on the east side of the bridge?
A I felt that we were on the southwest side more than what we were east.

Q Okay. So if you got there at 9:30 to 10, what time did you leave? What time did the search end?

A We cleared the scene at 2:30 in the morning, which would have been the time that we left, cleared the station, so left the scene maybe 1:30, two o'clock, I –

Q Okay. Would it help refresh your recollection if I provided you your deposition to look at?

A I –

Q Do you have it with you?

A I have my deposition, yes.

Q All right. If you'd turn to forty – page 42, lines 13 through 16, let me know if that helps refresh your recollection.

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

Q Sure. Forty-two, lines 13 through 16.

A Lines 15 and 16?

Q 13 through 16.

A Okay.

Q Does that help refresh your recollection about what time you all searched?

MR. MCLELAND: Judge, I'm gonna object. That's not the question. The question was what time did he clear the scene. If you take a look at the deposition, the answer he gave is consistent with the answer he gave in the deposition.

THE COURT: That's the question you asked him.

MR. BALDWIN: Okay. Well, maybe I just need to know the difference between leaving –

Q What's "clear the scene" mean?
A Cleared the scene, oh, correct, cleared the scene would have been what time we left the scene, yes.
Q Okay. What time'd you leave?
A What time did we leave?
Q Yeah.
A 2:30.
Q All right. Thank you. All right. And would it help refresh your recollection about searching along the east side of the bridge, would it help refresh your recollection if I pointed out where you talked about that, searching on the east side?
A Yes.
Q Page 56, lines 11 through 14.

MR. MCLELAND: I'm sorry, Mr. Baldwin, what were the line numbers, please?

MR. BALDWIN: 11 through 15.

MR. MCLELAND: Thank you.

A Okay.
Q Okay. So remember that. And I also want you then to refresh your recollection at page 39, lines 13 through 16. Page 39, lines 13 through 16. And lastly, on page 47, lines 1 through 16, 1 through 16 on page 47.
A What lines?
Q 1 through 16.
A Okay.
Q Did that – those areas on your deposition refresh your recollection about

whether you did search on the east side of the bridge?

MR. MCLELAND: Judge, that question was asked and answered. He's testified he did search on the east side of the bridge, he's testified to that a couple times.

MR. BALDWIN: He seemed unsure and I was just –

THE COURT: He said that he searched.

MR. BALDWIN: All right. Thank you, Judge.

THE COURT: Sustained.

MR. BALDWIN: I'll move on.

Q Now, you did order a search of the – as the fire chief, you ordered a search for that area, is that – on your people; is that correct?

A The area being the area of the High Bridge?

Q Correct.

A Correct.

Q And did you order a search on both the north side of the creek and the south side of the creek?

A I ordered a general search of the area. To specifically say north or south, I ordered the men to search the area.

Q Would it refresh your recollection and help you if you looked at page 34 of your deposition?

A Well, apparently, I said something.

Q I'm sorry.

A No, you're fine.

Q Lines 1 through 6. Page 34, lines 1 through 6.

A Okay.

Q You ordered – does that help refresh your recollection?
A Much more than trying to use my memory, yes.
Q Oh, thank you. Did you order a search on both sides, the north side of the creek and the south side of the creek?
A Yes.
Q And both on the east and the west?
A Yes.
Q Okay. And you were talking about – you had said that you – when I was – I said that about the Hollywood lights and whatever, I think – let me ask it this way: Floodlights.
A Floodlights.
Q Do you remember if there were any floodlights that were near the High Bridge, illuminating the area?
A Possibly on one of our units, but outside of that, I don't – did I say otherwise?
Q If you could go to page 35, line 17 through 18, that might refresh your recollection.
A I apologize.
Q No, you're doing great. Page 35, lines 17 through 18.

MR. MCLELAND: I'm sorry, Mr. Baldwin, what were the lines again?

MR. BALDWIN: Page 35, lines 17 through 18.

MR. MCLELAND: I'm not seeing anything about lights on those lines on that page number.

MR. BALDWIN: Lines – yeah. I'm sorry, starting at line 13 through 18.

Q Does that help refresh your recollection about whether or not there was higher-intensity lights there? I call them floodlights.

A Yeah.

Q Okay. And do you know, do you remember which direction they were pointed? Were they pointed –

A No.

Q Okay.

MR. MCLELAND: Judge, I guess I want to clarify for the record: His deposition matches the answer that he gave, "We quite possibly could have had a vehicle out there with maybe some higher-intensity lights." That's the answer he gave in the deposition, so I want to clarify that for the record, they had him refresh his recollection on that and his answer's the same as what he gave here in court today.

THE COURT: Okay. Thank you.

Q Well, do you remember or not? I'm not trying to trick anybody. Do you remember if there were lights there or not?

A No, I do not.

Q Okay. Fair enough. Who, if you know, were out there other than firefighters participating in the search of that area?

A I recall seeing police officers and family members.

Q Okay. What about citizens? Did you see just regular citizens?

A I cannot re – I do not recall.

Q Okay. Would you – would it help to refresh your recollection? I'm sorry.

A No, I apologize. I know I –

Q You're doing great.

A -- gave this deposition.
Q Page 38, lines 5 through 8 – 38, lines 5 through 9 make that.
A Okay. I did not understand your questioning of that, but yes.
Q So I may have asked a bad question here today. Did you – do you know if there were citizens also involved in a search on – at that time?
A Do I know or are you reading something else I said? There were –
Q I asked –
A I would say there were others out there.
Q Yeah?
A Yes.
Q There were other regular –
A Civilians.
Q Civilians. Civilians, okay, that's – maybe that's the right term. Okay. Thank you. Hopefully we don't need that for a minute. When you were searching, how was the light? Was it dark or – I know it's a dumb question, but was it dark or light outside?
A It was very dark.
Q Very dark. What were you using as you were searching to illuminate?
A We were using hand lanterns, firefighter issued, they're called hand lanterns. They're a flashlight.
Q And to the extent that it may matter to the jury, did they – were – how bright were they? How would you characterize the brightness? Were you able to ramp up the intensity or – just tell us about the flashlights.
A They're just a box-looking flashlight and they have a head approximately that big. (Indicates) They're made for interior firefighting, so they have a spot

setting and they have a flood setting.

Q That's about it?

A They're – they look fancy, but they're not, and they cost more than what they should.

Q All right. And when you were searching with your five to six guys on the southwest side of the creek – west of the bridge, south of the creek – did you see lights on the opposite side of the creek?

A Yes.

Q And when you were searching on the east side of the creek, south of – I'm sorry, east side of the bridge, south of the creek, did you see flashlights across that way, as well?

A Yes.

Q All right. And were people using their flashlights, pointing them in the direction of the creek to see if there was anything in the creek?

A I cannot speak for every individual that was there. I would say somebody may have.

Q Okay. We're gonna have to do it again. Would it help refresh your recollection at page – if you look at page 47, lines 1 through 4. Page 47 – well, you'd probably have to go back, actually, to page 46, the last couple of lines, and then to the top of page 47.

A My apologies.

Q I think that's – were people searching into the water to look for something that might assist in the –

MR. MCLELAND: Judge, may I ask a few foundational questions on that?

THE COURT: You may.

MR. MCLELAND: Mr. Sterrett, in your deposition, you said, "We searched from the water inland." When you say "we", are you referring to you and the team you were with?

A Yes.

MR. MCLELAND: Did you have any knowledge about what the people on the other side of the creek or what the other people searching were doing?

A No.

MR. MCLELAND: Judge, I'm gonna object to the question. He can testify, as he did in his deposition, what he did, but not about what other people on the other side of the creek. If I'm following the question correctly, that's where we're at, Judge, but –

MR. BALDWIN: No, you're not.

MR. MCLELAND: Okay. Maybe I'm not.

Q Were you and your –

MR. BALDWIN: Is it okay if I –

THE COURT: Yeah.

Q Were you and your team looking in the water as you travel along the east – east of the bridge, south of the creek?

A Yes.

Q All right. Did anybody in your team see any clothing in the creek that caught your attention?

A No.

Q All right. And you did see flashlights across the way as you were searching

on the south side of the creek, you testified to that earlier; is that correct?

A Yes.

Q Did you hear anybody shout out, "I found clothing in the creek"? Did anybody say that, that you heard?

A No.

Q And – we'll get to that. Were you able to hear people across the creek as they were moving? Could you hear noise?

A I'm gonna say no. What page?

Q Page 48, lines 20 through 25.

A Somehow these questions don't seem the same as when I gave the deposition.

Q And that would be 48, 19 through 25, and line 1.

A My apologies.

Q You're doing great. So were you able to hear on both sides of the creek, people from across the creek?

A Yes.

Q And were you able to hear people in other areas of the search?

A Yes.

Q All right. Lastly, to your knowledge, did any of the search party from your fire department search near where the bodies were found?

MR. MCLELAND: Judge, a foundational question?

A I cannot answer that. I do not know where the bodies were found.

THE COURT: Hold on, sir. Hold on.

A Oh, I'm sorry.

MR. MCLELAND: That's okay. He's kind of answered it already,

Judge. I was gonna ask him if he knew where the bodies were found, he said he didn't. So I'm gonna object to that question, it calls for speculation, he doesn't even know where the bodies were found.

THE COURT: Sustained.

Q Thank you. When you said "hasty search" at the beginning –

A Yes.

Q -- does that mean a search that's intended to cover more ground quickly?

A Yes.

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

THE COURT: Mr. McLeland.

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

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

(Sidebar conference conducted.)

THE COURT: "Did you search the area southeast of the cemetery?"

MR. BALDWIN: If he knows.

THE COURT: "How long ago did you give your deposition and did you get a copy at that time?"

MR. BALDWIN: Yeah, that's fine.

(Sidebar conference concluded.)

JUROR QUESTIONS OF DARRELL STERRETT

QUESTIONS OF THE JURY, READ BY THE COURT.

Q Sir, how long ago did you give your deposition and did you get a copy at that time?"

A I gave my deposition on – three weeks ago, four, and I did not receive a copy at that time. It was mailed I believe two weeks after.

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

MR. BALDWIN: No, Judge. Thank you.

THE COURT: Mr. McLeland?

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

Q Did you search the area southeast of the cemetery?

A I did not personally.

THE COURT: Mr. Baldwin?

MR. BALDWIN: No.

THE COURT: Mr. McLeland?

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

THE COURT: All right. Thank you, sir. You may step down. Well, we're gonna take a short break so, ladies and gentlemen, 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, 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 2:54 p.m.)

THE COURT: All right. Let's be back in 15 minutes.

MR. BALDWIN: Judge, may we approach just about scheduling?

THE COURT: Yes.

(Sidebar conference conducted.)

MR. BALDWIN: So we had witnesses that are now deep in

pregnancy that are not here, so we're gonna call Steve Mullin, Judge. That's gonna be a longer direct. I don't know how long that cross will take. But then we don't – we can – I told the State we would call Tobe Leazenby up, he's a shorter witness, so we can finish the day with those two. I don't know if it's gonna extend us out to 5 or 6. It – I think'll probably extend us into 5, but I could be wrong. I've thought – and I've talked to Nick about this, if you were so inclined, Judge, we could argue the third-party motion orally to – so that we are not wasting time, if we need to, to fill up the time, I'm happy to do that. And then, we also have to talk about the FBI Agent Pohl, as well, what we're gonna do about that, so –

THE COURT: And your transport orders.

MR. BALDWIN: And that, too. Yeah.

MR. MCLELAND: I'd like to talk about the witness – I think they intend to call Superintendent Doug Carter tomorrow. Depending on what they're gonna have him testify to, I may have an objection. I'd like to talk to you about it today, so they don't get here tomorrow and waste that day. You might not allow him to testify to some things.

THE COURT: Okay. All right. Well, let's – I mean, whatever – however many witnesses you've got left for the day, I'd like to get as much done as we possibly can.

MR. BALDWIN: Sure, okay. I mean, is it – can Tobe come in at this point?

MR. MCLELAND: I wasn't ready for that, Judge, I haven't had –

MR. BALDWIN: Oh, I'm sorry.

MR. MCLELAND: I haven't had time to call. I'll need to check on –

THE COURT: So your intention is to call –

MR. BALDWIN: Steve Mullin.

THE COURT: -- Steve Mullin, Tobe Leazenby, and who else?

MR. BALDWIN: That'd be it.

THE COURT: Two? Oh, okay. Okay.

MS. AUGER: Judge, do we know anything about Agent Pohl – Special Agent Pohl? It's really kind of –

THE COURT: I can't hear you.

MS. AUGER: Sorry. Do we know anything about whether Agent Pohl can testify remotely?

THE COURT: There is a way to do that. I do not have the capability to do that. I have contacted somebody that does know how to do that, so that if that is possible, I – and we haven't resolved the issue about the FBI lawyers and that concern, so – but yes, there is the ability to testify remotely, I just don't know how complicated it is to set up and how long it takes and what the requirements are for the other end of testifying remotely.

MS. AUGER: Okay. I'm just trying to – he's been waiting, so I'm just trying to give him some direction.

THE COURT: There is the ability to do so, yes. I –

MS. AUGER: Okay.

THE COURT: I do not know how it works, I do not know what the capability of from this end versus that end, because I know that there's electronic stuff that has to communicate back and forth. I don't know.

MR. ROZZI: Did anybody ask – possibly ask Judge Evans? 'Cause he's –

THE COURT: That's who I talked to.

MR. ROZZI: Yeah, okay. 'Cause he's – I mean –

THE COURT: He has the ability to set it up. It's, apparently, on his laptop, but I don't know what the technology is, I didn't ask him, I don't know if it's Zoom or if it's Teams or was their –

MR. ROZZI: What kind of invite –

MS. AUGER: Okay.

THE COURT: -- what their end looks like.

MS. AUGER: Okay.

THE COURT: I have no idea what their end looks like, if their end can even communicate with this end, 'cause if it can't, then that's the end of that discussion, so I don't know. But yes, we have the ability in this courtroom to do remote testimony.

MS. AUGER: Okay.

THE COURT: We do not have the ability to send documents electronically.

MS. AUGER: I can work around that.

THE COURT: So – but that is – that's what Judge Evans told me.

MS. AUGER: Okay. And is that – would you allow him to testify remotely?

THE COURT: Well, we have to have that discussion, because I don't know what – are these the FBI lawyers? I don't know –

MS. AUGER: The FBI –

THE COURT: I don't know who the FBI lawyers are.

MS. AUGER: Oh.

THE COURT: And I haven't heard anything from them, I've just

heard from Mr. McLeland that they're concerned that the report's not even the right report.

MS. AUGER: Well, I mean, can I bring them up, so that we can try to get this resolved?

THE COURT: No. I don't want to talk to them. That's between all of you lawyers. You guys decide that –

MS. AUGER: Well –

THE COURT: -- and you talk about that and then you let me know what are the concerns and do I have the ability to accommodate their concerns. I don't know. I got your motion two seconds ago and I haven't even looked at it. All I know is what we talked about over here, which is the State is objecting, so I don't know.

MR. AUGER: Well, the FBI, I don't think that's –

MR. BALDWIN: Yeah.

MS. AUGER: Yeah, I don't think that's –

MR. ROZZI: Just make them bring him up here, I mean –

MS. AUGER: He can't. He's got a medical condition.

THE COURT: Okay. Well, there you go.

MR. ROZZI: You've served him, haven't you?

MS. AUGER: Yeah. But, for good cause shown, the Court has the ability to do it over objection.

THE COURT: Okay. I don't – you have caught me completely off guard.

MS. AUGER: I'm sorry.

THE COURT: I have no idea what you're talking about, a medical

condition, I have no idea what you're talking about.

MR. BALDWIN: We just learned about it, too.

MS. AUGER: Yeah.

THE COURT: So I don't know.

MR. BALDWIN: The US Attorney folk said they would be willing to talk to you to give you more information about this.

THE COURT: Okay. All right. Let's take a quick break.

MR. BALDWIN: Okay. I'm sorry, Judge.

(Off record at 3:00 p.m.)

(On record at 3:18 p.m.)

THE COURT: Okay, we are back on the record. Is the Defense ready to proceed with their next witness?

MR. BALDWIN: We are, Judge. Thank you.

THE COURT: The State ready?

MR. MCLELAND: Yes, Your Honor.

THE COURT: Let's go.

THE BAILIFF: All rise.

(Jury in at 3:21 p.m.)

THE BAILIFF: Thank you. You may be seated.

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

MR. BALDWIN: Thank you, Judge. We'd call investigator Steve Mullin.

(Witness sworn.)

DIRECT EXAMINATION OF STEPHEN MULLIN

QUESTIONS BY MR. BALDWIN.

Q Is investigator an appropriate thing to call you?

A Yes, please.

Q Investigator, how important would you say it is to preserve evidence in a case?

A It's important.

Q Why is it important?

A To preserve the integrity of the investigation as much as possible.

Q Is it important for the people on the Prosecution side of the case?

A It's important to everyone.

Q It's important to the Defense, as well?

A Yes.

Q How important would it be, if at all, to alert the Defense if there's missing evidence? Would that be important?

A Yes.

Q Why is that important?

A To alert them that any evidence was missing would be important.

Q Why?

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

Q Why is it important?

A I believe I answered the question, it's important.

Q Okay. I appreciate that. My question is: Why is it important though? Why is it important?

A Because of the integrity of the case.

Q What evidence, if any, has come up missing in this case?

MR. MCLELAND: Judge, can I ask to clarify: In the case against Richard Allen?

MR. BALDWIN: Yes.

THE COURT: And specifically the charges against Richard Allen?

MR. BALDWIN: Just the evidence related to the investigation of A.W. and L.G.'s murders.

MR. MCLELAND: Judge, I'm gonna object to relevance. The only thing that's relevant in the State's mind is what pertained to the investigation of the guilt or innocence of Richard Allen.

MR. BALDWIN: We're gonna have to have a sidebar.

THE COURT: Okay.

(Sidebar conference conducted.)

MR. BALDWIN: We – first of all, Judge, the overall investigation, the opinion of the Defense that there's total ineptitude of investigation, but most importantly, we had suspects that we didn't get to see their interviews, we were not able to see them, so, you know, we should be able to ask questions, "Were there suspects in the – were there people who were interviewed early on in the investigation that interviews are missing?" "Yes." "How many people? Who were there?" At least ask the questions.

MR. MCLELAND: Judge, I don't think that's relevant to the investigation of Richard Allen. He's asking him about stuff that has nothing to do with the investigation or the charge against Richard Allen.

MR. BALDWIN: Well –

MR. MCLELAND: And he's getting into the motion in limine stuff.

MR. BALDWIN: That's why we're here, 'cause I didn't want to get

into that, but, you know, the failings of an investigation is one of the hallmarks of, you know, defense lawyers and how they, you know – the questioning that they ask. I mean were there failings in the investigation? If there were, that's – you know, the jury gets to determine whether or not that had any impact on the charges themselves and the facts of the case and what might be missing.

MR. LUTTRULL: I disagree that there's any tendency to make a fact more or less probable (inaudible)

THE COURT: Well, and that's the hallmark of relevance. I don't have a problem with inquiring about if evidence that is missing, and yes, in the course of the investigation, yes, there were some missing interviews that were – you had technical problems.

MR. BALDWIN: Right. That's what I'm gonna be asking about.

THE COURT: Okay. I mean, and I think that's fair, but we're not gonna be talking about – you don't know that they were suspects or you don't know if they would have been charged (inaudible)

MR. BALDWIN: But I –

THE COURT: -- the recording equipment was malfunctioning or was overwrote itself.

MR. BALDWIN: That's what I gonna –

THE COURT: Yeah. That's the evidence. I don't have a problem getting into that type of evidence –

MR. BALDWIN: Okay.

THE COURT: -- or to that event, but limit it to your client.

MR. BALDWIN: Okay. Well, I appreciate that. I will not talk – that's why I'm here. I didn't not want to – my question was gonna be, "We didn't get a

chance to see the interviews with third-party suspects," that was gonna be my answer. Didn't want to do that in front of the jury.

THE COURT: Oh, no.

MR. LUTTRULL: Not the word "suspects".

MR. MCLELAND: 'Cause you don't even know –

MR. BALDWIN: Yeah.

MR. MCLELAND: Yeah.

MR. BALDWIN: We can –

MR. MCLELAND: So he can ask – I guess so I – I don't want to continue to object, and I have a bad feeling he's gonna go back and ask the same question. He can ask about the missing evidence as it pertains to Richard Allen or am I –

THE COURT: No, he can ask about evidence missing, but he cannot get into – I don't think anybody has any doubts that there were flaws in the investigation, but getting into your allegations of any third-party suspects that you don't have any evidence of –

MR. BALDWIN: I'm not gonna do that, but I will get into – I'm gonna – I'll just tell you what I'm planning on getting into is there were the DV – the missing interviews and then there was other missing interviews later on from April the 28th, I think, till June 2nd. And we have reviewed – I have reports that Investigator Mullin has provided us that I was gonna introduce just to say, yes, that's when it happened.

THE COURT: Well, we don't need reports – well, you do it however you –

MR. BALDWIN: Yeah.

THE COURT: You do whatever you want. There's an objection. Just so you know, I don't think reports are necessarily if he's gonna testify about his knowledge, which is sufficient. He was the chief of police at the time; right?

MR. MCLELAND: Correct, correct.

MR. BALDWIN: Okay. Well, so we don't have to have another sidebar, the report is important to show – it's a real concise way for him to explain what happened, you know, what he did about it, if anything, and so forth, and I would – that's why I would introduce it.

THE COURT: Well, he's clearly testified about that from memory, as I recall for here in court –

MR. BALDWIN: Okay.

THE COURT: -- that he was pretty clear and succinct.

MR. BALDWIN: Okay.

THE COURT: To use it, there must be something he can't –

MR. MCLELAND: He can ask questions about the missing DVR –

THE COURT: Yeah, where it kind of –

MR. MCLELAND: Okay.

THE COURT: -- got weird and that.

MR. MCLELAND: He can ask that?

THE COURT: Yeah.

MR. MCLELAND: He can't refer to that as interviews of suspects though?

MR. BALDWIN: I'm not. I won't.

MR. MCLELAND: Okay. Okay.

MR. BALDWIN: I'm gonna say there were several people

interviewed.

THE COURT: And that's fine. That's fine.

MR. LUTTRULL: Fair enough.

THE COURT: I mean, I think that's fair.

MR. MCLELAND: Okay. Thank you.

(Sidebar conference concluded.)

THE COURT: You may proceed.

MR. BALDWIN: Thank you.

Q In this case, early on, there were interviews that ended up – of dozens and dozens of people missing, but missing's not the right word. Are there interviews that the Defense does not have access to because of something that happened to those interviews back in 2017?

MR. MCLELAND: Judge, I'm gonna object. It's a leading question.

THE COURT: I'll give you a little leeway just to get to the point.

MR. BALDWIN: Thank you. I'm trying (inaudible).

Q Is – were there interviews in 2017 that are not available to the Defense because of something that happened in 2017?

A Yes. And they're not available to the Prosecution, either.

Q And the dates – what were the dates of those missing interviews?

A I believe they were from the date of the – and time the investigation began up until I believe it was the 21st of March. I'm not sure, I'd have to look at my report to make sure.

Q Do you have a copy of your report?

A I don't have a copy of it. Do you?

Q It was – would you agree with me it was dozens and dozens of witnesses

that are just unavailable to either side?

A Correct.

Q What list of those people whose interviews are missing was drafted so that you and the Defense would know what interviews are missing?

A I believe there was a list of interviews that was kept in the filing cabinet scan that you were given and that list may detail that.

Q You think there is a list of people that were interviewed between February the 14th and whatever that date was in March?

A There is a list of the people who were interviewed on what dates in the filling cabinet scans.

Q Okay. Do you remember testifying at a hearing in Fort Wayne March the 18th?

A I do.

Q Is that the testimony you gave on – at that interview?

A Be something like that.

Q Interviews – would you agree, just as an investigator, that interviewing people at the beginning of a case is important, because that's when memories are fresh and the facts are more vibrant for the person interviewed?

A Was there a question, I'm sorry? What was your question?

Q Is it true that it's important to have interviews conducted early on, while the memories are fresh and vibrant in the person's mind?

A Yes, that's true.

Q Okay. So when these missing interviews came up, what month was that?

A I believe it was in August we discovered the problem.

Q And once you discovered the problem and you had this list that you claim

exists of the missing interviewees, what did you do to recreate those interviews for later use once somebody was arrested?

A There was nothing I could do to recover the interviews, they were recorded over.

Q I understand that. Let's say that John Doe was on this list that you say exists of people that were interviewed on February the 19th. Did you go to John Doe and say, "Hey, we lost your interview. We need you to be re-interviewed about what you saw," did you do that?

A I did not do that.

Q Did you ask anyone to do that?

A The investigative team was aware that the interviews were lost and they can – we can make decisions about who we needed to re-interview, if we needed to.

Q Okay. Who, of the missing interviews, was re-interviewed? That's the question.

A Okay. I do not know or do I remember exactly who was re-interviewed.

Q Was there a single person that was re-interviewed from these missing interviews?

A I believe there was, but I can't recall who they were.

Q Your job with the – what is your job with the Prosecution, for the Prosecutor?

A I'm the investigator.

Q Okay. And you've been in charge of their evidence; is that correct?

A Yes.

Q Okay. So as you sit there, you don't know, as both the former police chief

and investigator on this case and now as the investigator for the Prosecution, you don't know who was re-interviewed, if anyone?

A Without refreshing my notes and in looking into it more carefully, I can't answer your question right now.

Q What were the reasons why some of the missing interviews – the people that were involved in those interviews, what were the reasons that some would be re-interviewed and some would not be interviewed?

A I can't answer that specifically as to why decisions were made to re-interview people, but I believe it was because we thought that information might be imperative or important.

Q You did end up – did you ever draft a document to explain why the interviews were missing?

A I did so immediately.

Q Okay. But that report that you drafted, does it have a date on it?

A No, it does not.

Q Okay. Was there a second grouping of interviews that ended up being missing?

A Yes, there was.

Q And that was from what time roughly to what time?

A This is a little unclear for me right now, but I believe it was sometime later, we had a problem with the DVR, it had – there was an incident where the videos were lost we thought, the hard drive had been reformatted, and we were able to recover the videos, but not the audio.

Q And that timeframe covered what?

A As I sit here right now, I cannot remember exactly what the timeframe was,

but I think I've testified to it before.

Q Does April 28th to June 2nd sound about right?

A It was the time period we were at the REMC building and I believe that may be correct, but I can't say for sure without looking at my notes.

Q Was there a list made of the people in those interviews?

A There was a list made of the persons who were interviewed for the most part, yes.

Q Okay. And you believe you've given the Defense that list?

A They have all the interviews that we do.

Q But as you said, the interviews are – are they valuable if they don't have any audio?

A All the interviews are valuable.

Q Okay. How would an interview without sound be valuable?

A I'm sorry, that wasn't the question you asked me.

Q You said all interviews are valuable after I had asked you how valuable is an interview without sound, and you said they're all valuable, and I'm asking you is how is an interview without sound valuable?

A Well, it is certainly important to have the sound or the audio portion form the interview, I would agree.

Q And you drafted a report – or strike that. Did you draft a report explaining why these – the problem with these series of interviews? Did you draft a report detailing why there was a problem with that second series of interviews?

A Yes, I did.

Q Did you put a date of that report on the report?

A I don't think I recall – I don't think I put a date on that report, either.

Q Okay. Would you – do you find it important to date – put dates on reports or not important?

A My report was to detail exactly what happened and the efforts we made to make sure that the interviews, as much as possible, were recovered. I'm sorry that I didn't date the report for you, but I made it right after it happened.

Q When did you provide these undated reports to the Defense?

A Those reports were provided to you sometime before today, I think sometime before we had our last hearing.

Q February of 2024 sound correct?

A That could be right.

Q So why didn't you tender those reports to the Defense prior to February of 2024, when we've been on the case for almost a year and a half?

A Well, thank you, Mr. Baldwin, for that question, because I really wanted to answer that. I thought that that information may have been already contained in the volumes of information that we had given you through discovery, but after I found that it was not, so I wanted to make sure you had them.

Q It was only after we asked though if there was a report.

A Something like that.

Q Yeah. And it's an undated report, so we don't really know when you drafted it.

A I made it right after it happened and made the information available to the investigative team.

Q But just not to the defense lawyers.

A That was later.

Q In fact, we didn't even know about the missing videos until when?

MR. MCLELAND: Judge, I'm gonna object. That calls for speculation, calls for Investigator Mullin to determine when the Defense knew and when they didn't know about the missing interviews.

THE COURT: It's speculation, I'll sustain it on speculation.

MR. BALDWIN: He either knows or he doesn't know.

THE COURT: It's speculation.

Q Do you know when – do you know when the Defense learned –

A As I stated in the hearing in Fort –

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

THE COURT: If he knows. Overruled.

A I don't know.

Q You don't know. I'm gonna hand you – it's not dated, so I'm not gonna ask. Was it – if you know, was it several months, maybe close to a year, before the Defense learned of these missing videos?

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

MR. BALDWIN: I did not ask about the timeframe.

THE COURT: Overruled.

A I would say that's correct, several months. At least, that's when you were notified of the reports.

Q Would you agree with me that not dating a report at least should be considered sloppy work?

A I would not.

Q So if you could go back in time, you would not have dated those two

reports?

A If I knew you were gonna do this to me now, I probably would have.

Q You think this is funny?

A I don't.

Q So you were put on notice back in March of this year that the Defense was scrutinizing the way that you memorialized things; would you agree?

A Could you repeat the question, please?

Q Sure. For some time now, maybe March 18th, when we first – when I first conducted a – when you were on the stand and I asked questions, you've been aware for several months that the Defense is scrutinizing the way that you have memorialized your reports.

A You told me about it then, yes.

Q Okay. Are tape recordings a way to memorialize conversations you would have with suspects or with just witnesses?

A Yes.

Q Brad Weber, in August of this year, you called him on the phone, did you not?

A I did.

Q And the purpose of that phone call was to bring him in to talk to him about whether he drove a van and whether he drove straight from his work to his house; correct?

A Yes.

Q And it would be important to memorialize that phone call so that we know whether or not you put any information in his head before he came in the next day for an interview; would you agree?

A I agree.
Q But you did not tape record that phone call with Brad Weber, did you?
A I did not.
Q So we will never really know what that conversation involved, will we?
A I detail it in my report.
Q Was that report dated?
A Yes, it was.
Q You got one of these in your – on your person much of the time?
A I do.
Q Does it have a tape recorder on it?
A It does.
Q Why didn't you use this –
A If I might correct, it's not a tape recorder, it's a audio recorder.
Q Does it tape record?
A No, it doesn't tape, it records audio digitally.
Q Okay. That's fine. Why didn't you use your audio recorder on your phone to tape record the Brad Weber phone call when you asked Brad Weber to come in for his interview the next day?
A Well, I believe I was actually using my phone at the time, so I'm not sure if I know how to record it when I'm making a call.
Q Okay. You got CVSs here in Delphi?
A We do.
Q All right. Do you know if they sell tape recorders?
A I'm sure they do, but I have an audio recorder, as well.
Q You have an audio recorder?

A I do.
Q Okay. Why didn't you use the audio recorder?
A I don't know why I didn't.
Q How long does it take to say this, "Brad, you did drive straight home from work in a white van, didn't you?" How long does that take?
A Not very long.
Q You should have tape recorded that call.
A I could have, but I didn't.
Q My question is: You should have, shouldn't you?
MR. MCLELAND: Judge, it's been asked – I'm gonna object. It's been asked and answered various times.
THE COURT: Sustained.
Q If you could do it all over again, would you tape record that call?
MR MCLELAND: Judge, objection. It's been asked and answered.
MR. BALDWIN: I have not asked that question.
THE COURT: Overruled.
A Well, sitting here now, obviously, I probably would have.
Q When was the first time that Brad Weber ever told law enforcement that he drove a white van direct from work to his house?
A I am not certain when he told law enforcement first, but I know he told myself and Detective Harshman that without even asking him the question.
Q After your phone call the day before?
A Which I made no mention of any type what I was going to talk to him about.
Q So we know that the first time – oh, strike that. We know that at least one time that Brad Weber told police that he drove a white van directly from work to

home was on August of this year, just a couple of months ago, August the 8th, I believe; is that right?

A Yes.

Q My question is: What other dates, if you know, did Brad Weber ever say, "I drove my white van from work directly to my home" other than that day just a few months – a couple months ago?

A I'm not sure if I can answer your question. I don't know.

Q You don't know. It's a pretty big deal. You guys are making a big deal about this white van, aren't you?

A Yes.

Q Okay. So you don't tape record that conversation; right?

A I did not.

Q And then, you – as you sit here, you don't know if Brad Weber had ever said that before to law enforcement?

A I don't recall as I sit here right now.

Q Was there anything in your investigation that revealed that Brad Weber said something different than he drove directly home from work?

A I believe there may have been a mention he drove his Subaru home from work once, but I don't know for sure without re-reading the notes.

Q What about driving not directly home, but going and taking care of his ATM machines?

MR. MCLELAND: Judge, I'm gonna object. It's a leading question, it's asked and answered, so I'm gonna object under those grounds.

THE COURT: Sustained.

Q Who, if you know, has Brad Weber talked to in law enforcement other than

you?

A I believe he talked with Agent Pohl, perhaps Christopher Gootee; beyond that, I'm not sure.

Q Okay. And you were here when Christopher Gootee testified today, weren't you?

A I was.

Q And he refreshed his recollection off of a document, is that – were you here when that happened?

A I was.

Q And he remembered that he drove directly from – his memory was refreshed to show he drove directly – or not directly – said he drove home from work; right?

A I believe that's what his testimony was.

Q But he couldn't remember off that document whether or not there was – it wasn't refreshed as to other aspects of that document, was it?

A I don't know. I'm sorry. I don't understand your question I guess.

Q It's not a good one. So are you aware of whether Brad Weber has provided conflicting statements about coming home from work and how he came home?

A Yes, there's some conflict about it.

Q Do you know Brad Weber's side – if he has a side job at the time other than Subaru, a way that he made money?

A Yes.

Q How – what do you know about that?

A I believe he has some ATM machines he tends to.

Q Okay. Do you know whether he tended to those ATM machines on

February 13th after he got work – off work at two o'clock?

A He says he drove straight home to us.

Q To you?

A Yes.

Q You being you and who?

A Detective Harshman.

Q Were you present when Brad Weber talked to Agent Pohl and Christopher Gootee?

A I was not.

Q What kind of gun, if any, do you know that Brad Weber possessed?

A I believe a Sig Sauer.

Q I'm weeding through my questions. Did you ever – strike that. Was there ever a list made of the law enforcement that were walking in the area of where the bullet was found?

A Can you rephrase that question?

Q Sure. Did you or law enforcement ever put together a list of law enforcement that walked in and around the area of where the bodies were found?

A I'm sorry, I don't – was not at the scene and I do not know. If there is a list, it was made by the Indiana State Police, the crime scene investigators and the person who was in charge of the crime scene log.

Q Okay. Do you know whether any emails were sent out to law enforcement that were in and around the scene, asking them what kind of weapon they were carrying when they were in and around the scene?

A I am not aware of that.

Q Are you aware of any information where law enforcement believed that the

bullet may have come from a law enforcement officer?

A No.

Q Having watched Richard Allen's interview three days ago, whenever it was, would you agree with me – strike that – would you agree that Richard Allen never said he didn't know which way he travelled when he went to the CPS building?

A Are you asking if I would agree with you on that statement?

Q Did Richard Allen – I'll rephrase. Did Richard Allen ever, in his interview, say, "I don't know which way I went when I ended up parked at the CPS building"?

A He did say something like that.

Q How many people do you think were involved in the murder of A.W. and L.G.?

A One.

Q How long have you believed that only one person was involved in the murder of A.W. and L.G.?

A Since the arrest of Richard Allen.

Q Before that, you thought it was multiple people?

A Didn't really matter what I thought, it's what the evidence would show.

Q Did you believe the evidence would show if there was more than one person?

A I didn't know.

Q A lot of stuff done at that murder scene, would you agree? If that's where the murders occurred.

A There was a lot of stuff done, if you're – that's your question.

Q Yes, it is. How long, based upon the evidence and your knowledge of the

case, would it have taken for the – in this case, you say Richard Allen to have done all the things that were done at that scene? What's the maximum amount of time?

A I –

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

A -- don't know.

THE COURT: Sustained.

Q Well, we know that the video's at 2:13; correct?

A Yes.

Q What do you think the evidence shows as the end time of the events that led to their murders?

MR. MCLELAND: Judge, I'm gonna objection to that question. I'm not sure what events he's talking about.

THE COURT: Sustained.

Q What time do you think the killer left behind those girls?

A I don't know exactly what time he left.

Q Would you agree with me that it's a major problem for your timeline if Betsy Blair describes – well, strike that. Do you think it's a major problem for your timeline if the person Betsy Blair saw is not Richard Allen?

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

THE COURT: Sustained.

Q How important is it that Betsy Blair identified Richard Allen as the person that she saw on the bridge?

A I don't believe there's any one portion of our timeline that's terribly important. Mr. Allen says himself he was out on the bridge.

Q Okay.
A He was –
Q What time did he say that he was out on the bridge?
A We know his car arrived at 1:27. He said he was there at 1:30. He would have had to have gotten out to the bridge, it could have easily been accomplished within the timeframe of him appearing on the video.
Q He said that he was there at 1:30?
A We have his car there at 1:27 passing –
Q You have a car.
A We have his car, a car certainly looking like his.
Q Maybe I saw a different video than you, his interview, but I saw – interrogation, but I saw him say he was there between 12 and 1:30 or 1:45.
A Is there a question?
Q You said that he was there at 1:30; so where are you getting that information?
A From his original report he had made to Dan Dulin.
Q Okay. Were you standing next to Dan Dulin when he made that report, when he was talking to Richard Allen?
A I was not.
Q Were you standing next to Dan Dulin as he wrote it on his pad?
A I was not.
Q Were you standing next to Dan Dulin as he transferred it from here to his computer?
A I was not.
MR. MCLELAND: Objection: Asked and answered, Judge.

THE COURT: Sustained.

Q How important is it that Betsy Blair described a car that – let me rephrase that, 'cause I want – how important is it to the timeline that Betsy Blair described a car that matches Richard Allen's car?

MR. MCLELAND: Objection: It's leading.

THE COURT: Sustained.

MR. BALDWIN: That is not a leading question. That's how important is it. It's not a leading question.

THE COURT: I've sustained the objection, sir.

MR. BALDWIN: Based on what?

THE COURT: It's a leading question.

MR. BALDWIN: Under Rule 611, that is not a leading question, Judge.

THE COURT: Would you like to rephrase your question, Mr. Baldwin?

Q Why is it important, if it is at all important, that Betsy Blair described a car that matches Rick Allen's car?

A I don't believe it's terribly important. We know that she saw a car there. She may have been wrong about her description of the car, maybe even confused.

Q Maybe even confused?

A Yes.

Q It's a problem, isn't it, for you?

A No.

Q How important – well – why would it be important that the person that Sarah Carbaugh claims that she saw and the person that Betsy Blair claims that

she saw – let me rephrase that. Why would it be important, if it is at all important, that the person Betsy Blair saw at the beginning of your timeline and the person that Sarah Carbaugh saw at the end of your timeline be the same person, Richard Allen?

MR. MCLELAND: Judge, could we have a sidebar, please?

THE COURT: Yeah.

(Sidebar conference concluded.)

MR. MCLELAND: Judge, there's also a relevance objection. That's a question for jury to decide.

MR. BALDWIN: I apologize. I don't think they're leading, but I'm frustrated.

THE COURT: It's a matter of fact that you are invading the province of the jury. It's for them to decide what's important, what's not important. They're the ones that are supposed to determine that from taking evidence, and that's their job, not his.

MR. BALDWIN: All right. I'll move on.

(Sidebar conference concluded.)

Q Why is it, based upon the evidence, that you believe sticks were placed on the girls?

A I don't know.

MR. MCLELAND: Judge, can he rephrase the question? I'm sorry, I'm having a hard time hearing him. What was the question?

MR. BALDWIN: I asked –

MR. MCLELAND: Not rephrase the question, just repeat it, I'm sorry.

MR. BALDWIN: Well, he said he didn't know, but –

MR. MCLELAND: Okay.

MR. BALDWIN: -- do you want –

MR. MCLELAND: No, that's okay, go ahead. Sorry.

MR. BALDWIN: No, that's fine.

Q When, if ever, did the law enforcement become aware that Monica Wala was talking to podcasters or lis – or – I'm sorry, was paying attention to this case through podcasters and so forth? Do you know when they realized that?

A I don't remember.

Q To your knowledge, was there ever an Amber Alert that was requested or given related to the missing girls?

A I do not remember.

Q You don't –

A I don't remember

Q Okay. How many girls were with Bre Wilber, if you know?

A I believe there were four girls.

Q Including Bre Wilber?

A I think they met Bre Wilber on the trail.

Q You heard testimony in this courtroom, I think you were here, when Mr. McCain testified; were you in here?

A Yes.

Q Did you hear his description of the height of the bridge?

A Yes.

Q Do you have any reason to dispute that?

A No.

Q Have you been to that end of the bridge where the girls were abducted?
A Yes, I have.
Q Okay. And have you gone from where the girls – that area where they were abducted down to the creek?
A Yes.
Q All right. When you go down the hill, how far – do you know how far that is?
A I have not measured it.
Q Okay. That's one decline of some distance – would you agree? – from here to here.
A Yes.
Q It's at least – would you agree, it's at least ten feet?
MR. MCLELAND: Judge, I'm gonna object. He's – it's been asked and answered, he said he didn't know.
THE COURT: Sustained.
Q And then, when you are down from that initial – the initial walk down the hill, where are you?
A After coming down from the railroad tracks?
Q Right.
A On Weber's lane.
Q Okay. And that's that road that we talked about?
A Yes.
Q When – okay. And then, if you turn to your left, where would you go?
A Which way am I facing?
Q Yeah, that's a good question. So you're down at the bottom, you're facing

the creek, you turn left; would you go under the bridge at that time?

A I'm facing the creek; is that correct?

Q Right.

A Okay. So yes, I would go under the bridge I believe if I went left.

Q Okay. And then, if you went down another layer, down to the creek, would you also be descending a number of feet to get to the creek from Weber's lane?

A A number of feet, yes.

Q And do you know how many?

A I'm sorry, I don't have that –

Q That's fine. Do you know if that information was ever gathered, how many feet are from the top of the bridge down to Weber's lane and how many feet from Weber's lane down to the next plateau, and now how many feet from that plateau to the creek?

A I believe we have that information in topographical maps that we may have available.

Q Okay. According to your investigation, when would be the latest time that that phone was under – L.G.'s phone was under A.W.'s body, if you know? The latest.

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

Q So according to the investigation and what you know about it, what was the latest timeframe that that phone would have been under A.W.'s body?

A When it was discovered the next day.

Q No. On the – you're – I believe – you think the bodies were there on the 13th; correct?

A Yes, after Mr. Allen killed them.

Q Okay. I understand that's what you believe. My question is: On the 13th, based upon your belief that Richard Allen killed those girls on the 13th, what time would be the latest that that phone would have been under A.W.'s body? Richard Allen, according to you, is seen at – by Sarah Carbaugh at around four o'clock, we'll use that as a tent post. How much earlier than that four o'clock, based upon the investigation, was that phone under A.W.'s body?

A I'm still – I'm not sure if I understand your question.

Q Once Richard Allen, according to you, left the scene, did that phone ever leave from being under A.W.'s body?

A No.

Q Okay. And based upon your investigation, did Richard Allen ever leave with the phone?

A No.

Q And based upon your investigation, did Richard Allen ever return to the scene of the crime?

A I don't know.

Q Were there – on the 13th, are you aware of any search member that came within a hundred yards or so of the girls?

A I am not.

Q Okay. Do you remember looking at any trail cams?

A Yes.

Q Okay. On trail cam, was there any revelations that you had about anybody that may have been within a hundred yards of those girls?

A I know there was a trail cam, I'm not certain how far it was from this location where the bodies were found, and I'm not certain it's exactly 100 yards

or not, but there is a trail cam a distance from where the bodies were found.

Q Would it help refresh your recollection if you looked at the deposition?

A I don't think so. I remember what I told you.

Q I don't think you do. I'm going to ask you to refresh your recollection by looking at your deposition. Do you remember taking a deposition?

A I do.

Q That was on –

A The 13th.

Q -- September the 13th. Did you tell – swear to tell the truth?

A I did.

Q Did you do that?

A To the best of my knowledge.

Q Okay. I'm gonna have you look at page 23, lines 14 through 25, and page 24, the whole page. Thank you.

A You're asking me to do that?

Q Yes, I am.

A I see no reason for me to do that, I remember what I told you, and I'm telling you now I don't know exactly how far it was.

Q Go ahead and refresh your recollection, please.

A What were the pages?

Q Page 23, lines 14 through 25, and all of page 24.

A What were the lines again, I'm sorry?

Q On page 23, that is lines 14 through 25.

A What were the other pages?

Q Page 24, the entire page, 1 through 25. And then lastly, it looks like you're

going to page 25, lines 6 through 8 –

A I haven't finished yet, I'm sorry. What was the other –

Q Next page, lines 1 through 8, particularly 6 through 8.

A Very well.

Q What did the trail cam reveal as to the proximity of anyone related to the bodies, where the bodies were ultimately found?

A I'm sorry, I don't understand your question –

Q Does that refresh your recollection of –

A Yes, but I don't understand your question.

Q What'd the trail cam say about – show you as to how close somebody was to those bodies?

A There was no audio on the trail cam, it was only video, and it showed that there was someone in front of the camera during the day that the search was taking place.

Q On the 13th?

A I believe on the 14th.

Q You think it was on the 14th?

A Yes.

Q How close was it on the 14th, how close was this person according to – if that's refreshed your recollection?

A As I told you, the person would have been in front of the trail cam, pictured on the trail cam.

Q You said 100 to 200 yards; correct?

A I'm not sure if I understand what you're asking me. You're asking where the trail camera is at –

Q I'm asking you –

A -- or asking where the person was at on the trail cam?

Q -- how close was the person that you saw on the trail cam to where the bodies were found?

A It would be important for them to understand where the trail camera was at. I could show you.

Q Let's do it, then. Do you think you could do it off of the – on this?

A I think to some degree of accuracy.

MR. BALDWIN: Judge, may he step down and show us?

THE COURT: Yes.

MR. BALDWIN: Thank you.

A So this is the cemetery located here. (Indicates) There is a valley right here. (Indicates) The best I can understand of what we were able to surmise of the location of the trail cam was located somewhere within this vicinity on top of a hill. There's a black area here – (indicates) – and a valley here – (indicates) – and, of course, the bodies were located somewhere within this vicinity here. (Indicates)

Q Okay. Thank you. I appreciate that. I think that does help. Would it help refresh your recollection about what day you – the person was on that trail cam that you just described by looking at your deposition?

A My memory is fine. I'm not sure what the deposition is going to do. I may have told you something, I don't know – what did – what are you saying? What page?

Q Page 23, please. Line 14 through 25.

A Not there yet, hold on. Page 23 you said?

Q Yes.
A Lines again?
Q 14 through 25.
A Yes, go ahead.
Q What day was it that the person that you saw on the trail cam – what day were they on the trail – or on the trail cam video?
A I believe I saw them on the 14th and then there may have been someone on the 13th.
Q My question was: Are you aware of anyone who searched the area upstream from the Monon High Bridge on February 13th?
MR. MCLELAND: Judge, I'm gonna object to this line of question. It's improper impeachment.
THE COURT: Overruled.
A Okay. What's the question?
Q I asked you, "Are you aware – in the deposition, "Are you aware of anyone that searched the area upstream from the Monon High Bridge on February 13th?" And you answered that there was somebody within two to three hundred yards, and then later, you said one maybe a hundred yards.
A If those are my words, I believe it's confused. What I am understanding you asked me is what position were they in, where the camera was located at. They were directly in front of the camera.
Q On the – on February the 13th?
A I have a recollection of someone having been seen on the 13th and then again on the 14th.
Q I asked you about the 13th in the deposition and that's the answer you

gave me is somebody was a 200 yards and then 100 yards from the bodies; correct?

A I'm – I have no reason to doubt that I said that.

Q Where the bodies were found is in a flatter area, would you agree?

A Your interpretation of flat is what?

Q That's fine. That's fair. How would you describe the area where the girls' bodies were found?

A Near to the creek in a flood area, floodplain area. The area where the girls were found at, as I understand, was kind of like in a bowl or a slight depression area within that floodplain.

Q Okay. And there was a steeper incline maybe a hundred yards away from the girls; is that accurate?

A Which direction?

Q West.

A Yes.

Q And actually, when – if you go north toward the cemetery, was there a steep incline that direction, as well?

A There is an incline that direction, as well.

Q But that was some distance from the girls, as well?

A Yes.

Q How many, if you know, tips were recovered that linked Richard – that said, "I think Richard Allen is involved in this crime"?

A There was only one.

Q And was that really a tip?

A That's not a tip, it was his information given to us about him being out on

the trails.

Q If you know, approximately how many people were searching for the girls around the High Bridge on February the 13th?

A I don't know how many exactly.

Q Are you aware of any lists that were made that would show at least some of the people that were searching for the girls?

A Only those by the fire departments.

Q Okay. The ones that were in – one of those, at least, was introduced today –

A Yes.

Q -- if you know? To your knowledge – I mean, you heard Fire Chief Sterrett testify that you and Sheriff – then-Sheriff Leazenby were kind of in charge of the initial search on the 13th; did you hear him testify to that?

A I did.

Q Would you agree with that?

A I don't think I was in charge.

Q Okay. Was there a concern among law enforcement that the girls may have fallen into the water or would be in the water?

A There were a number of concerns about their safety in that respect, maybe falling in the water; become lost; as Chief Sterrett said, hunkered down, we had no idea.

Q And focusing some of the search, at least, with lighting that – with flashlights into the creek, that was part of the way the search was conducted, looking for the girls in the creek?

MR. MCLELAND: Judge, may I ask some foundational questions?

THE COURT: You may.

MR. MCLELAND: Investigator Mullin, were you out there during the search?

A No, I was not.

MR. MCLELAND: Did you participate in the search in any way?

A I did not go out to the scene or participate in the actual search.

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

THE COURT: Sustained.

Q Do you believe that people were searching east of the bridge on the 13th?

A I believe that there were people out there. I know that someone went to Brad Weber's house, which is in the general area you're pointing to.

Q What about on the north side of the bridge?

A On the north side of the bridge?

Q I'm sorry on the north side of –

A You were pointing to a different area.

Q -- to the north side of the creek – no, the east side of the bridge.

A I'm sorry, I'm gonna have to ask you to repeat the question.

Q That's fine, it's – are you aware, through the course of this investigation, as to anybody searching north of the creek, east of the bridge, on February 13th?

A I am not, in that area you're pointing to, I am not.

Q But you don't know whether anyone did or not?

A I don't know.

Q And you heard Chief Sterrett's testimony today?

A I did.

Q How familiar are you with the DNA aspects of this investigation?

A Not particularly.

Q Okay. Then, I'll move on. Why did it take so long – maybe you know this, I don't think you have to know much about DNA to know the answer to this. Why did it take so long for the Unified Command to get Kelsi's DNA profile and turn it over to the lab so that they would know whether or not that was her hair in the hand?

A I'm sorry, I don't know anything about that.

Q You don't know anything about that? Who would know and be in the best position, as far as you know from the investigation, to know the most about L.G.'s cell phone, the forensic data contained in L.G.'s cell phone?

A Christopher Cecil or Brian Bunner.

MR. BALDWIN: Give me just a second, Judge. I'm getting close to the end here.

Q To your knowledge, did law enforcement receive numerous tips, phone calls, emails from tipsters claiming that they knew or recognized the voice on that video?

A I can say, over the years, we've received individuals who said that they thought the person they heard on the voice was someone they knew.

Q Okay. Can you give me an estimate of how many?

A I'm sorry, several.

Q Okay. Dozens?

A More than that.

Q Hundreds?

A Perhaps.

Q Do you ever believe that Richard Allen returned to the crime scene, to

where the girls were found?

A I don't know.

Q As part of your job, do you draft reports?

A I do.

Q And is that just part of the job as a regular, routine practice of your work?

A Yes.

MR. BALDWIN: Judge, can we have a sidebar?

(Sidebar conference conducted.)

MR. BALDWIN: We're going to attempt to get this document in as a – under 803(6).

MR. MCLELAND: What's 803(6)?

MR. BALDWIN: I don't know, I can't think of the name of it. It's not prior recorded –

MR. MCLELAND: Jim'll tell us the official title.

MR. LUTTRULL: Record of regularly conducted activity.

MR. BALDWIN: Record collected, yeah, regularly conducted activity.

THE COURT: The business record exception.

MR. LUTTRULL: Yes.

MR. BALDWIN: Yes, essentially.

MR. MCLELAND: How – Judge, Inaudible) there's hearsay (inaudible) talk about ISP (inaudible) there's – I don't believe (inaudible) it's 803?

MR. LUTTRULL: It's 803(6).

MR. BALDWIN: 803(6).

MR. MCLELAND: I didn't think police reports were included in that,

but –

MR. BALDWIN: I tell you what –

MR. MCLELAND: -- I have not read this.

MR. BALDWIN: -- here's what I'm willing to do, if it's okay, I will just stop my examination, I will re-call him if I – I'll give you a chance to make your argument, and that's the way we'll do it. All right.

(Sidebar conference concluded.)

Q To your knowledge, before Richard Allen was arrested and thrown into solitary confinement at Westville prison, he had always steadfastly denied his involvement in the murders?

MR. MCLELAND: Judge, I'm gonna object. That's a leading question.

THE COURT: Sustained.

Q How many times before Richard Allen was arrested and thrown into solitary confinement at Westville prison did he confess to the crimes?

A None.

MR. BALDWIN: Thank you, Investigator.

THE COURT: Mr. McLeland.

MR. MCLELAND: Judge, just a moment, please.

CROSS EXAMINATION OF STEPHEN MULLIN

QUESTIONS BY MR. MCLELAND.

Q Investigator Mullin, you interviewed Brad Weber in August of this year; is that correct?

A Yes, I did.

Q And prior to the interview, you gave him a phone call; is that correct?

A Yes, I did.
Q And that phone call was to ask him to come down and speak with you; correct?
A Correct.
Q And in that phone call, you did not tell him the topic of the investigation; correct?
A That is correct.
Q And in that phone call, you didn't tell him what to say in your interview, did you?
A I did not tell him what to say.
Q And the interview of Brad Weber, was that recorded?
A Yes, it was.
Q And was a report drafted for that?
A Yes, there was.
Q And during that interview, did Brad Weber state that he got off work at 2:02 and drove straight home?
A He did.
Q And in that interview, did he tell you that he drove his van home?
A Yes, he did tell us that.
Q And in that interview, he knew that he drove his van home from reviewing his phone records; correct?
A That's what he said.
Q And in fact, you pulled his phone records; correct?
A We did.
Q And from those phone records, you were able to confirm that he did, in

fact, drive his van home that day?

A Yes.

Q And through that interview, Mr. Weber informed you he got home about 2:30 p.m. on February 13th of 2017; is that correct?

A Yes.

Q And during the pendency of this investigation, a gun from Brad Weber was collected; correct?

A Yes.

Q And he consented to handing that gun over to law enforcement?

A He did.

Q And that was tested by the laboratory?

A Yes.

Q And that gun was given back to Mr. Weber; correct?

A That is correct.

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

THE COURT: Mr. Baldwin.

RE-DIRECT EXAMINATION OF STEPHEN MULLIN

QUESTIONS BY MR. BALDWIN.

Q But Brad Weber's Sig Sauer was not excluded as the weapon from whence that bullet came?

A I'm not certain what the lab results say, but it indicated that his weapon was not involved. There was no match made.

Q That's what you think that the lab report said?

A I'd have to look at it again, but that's what I understand.

Q Were you here when there was testimony concerning that?

A I may have missed that portion.

Q Yeah. So you don't know if that – if Brad Weber's gun was ever excluded?

A It was determined that it was not the weapon that was connected to the bullet found at the scene.

Q When you talked to Brad Weber after your phone call, the next day he came in, did you ever inquire about – to Brad Weber or asked him questions if he had ever provided inconsistent statements about his route home?

A I don't think I did. I don't remember that.

Q That would be a good question to ask of someone, would you agree, if they've ever given an inconsistent statement?

A I would answer that by saying Mr. Weber said, when he was talking with us, that he had remembered exactly what happened that day because he had reviewed his text messages prior to come in to talk with us.

Q That's interesting. That's certainly interesting that he would be reviewing his text messages when he doesn't know exactly why he's coming in; would you agree?

A I would agree that's interesting and I have no explanation for it.

MR. BALDWIN: Thank you. No other questions.

THE COURT: Mr. McLeland.

RE-CROSS EXAMINATION OF STEPHEN MULLIN

QUESTIONS BY MR. MCLELAND.

Q Investigator Mullin, my recollection from the testimony from the lab analyst or lab scientist is that she confirmed that the bullet found at the scene was cycled through the gun owned by Richard Allen; do you recall that?

A Yes, I do.

Q I also recall her stating that if she was – were able to – the gun technician did not come to the same conclusion with Brad Weber's gun; correct?

A Correct.

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

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

(Sidebar conference conducted.)

THE COURT: "Do law enforcement officers use hollow-point cartridges as a standard-issue bullet?"

MR. MCLELAND: Okay.

MR. BALDWIN: Yeah.

THE COURT: "Which direction does the trail cam face, north, east, south, west?

MR. MCLELAND: No objection.

MR. BALDWIN: No.

THE COURT: "If you saw someone on the trail cam, could you identify what they were wearing?"

MR. MCLELAND: No objection.

MR. BALDWIN: No objection.

THE COURT: "Is it possible to see anything on the ground?" I assume that's from the trail cam.

MR. MCLELAND: From the trail cam? Yeah, no objection.

MR. BALDWIN: No objection.

THE COURT: "Could you have seen the bodies if the videos were

altered to zoom in and was that done?"

MR. BALDWIN: No objection.

MR. MCLELAND: From the trail cam, I assume.

THE COURT: Yeah, we're – this is all trail cam.

MR. MCLELAND: Okay. I'm sorry, Judge. No objection.

THE COURT: No, but I will couch these all so that he understands this is trail cam stuff.

MR. MCLELAND: Okay.

THE COURT: "L.G.'s cell phone movements stop at 2:32 on 2/13/17, the phone was under L.G.'s body. Do you believe that is where they died?"

MR. MCLELAND: No objection.

MR. BALDWIN: No.

THE COURT: "As a trained officer, how hard is it to be accurate with a vehicle description parked while driving by it, only seeing it for a short amount of time?"

MR. MCLELAND: No objection.

MR. BALDWIN: No.

THE COURT: "Can you expect someone who is not trained to look for details quickly and perfectly describe a vehicle parked while driving by?"

MR. BALDWIN: I mean –

MR. MCLELAND: I think it's speculation, but that's fine.

THE COURT: "Are law enforcement issued hollow-point bullets for their department-issued guns?"

MR. BALDWIN: You know that was the first one –

THE COURT: This one is used, this one is are they issued hollow-point bullets for their department-issued guns.

MR. BALDWIN: Oh, okay.

MR. MCLELAND: I'm okay if you combine the question, saying issued and used.

THE COURT: 'Cause then the next part of it is, "If no, can they legally carry hollow-point bullets in their department-issued guns?"

MR. MCLELAND: I'm okay with combining the question –

MR. BALDWIN: No.

MR. MCLELAND: -- if you want to combine them.

MR. BALDWIN: No.

THE COURT: Maybe I'll ask this one instead of that one, do they use – issued, because then if they –

MR. BALDWIN: That's fine, but I mean, too – no, it's fine.

THE COURT: "If you know, do we have the trail cam video?"

MR. BALDWIN: If he knows.

MR. MCLELAND: I have no objection.

THE COURT: "Can we make sure the timestamp is accurate, as setting date and time is something that happens manually by the owner of the camera."

MR. MCLELAND: The trail cam is not (inaudible).

MR. BALDWIN: No, that's –

THE COURT: This is the trail –

MR. MCLELAND: I would object to it.

MR. BALDWIN: Yeah.

MR. MCLELAND: I don't know if he can answer that, but no.

MR. BALDWIN: If he knows.

THE COURT: Okay. Yeah, very thoughtful jury.

(Sidebar conference concluded.)

JUROR QUESTIONS OF STEPHEN MULLIN

QUESTIONS BY THE JURY, READ BY THE COURT.

Q Which direction does the trail cam face: north, east, south, west?

A The trail cam was facing the west and a little bit south, and it'd be basically towards Delphi I guess would be the best way to look at it. If I could show them the map, it'd be helpful.

Q Sure, go ahead.

A Get my bearings. Okay. So the trail cam, as best as I recall from the view and what we saw, was facing in this direction. (Indicates) So anyone walking in front of it would have been picked up standing to the west and more – more west and south from it. Did I make that clear?

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

MR. BALDWIN: Yes.

FOLLOW-UP EXAMINATION OF STEPHEN MULLIN

QUESTIONS BY MR. BALDWIN

Q Would the trail cam have shown the direction from whence the person was traveling, either west to east or east to west?

A The trail cam would have shown someone walking towards it, if they were walking towards the east or northeast, and it would have also shown someone walking from the north to south or south to north in front of it. But also, keep in mind, this area was in the woods and the area of vision was restricted to

probably 25 to 30 feet.

Q And that – what we're talking about, again, was about one to two hundred yards from where the girls were found?

A I have not measured it.

MR. BALDWIN: Okay. That's all. Thank you.

THE COURT: Mr. McLeland?

FOLLOW-UP EXAMINATION OF STEPHEN MULLIN

QUESTIONS BY MR. MCLELAND.

Q Investigator Mullin, I'm gonna blow up State's Exhibit 5, and can you show again the jury where – and for me, too – where the trail camera was.

A The trail cam was located about in this area here. (Indicates) There's like a logging trail that goes through the woods here. (Indicates)

Q That's fine. And where was the trail cam pointed?

A That direction. (Indicates) If you see the camera facing inside of my hand, it was facing that direction.

Q So it was facing down towards the bottom –

A Yes.

Q -- of the photo? And were the bodies found on the back side of the trail camera?

A The bodies were found a bit – were right in this vicinity here. (Indicates)

Q So the area where the bodies were found wouldn't be in the field of view of the trail camera; is that an accurate statement?

A That is an accurate statement.

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

MR. BALDWIN: Judge, I have questions after that, if that's okay.

THE COURT: Briefly.

FOLLOW-UP EXAMINATION OF STEPHEN MULLIN

QUESTIONS BY MR. BALDWIN.

Q That logging trail that you talked about, that naturally goes down toward the creek, that's how you get access to that bottom part of the creek; is that correct?

A I don't believe it is exactly accurate. I think the trail goes to this area and I think it stops in this vicinity – (indicates) – at the top of the hill. It may continue on down to the creek as a kind of a walking area, not necessarily driving.

Q So it would go to the creek?

A Eventually, it would lead down to the depression of the valley, hit to the valley here. (Indicates)

MR. BALDWIN: Okay. All right. Thank you.

THE COURT: All right. Go ahead and have a seat, then.

JUROR QUESTIONS OF STEPHEN MULLIN

QUESTIONS BY THE JURY, READ BY THE COURT.

Q If you saw someone on the trail cam, could you identify what they were wearing?

A I did, yes.

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

FOLLOW-UP EXAMINATION OF STEPHEN MULLIN

QUESTIONS BY MR. BALDWIN.

Q You actually – did you know who it was from looking at the trail cam, it was that defined?

A We identified it as Fireman Closson.

MR. BALDWIN: Thank you.

THE COURT: Mr. McLeland?

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

JUROR QUESTIONS OF STEPHEN MULLIN

QUESTIONS OF THE JURY, READ BY THE COURT.

Q Is it possible – in the trail cam, is it possible to see anything on the ground?

A Yes. I'm trying to think how to describe the aspect of the view of the camera. It would be probably in thirds: ground, front of it, and then in height the sky above. I'm not sure if that's a good way to describe it, that's the best I can do. You can see the ground in front of it, yes.

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

MR. BALDWIN: No, Judge. Thank you.

THE COURT: Mr. McLeland?

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

Q And on that trail cam, could you have seen the bodies if the videos were altered to zoom in?

A No.

THE COURT: Mr. Baldwin?

MR. BALDWIN: No.

THE COURT: Mr. McLeland?

MR. MCLELAND: No, Your Honor.

Q L.G.'s cell phone movement stopped at 2:32 p.m. on February 13th, 2017, and the phone was found under L.G. – A.W.'s body. Do you believe that is where they died?

A I do.

THE COURT: Mr. Baldwin?

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

THE COURT: Mr. McLeland?

MR. MCLELAND: No, Your Honor.

Q Are law enforcement issued or use hollow-point bullets for their department-issued guns?

A Yes.

THE COURT: Mr. Baldwin?

MR. BALDWIN: No.

THE COURT: Mr. McLeland?

MR. MCLELAND: No, Your Honor.

Q If you know, do we have the trail cam video and can we be sure the timestamp is accurate?

A Yes, we do have it.

THE COURT: Mr. Baldwin?

MR. BALDWIN: No questions.

THE COURT: Mr. McLeland?

MR. MCLELAND: No questions.

Q As a trained officer, how hard is it to be accurate with a vehicle description parked while driving by it, only seeing it for a short amount of time?

A Can you repeat that, please.

Q You're a trained officer, how hard is it to be accurate with a vehicle description parked while driving by it, only seeing it for a short amount of time?

A As an officer who's had experience identifying vehicles over their career, I would expect their account to be accurate.

THE COURT: Mr. Baldwin?

MR. BALDWIN: No, Judge. Thank you.

THE COURT: Mr. McLeland?

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

Q Can you expect someone who is not trained to look for details quickly to perfectly describe a vehicle parked while driving by it?

A I – depends on the person. I – Some people are good at it, some people are not very good at describing vehicles and their models and years and so on.

THE COURT: Mr. Baldwin?

MR. BALDWIN: No, thank you, Judge.

THE COURT: Mr. McLeland?

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

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

THE WITNESS: Thank you.

THE COURT: You may call your next witness.

MR. BALDWIN: Call Tobe Leazenby.

(Witness sworn.)

MR. BALDWIN: Thank you, Judge.

DIRECT EXAMINATION OF MAJOR TOBE LEAZENBY

QUESTIONS BY MR. BALDWIN.

Q Good afternoon.

A Good afternoon.

Q Would you state and spell your name for the jury, please,

A It's Tobe Leazenby, L-E-A-Z, as in zebra, E-N-B-Y.

Q Some people may not know the spelling of Tobe; would you do that, as

well.

A I'm sorry, T-O-B-E.

Q Okay. Thank you. You – what is your job title?

A I serve as the Carroll County chief deputy under Sheriff Liggett with a major's title.

Q Okay. And what, prior, did you do?

A Prior to being chief deputy, I was the elected sheriff of Carroll County, serving from 2015 to 2022.

Q So were you then the sheriff in February of 2017?

A I was.

Q Okay. And I don't want to get into a whole lot, you're here for just a very short period of time, but just tell the jury kind of how you got involved in the investigation, what did you do in the investigation, and so forth.

A In my capacity at that time period, as I indicated, I was sheriff, and so a lot of my duties were administrative, and so I did not play a huge role with the investigation. I was not, if you will, boots on the ground, but rather, was kept up to date by our investigators at that time period.

Q Okay. So you were involved in at least the knowledge of what was going on?

A Yes.

Q Okay. So I want to just kind of cut to it, it's kind of – it's been a long day. Based upon your knowledge of the investigation and what you – who you talked to and what you know about it, how many individuals do you think were involved in this crime?

A The initial information was unknown as far as, obviously, we were starting

the investigation and did not know, and that was pre-Mr. Allen, and then, once that information was developed, obviously, that changed.

Q Okay. How many people were – did you think, even after Mr. Allen was arrested, were involved in the crime?

A At that point, I only felt one.

Q Okay. Do you remember taking a deposition with me on August, I think it was the 5th of 2023?

A Vaguely, yes.

Q And you swore to tell the truth, the whole truth, and nothing but the truth at that time?

A Yes.

Q Okay. Would it help me to you refresh your recollection about how many people you thought were involved in the crime in August of 2023, by looking at your deposition?

A Yes.

Q Thank you. And I don't have the paper copy, I have it on computer here. I'm gonna have you look at page 19 – page 19, lines 19 through 25.

A Okay.

Q If you just – when you're done, let me know if that refreshes your recollection.

MR. MCLELAND: Mr. Baldwin, do you have a hard copy?

MR. BALDWIN: I don't.

THE COURT: Okay. That's fine. I'll try to –

MR. BALDWIN: I'm sorry.

MR. MCLELAND: Judge, if I could have a moment to pull it up,

'cause I didn't bring up a hard copy of it. I want to be able to follow along.

Q And going to the next page – I don't know if I call you former Sheriff Leazenby or –

A Tobe's fine.

MR. BALDWIN: I'll bring it over to you.

MR. MCLELAND: That's okay, I've got it. What are the page numbers, please?

MR. BALDWIN: There's 19, kind of middle of the page to the end, and then 20.

A I can't seem to get it to scroll up, almost there. Okay.

Q Does that help refresh your recollection about how many people who told me you felt were involved in the murders when you were deposed in August of 2023?

A Yes, that information does.

Q Okay. And how many people did you think were involved in the murders of A.W. and L.G. when – as of August of 2023?

A That information was multiple or at least two.

Q Okay. And Richard Allen was arrested in October of 2022; correct?

A Yes.

Q And that deposition took place about ten months later?

A Yes.

Q And you felt, ten months after his arrest, that at least two people were involved?

MR. MCLELAND: Judge, objection. It's been asked and answered.

MR. BALDWIN: That's fine.

THE COURT: Sustained.

MR. BALDWIN: I just wanted to – okay.

Q And you weren't the only – were there anyone else that believed that more than one person was involved?

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

THE COURT: Sustained.

Q How many others, if you know, believed that more than one person was involved in the crime, the murders of A.W. and L.G.?

MR. MCLELAND: Judge, same objection.

THE COURT: If he knows.

A I do not.

Q Do you know of anyone, at least one person?

A No one comes to mind.

Q Okay. Would it help to refresh your recollection if you looked at your deposition again?

A Yes.

Q Okay. I'm going to ask you to refresh your recollection by looking at – you can use your finger on this one –

A Okay.

Q -- page 103, lines 10 through 25, and then the next page, which is page 104.

A Okay.

Q That's page 103 it's on right now.

A Okay. Okay.

Q Does that help refresh your recollection as to who else believed, that you

knew of, that more than one person was involved in their murders?

A Yes.

Q And who was that?

MR. MCLELAND: Judge, may I ask some foundational questions?

THE COURT: You may.

MR. MCLELAND: Mr. Leazenby, were you aware, when you made the deposition, of the feelings of other officers involved in the investigation? Let me rephrase that: Did you know what other officers believed, other officers that had been involved in the investigation, did you know what they believed at the time you gave the deposition?

A A lot of what I provided –

MR. MCLELAND: Just did you know –

A No.

MR. MCLELAND: -- what other officers believed –

A No.

MR. MCLELAND: -- at the time you gave the deposition?

A Not at the time of the depositions, no.

MR. MCLELAND: At the time you gave the deposition, were you aware or – let me back up, let me strike that. At the time of the deposition – well, I'll just stop there, Judge. I don't have any other foundational questions. Same objection, it calls for speculation, and so the State's gonna object to the question, Judge.

THE COURT: Overruled.

MR. BALDWIN: Thank you, Judge.

Q Go ahead and answer the question.

A Could you rephrase that, please?

Q Sure. Who was it, now that your recollection has been refreshed, that believed that there was more than one person involved in the murder of A.W. and L.G.?

A At that time, then-detective Tony Liggett.

Q Okay. And why did you believe that more than one person was involved?

A That was based on early conversation in the investigation.

Q Okay. Well, this deposition was taken in August of 2023, and you didn't give any – you didn't say that then, you just – did you? You just said, "Yeah, I still – I think that it's more than one person"; right?

A I did then, yes.

Q Okay. So at that time, and you'd been – well, strike that. In August of 2023, when the deposition was taken, how long had you been involved in the investigation or the knowledge of the investigation of the murders at that time?

A At least over – yeah –

Q Five years.

A Um-hmm. (Affirmative response)

Q So with all that knowledge that you had in your brain when you took that deposition, you still thought more than one person was involved in the murders; is that correct?

A Based on an early conversation.

Q Early – okay. Early meaning 2017?

A Um-hmm.

Q Yes?

A Yes.

Q Okay. So you did not have any other conversations about the investigation from 2017 until 2023?

A No, there were on-going conversation as the investigation progressed through the years.

Q Okay.

A But not necessarily on the number of individuals involved.

Q So that was not talked about, the number of individuals involved?

A It was mainly focused on the tips and information that were continually coming in.

Q I appreciate that. And I don't think you ever answered my question. No matter what it was based on, why did you think, based upon your knowledge of the investigation, that more than one person was involved in the murders of A.W. and L.G.?

A It was based upon the totality is the word I'll use of the information provided to investigators during that time period, so it was the bigger picture in knowing what had actually happened at the crime scene.

MR. BALDWIN: Okay. Thank you. I don't have any other questions.

THE COURT: Mr. McLeland.

CROSS EXAMINATION OF MAJOR TOBE LEAZENBY

QUESTIONS BY MR. MCLELAND.

Q You testified before that you weren't heavily involved in the investigation; is that correct?

A Correct.

Q And so did you know all – is it fair to say you did not know all the details

and evidence involved in the investigation?

A Correct.

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

THE COURT: Mr. Baldwin.

RE-DIRECT EXAMINATION OF MAJOR TOBE LEAZENBY

QUESTIONS BY MR. BALDWIN.

Q You were the sheriff in 2017.

A Yes.

Q And 2018?

A Yes.

Q And 2019?

A Yes.

Q And 2020?

A All the way through 2022.

MR. BALDWIN: No other questions.

THE COURT: Mr. McLeland.

MR. MCLELAND: No, Judge.

THE COURT: Does anybody on the jury have any questions for Major Leazenby?

(Sidebar conference conducted.)

THE COURT: "How many murders have you personally investigated in your career?"

MR. BALDWIN: That's good.

MR. MCLELAND: Okay.

(Sidebar conference concluded.)

JUROR QUESTIONS OF MAJOR TOBE LEAZENBY

QUESTIONS OF THE JURY, READ BY THE COURT.

Q Major, how many murders have you personally investigated in your career?

A I've not personally investigated murders, although I've been involved, being a smaller agency, with other homicides within this county.

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

MR. BALDWIN: No, Judge. Thank you.

THE COURT: Mr. McLeland?

MR. MCLELAND: No, Your Honor.

THE COURT: All right. Thank you, sir. You may step down. Okay. Well, ladies and gentlemen, that's the last witness for the day, so we will call it a day. While you go on about your business then the rest of the afternoon and into the evening, please, remember what I've told you about not talking about the case amongst yourself or with anyone else, since you will be under the supervision of the bailiffs. Have a safe and a peaceful evening and we'll see you all in the morning. Gentlemen.

THE BAILIFF: All rise.

(Jury out at 5:01 p.m.)

THE COURT: You may be seated. So we have a couple of things we need to resolve before we recess for the day. I know the Defendant filed motions for transport orders for DOC inmates, there's a pending motion for witness to appear remotely, and the Defendant's motion to admit evidence of Odinism, Norse paganism, and ritualistic killings, two of those. So let's – can we address the – I know that the Defendant filed its motion for transport of DOC

inmates. The most recent one that you filed that you indicated you really wanted was inmate Jesse James, so I have granted that one and have signed that one as of yesterday.

MR. ROZZI: Thank you, Judge. Just to maybe make this quick, there were several other that were filed a few weeks ago –

THE COURT: Yes.

MR. ROZZI: -- and at this time, I'm communicating with Mr. Goodwin, the attorney general that's representing the DOC –

THE COURT: Okay.

MR. ROZZI: -- and I don't think that we really need you to sign any of those orders right now.

THE COURT: Okay.

MR. ROZZI: We're trying to avoid bringing as many of those people as we can.

THE COURT: Okay.

MR. ROZZI: And – but I may be revisiting one or two of those early next week, depending on how the evidence shapes up over the next couple of days.

THE COURT: Okay. So do you need that one gentleman?

MR. ROZZI: Well, I would like to retain – to maintain that order.

THE COURT: Okay.

MR. ROZZI: Again, the order says that, upon 24-hours notice to the DOC, they'll bring him, so it's not like he has to be here I don't believe, I think that's the –

THE COURT: Yes.

MR. ROZZI: -- way you craft them –

THE COURT: Okay.

MR. ROZZI: -- so there's some flexibility.

THE COURT: So that one's done.

MR. ROZZI: Thank you for that.

THE COURT: So you can let me know about that one –

MR. ROZZI: I will.

THE COURT: -- then at a later time, whenever you want to do that. Okay. The motion for the witness to appear remotely.

MS. AUGER: Your Honor, we received discovery in mid-August that brought some new issues, such as Mr. Weber, his whereabouts on February 13th, his vehicle. We have been investigating that, tracking that down since, and working with the US Attorney's Office and the FBI and their attorneys in how to address this and Mr. Weber's prior inconsistent statements. We had – hoping to resolve this issue through Officer Gootee's testimony, and I had been working with the attorneys who were here earlier about that. Obviously, we were not able to do so. The problem is that Supervisory Special Agent Pohl is the special – or is the – in command of, basically, election security in Texas, and I am told he is unable to be here Monday through Wednesday. While these proceedings were happening today, there – another issue arose with him that he is unable – he has a medical issue which I believe prevents him from flying. Mr. Rozzi was able to talk to the other judge in Carroll County, a Zoom platform is available. That judge is willing to come in tomorrow to facilitate that. Administrative Rule 14(C) says a court must conduct all testimonial proceedings in person except the court may conduct a proceeding remotely for all or some of the case participants – case

participants include witnesses – for good cause shown or by agreement of the parties. Your Honor, I do not believe Special Agent Pohl's testimony is going to be probably not more than a half hour. We had – the – we had been working with the U.S. Attorney's Office pursuant to a Touhy request for quite some time, whether he would have to appear in person or remotely; and given the short time of his testimony that we believe it'll take, his medical issues, his job duties in Texas, we believe that there's good cause show for him to testify remotely. Furthermore, he can't – given his medical condition, as a layperson with some knowledge of this condition, I'm not even sure he could drive here. And so Agent Pohl's testimony has a tendency to rebut Mr. Weber's claim that he drove straight home, and we believe that Mr. Allen's Sixth Amendment right is also at play here, Fifth and Sixth Amendment rights also at play here, as good cause to allow him to appear remotely.

THE COURT: When was he sent a subpoena?

MS. AUGER: Maybe three or four weeks ago. But there's an additional process involving Touhy requests –

THE COURT: I'm familiar with the Touhy requests.

MS. AUGER: Sure. And so we've been talking back and forth with the US Attorney's Office about how to accomplish this since then.

THE COURT: You had the evidence in August and issued a subpoena two or three weeks ago? I just want to get the timeframe correct.

MS. AUGER: Sure. Yeah, it was before the trial, in I believe early October.

THE COURT: You sent a subpoena in early October for this trial?

MS. AUGER: Yes.

THE COURT: To start on October 14th?

MS. AUGER: Yes. But we didn't have all of – I mean, the information about what was going to be discussed was kind of an on-going – we weren't sure whether – what we would need to do that. And it's not that – Your Honor, they're not fighting the subpoena, it's just whether he can appear in person, because he can't, I mean, with his medication condition. That just came to light today. Otherwise, they would have been able to get him here.

THE COURT: And the State's position? You are objecting?

MR. MCLELAND: Judge, I'm objecting to him being called as a witness for this impeachment purpose and I noted that on the record and I respect the Court's decision that you've overruled that objection. So that's the State's objection. I'd leave whether or not he appears remotely to the discretion of the Court. I think the better way to impeach Weber is through Mr. Weber and that hasn't been done. And again, I understand the Court has made their decision. And so that's the State's objection, that he is allowed to testify as an impeachment witness to Weber altogether. I'd leave the part about whether or not he can appear remotely to the discretion of the Court.

THE COURT: Well, again, this witness, Weber, was never confronted with the statement – correct? – by Agent Pohl.

MR. BALDWIN: I – it is my belief that he was, Judge, and that's what we talked about on the sidebar, but I believe that that did happen.

MR. MCLELAND: And my recollection, Judge, is that he started to read the statement to him – I didn't think it was proper impeachment and that's the State's stance, Judge, and that's why we're objecting to the witness, not necessarily whether or not he can appear telephonically.

MS. AUGER: Your Honor, they – I mean, the State also presented evidence that he went directly home, and so this is also rebuttal evidence, that he did not.

MR. MCLELAND: Judge, I disagree with rebuttal. I think it's – he's solely being called to impeach the testimony that Weber – Brad Weber gave.

MR. BALDWIN: My memory, Judge, is that I asked Mr. Weber, "Did you tell Agent Pohl and Agent Gootee that you went and – that didn't go directly home, you worked on your ATM machines?" He said, "No," he got all mad, and that that's when it ended. That's my memory of it.

MR. MCLELAND: That's my recollection, too, and that's improper impeachment. He didn't give him an opportunity to review the document and say, "Do you recall this document," and then follow up with the questions, so that's my recollection, as well.

THE COURT: And I did review my notes and that's not how it kind of – you never showed him the report.

MR. BALDWIN: Well, I – I'm sorry, Judge, in my opinion, once he denies that – I think it's improper to show somebody a third-party – that's typically their own deposition. I don't know that you can show them another report of somebody else, that's just my way of thinking, but –

THE COURT: Well, he was never confronted with the statement, that's the point –

MR. BALDWIN: It's an inconsistent –

THE COURT: -- that's the impeachment.

MR. BALDWIN: I'm sorry, Judge, to interrupt.

THE COURT: No, but I mean, the point of impeachment is to

confront the witness with the prior inconsistent statement and ask whether they did or didn't say it, and he was never confronted with that specific statement.

MR. BALDWIN: That is a form of impeachment. There's also what – where somebody says on the stand, "I said A," and then they didn't say A, and somebody comes up and says, "No, they didn't say A, they said B," and that's what this is. This is – he said on the stand, "I never said that," and Pohl, again, would get up on the stand and say he did say that, so that – it's just a different – in my experience, at least, that's a different thing. You can call that impeachment or you can call it an inconsistent statement that's being offered not for the truth – to prove the truth of the matter asserted, but to show that there was a statement made that is inconsistent.

THE COURT: Well, I understand that there is the technology to appear remotely for this witness. I don't think I've heard good cause shown based on the issuance of the subpoena, so I'm gonna deny the motion. The last thing then is your motion, Mr. Baldwin.

MR. BALDWIN: Judge, to make it simple, I would just stand on the motion itself, both of them.

THE COURT: So no additional argument?

MR. BALDWIN: No additional.

THE COURT: Mr. McLeland.

MR. MCLELAND: Judge, if I understand the motions, the Defense is claiming that we've opened the door by the questions that we had, and I believe – I hope I can cover all of these issues in here, but I believe, in part, it was from the testimony of Kohr, and perhaps Olehy, and then Holeman. I don't believe the State has opened the door at this point. Specifically to Olehy, they initiated

the question as to how the sticks were arranged; and with Holeman, they initiated those questions. Any questions after that were just follow-up questions to clarify the questions from the Defense, and so the State does not believe they've opened the door at this point to allow those – that third-party motive or third-party evidence into this trial, Judge.

THE COURT: Anything else?

MR. BALDWIN: Yes, Judge. Certainly, certainly, Judge, when the State puts in evidence of sticks on these girls in what I would label in a very unusual way, especially on A.W., that invites questioning from the Defense of the witnesses, so I would say they opened the door is the way I would – it would be ineffective assistance of counsel for me not to ask questions about that and, therefore, I asked questions about that. It's not door-opening, it's – you know, it's cross examination based upon what they put into evidence, so I would say that. Then there's the whole situation involving the undoing, that was definitely not offered by the State – by the Defense, that was offered by the State of Indiana on re-direct by Mr. McLeland, who asked was it also thought that the reasons for the sticks on the bodies was an undoing, and the answer was yes and not – so we have a different opinion. It is not an undoing, it is from Odinism, it is from Norse paganism, we have an expert that has testified to that. And certainly, the State has produced – has invited opening the door through that questioning and that should allow us to put in our own reasons why we think those sticks were on the girls and how they were formed and so forth, and that's a Sixth Amendment right that Mr. Allen has. And then, you know, I'll just let the other arguments stand, Judge, as it relates to, you know, Mr. – Lieutenant Holeman saying that only one person was involved, because more than one person – if

there are more than one person, then it's gonna leak out, because more people can't, you know – basically there's just more opportunity for that information to leak out about the crimes and, certainly, through the *Franks* memo, through the testimony from August 1st, we have learned that Elvis Fields said that – asked the question, "If my spit is found on the girls, but I have an explanation for it, would I still be in trouble?" I would call that an incriminating type of comment or question. And then, we have the linkage between Elvis Fields and Brad Holder; therefore, what Lieutenant Holeman said on the stand bears itself out to be true, that more than one person, in our belief, are involved in the crime. Elvis Fields made an incriminating statement. We believe there's strong, you know, evidence that a guy 125 miles away in Rushville and a guy up in Logansport who are following each other and mimicking each other on Facebook, that that is a – an inexplicable connection that the common denominator is the Delphi murders. Brad Holder, as you know, Judge, his son dated A.W., and Elvis Fields said that – you know, asked the question that he asked; therefore, I think when Lieutenant Holeman stated that more than one person – "I only believe it's one person for a lot of reasons, one of them being that, nobody's gonna admit to it if it's just one," it bore itself out. So it's been a long day, I'm gonna sit down. That's – I'm gonna stand on that. Thank you.

THE COURT: Anything else, Mr. McLeland?

MR. MCLELAND: Judge, just the same argument, those are questions elicited by Defense, and so they're trying to use their questions to then open the door for their third-party suspects. Any questions asked by the State by were in response to the questions asked by Defense, and so I believe they are trying to open the door and allow this stuff in, and so I don't think – the State

does not believe it's proper at this point to allow that kind of evidence in, Judge.

THE COURT: Well, again, the case law is perfectly clear about third-party suspects and that there has to be a nexus, and there is no nexus, there's still no nexus between the third-party suspects and the crime, so both of the motions that you have filed, Mr. Baldwin, are denied.

MR. BALDWIN: Thank you, Judge.

THE COURT: You're welcome. Will you be ready then tomorrow morning to begin promptly at 9?

MR. ROZZI: Yes.

MR. MCLELAND: Judge, can we have a sidebar –

MR. BALDWIN: Yes.

MR. MCLELAND: -- as to one of the witnesses for tomorrow, so we can discuss whether – some objections the State has?

THE COURT: Okay, sure.

MR. MCLELAND: Thank you, Judge.

THE COURT: Sidebar.

(Sidebar conference conducted.)

MR. MCLELAND: Judge, my understanding is they're gonna call Superintendent Doug Carter tomorrow.

MR. BALDWIN: Yes.

MR. MCLELAND: When I asked Mr. Baldwin before what he's gonna testify to, I don't know if I remembered everything, but anything more –

MR. BALDWIN: No.

MR. MCLELAND: -- the FBI?

MR. BALDWIN: Correct.

MR. MCLELAND: And I forgot the second one.

MR. BALDWIN: The – he walked on the bridge.

MR. MCLELAND: He walked on the bridge.

MR. BALDWIN: Yeah.

MR. MCLELAND: Was that all?

MR. BALDWIN: No.

MR. MCLELAND: Did I miss something?

MR. BALDWIN: Oh, the third one was – I'm gonna – okay. I'm just gonna ask him, "Was there a time that the FBI was working with you?" "Yeah." "Was there a time that you told them to no longer work with you?" "Yeah." "And why is that?" He'll say whatever. That's pretty much that. The second area is, "Did you walk on the bridge?" "Yeah." "Tell me about that experience." And he actually crawled on the bridge and there's – I just – I wanted that for the jury to understand how treacherous that bridge is for reasons that are related to the Defense. And then the third – and that won't – you know, those will take very quick. And then the third one is also quick and that is, "How much money did the Governor – did he ever restrict the amount of money that you would have or need on the Delphi investigation?" He's gonna say, "No." And that's all.

MR. MCLELAND And I object as to relevance.

THE COURT: How are those relevant?

MR. ROZZI: Well, the FBI issue is relevant because of this: The reason why the nexus was cut between the FBI and State Police involves the loss of lost videos, surveillance video that both agencies were seeking out in the case, and so it goes to one of the themes that we've been offering up and that is the lack of continuity of the investigation and the lack of quality –

THE COURT: This is the stuff that Steve Mullin testified to?

MR. ROZZI: No, that was actually a different one.

MR. BALDWIN: Because it's the FBI, it's different. There's also, Judge, the FBI were given the extraction from L.G.'s phone and, to our knowledge, and based upon depositions that we've conducted, they never – they – when they were gone, they were gone, and there was never any – we need to be able to explain – that's part of our – one of our themes is, you know, the – you know, the extraction of the phone should have been done better, it could have been done better had the FBI been around, but why – but then there's this lingering question, "Well, what happened to the FBI?" I think the jury has the right to know that – I mean, I don't even know why it's controversial. Doug Carter kicked them out, you know.

MR. MCLELAND: That's not – it's not because of the – we have some disagreement of how it went down.

MR. BALDWIN: Okay.

MR. MCLELAND: I just don't think it's relevant to the case against Richard Allen. Also, Doug Carter's not gonna testify to the phones, he's not gonna be able to testify to that. I don't think he's gonna be able to testify to (inaudible).

MR. BALDWIN: Well, that's what he's testified to in the depo already, but –

THE COURT: So the – I just want to make sure I understand: You want the Superintendent of the Indiana State Police to testify about the break-up with the FBI?

MR. BALDWIN: I think the jury just has – I don't even care about

that, I just want them to know that the FBI, at one point in time –

THE COURT: Was removed.

MR. BALDWIN: -- was removed. When they left, they were no longer working together. I don't have to get into the reasons why, I –

THE COURT: And it doesn't matter.

MR. BALDWIN: Yeah.

THE COURT: You just want to get in the fact that the FBI was involved and then the –

MR. BALDWIN: Yes.

THE COURT: -- FBI was not involved?

MR. BALDWIN: Yes.

MR. MCLELAND: We've done that already through Tony Liggett.

MR. BALDWIN: Tony Liggett –

MR. MCLELAND: Tony Liggett testified that he could call them at any time and ask them and I think that's the truth, we could call them right now and ask them –

MR. BALDWIN: Well, then that would be different than what we were told by Jerry Holeman about – Jerry Holeman testified very, I mean, proudly that Doug Carter kicked them out. That's what he said. I mean, he said, "Yeah, I booted them out." That's what –

MR. LUTTRULL: That's not relevant to this trial.

MR. ROZZI: Well, they're gonna say lack of investigation. And it's true that it did occur over lost video, and there's an email that memorializes all this and it's very clear. In fact, when Trooper or – Superintendent Carter, who was the mouthpiece for the State Police throughout this entire investigation to

the public, he acknowledged that to us in a deposition. I mean, he wasn't hiding that.

THE COURT: If that's the extent of that, okay. That's already in, so it's cumulative at best, so you can ask that very – if the FBI was in and the FBI was out.

MR. BALDWIN: Fair. All right. That's fine. That's fine. The second one was the crawling.

THE COURT: About the crawling?

MR. BALDWIN: Yes. Oh, I don't have it here. There's a photo of A.W., the 2:07 p.m. photo – oh, let me grab it. This is the 2:07 photo that's been admitted into evidence.

THE COURT: Okay.

MR. BALDWIN: The State appears to be claiming that Richard Allen was here, although you don't see him here, and that while these girls are walking, he caught up –

THE COURT: Well, there's somebody right there –

MR. BALDWIN: There's a –

THE COURT: -- or is that a tree?

MR. BALDWIN: There's a post, actually. But they're –

THE COURT: They're walking across the bridge with them.

MR. BALDWIN: Right.

THE COURT: And you see that in the bridge video, the Bridge Guy video; right?

MR. BALDWIN: Well, you see somebody there.

THE COURT: You see somebody.

MR. BALDWIN: Yeah.

THE COURT: Okay.

MR. BALDWIN: My point is, and the point we will be making – I don't like sharing all my information with the State, but that's where I will leave it – is it's so treacherous, and Richard Allen's about Doug Carter's age, maybe a little bit younger. It's treacherous for a man to walk across there. In fact, we believe that it was somebody else at the other end –

THE COURT: But we have a video – we have a video that shows a man, whether – of Bridge Guy walking across there, so –

MR. BALDWIN: Well –

THE COURT: -- it's not that treacherous.

MR. BALDWIN: It was so treacherous that –

THE COURT: Whether Doug Carter crawled or not is irrelevant.

MR. BALDWIN: Well, he said it was so treacherous he felt it – that he needed to crawl.

MR. LUTTRULL: That doesn't have anything to do with the State's –

MS. DIENER: We just had Dave McCain saying he crossed the bridge. He's 70-some years old.

MR. ROZZI: Well, it goes to the weight.

MS. DIENER: Why does the testimony of Doug Carter mean so much more than anyone else that's talked about crossing this bridge?

MR. BALDWIN: Because he's a guy that said that he crawled across the bridge, that's why. There's some people that crawl across the bridge.

MS. DIENER: It's irrelevant.

THE COURT: It's – that is – now we're getting into the – that's not relevant. He can testify about the FBI, he can testify that he brought them in, he brought them out, but that he crawled across the bridge, I'm not sure how that's relevant to the guilt or innocence of Richard Allen.

MR. BALDWIN: I'm gonna make one – I appreciate that, Judge. I'm gonna make one last pitch. Oh, sorry, sorry, sorry, sorry, sorry, sorry, sorry. I'm gonna make one last pitch. If the State of Indiana is going to claim on closing argument and throughout the trial, as they are, that Richard Allen, who's not seen in that photo, caught up to L.G., it had to be done in a quick fashion. This is the argument that we're gonna make. Again, I'm glad that I can make these arguments to you. And –

MR. MCLELAND: You haven't made the argument yet, but (inaudible)

MS. DIENER: Yeah.

MR. MCLELAND: I didn't think that I made that 2:07 argument. Anyway, a grown man feeling the need to crawl when it is – this is – it tends to prove that what they're saying is not true. That it's so treacherous that a grown man – there's a 70-year old man and that goes – you know, he said that he can go across that, somebody who's lived here his whole life. Doug Carter, who has not, needed to get on his knees to crawl across there and – because he's so scared. I'm saying Richard Allen or whoever would not have been able to walk across here in such a quick fashion to the degree that Doug Carter had to crawl.

THE COURT: And there has been evidence and testimony presented that other witnesses have crawled or refused to go across the bridge because –

MR. BALDWIN: Was there crawling?

THE COURT: -- it's treacherous.

MR. ROZZI: So that was relevant, so then this would be, too.

MS. DIENER: Not from Doug Carter.

MR. ROZZI: What's the problem with letting them know the truth?

MS. DIENER: The truth is already there.

MR. BALDWIN: The female – I think there was –

THE COURT: Keep your voice down.

MR. BALDWIN: I'm sorry, I'm sorry. If somebody could testify it was a female, not a grown man. A grown – you know, so – I mean, I respect your ruling, that's fine. I made my record.

THE COURT: Yes, you have.

MR. BALDWIN: Thank you. Thank you.

THE COURT: And what's the other issue?

MS. DIENER: The other one was the money.

THE COURT: Okay.

MS. DIENER: And that's completely inappropriate.

MR. ROZZI: The what?

THE COURT: The money. How is that relevant?

MR. ROZZI: Well, it's relevant because it was Trooper Holeman said that they wouldn't move forward with the height study because it was gonna cost them ten grand. At the same time, his boss is saying that they would throw the entire state budget at this thing. I think it is relevant because I believe it goes, again – well, first of all, it's a credibility issue and, second of all, it goes to a lack of investigation. He said they were on a budget.

MR. MCLELAND: First of all –

MR. BALDWIN: I'm sorry, no, no, no, no.

MS. DIENER: That's a prosecutor call.

MR. BALDWIN: Yeah. If he said that there was money, and there wasn't, then that also just contradicts, it's contradictory. Sorry. You know –

MR. MCLELAND: Again, my recollection of the testimony is that the variance of the results, as well. Now we're getting into – then they came to me and they said, "Do you want to spend the money and do you want to test this, knowing that there may be issues." So, if anything, I made the decision.

THE COURT: Okay.

MR. MCLELAND: So we're (Inaudible) brings it up to me and I'm the one who made the decisions and it not – there's too much of a variance, it's not what it was (inaudible), just like –

MS. DIENER: It's like doing voice recognition.

MR. ROZZI: Well, but it's a two-part argument, and one part was, is that he said he didn't have – they didn't want to spend the money, but more important –

MR. MCLELAND: I didn't want to spend the money.

MR. ROZZI: Well, but then –

THE COURT: He objected because it's not his decision to make, it's Mr. McLeland's decision to make.

MR. ROZZI: He's the lead investigator.

THE COURT: Well, I understand that, but he doesn't make those decisions, the elected official makes those decisions, so –

MR. BALDWIN: Okay. So I'm sitting here thinking about – so Carter's gonna be very – I'm think about tomorrow like witness wise.

MR. ROZZI: Well, we're gonna try to use the list that Nick gave us to –

THE COURT: To kind of maybe do some videos.

MR. ROZZI: -- do some work tonight –

MR. BALDWIN: Video.

MR. ROZZI: -- and try to clean it up.

MR. MCLELAND: Are you thinking of doing those tomorrow?

MR. ROZZI: That's what we're hoping to do.

MR. MCLELAND: All right. I'll get it done tonight.

MR. ROZZI: If we want to wait, you know –

MR. BALDWIN: The problem is we don't have any witnesses.

MR. MCLELAND: (Inaudible)

MR. ROZZI: Yeah, I have – I don't know that we're gonna be able to mobilize people. You know, we're –

THE COURT: You gotta have something more than one witness that's gonna take 20 minutes.

MR. ROZZI: Can we take a look at our list and see –

MR. BALDWIN: Yeah –

THE COURT: Let's see if you can –

MR. ROZZI: Again, we're working on short notice here.

THE COURT: I know.

MR. BALDWIN: We really are.

THE COURT: You can maybe juggle some people around and see if you can't get anyone tomorrow.

MR. BALDWIN: Okay.

THE COURT: So – I mean, because the jury shows up to work, and then you only have the one witness, and then they hold that against you guys because you won't have anybody else.

MR. BALDWIN: We had planned to play the video today and tomorrow, so if we play the video, that'll take up most of the time.

THE COURT: That'll take up some, yeah.

MR. MCLELAND: Yeah.

THE COURT: So we can do Mr. Carter, play the videos –

MR. ROZZI: The camcorder video is two hours basically.

MR. BALDWIN: Okay.

MR. MCLELAND: I just wanted to look at that list –

THE COURT: Okay.

MR. MCLELAND: -- and see –

MR. ROZZI: Oh, I do too. I – we haven't –

MR. MCLELAND: -- if those dates on that list match up and can I match anything in the video, that's my intention.

MR. ROZZI: I agree.

THE COURT: Okay.

MR. ROZZI: Max seemed to think that he was – I mean, he wasn't mad at you. He was like, "This looks like it's exactly what we –

MR. MCLELAND: Well, that's why I (inaudible) –

MR. ROZZI: Some I'm hopeful that might expedite it.

(Sidebar conference concluded.)

THE COURT: All right. So we'll be ready, then, tomorrow morning at nine o'clock with your witness and, potentially, maybe some of the video that

we weren't able to get to today?

MR. BALDWIN: Yes, Your Honor. Thank you.

THE COURT: Okay. Perfect. All right. Is there anything else, then, that we need to discuss or are we done?

MR. BALDWIN: Not that I know of.

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

MR. BALDWIN: Thank you.

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

(Off record at 5:30 p.m.)

(On record November 2, 2024, at 9:14 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. We are outside the presence of the jury. And I appreciate the opportunity, Mr. McLeland, Mr. Rozzi, to have a discussion about the exhibits that you will be publishing to the jury. I believe we're talking about Defendant's Exhibit XX, it was offered yesterday. The State objected. Over their objection, I admitted it. You then had the master sheets for the movement video and the in-cell video, which we didn't get to the in-cell master sheet, all we did was the camcorder master sheet, so that'll have to be offered up at the appropriate time, Mr. Rozzi.

MR. ROZZI: Would you repeat yourself, please.

THE COURT: Yes. The master sheet on the in-cell video you

withdrew.

MR. ROZZI: Okay.

THE COURT: So that has not – that's ZZ and that has not been offered or admitted, but the master sheet on the camcorder has been, that's YY.

MR. ROZZI: And we're gonna submit an updated one.

THE COURT: Okay. So you've got the updated YY?

MR. ROZZI: We got a new one, yeah.

THE COURT: Okay. So I'm gonna show it as YY(1) and YY(2). The updated one will be 2.

MR. ROZZI: Judge, I have the updated one – I just was handed an exhibit sticker that was DDD.

THE COURT: Oh, okay. Thank you. Okay, DDD.

MR. ROZZI: And DDD, just before that is gonna be the thumb drive with the actual video –

THE COURT: Okay.

MR. ROZZI: -- which is 15 videos.

THE COURT: And I assume the State is maintaining its objection.

MR. MCLELAND: Yes, Your Honor –

THE COURT: Okay.

MR. MCLELAND: -- same objection for the same reasons we had at the sidebar, on November 1st, for the in-cell video, if I'm following along correctly, with the camcorder video.

THE COURT: Right. Okay. And I know that we had a conversation in chambers about some of the content of the exhibit, that it contains some rather explicit scenes that – obviously, the jury has to see this, but I know, Mr.

Rozzi, you had some concerns.

MR. ROZZI: Yes, Judge. I have requested on the Court and I am requesting that we publish these videos, but out of respect for various people involved in this, including my client and his dignity, I would appreciate the Court allowing us to publish these to the jurors. I think that's the more appropriate way to handle this and I think it's just a more professional way to deal with this content.

THE COURT: Okay. And that's fine, I don't have a problem with that. And I know that you've moved the big-screen TV to a point in the middle of the courtroom to where it's been angled so that the jury has a clear view of the exhibit and the display is not being projected out into the audience for all of the reasons that you've just expressed. So with all of that being said, is the State ready to proceed?

MR. MCLELAND: Judge, just one other note before the jury comes in, just know that the State is gonna have a continuing objection to, as we get past the first video, to then 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, the State's gonna have a continuing objection that, after we get past video 1, that any of the videos are cumulative, and so just wanted to note that objection so the Court can note that so I don't have to do that every time they move on to another video, Judge.

THE COURT: Okay. Thank you. And I'll just show it as a continuing objection. And if it gets to a point where – 'cause I know each of the videos is a specific date within the timeframe that the Defendant is alleging, from April to June, that we discussed at sidebar. So if I get to the point where I'm agreeing with the State, I'll ask counsel to approach and we'll have a conversation

at sidebar.

MR. MCLELAND: Thank you, Judge.

MR. ROZZI: Judge, when you receive Exhibit EEE, you're gonna – obviously, the master list, the new master list, if you will, on there you'll see the length of time for each of the videos, just to the extent that that gives you some context about, you know, what – about what you're seeing from a cumulative standpoint.

THE COURT: Okay. Thank you.

MR. ROZZI: Yeah. Some of them are just two minutes or, you know –

THE COURT: Yeah.

MR. ROZZI: -- very short clips.

THE COURT: And I'm looking at the screen and I'm seeing mpg file with 92,672 kb, whatever that is, and then others that say 479,000 –

MR. ROZZI: Oh, I'm sorry.

THE COURT: -- so, obviously, there are different lengths.

MR. ROZZI: Yeah. And they're on the master list, we've got exact lengths –

THE COURT: Okay.

MR. ROZZI: -- which were on the list we got from the State yesterday.

THE COURT: Okay. And I appreciate the State providing that. It's work product, you didn't have to provide it, but I appreciate that you did provide it to the Defense so that they could more clearly produce this information for the

jury's benefit, so I appreciate the State's cooperation on that. All right. Anything else from the State?

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

THE COURT: Anything from the Defendant?

MR. ROZZI: No, Your Honor.

THE COURT: All right. Let's go. Folks, could you turn your table mics on.

MR. MCLELAND: Sorry.

THE COURT: I can't see everybody on the Defendant – Ms. Auger or Mr. Baldwin, could you turn the table mics on.

MR. BALDWIN: Got it.

THE COURT: Thank you.

THE BAILIFF: All rise.

(Jury in at 9:24 a.m.)

THE BAILIFF: Thank you. You may be seated.

THE COURT: Okay. Everybody's all settled in over there. Good morning, ladies and gentlemen. It's nice to see you back this morning. I hope you had a pleasant evening. As we have parted company and you've had access to your phones for purposes of communicating with your family and checking work emails, I'll again ask you the series of questions that I'm sure at this point now you can recite back to me. Ladies and gentlemen of the jury, have you read, seen or heard any media accounts concerning this case?

A (All jurors answer in the negative.)

THE COURT: Have you discussed this case with anyone?

A (All jurors response in the negative.)

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

A (All jurors respond in the negative.)

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

A (All jurors respond in the negative.)

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

A (All jurors respond in the negative.)

THE COURT: All right. Once again, ladies and gentlemen, I very much appreciate your continued compliance with the Court's directives. The attorneys have indicated that they are ready to proceed. Mr. Rozzi, you may call your next witness.

MR. ROZZI: Thank you, Judge. We would re-call Max Baker.

(Witness sworn.)

DIRECT EXAMINATION OF MAX BAKER

QUESTIONS BY MR. ROZZI.

Q All right. Tell the jury your name again.

A Max Baker.

Q Max, and we – kind of picking up where we left off yesterday. Yesterday afternoon, did we, essentially, receive a list from the State that had a lot of these things or a lot of these camcorder videos organized in a little bit more consumable fashion?

A Yes. Yeah, it provided the dates for most of those videos, yeah.

Q Okay. And are these the videos that just weren't timestamped before because they were on a camcorder?

A Yes, yeah.

Q All right. So that was very helpful in us putting this together?

A Yes. Yeah, I was able to make sure that all of the videos come from the months we wanted them to.

Q Okay. And so in that regard, did we – did you prepare another thumb drive with videos essentially from April, May, and June of 2023, at Westville?

A Yes. I did that this morning.

Q And are those videos on Exhibit DDD?

A Yes.

Q And are those videos all, again, what we call movement videos or camcorder videos?

A Yes, they are.

MR. ROZZI: I move to exhibit – to admit DDD.

DEFENDANT'S EXHIBIT DDD OFFERED

THE COURT: And I'll show that has been admitted over objection from the State.

DEFENDANTS EXHIBIT DDD ADMITTED

MR. ROZZI: Thank you, Judge.

Q And then, we introduced a master list of the camcorder videos yesterday; do you recall that?

A Yes.

MR. ROZZI: May I approach, Judge?

THE COURT: You may.

Q Let me hand you what's been marked now as Exhibit EEE, and just tell the jurors what this is.

A Yeah. So basically, this is a master list of the videos, basically has them number 1 through 15, and it has the file name, you know, the date. When you get this list, you'll see the first two, I was only able, from the list I received from the State, to ascertain that the first two were between April 5th and April 13th, but the rest of them have the exact date from when the video is made. And then, they – also includes the time, how long just the video takes in minutes and seconds, and then I also added, last night, just the words "contains nudity" on the videos that contain nudity, just to kind of mentally prepare you for that.

Q Did I ask you to also do that so we have some idea of which ones? We weren't sure what we were gonna play today; right?

A Yes.

Q So we're just trying to have a guide list so we can walk through these with some sense of organization?

A Yes, yeah.

Q Also, there's a file number on here, I know this stuff can get kind of mesmerizing when you look at it, but, for example, on number 1, it's M2U00964; do you see that file number?

A Yes, I do.

Q Is there some meaning to those file numbers as far as the timing?

A Yeah. So they're chronological, so the – I'm assuming all these videos come from one camcorder, I've received no information otherwise, and so, you know, when a camcorder records these, it's saving these files in chronological order, so you know, for example, 964 is before 973, the second video.

Q Okay. So that also helps us kind of determine the timing of them?

A Yes.

MR. ROZZI: Okay. I move to admit EEE.

DEFENDANT'S EXHIBIT EEE OFFERED

MR. MCLELAND: Judge, same objection as the other one, just 'cause it goes in conjunction with the zip drive from the State, and so just note that objection, Judge, that we talked about yesterday with the – I call it a zip drive – with the other files, Judge.

THE COURT: Yes. And I'll EEE is admitted over objection.

DEFENDANT'S EXHIBIT EEE ADMITTED

MR. ROZZI: May I publish?

THE COURT: You may.

DEFENDANT'S EXHIBIT EEE PUBLISHED

MR. ROZZI: May I continue?

THE COURT: You may.

MR. ROZZI: Okay.

Q All right, Max, so just to start the series here, video number 1M2U00964; is that correct?

A Yes.

MR. ROZZI: May I publish this video, Your Honor?

THE COURT: You may, yes.

MR. MCLELAND: If I could have just a moment, Judge, to see if I can –

THE COURT: Yes, you may.

MR. MCLELAND: Thank you.

MR. ROZZI: May I?

THE COURT: You may.

DEFENDANT'S EXHIBIT DDD PUBLISHED IN PART BY PLAYING

MR. ROZZI: May I continue?

THE COURT: Yes, yes.

Q Max, and then video number 2, looking at the master list, is this the video, about two-minutes long, from somewhere between April 5th and April 13th of 2023?

A Yes, sir.

MR. ROZZI: May I publish, Judge?

THE COURT: You may.

DEFENDANT'S EXHIBIT DDD PUBLISHED IN PART BY PLAYING

Q And then, Max, moving on, video number 3, M2U980, about five-minute video; is that correct?

A Yes.

MR. ROZZI: May I publish, Your Honor?

THE COURT: You may.

DEFENDANT'S EXHIBIT DDD PUBLISHED IN PART BY PLAYING

Q All right, Max, so video number 4, M2U987, for three minutes and 43 seconds; is that correct?

A Yes.

Q This looks April 14th, 2023?

A Yes.

MR. ROZZI: May I publish, Your Honor?

THE COURT: You may.

DEFENDANT'S EXHIBIT DDD PUBLISHED IN PART BY PLAYING

Q And then, video number 5, Mr. Baker, is that 1002?

A Yes.

Q And that's April 17th, 2023?

A Yes, it is.

Q Two minutes and 57 seconds; is that right?

A Yes.

MR. ROZZI: May I publish, Your Honor?

THE COURT: You may.

DEFENDANT'S EXHIBIT DDD PUBLISHED IN PART BY PLAYING

Q And then, Max, number – video number 6, is that the M2U1005?

A Yes.

Q And that was April 17th at looks like 9:31 – I'm sorry, April 17th at 11:49 a.m.?

A Yes.

Q Two minutes and 48 seconds; right?

A Yes, sir.

MR. ROZZI: May I publish 1005, Your Honor?

THE COURT: You may.

DEFENDANT'S EXHIBIT DDD PUBLISHED IN PART BY PLAYING

Q And then, Max, video number 7, is that video M2U1007?

A Yeah.

Q And does that appear to be from April 17th of 2023, starting around 5:12 p.m.?

A Yes, sir.

Q And that's about 26 minutes in length?

A Yes.

MR. ROZZI: May I publish, Your Honor?

THE COURT: You may.

MR. ROZZI: Judge, I may seek permission to move through this a little bit more hastily as we watch this one, 'cause it's a little longer.

THE COURT: Yeah, that's fine.

MR. ROZZI: But this is 1007.

DEFENDANT'S EXHIBIT DDD PUBLISHED IN PART BY PLAYING

MR. ROZZI: Your Honor, may I advance the video?

THE COURT: Certainly.

MR. ROZZI: I think this is gonna do it in 30-second segments.

THE COURT: Okay.

MR. ROZZI: May I advance it two minutes?

THE COURT: Yes.

MR. ROZZI: And then maybe we'll move from there. So now looking at 10:14 on the video. Thank you. Your Honor, may I advance the video another two minutes?

THE COURT: You may.

MR. ROZZI: Thank you. We're now viewing 13:10 on the video. Your Honor, may I advance two more minutes?

THE COURT: You may.

MR. ROZZI: And now viewing 15:57. Your Honor, may I advance the video another two minutes?

THE COURT: You may.

MR. ROZZI: Now at 20:12. May I advance two minutes?

THE COURT: You may.

MR. ROZZI: Now at 22:50.

Q Okay, Max, video number 8, is that file 1014?

A Yeah.

Q And is that from April 18th, 2023, at 6:02 p.m.?

A It was.

Q And 12 minutes and 8 seconds?

A Yes, sir.

MR. ROZZI: May I publish 1014, Your Honor?

THE COURT: You may.

DEFENDANT'S EXHIBIT DDD PUBLISHED IN PART BY PLAYING

MR. ROZZI: May I advance, Your Honor, a minute?

THE COURT: You may.

MR. ROZZI: Thank you. We're now at 5:36. May I advance a minute?

THE COURT: You may.

MR. ROZZI: We're now at 7:09. May I advance a minute?

THE COURT: You may.

MR. ROZZI: We're now at 8:44. May I advance one minute?

THE COURT: You may.

MR. ROZZI: And now at about 10:12.

Q All right, Max, so the next video file, 1026, is that on April 21st, 2023?

A Yes.

Q Does it appear to be around 9:41 a.m.?

A Yes.

Q Eleven minutes, seven seconds?

A Yes, sir.

MR. ROZZI: May I publish, Your Honor?

THE COURT: You may.

DEFENDANT'S EXHIBIT DDD PUBLISHED IN PART BY PLAYING

MR. ROZZI: May I advance one minute?

THE COURT: You may.

MR. ROZZI: Oh, sorry, that was about 5:25. May I advance one minute?

THE COURT: You may.

MR. ROZZI: 9:58.

Q All right, Max, next video, file 1052, is that on April 28th, 2023?

A Yes.

Q At 8:56 p.m.?

A Yes, sir.

Q And it's 52 minutes, 25 seconds?

A Yes.

MR. ROZZI: Judge, I'll be seeking permission to advance through this too hastily, so –

THE COURT: Certainly.

MR. ROZZI: Thank you. May I publish 1052?

THE COURT: You may.

DEFENDANT'S EXHIBIT DDD PUBLISHED IN PART BY PLAYING

MR. ROZZI: May I advance two minutes?

THE COURT: You may.

MR. ROZZI: 7:25. May I advance two minutes?

THE COURT: You may.

MR. ROZZI: 10:38. May I advance two minutes?

THE COURT: You may.

MR. ROZZI: 14:03. May I advance two minutes?

THE COURT: You may.

MR. ROZZI: 16:49. May I advance two minutes?

THE COURT: You may.

MR. ROZZI: 19:54. May I advance two minutes?

THE COURT: You may.

MR. ROZZI: 22:30. May I advance a minute?

THE COURT: You may.

MR. ROZZI: Twenty-four minutes. May I advance two minutes?

THE COURT: You may.

MR. ROZZI: 26:30. May I advance two minutes?

THE COURT: You may.

MR. ROZZI: 28:52. May I advance two minutes?

THE COURT: You may.

MR. ROZZI: 31:07. Same request.

THE COURT: You may.

MR. ROZZI: 33:15. May I?

THE COURT: You may.

MR. ROZZI: 34:57. May I advance two minutes?

THE COURT: You may.

MR ROZZI: 37:15. And again?

THE COURT: You may.

MR. ROZZI: 39:28. And again?

THE COURT: You may.

MR. ROZZI: 41:40. And again?

THE COURT: You may.

MR. ROZZI: 43:55. And again?

THE COURT: You may.

MR. ROZZI: 46:10. And again, two minutes, please.

THE COURT: You may.

MR. ROZZI: 48:40. One minute, please.

THE COURT: You may.

MR. ROZZI: 49:54. One minute, please.

THE COURT: You may.

MR. ROZZI: 51:10. Judge, would the Court be inclined to take a quick recess and maybe we can call another witness and then finish up with the video?

THE COURT: Sure.

MR. ROZZI: We may have a quick discussion about dealing with this while we call a witness, so –

THE COURT: Okay.

MR. ROZZI: That – I think that might be a good tine and we've got a few more to do, but –

THE COURT: All right. Well, ladies and gentlemen, we'll go ahead and take our morning break. While you're outside the courtroom, please, keep your minds open. Please don't form any opinions or conclusions about anything. You may discuss the evidence that you've heard so far, but please, only do that

if all 15 of you are present in the jury room at the same time and, please, don't deliberate. Gentlemen.

THE BAILIFF: All rise.

(Jury out at 10:45 a.m.)

THE COURT: All right. Let's take 15 minutes. Jodie, you can go off – you want to do it now or you want – okay.

(Off record at 10:48 a.m.)

(On record at 11:07 a.m.)

THE COURT: All right. We are back on the record.

MR. ROZZI: I'm sorry.

THE COURT: No, we're just – I'm just saying we're back on the record. You can be seated, folks. Are we ready to – are we continuing with Mr. Baker?

MR. ROZZI: No. I understand Mr., you know, McLeland has to be able to cross him, but I'm gonna – we're gonna pull him off so we can take a witness and then maybe finish up with some video.

THE COURT: Okay.

MR. ROZZI: That way, we just kind of break it up for the jury.

THE COURT: Okay. That's fine. All right. You can go ahead and step down, Mr. Baker.

THE WITNESS: Thank you, Your Honor.

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

MR. BALDWIN: We are.

MR. MCLELAND: Yes, Your Honor.

THE COURT: Gentlemen.

THE BAILIFF: All rise.

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

THE BAILIFF: Thank you. You may be seated.

THE COURT: So I understand, Mr. Rozzi, we're going to pause with the videos and you have a witness that you would like to present today.

MR. ROZZI: Yes, Your Honor.

THE COURT: You may call your next witness.

MR. BALDWIN: Thank you, Judge. I call Superintendent Doug Carter.

(Witness sworn.)

DIRECT EXAMINATION OF SUPERINTENDENT DOUG CARTER

QUESTIONS BY MR. BALDWIN.

Q Good morning.

A Good morning.

Q Would you – seems like a pretty easy name to spell, but we've been doing it with everybody else – state your name and spell it for the record, please.

A Yes. Doug Carter, D-O-U-G, last name is Carter, C-A-R-T-E-R.

Q And what do you do for a living, sir?

A I'm the superintendent of the Indiana State Police.

Q And how long have you been doing that?

A Almost 12 years.

Q All right. I want to get right to this. Were you – what was your involvement, if any, in the investigations of the deaths of A.W. and L.G.?

A The short answer is I was in a support role for those that were – have been

here over the course of the last seven and a half years.

Q Okay. Could you tell the jury, if you know, what agencies, state, local, and federal, if any, were involved in the investigation.

A I wouldn't have a list in my mind, but there were dozens of agencies that were involved.

Q Okay. Can you just name off a few for the jury. Like I know Carroll County Sheriff's Department, for example, would be one of them.

A Yeah. I would suggest just about every contiguous county to here. We brought – the State Police brought detectives and support personnel in from all over Indiana, along with several federal agencies.

Q What federal agencies?

A ATF, the FBI, the US Marshals.

Q Was there a time when the FBI was assisting the Unified Command in this case in the investigation of these murders?

A Yes.

Q Okay. Was there a time when the FBI was no longer involved in the investigation of the murders?

A Yes.

Q And what timeframe was that? Just the year, if you know.

A Probably 2021.

Q Okay. Would it help refresh your recollection if I showed you your deposition?

A Yes, sir.

Q Okay.

MR. BALDWIN: Okay. Judge, may I approach?

THE COURT: You may.

Q I'm gonna hand you an email that may refresh your recollection.

THE COURT: Wait, you said a depo. It's not a deposition, it's an email?

MR. BALDWIN: Yeah, I apologize.

THE COURT: Okay.

MR. BALDWIN: This is actually the depo, but this isn't where it's at.

Q Does that help you out?

A Yes, sir, it does.

Q What timeframe was it?

A August of 2021.

Q Thank you. So in August of 2021, was – the FBI, you said, was – that's when they were no longer being used in the case?

A Yes.

Q Did you ask them to do anything when they kind of left the scene?

MR. MCLELAND: Judge, can I approach?

THE COURT: Yes.

(Sidebar conference conducted.)

MR. MCLELAND: Judge, I completely missed it, but what was – I thought the question was when they were out of there.

MR. BALDWIN: I was just – he said in his deposition that he requested they send him everything from an evidentiary standpoint, investigative documents and so forth, and that's all – that's how –

THE COURT: Okay.

MR. BALDWIN: Can I ask it in a leading question so it's – open-ended would be a little difficult for him to know exactly what I'm talking about if I didn't – "Did you request the FBI just send you back, from an evidentiary standpoint, all investigative documents?" That's – that would be my last question.

MR. MCLELAND: I understand that, but what's the relevance?

THE COURT: How is this relevant?

MR. BALDWIN: Because somebody will testify that the FBI is continuing to work or is available for work and this kind of puts it into more of a perspective that they were relieved. They sent all their investigation documentation back.

THE COURT: You may ask.

MR. BALDWIN: Thank you.

(Sidebar conference concluded.)

THE COURT: You may proceed, Mr. Baldwin.

MR. BALDWIN: Thank you.

Q At the time – was that your decision, by the way, for the FBI to leave?

A It was.

Q Okay. And when they did leave, did you ask them to return all the investigative documents that they had in their possession?

A I did.

MR. BALDWIN: Thank you. No other questions.

THE COURT: Mr. McLeland.

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

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

Superintendent Carter?

(No response or indication from any juror.)

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

THE WITNESS: Thank you.

MR. MCLELAND: Judge, is he released from his subpoena?

MR. BALDWIN: Yes.

THE COURT: Yes. And you are free to go, sir. Thank you. You may continue. You may proceed.

MR. ROZZI: Oh, I'm sorry.

THE COURT: You may proceed.

MR. ROZZI: May I re-call Mr. Baker.

THE COURT: And, Mr. Baker, I'll just remind you, you're still under oath.

THE WITNESS: Thank you, Your Honor.

MR. MCLELAND: Judge, just for the record while we're doing this, just if the Court could note our continuing objection. By my count, I think we're at about two hours of videos at this point, so just want to renew the objection for the record, Judge.

THE COURT: Thank you, Mr. McLeland. You may proceed.

DIRECT EXAMINATION OF MAX BAKER

QUESTIONS BY MR. ROZZI.

Q Mr. Baker – I don't think I've ever called you that. Max, can we – what number video are we on? Number 11, it looks like to me. Is that right? On the grid?

A Yes, sir. Yeah.
Q Okay. And this is a file labeled 1106; is that right?
A Yes.
Q And was this file created on May 13th, 2023, at 12:45 p.m.?
A Yes.
Q And it's one minute and four seconds –
A Correct.
Q -- is that correct?
A Yeah.

MR. ROZZI: May I publish, Your Honor?

THE COURT: You may.

DEFENDANT'S EXHIBIT DDD PUBLISHED IN PART BY PLAYING

MR. ROZZI: May I continue?

THE COURT: You may.

Q Mr. Baker, moving it – directing your attention to video number 12, is that 1136?
A Yes.
Q File 1136, May 20th, 2023, at 3:14 p.m.?
A Correct.
Q And it's 55 seconds in length?
A Yep.

MR. ROZZI: May I publish, Your Honor?

THE COURT: You may.

DEFENDANT'S EXHIBIT DDD PUBLISHED IN PART BY PLAYING

Q Max, directing your attention to video 13, file 1153; is that on May 26th,

2023, at 12 p.m.?

A Yes.

Q And this is four minutes and five seconds?

A Correct.

MR. ROZZI: May I publish, Your Honor?

THE COURT: You may.

MR. ROZZI: Thank you.

DEFENDANT'S EXHIBIT DDD PUBLISHED IN PART BY PLAYING

Q All right, Max, so then video number 14, is that titled or filed number 1164?

A Yes.

Q And was that on May 30th of '23?

A Yeah.

Q And at 7:09 a.m.?

A Yes.

Q For three minutes, 58 seconds; right?

A Correct.

MR. ROZZI: May I publish, Your Honor?

THE COURT: You may.

MR. ROZZI: Thank you.

DEFENDANT'S EXHIBIT DDD PUBLISHED IN PART BY PLAYING

Q And then finally, Max, video number 15, is that labelled 120 – number 1201?

A Yes, it is.

Q On June 20th, 2023?

A Yes.

Q At 10:52 a.m.?

A Correct.

Q And that's 34 minutes, 43 seconds in length?

A Yes, sir.

MR. ROZZI: May I publish, Your Honor?

THE COURT: You may.

DEFENDANT'S EXHIBIT DDD PUBLISHED IN PART BY PLAYING

MR. ROZZI: May I advance one minute?

THE COURT: You may.

MR. ROZZI: Thank you. I'm gonna probably ask to do these through this video –

THE COURT: That's fine.

MR. ROZZI: -- 'cause of the length of it. Same question.

THE COURT: You may.

MR. ROZZI: May I advance one minute?

THE COURT: You may.

MR. ROZZI: May I advance two minutes?

THE COURT: You may.

MR. ROZZI: May I advance two minutes?

THE COURT: You may.

MR. ROZZI: May I advance two minutes?

THE COURT: You may.

MR. ROZZI: May I advance two minutes?

THE COURT: You may.

MR. ROZZI: May I advance two minutes?

THE COURT: You may.

MR. ROZZI: May I advance one minute?

THE COURT: You may.

MR. ROZZI: Same request.

THE COURT: Yes, you may.

MR. ROZZI: One minute, please.

THE COURT: You may.

MR. ROZZI: We're at 30:02. I'm sorry, I wasn't noting that earlier. One minute, please.

THE COURT: You may.

MR. ROZZI: Can I –

THE COURT: Yes.

MR. ROZZI: -- finish up here, Judge?

THE COURT: Yeah.

MR. ROZZI: Thank you.

Q So, Max, is it fair to say that we kind of created a similar thumb drive and a cheat sheet, so to speak, with regard to the in-cell videos?

A Yes.

Q Okay. And the in-cell video, is it accurate to say that that video actually has – you can see the date and the time on the video?

A Yes, while you're watching it.

Q Like it actually shows the actual real time?

A Yes.

Q Okay. So it wasn't hard to ascertain when those videos were?

A It was not, no.

MR. ROZZI: Okay. Judge, I'm not gonna introduce any more video today, so I don't have any further questions today regarding a foundational issue.

THE COURT: Mr. McLeland.

MR. MCLELAND: Judge, are there gonna be additional videos – well, did you want me to go ahead and go – start with cross now on him or is there gonna be additional videos through him and do it all at once? Like whatever the Court's preference is.

THE COURT: I don't know. There are more videos. I guess that's something we'll have to talk about on sidebar, but yeah. So do you want to reserve that until that's all done?

MR. MCLELAND: I guess could we have a sidebar, Judge, to briefly just –

(Sidebar conference concluded.)

MR. MCLELAND: I can do it however you want to, Judge. Are you gonna the rest of the video on Monday?

MR. ROZZI: I think probably not Monday. We're were just kind of talking in general about schedule and I don't think Monday, but I do try to – we're trying to put some more in. I'm gonna go back this weekend and, again, try to condense them.

THE COURT: Yeah, 'cause we're starting to get into the cumulative issue that the State –

MR. ROZZI: Yeah, yeah, I understand. It's just –

THE COURT: Yeah, I understand that you want to present what you want to present, but I think he's – I've given you a lot of leeway, and you got

15 videos in and there was a lot of movement back and forth –

MR. ROZZI: Yeah.

THE COURT: -- in those videos –

MR. ROZZI: They do reference different areas of the facility though and –

THE COURT: Oh, yeah.

MR. ROZZI: -- it's important to get some context, you know –

THE COURT: Exactly, so –

MR. ROZZI: -- so –

THE COURT: -- I think that's probably (inaudible) get into –

MR. ROZZI: Yeah, I agree it'll bit tougher and more mundane.

THE COURT: Yeah, and they're all in the cell, so –

MR. ROZZI: Well, they're gonna demonstrate more of his behaviors, because, of course, you can only see what they're re – the prison guards are reacting to –

THE COURT: Sure.

MR. ROZZI: -- through these, so I think that'll be good context. I'm gonna – we're making a concerted effort to try to keep this – limit my reactions to this. I intend on showing videos a few more times. I don't want to do it in bulk, 'cause I think it's not helpful for the jury, so we'll give them a couple more doses and, you know, that's kind of where I am with it.

MR. MCLELAND: And I don't really (inaudible), but

MR. ROZZI: Take the time, it worked out pretty good today.

THE COURT: So is this is a good time to break for the day?

MR. MCLELAND: Then, obviously, I'll cross him then.

THE COURT: So let's get them out of here and then we can talk about Monday, and after this is prepared –

MR. ROZZI: Yeah. We've been talking to them. During the break, I was –

THE COURT: Okay.

MR. ROZZI: -- talking to Mr. Luttrull and giving them lists and all that stuff.

THE COURT: Certainly. If we can get through – were you kind of thinking videos on Monday or just witnesses?

MR. ROZZI: I don't think so. If we do, it might be a little bit on Monday afternoon, but I think that the plan is, on Monday morning, is to have Dr. Wescott come in –

THE COURT: Okay.

MR ROZZI: -- and then, in the afternoon, I think we've got some fact witnesses; right?

MS. AUGER: Um-hmm. (Affirmative response)

MR. ROZZI: And if those all line up like I hope they will, now that we've – again, we've got people travelling that took off between Monday, when we subpoenaed them, and Thursday and Friday.

THE COURT: Okay.

MR. ROZZI: And I think some of them are coming back tomorrow –

MS. AUGER: Yeah.

MR. ROZZI: -- so I think we'll get those lined up in the afternoon.

THE COURT: Okay. So we can –

MR. ROZZI: We might put a little video on.

MR. MCLELAND: And I'll just – when you're done with all video, then I'll get up and cross him –

THE COURT: Then you can cross him.

MR. MCLELAND: -- on today and anything else.

MR. ROZZI: Yeah, that's fine.

(Sidebar conference concluded.)

THE COURT: All right. Well, ladies and gentlemen, Mr. McLeland's going to conduct his cross examination at the conclusion of the all of the videos, so this is a good time, then, for us to take our break. While you're outside of the courtroom again, keep your minds open. Please don't form any opinions or conclusions about anything. As you will be under the supervision of the bailiff for some activities this afternoon and then tomorrow with your families, you, obviously, can't talk about the case with anybody, so please, don't do that. Have a good rest of your day and enjoy your family time. Gentlemen.

THE BAILIFF: All rise.

(Jury out at 11:56 a.m.)

THE COURT: All right. Then, we'll be in recess until 9 a.m. on November 4th.

MR. ROZZI: Thank you.

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

(Off record at 12:03 p.m.)

(On record November 4, 2024, at 9:02 a.m.)

THE COURT: All right. We are back on the record – good morning,

ladies and gentlemen – with *State of Indiana versus Richard Allen*, 08C01-2210-MR-1. I'll show that the Defendant's here in person with counsel. State's here by the Prosecutor and his deputies. The jurors have reassembled. Are we ready to proceed, Ms. Diener?

MS. DIENER: Yes.

THE COURT: Mr. Rozzi?

MR. ROZZI: Yes.

THE COURT: All right. Let's bring in the jury.

THE BAILIFF: All rise.

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

THE BAILIFF: Thank you. You may be seated.

THE COURT: Thank you, gentlemen. All right. Well, good morning, ladies and gentlemen. It's nice to see you back this morning. I hope you had a pleasant weekend. I know you had activities and had some time with family and friends and had access to your electronic devices to speak with family and friends and check your work email. So to that extent, ladies and gentlemen: Have you read, seen, or heard any media accounts concerning this case?

A (All jurors answer in the negative.)

THE COURT: Have you discussed this case with anyone?

A (All jurors response in the negative.)

THE COURT: Has anyone discussed this case with you?

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 once again, ladies and gentlemen, I appreciate your continued compliance with the Court's directives. We are ready to continue. Mr. Rozzi, you may call your next witness.

MR. ROZZI: Thank you, Judge.

MS. DIENER: Judge, if I may – Mr. Rozzi, before you leave – I just wanted to make a note for the record.

THE COURT: Yes.

MS. DIENER: Yesterday, I asked for an exception to the separation of witnesses for Dr. John Martin. I am withdrawing that request, he is not present, and I just wanted the record to reflect that he was not present for the testimony of Dr. Wescott and will not be present for the testimony of any other expert by the Defense.

THE COURT: All right. I'm sorry, I didn't hear what she said at the end, and will not –

MS. DIENER: Will not be for any other expert called by the Defense.

MR. ROZZI: Okay. May I, Judge?

THE COURT: Yes.

MR. ROZZI: Call Dr. Polly Westcott, Your Honor.

(Witness sworn.)

MR. ROZZI: May I?

THE COURT: Yes.

MR. ROZZI: All right.

QUESTIONS BY MR. ROZZI.

Q Good morning, Dr. Westcott. Tell the jury your full name, please.

A Good morning. My name is Polly Westcott.

Q Okay. And how old are you?

A I'm 49 years old.

Q And what do you do for a living?

A I'm a neuropsychologist.

Q And where do you work geographically?

A I work in Carmel, Indiana.

Q How long have you been working in that area as a neuropsychologist?

A I've been in that area throughout my entire practicing career, so after, I would say – I moved back to Indiana to complete my residency in 2004, and I've been in Indianapolis, in the Indianapolis area, since that time.

Q Okay. What's your highest level of education?

A I have a doctorate degree.

Q All right. And in what field?

A My doctorate degree is in clinical psychology, and I have two specialty concentrations, one is in forensic psychology and one is in neuropsychology.

Q For those of us that aren't familiar with some of these more technical terms, just tell the jury what the specialty in forensic psychology means and then tell them what the specialty in neuropsychology means.

A Sure. Forensic psychology is a specialty field in which we understand aspects of the law. So whenever – if I was forensic psychologist, which I'm partly forensic psychologist and forensic neuropsychologist, if there were mental health issues, if there were cognitive issues, then we help the courts or juries

understand different legal concepts, whether or not something – some way of thinking or emotional functioning disrupts somebody's ability to think through things at the time of a crime or if they can't testify in court and they're incompetent to testify or if we're trying to help with an issue of understanding why is someone's behavior the way that it is, then we can help kind of testify and understand different legal concepts that might be in play.

Q So that's forensic psychology?

A Right.

Q So then, what's neuropsychology?

A Neuropsychology is the science and study that really bridges the gap between the medicine world and mental health world. What we do is we understand the brain – the brain is our control center – and how it controls different functions or emotions, so we have specialty skills and tools that help us understand behaviors and they help us understand how those behaviors tie to specific aspects of brain function.

Q Okay. Thank you for that. So was there a point in time during this case I guess, if you will, that Mr. Baldwin and I sought you out and, essentially, hired you to help us?

A Yes.

Q Okay. Just tell the jury generally when that was.

A That was in May of 2023.

Q And are you getting paid to come here today?

A Yes, I am.

Q Tell the jury how much you're getting paid an hour.

A For forensic work, I charge $450 an hour.

Q Okay. And have you ever worked with lawyers before?

A Indeed, I have, yes.

Q Okay. And just give the jury some insight into kind of, you know, what your experience is in working with lawyers and courtrooms – let me just ask that, I guess I didn't – have you worked on criminal cases in the past?

A I have.

Q Okay. And give the jury some idea of the scope of that.

A Criminal cases, it could be a variety of factors that people seek me out. Again, it's usually to do with the brain or mental health type issues, whether somebody has committed a crime and we want to understand whether or not they knew right from wrong at the time of a crime, it might be that they have a mental health issue or background or cognitive limitations where they can't participate in helping with their testimony with their attorneys or maybe they can't help to understand what's real or not real, so they can't testify in court, or it might be, you know, do we need to understand what's called mitigating circumstances, somebody's committed a crime but they have a mental health background or they have cognitive limitations and that might be taken into consideration for sentencing.

Q Okay. Do you also testify in civil courtrooms?

A I do.

Q Okay. And would it be, you know, still within this field of forensics and forensic psychology and neuropsychology?

A Yes.

Q Okay. Do you work with both sides or primarily with the Defense or do you – just give the jury some idea how that works, if you would.

A I've been asked to work with both sides, prosecution and defense, in criminal cases.

Q Okay. And, I mean, have you worked recently with the prosecution?

A Yes.

Q Okay. When was that, the last time you worked with the prosecution?

A I would say it was probably a couple months ago. I often will have a question of the prosecution contacting me and asking me about different mental health concepts, what constitutes something like schizophrenia versus depression, if I would look at records to be able to determine if someone is faking a mental health issue or a cognitive issue, so I've done, more recently, I would say behind-the-scenes work, helping prosecution kind of guide their direction of what they're doing in their case.

Q Okay. And have you – how many times do you think you've been in a courtroom and testified? If you'd just give us some idea.

A I don't know if I can split it up for you. I know I've testified, whether it's deposition or testimony, this'll be my 72nd time, and I would say in a courtroom, I would say, oh, I don't know, this is a guess, probably around 25 times, maybe 30 times out of those 72.

Q Okay. Let's talk a little bit about your professional experience and work experiences. Have you worked with prisoners in the past?

A Yes.

Q Tell the jury what your extent or scope of work is in that field.

A So I have a pretty extensive experience with prisoners. It started back, actually, when I was in college, I worked for three years at Wabash Valley Hospital; and even though it was an in-patient psychiatric hospital, we actually

took in prisoners who were in mental health crisis, so if there was something that was going on where they needed intensive services, we had a unit where we actually warehoused them to do evaluations and kind of get them back into a place where they were more stable and then they would take them back into the jail or prison. Then, from there, I've worked in various aspects of – I worked at the Indiana Women's Prison for a year, did various things there, did treatment there, also did evaluation, evaluation meaning more testing. We have testing tools that we use to be able to determine what types of mental illness are present. And I've also worked throughout the years in my career in private practice, which has been since 2006, I've been asked to see various criminals in different types of situations. Most of the time, it's been pre-trial detainees, so there's – again, there's a question by an attorney, whether it's prosecution or defense, to go into a jail or a prison and be able to evaluate someone depending on the referral question, and then testify in court.

Q Kind of like in this case?

A Yes.

Q So I also noticed – I think, at some point, I was looking at your CV, that you have worked with police departments consistently throughout your career in crisis intervention; can you tell the jury a little bit about that.

A Well, if you're talking about crisis invention specifically, in every police department or I guess it's growing, since 2015 there's been a push to understand mental health disorders and to be able to inform what's called crisis intervention teams within local police departments on what are different types of mental health disorders, how can they interact with people who are mentally ill or if they have cognitive difficulties, and so I take part I'd say at least six times a year

working with various law enforcement departments and educating them on mental health issues or cognitive issues, giving them education about it, talking about how to interact with people like that. I actually, this summer, was invited to talk at the International Conference for Crisis Intervention and spoke on an international basis on those same issues; but I also, for 12 years, worked as the contracting psychologist with the Indiana State Police, which would be different than the crisis intervention training that I'm talking about.

Q So you're pretty familiar with law enforcement functions and the administration side of it?

A Yes.

MR. ROZZI: Okay. May I approach, Judge?

THE COURT: You may.

Q I'm gonna hand you what's been marked as Exhibit FFF; if you would, just take a look at that. Can you just tell the jury what that document is.

A This is a copy of my CV.

Q Basically, it's your resume; right?

A It is.

Q We call them CVs around here, curriculum vitaes, but it's your resume.

A Yes.

Q Talks about your education history and your history as professional experiences, things like that; right?

A Yes.

Q Now, I don't want to get into a bunch of details, but did – have you also published articles and things like that that are also referenced in here?

A Yes.

MR. ROZZI: Okay. Judge, I move to admit FFF.

DEFENDANT'S EXHIBIT FFF OFFERED

MS. DIENER: No objection.

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

DEFENDANT'S EXHIBIT FFF ADMITTED

MR. ROZZI: May I publish?

THE COURT: You may.

MR. ROZZI: Thank you.

DEFENDANT'S EXHIBIT FFF PUBLISHED

THE COURT: You may proceed.

MR. ROZZI: Thank you, Judge.

Q All right. So we talked a little bit about some of the specialty work that you do. Just tell the jury what you do on a daily basis. Like when you go to work, what kind of things do you do while you're there?

A Every day's a little bit different, but I would say in general what – I have what's called a clinical practice, so I do typical things that you would think of that a psychologist does. I have patients in my office that I see for therapy. I also – neuropsychology is really a niche of assessment and our expertise is using these tools to understand and say what's going on in terms of a diagnosis, whether that diagnosis means that it's a brain-based disorder or it's a mental health-based disorder. So in addition to – in my clinical practice, in addition to patients, I also get questions from physicians, sometimes sports coaches, various psychiatrists, other people wanting to know what's going on with this individual, and so I'll see somebody for what's called an assessment or an evaluation, depending on what the referral question is; and then, that helps guide treatment

going forward for those individuals. I'd say about 50 percent is also outside of my clinical practice, which is what we were talking about before, my forensic work, where I'm typically hired by a judge or an attorney who is asking me to perform some sort of an assessment or evaluation, again whether it's civil, a civil case, or a criminal case.

Q Okay. You mentioned psychiatrists, just again quickly explain to the jury what the difference between a psychologist and a psychiatrist is and how you work together.

A Sure. The psychiatrists – just look at education, different program. They actually go through medical school and they have really a specialty area that's specifically looking at medications and they're traditionally the people who will actually prescribe medications for mental health issues. Neuropsychology's a little bit of a hybrid field, so what we do is we actually go to – go through a psychology program, but we also take classes in medical school in neurology, so that we understand brain anatomy, brain function, and then, after schooling, both psychiatry and neuropsychology, we have what's required as a fellowship, so after we graduate, we have to complete a certain amount of years under supervised training doing specific things. In psychiatry, again much more related to medications and prescribing medications. In neuropsychology, it would be treatment or assessment. Again, I keep talking about these tools we use, that's kind of our specialty area are these objective tools that we use to measure and analyze behavior.

Q So when we first sought out your help, tell the jury what we asked you to do.

A When you first contacted me, you told me a little bit of context of what was

going on with Mr. Allen, concerns that there had been a change in his behavior and functioning since he had been incarcerated, and you really asked me three questions. One was, I understood from you in our initial call that he had a mental health history, and you wanted me to examine the mental health history and understand, if there was a mental health history, what was the nature, what was the context of his history. Second piece was to be able to do what I've been talking about, a neuropsychological evaluation, where is his brain-based functioning at that time, what is his mental health condition at that time. And then, the third piece was to be able to offer an opinion about kind of the breadth and context of his decline and physical and emotional function since he'd been incarcerated, and during that period of time there had been confessions and there was a desire to understand what were the breadth and context of what are the situations or factors that are playing into his decline during that period of time.

Q Did you, ultimately, get a chance to review information about Mr. Allen's circumstances and, if so, just tell the jury kind of what was available to you?

A Yes. I was able to say – we'll start with just paper records. So I was able to evaluate extensive records about his mental health history, so treatment before he was incarcerated. I was able to review treatment records and also documents of people who are watching or observing him while he was incarcerated. That would include also various medical records or medicines that were administered. I also reviewed additional video footage. At the time he was incarcerated, he had extensive video footage for months on end and was provided that video footage to evaluate. And I was also able to evaluate phone calls that he made while he was incarcerated. So I would say that's the extent of just the

record portion that I considered and evaluated.

Q Was there anything different about how much information was available in this case to you, historical information, versus the typical case that you would work in?

A If you're talking about a criminal case, I was provided an enormous amount of information that is highly atypical for a case. Part of that is because we typically don't have video footage of individuals while they're incarcerated, and so I was able to review 20 or so hours of video footage of him, so I can see for myself his behaviors while he's incarcerated. Also, that he had people who were observing him and they were taking notes, so people who are – they were called watchers, suicide watchers, for a period of time that were other inmates, then there were other corrections officers that were observing him and taking notes, and we just typically don't have that kind of information because individuals who are pre-trial detainees don't have that level of scrutiny or supervision, so there was an enormous amount of volume of information while he was in corrections that I had that I typically do not have.

THE COURT: Excuse me, could you turn your table mic on, please.

MR. ROZZI: I don't think it's off.

THE COURT: It's off.

MR. ROZZI: There.

THE COURT: Thank you.

MR. ROZZI: May I continue?

THE COURT: Yes.

Q Generally, and I don't know if you have any dates memorized, but can you give us some – the jury some idea of when it was that you last got video from me

and – you know, at some point all this stopped, the flow of information. Just give them some idea of the timeframe.

A I would say I have everything from when he was incarcerated in Westville, and then he was transferred at the end of the year in 2023, going into 2024, into Wabash Valley Corrections, and I believe I stopped getting information around – somewhere around March or April of this year.

Q And at some point, did you get a chance to meet Rick Allen?

A I did.

Q And tell the jury how that happ – when it happened and kind of in what context or what setting.

A So it's pretty typical, when someone's asking me for my evaluation or my opinion, where I'll request to meet with an individual and/or their family members. So in August of 2023, went out to Westville and performed an evaluation at Westville. And our evaluations typically take – the interview process takes about two hours, and then we have, again, these tests or tools I keep talking about, that usually takes upwards of five or six hours to complete.

Q And is this a one-day situation or do you do it over a couple of days? How does that work?

A It's typical we could do it over one or two days, but in this case actually I think we spread it over two days.

Q Okay. And did you have somebody else assist you generally, like with some of the background work I guess, if you will?

A I did. It's pretty common for neuropsychologists to have what's called a psychometrician, fancy term for someone who understands mental health background, they perform tests. We do it that way on purpose so that they are

separated from the evaluation. It's an independent, standardized test that we administer, and so they are skilled in being able to administer the test the exact same way for every individual that we see, which is important for us so that we can rely on the information that they're gathering. And so I had my psychometrician do the testing portion of the evaluation.

Q So you actually physically went to Westville and went inside the prison?

A I did.

Q Did this – did your evaluation occur – I can't recall, was it in the WCU segregated unit or was out somewhere else in the prison?

A It was in the segregated unit.

Q Okay. And after doing – reviewing all this information and going to Westville and conducting your objective testing, did you generate a report?

A I did. I'll add in one more thing that I did. I always request to talk to a family member or loved one, as well, just to give an additional component, a more comprehensive evaluation. In this case, I asked if I could talk with Kathy Allen, Richard Allen's wife, and I met with her several weeks after I met with Mr. Allen, in my office.

Q So then did you generate a report?

A I'll add in one more step. I mean, it's kind of insinuated a little bit, but I know when I had records and I went to Westville, I had asked you for additional records that I wanted, specifically I know we didn't have all the medication logs, some of the medical records seemed to be missing, so I had asked you a bunch of questions, "Could I have X, Y, and Z?" I also had asked specifically about wanting pictures and handwriting samples and other additional things, but yes, after I asked for those things, I received those things, I did eventually write a

report.

Q And that report's called an INE; right?

A Independent neuropsychological examination, yes.

Q A really long report; right?

A Very long report.

Q About 120 or 30 pages?

A 127 pages.

Q But in fairness, is it accurate to say that a lot of it is – in the middle of it – is just records and stuff that you included that you gathered during the investigation?

A Correct. There's a chronological summary of both his records from before incarceration and also, again, there was extensive records of when he was incarcerated, so there's a summary of those records included in the report.

Q And would it help – if we start talking about some of your findings, would it help for you to refer to your report to refresh your recollection?

A Yes, please.

Q Do you have that with you?

A I think I do.

Q Okay. Well, we're gonna talk. If you need to use that, I'll let you get it out. All right. Tell the jury what you learned about Rick Allen – Rick Allen's life from a mental health standpoint – that's the context of all these questions – what you learned about Rick Allen's life before he went to prison.

A So a lot of information I'm gonna try to condense. I learned that he's had an extensive mental health history, we'll start there, so from the time that he was a child, just based on my interview with him, again talking with Kathy Allen,

looking at medical records. As a young child, he can remember things like having intense difficulties with anxiety going to school. He had intense fears that he couldn't control of worrying that he would go to school and then never come home. He had intense fears that something bad was gonna happen to his family when he was separated from them. He had intense anxiety around other people and feared that other people were looking at him and thinking of him badly, even if there wasn't evidence for that. Was always very concerned about what other people thought of him, and so that made him a little bit more closed off, kept to himself, because he had such concerns and worries about what other people were thinking. When you – when he grows into adulthood is when anxiety again becomes so difficult, so prominent, those symptoms that he starts on medication in his 20s. So he starts on medications at first for anxiety and then, over time, what you notice is that there's pretty severe depression that comes into play. The depression is really a reaction to the anxiety, he can't control the anxiety, he can't control how he's feeling around other people. He's constantly thinking that he's failing his family, he's failing other people that he's working with. Again, in reality, he's not, but that's how he's feeling, and then he feels worthless and he feels like he's not able to provide for his family, he's sure that other people don't like him, he often wishes that he would die, he often hurts himself. So there's an extensive period of time where you see in his medical records, between his 20s all the way up through when he was incarcerated, where he is pretty frequently being seen for medication evaluations, reporting symptoms of depression and anxiety. They vary in terms of their levels of control. One of the things that's a factor in terms of his anxiety and depression is that he has a pretty clear-cut history of when there are what we call external stressors, so

things in his life outside of him happen as a stressor, something happens that puts additional pressure on him or stress on him, he kind of crumbles and falls apart quite literally, curling up in a ball crying.

Q What was one of the most significant of those that you observed historically before he got put –

A So there is – most of his anxieties in adulthood revolve around two concepts, one is primary work, finding that he feels like he's failing at work, that he's letting other people down at work, that he's not doing his job appropriately. Now, when you look again, that's his own internal experience and belief. When you look at his work history, he's had essentially three fairly long jobs, nine or ten years apiece, where he's loyal, he's responsible, he does the job, people like him, they promote him. When he's promoted, there's more stress on him, he's expected to actually tell other people what to do, which is something that causes him anxiety, he worries that if he tells somebody what to do, they're not gonna like him, and then he crashes, depression comes over. The companies like him so well that they keep him on and he ends up working for several years. That pattern happens three times, where he stays within the job, they're not letting him go, but every time he kind of rises to the top and he's in a management position, he can't handle the stress of it and you see it all over the place where he's at home again kind of crawling – curling up in a ball, crying. His wife plays a key role in kind of putting him back together and making him feel kind of good about himself and kind of sending him back out. And then again, work usually understands and allows him to be demoted and they still keep him on task. But even in lower positions, he's still having that anxiety and depression, because seeing himself kind of fall from that position also contributes to feelings of like,

"I'm worthless. I'm not doing well. I'm not providing for my family."

Q So there's a bit of a cycle of this in his work history?

A Correct.

Q All right. What about – one thing I'd forgot to ask you about: Does he have any family history of mental illness; and if so, is that important to you? I don't understand the genetic side of all this.

A Well, I would say –

MS. DIENER: Judge, may I ask a preliminary question?

THE COURT: You may.

MS. DIENER: Dr. Westcott, with regard to family history, was the information you received about family history of mental illness all from Mr. Allen?

A No. In fact, it was from medical records and Mrs. Allen.

MS. DIENER: With regard to his own family though, the medical records are medical records of his where he's previously reported family history; correct?

A Correct.

MS. DIENER: So it's all – the only source is Mr. Allen telling a professional what he believes his family has been diagnosed with?

A That's correct.

MS. DIENER: You didn't have any medical records of those family members to verify those statements; is that correct?

A That's correct.

MS. DIENER: I'd object to the question.

MR. ROZZI: Judge, I think it goes to the weight of – you know, of

the historical side of her review of Mr. Allen.

MS. DIENER: It's also –

MR. ROZZI: Certainly, there's a therapeutic –

MS. DIENER: -- hearsay from the Defendant, Judge.

THE COURT: Sustained.

MR. ROZZI: I'm sorry, I didn't hear what she said.

THE COURT: She said it's also hearsay. Sustained.

MR. ROZZI: Well, she's an expert. She's testifying about the documents she reviewed in preparation for her testimony.

THE COURT: But the objection is the hearsay contained within those records that she didn't review of family members.

MR. ROZZI: Can I continue, Your Honor?

THE COURT: Yes.

MR. ROZZI: Thank you.

Q So was there ever a time in Rick Allen's adult life when he was not suffering from depression and anxiety, based on your review of the records?

A I would say there's always a time where he's suffering at some level; right? There's a spectrum for anxiety and depression. There's always some level of anxiety and depression. There are periods of time where symptoms have improved, usually that's when medications have been switched around and/or there's been a change in his work environment where there's less of a demand or perceived demand for him. And I would say, too, there was one point in time where, because of his job, he lived away from his family, which was also a point in time where he kind of crumbled and wasn't able to maintain his mental health; but once he reunited with his family again, they were a strong support for him.

Q Did you also assess him for personality disorders?

A Yes.

Q Okay. Was there – what were your findings in that regard?

A Found that he has what's called dependent personality disorder. Dependent personality disorder features are someone who really needs other people to be able to feel like they're a whole person; so alone, feels very worthless, doesn't feel like he's capable of doing things, life isn't meaningful, but really relies, in his specific circumstance, on his wife heavily, and I would say to a certain circumstance his mother, as well, to be able to be there and have reinforcement, say that they love him, you know, tell him that he's a worthwhile person, because he's not able to do that for himself. Also, an abnormal amount of time in dependent personality disordered individuals they spend with their spouse, I mean, it's like they can't function alone. They have difficulty making decisions on their own, they have difficulty, you know, just existing on their own, they really need that other person to kind of prop them up and feel a little bit better about their world and their life.

Q What impact, in your opinion, would his incarceration have or his dependent personality syndrome have on his incarceration?

A It's pretty significant, because take away the incarceration piece, with a primary feature of someone who has dependent personality disorder is they have constant feelings of fear of abandonment and fear of rejection of other people. And again, they don't feel worthwhile on their own. If they're around their loved ones, then they feel a little bit better; but if they're separated from their loved ones, then they really, truly can just fall apart. They really need that as kind of a vein to be able to give them almost like nutrients to be able to sustain how they

can see and interact with people in the world. When they're separated from their loved ones – I gave you the example before, there was a period of time where he, because of work circumstances, Monday through Friday was living in a different place from his family and it was a very hard, difficult time period, even though he could still talk to them, his wife and his daughter visited on weekends and, you know, he had the ability to see them, he would fall apart when they weren't physically there and supporting him during that period of time.

Q All right. And so ultimately, referring to your independent exam, did you draw some conclusions about those things that I asked you to do a year or more ago?

A I did.

Q Okay. And just to kind of assist here, are those conclusions essentially outlined in the back of your report?

A Yes.

Q Okay. And I'm directing your attention to page 122, if you could turn there, please. Sorry, we don't have a table here.

A That's okay.

Q But I'm noting here that you drew – give me a second here – about six different kind of main conclusions. I'm just counting your paragraphs. Could we start with the first one and just summarize for the jury what your first conclusion was.

A My first conclusion is that Mr. Allen had a long history of mental health issues. I'm gonna use the analogy that, essentially, he was a fragile egg. So he was born, you know, you think of an egg, it's got a smooth shell, no cracks. He had – early in childhood, actually, his father abandoned him. Now, his mother

remarried and her husband –

MS. DIENER: Judge, I'm gonna object to hearsay.

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

THE COURT: Yeah, go ahead.

Q You said that you researched his history in terms of the documentation from other mental health providers; is that accurate?

A Yes.

Q And you also spoke with his wife?

A Yes.

Q And you also spoke with him?

A Yes.

Q Are those the types of sources of information that you routinely rely upon when you're generating medical opinions or psychiatric opinions?

A Yes.

MR. ROZZI: Judge, I think this is all just in the context and scope of an expert.

THE COURT: Overruled. You laid the foundation.

MR. ROZZI: Thank you for that, Your Honor.

Q Okay. So long history of mental illness, we kind of already touched on that a little bit earlier; right?

A Sure.

Q Okay. And your second conclusion, just generally tell the jury what that was.

A So one of the things that we consider in every case, whether it's a criminal evaluation or a civil evaluation, is whether or not someone's lying or they're

exaggerating – let's say they have mental health issues, but they're exaggerating them – or they're just out and out lying, because there's a term called malingering, where someone fakes or exaggerates symptoms 'cause they're trying to, in criminal case, escape any kind of sentencing or culpability, and so that's part and parcel of what we do when we evaluate in our assessment.

Q What do you do – like what part of your assessment is important to those – drawing those conclusions one way or another?

A It's multi-faceted. I would say if we talk hard core, tell you these tests or tools we use, we actually administer tests or tools that have decades of research that detect whether someone's exaggerating or if they're underreporting and they're not telling us everything. So those tools, whether they're looking at his cognitive functions – we have some there – and – or the emotional or mental health symptoms, we're looking at those, those tools will help us know that the information that we're gathering is real information, so it's not an underreport or it's not overreporting or just an out and out lie. The other thing is that I'm looking for consistency in behavior, and so there are lots of things that we look towards in terms of an analysis of symptoms that are reported in mental health issues and cognitive issues. What we know is that there are certain things that you look for if someone's faking or exaggerating versus if they have real, for example, psychosis or if they have real cognitive issues, so I'm asking questions about that, I'm looking at observations that I had when I met with him, certainly looking at those things and looking for consistency throughout the videos that I saw, the audio recordings, just looking for consistency, is this something that's consistent with a true and real experience for mental health or is it something that wouldn't be what you would typically see in a mental health issue.

Q So does – we've heard the phrase "objective testing" in the courtroom over the last couple weeks. Is that really a big part of this; not the only part, but a big part of it?

A Sure, yes.

Q Okay. Now, let me just see if – could you explain to the jury, if you did your testing in August of 2023, how can – if you can look back retroactively, tell the jury how that works.

A So one of the things we do typically is we look through, again, all the records that we have. We have plenty of records in this case, more so than in any other case I've ever been a part of. So not only do I have extensive records of people who are supervising and watching him constantly, I have videotapes that I watched, audio recordings from every aspect of since he's been incarcerated, and I'm looking for consistency of those symptoms just across time, what would the course be. You know, in my opinion, of course, I'm saying that he had some sort of psychosis. I'm looking for what do I know about psychosis, what does it look like, is it consistent with what I know about psychosis, is it inconsistent, but a lot of that is not only just looking at written records, it's looking at the video and audio recordings to know is that consistent with what I know of as a psychosis.

Q So did the vast amount of information in this case help you kind of take a retroactive view of his circumstances?

A Yes.

Q All right. And your third conclusion, on page 123, the language here is a little bit deeper, you said – could you just explain that to us in laymen's terms.

A Essentially, the next point is talking about what were my findings from my

tools and exams. We already covered that I was able to rule out that there's any faking or exaggeration on those tools, there's nothing that would indicate exaggeration, there was nothing that would indicate that he wasn't putting forth an honest and straightforward performance on our tests or tools. So then we get to the heart of the tools and tests. I'll start with the cognitive. With the cognitive aspect, what we find is that he has a significant slowing. So in terms of his thinking, he's slower to understand things, he's slower to respond to things. In fact, you know – we like our numbers in neuropsychology – he's performing about fifth or sixth percent compared to other people of his same age and education and background. That's pretty low or impaired.

Q Are you talking about like his problem-solving abilities or am I grouping that –

A That's next.

Q Okay.

A So this is just the slowing of his thinking.

Q Got it.

A His thinking is slow. Then we look at what's called – a portion of the brain that's called the frontal lobe. The frontal lobe is also known as your executive function because it acts as an executive over every aspect of thinking. There's a portion of the frontal lobe that warehouses problem solving, and problem solving meaning that you see a new situation, you try to figure out what's going on, and then you've gotta come up with what are the next steps to solve it and move forwards. His problem-solving skills are also in that kind of two to four percent, it's pretty low, compared to two to four percent – he's performing at the two to four percent compared to his peers of same education, same age, and

background. The other part of that same test looks at what's called perseveration, so people who get stuck on concepts. They have something that comes to their mind and they keep thinking it, thinking it, thinking it, and they can't get off that subject. Even if you say, "Come on, let's switch gears, let's go over here," they have a hard time controlling their thought process, so they just think, rethink, rethink, again at that very low level. He just has a very hard time jumping from one topic to the next, 'cause if he has something in his head, he's just what we call ruminating, he's overthinking it over and over again.

Q Could you give them an example of one of the things that you've observed?

A Well, I would say two things: One, before he was incarcerated, he would have this constant feeling that he's failing, that he's not living up to his standards as a father or wife – for his wife, a husband, that he's not able to fulfill financially his obligations to his family, when he was actually pretty successful financially, didn't have any debts, you know, there wasn't a reality component, but he could not stop worrying about it, kept checking his bank account, kept checking his stocks, those kinds of things, couldn't get the thought out of his head. Then, when he's incarcerated, one of the things that he's – I mean, there are a variety of things that he becomes fixated on. For a period of time, he becomes fixated on just feeling guilty. You know, he felt guilty before incarceration, has a history in the medical records of just – he's the type of depressive person who turns situations and makes himself feel bad for whatever's happening around him and he feels like a bad person. He perseverates on feeling guilty. He feels bad about himself, feels like he's not a worthwhile person, then it leads in, of course, to a period of time where he fixates on confessing to murders.

Q So self-blame is a theme for Mr. Allen?

A Both before incarceration and after, yes.

Q Okay. Number 4 on your list here, page 123, what was your finding in that record?

A That there's a pretty clear distinction of decline in both physical and mental health when he arrives at Westville, within the first four months of his incarceration, and that you see him as someone who, again, is having anxiety and depressive symptoms, then progresses to a little bit more of a suicidal ideation or wanting to hurt himself, then he kind of pulls back and doesn't talk for a period of time, he's seen mumbling, and then it goes into what we call a psychosis. So he's having hallucinations, he's seeing and hearing things that aren't really there, and then he's having delusions, which means that he's having false beliefs about things that aren't really true. And along with that, it's not just the thinking and what he's saying and reacting to, but he's also having a whole host of other symptoms that are called negative symptoms of psychosis, where he's not showing any kind of emotion, he might stare off and not be any – have any kind of reactivity to things. He's doing things where he's drinking out of a toilet. He's defecating and wiping it on himself and eating the feces. He's banging his head into the wall and hurting himself. He's asking for Trump. He's saluting –

MS. DIENER: Judge, I would object to her relating any statements by the Defendant as hearsay.

MR. ROZZI: They're not offered to prove the truth, they're offered to prove his mental state, so –

THE COURT: Well, and, ladies and gentlemen of the jury, it's not substantive evidence, it's not –

MR. ROZZI: May I continue?

THE COURT: -- for that purpose. Overruled. You may.

MR. ROZZI: Thank you.

Q Okay. So are you – in a state of psychosis – number 4 on the list is basically that he's decompensated mentally and physically and that's – one of the symptoms or the results of that is the state of psychosis?

A Correct.

Q Is that me being too general or too much of a layperson?

A No. That summarizes that point.

Q Okay. And then, number 5, could you tell the jury what your findings are there?

A So that, in number 5, I'm saying that the totality of what I see on the videos, the audiotapes, the records all are consistent with someone who has major depressive disorder, which was well documented in his records. Then, when you have major depressive disorder that hits a severe level – this is what's known just in terms of research – when you hit a severe level and you have a high level of stress, whether it's stress in your environment, stress that you're experiencing internally, that it can actually go into a psychosis, and it's my opinion that he had major depressive disorder with psychosis.

Q Okay. And number 6, again some words that are a little bit more clinical, etiology, the etiology of Mr. Allen's psychosis is multifactorial. Put that in lay terms for the jury.

A Okay. So there's a couple different factors that go into him specifically and understanding this major depressive disorder with psychosis. I mentioned before that I would classify him as kind of like a fragile egg, so he was somebody

we know beforehand, when he hit higher levels of stress – I talked about how he – when he was promoted at work. A lot of times, that'd be a good thing for somebody. For him, that additional stress actually caused decompensation. He had a very hard time, when he was in a position where he was dealing with external stress, stress that's happening around him. He also had a hard time when he felt like people don't think that he's a good person. And so the com – and he also – we mentioned before that he was very dependent on his wife specifically. So when you separate him, and he's never been incarcerated before, he's away from his family, he's in an environment where there's a lot more stress, he's put in solitary confinement, all of those factors impose a significant amount of stress that actually can change brain chemistry when someone's in that state of high-level stress that can bring about these psychotic symptoms.

Q Okay. Thank you for that. And so – all right. So those are your kind of six bullet-point findings, if you will. There's some subsections in here; right?

A Yes.

Q All right. And let me ask you this: You had a chance, I think you said earlier, to review some handwriting samples; is that right?

A Yes.

MR. ROZZI: And may I approach, Judge?

THE COURT: You may.

Q I'm gonna hand you what's been marked as GGG; just take a look at that and tell me – tell the jury, I guess, what that is, generally.

MS. DIENER: Judge, may I ask a preliminary question?

THE COURT: You may.

MS. DIENER: Dr. Westcott, what is your education or experience

with handwriting analysis? I couldn't find anything related to it in your CV.

A That's part and parcel of what we do as neuropsychology. In fact, we assess what's called dysgraphia, so that's a specific type of handwriting disorder, so we are able to look at different – we look at every aspect of human behavior and we're able to extrapolate information to know, if there's been a change in handwriting, what that might mean in terms of brain function and why it's happening.

MS. DIENER: And couldn't just regular old intense stress impact handwriting, as well?

A Yeah, absolutely it could.

MS. DIENER: Thank you. No other questions.

Q And so what is that exhibit, GGG?

A So this is a letter from Mr. Allen, it says filed November 9th, 2022, where he's essentially asking the Court for help in a very detailed way with assistance of having lawyers and whatnot, but it's pretty descriptive and imploring consideration of assistance from the Court.

Q With – I don't know, did I give that to you or did you get it yourself off –

A I think it was actually – I think it was one of the things, when I saw his written confession, I had asked, "Is there any type of handwriting that you have?" I think I received this from you and then I also received a second bit of information from Mrs. Allen where she had given me a letter that he had written to her before incarceration –

Q Okay.

A -- so I would have a comparison of whether or not his handwriting had changed over time.

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

DEFENDANT'S EXHIBIT GGG OFFERED

MS. DIENER: Do you have one for me?

MR. ROZZI: I do. Sorry.

MS. DIENER: Judge, I would object to the admission of GGG as hearsay.

MR. ROZZI: May I?

THE COURT: Yes.

MR. ROZZI: Judge, it's not being offered for the proof of the truth of the matter. The statement's being offered to show the contrast between his handwriting in this letter and Exhibit 292, which was offered into evidence by the State earlier, it's the letter to the warden, and it's also being offered to show the contrast between the logical thought process that's demonstrated in this exhibit, GGG, and State's 292.

THE COURT: Am I gonna get an opportunity to review the exhibit to rule on her objection?

MR. ROZZI: I'd be happy to give you a copy.

THE COURT: That would help.

MR. ROZZI: It's also in the independent neurological examination that was previously filed with the Court many, many months ago, and there's actually an image of the two letters in that examination, specifically page 116.

THE COURT: Could we have a sidebar.

(Sidebar conference conducted.)

THE COURT: I mean, there's a lot of hearsay in here that I don't – that wouldn't be meaningful to the jury, I mean, (inaudible) this is really –

MR. ROZZI: I think it's classic non-hearsay. I mean, I couldn't think of a better example, honestly, because she doesn't care entirely about what he's saying, she cares about the way this looks more than anything.

THE COURT: Well, I understand –

MR. ROZZI: It's classic non-hearsay.

THE COURT: I understand, but there's information in here that has nothing to do with her ability to examine his handwriting. I don't have a problem with some of this going back, but I don't think the letter needs to go back. There's just too much in here.

MS. DIENER: Like maybe just the first four lines and then his signature? She also testified that his handwriting could change just from regular old stress –

THE COURT: Stress.

MS. DIENER: -- so how is this –

MR. ROZZI: But that's a weight –

THE COURT: That goes to weight.

MS. DIENER: Yeah.

THE COURT: That's a weigh issue. Again, I mean, this, and the envelope even, for that matter.

MR. ROZZI: Well, I was – well, I'll just say I'm just trying to be authentic about what I'm offering up, it's the whole document.

THE COURT: Oh, no, no, no, I understand that.

MR. ROZZI: I don't want to –

THE COURT: I understand that.

MR. ROZZI: I think when you put this up literally side by side with

the letter to the warden, I think that the optics of this is part of what she's saying matters, too. So when you're cutting out two-thirds of the letter, then you cut out the context of the optics, so you know, for that reason, I think that the whole letter should be admitted. Again, I think it's classic non-hearsay. That's my argument. I'm, you know – and she's –

MS. DIENER: The confession itself is about that much information, so –

THE COURT: I mean, this is the concern I have right here, this information. That has no bearing on whether he is guilty or not guilty, and it can be viewed or interpreted by the jury inappropriately. It's begging for sympathy, which I think is inappropriate –

MR. ROZZI: Well, I wasn't –

THE COURT: No, I know that –

MR. ROZZI: I wasn't even representing him at this time, you know what I mean.

THE COURT: I understand that, but I mean –

MR. ROZZI: It's not like it's prepared in an anticipation or anything.

THE COURT: But that is clearly not –

MR. ROZZI: Okay.

THE COURT: -- I mean, this and that and the signature and that first four lines and I think that's plenty to give to them.

MR. ROZZI: Maybe what I'll do is, you know, try to do this over the break or – and we'll just give it to them later.

THE COURT: Okay.

MR. ROZZI: Just so we're moving along.

THE COURT: I'll show it's admitted over objection.

MR. ROZZI: With the redaction.

MS. DIENER: With the redaction.

MR. ROZZI: And you can –

THE COURT: With the redactions.

MR. ROZZI: Can I draw the same lines that you're drawing?

THE COURT: Why don't I just give this back to you.

MR. ROZZI: That would be great.

THE COURT: So this needs to be redacted, so then that gets –

MR. ROZZI: Okay.

THE COURT: -- this –

MR. ROZZI: That's fine.

THE COURT: -- and this, and maybe the entire envelope, 'cause there's a lot of writing in that, as well.

MR. ROZZI: You want me to get rid of it?

MS. DIENER: (Inaudible)

THE COURT: No –

MR. ROZZI: That can come in?

THE COURT: -- because I agree, that can come in –

MR. ROZZI: Perfect.

THE COURT: -- and that shows some (inaudible)

MR. ROZZI: Yeah, yeah. I'm going to ask her a couple questions just about the structure, if that's okay, even though I'm not gonna talk about what it says.

MS. DIENER: Okay.

MR. ROZZI: Does that make sense?

THE COURT: That's fine.

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

(Sidebar conference concluded.)

THE COURT: All right. Based on our conversation then, I'll show G [sic] is admitted as redacted over the State's objection, and then you can publish your redacted copy later.

DEFENDANT'S EXHIBIT GGG ADMITTED

MR. ROZZI: Very well. Thank you, Judge. I will do that.

Q Ms. Westcott, without talking about some of the words that are in the middle of that document, is the structure of the letter, just the way it looks visually, is that important to you and your analysis?

A Yes.

Q Tell the jury why.

A I'm looking at – I mean, when someone writes a sample or a letter like this, you can see their thought process, so it's very organized, there are a lot of descriptive words in it, everything's spelled correctly, punctuation is appropriate, it's a compelling letter, so you can tell a little bit about intelligence; but really, what I'm looking for is the integrity of sentences and that are thoughts aligned in a way that are organized and make sense, that's a reflection of someone's mental state.

MR. ROZZI: I'll give GGG to the Court.

THE COURT: Okay.

MR. ROZZI: Thank you. I'm gonna move to publish with the redacted portions. We'll figure that out –

THE COURT: Okay.

MR. ROZZI: -- maybe during one of the breaks or overnight and –

THE COURT: That's fine.

MR. ROZZI: -- offer that later. Thank you for that.

Q Just tell the jury, in summary, what, if any, assistance were the handwriting – I'll use the word exemplars, I guess, or the handwriting samples to you in your analysis.

A From looking at, again, the comparison that was from November and then there's a confession statement later where you can see his handwriting again, I'm looking if there are changes that would be a reflection of some cause. Now, consistent with everything else that I'm noticing in terms of symptoms and videos and everything else around that time of when he wrote the confession statement, the handwriting looks very different. It's disorgan – what we call disorganized in terms of thinking. There are fragments of sentences. The letter structures are not even formulating full letters. There's not grammar and punctuation. His signature looks different. So you can extrapolate what we know, there are studies that look at handwriting and how that changes if someone has a cognitive difficulty or if they're having mental health difficulties like psychosis, that handwriting does indeed change and the changes are exactly that, that you don't see full letter construction, you see fragmented thoughts, it's not written linearly, you know, on the lines of paper, it looks very different than the November letter.

Q Okay. Let's – in this letter that you're talking about of November – the letter you were talking about that you're comparing with it, is this it, 292?

A Yes.

Q This is letter that's addressed to the warden; is that right?

A That's correct.

Q Okay. And you would have noted both of these, actually put images of them in your exam?

A I did.

Q Thank you. All right. So I want to talk to you about these objective tests. Let me hand you what's been marked as Exhibit HHH, two pages, just take a quick look at that, tell me if you've seen them before. Do you recognize that document?

A I do.

Q And, please, tell the jury what that is.

A This is a print-out of one of the objective personality tests that I administered during my evaluation of Mr. Allen.

Q And what test is this?

A It's called the MCMI. We like our acronyms.

Q Okay.

A But –

Q Tell the jury what this means in short.

A Essentially, there are two different testing instruments that we gave that are what's called comprehensive objective tests. What that means is we're evaluating with these tests, they're hundreds and hundreds of questions that he's filling out and he's filling out true or false, they're symptom statements, "Is it true for you/false for you?" They analyze or give us information if there's any presence of a personality disorder, we talked about before with dependent personality disorder. There are personality features that are assessed, so personality features being they're lifelong traits we all have; one that I would give

an example is like some people are introverted versus extroverted, it looks at those factors, what makes us human, what do we like, what are our preferences that are usually pretty stable over time. It also looks at every kind of mental health disorder you can think of, so anything from like schizophrenia, bipolar disorder, depression, anxiety. It's analyzing or taking information from those responses to say, "Is this consistent with any of those major mental health disorders?"

Q Does the – do the test results also – or does the test also focus on this issue of malingering or faking or feigning – we've heard a lot of words – I guess I'll use the word faking – behavior –

A Yeah.

Q -- does it do that?

A Yeah. And so on both tests, we're looking at – and there are different ways or questions that they ask that are looking for whether somebody's either exaggerating or faking or also holding information and not giving us information.

Q Underreporting?

A So we – yes. We have to know is the information on this an accurate and real picture of what's going on or are there concerns there.

Q And are these the results from Mr. Allen's objective testing, are these the MCMI results that you generated from August of 2023?

A Yes.

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

DEFENDANT'S EXHIBIT HHH OFFERED

MS. DIENER: Judge, the State would object. This particular document is only one tool that she used. We asked for copies of all of these

testings and results, we were denied access to them. We were told they would only be released to another psychiatrist or psychologist. I think it's inappropriate to provide this to the jury and ask them to interpret it as a document outside of everything else that she may have administered or considered, and so we would ask it be excluded.

MR. ROZZI: Judge, first of all, they haven't even – they never even took the time to take a deposition of her in the last year and a half. They had an opportunity to do discovery. I offered up this INE to them and the Court, it was filed with the Court – I don't want to get into exact dates, but it was months and months ago. This information has been available to them for months, maybe even more than a year, I'm just losing my timing. There is case law that does support that the results of an MMPI, which is kind of the sister test to this MCMI, is admissible; I have that case with me today. You know, it's part of what she relies upon in the course of her findings, so I think it's relevant, it has a tendency to prove that what she's saying today is more – is reliable and accurate and based on sound testing practices, so I think it's admissible for all those reasons.

MS. DIENER: Judge, after the report was provided and after I reviewed it, I asked for the 12 assessment tests that were administered, along with their results. I was advised they were not available to the State unless they were sent directly to another mental health professional. Our choice not to depose the witness does not reflect on our interest in what she has to say or doing our homework with regard to her testimony. My point is, is that this is one test out of 12, and that might not be accurate, there may be more, based on the way they're described in the report, and it is inappropriate to take this one test and hand it to the jury when, as an attorney, I was considered unqualified

to interpret it.

MR. ROZZI: Judge, they could have sought the Court's intervention to get whatever documents they needed. That also was not done.

THE COURT: Well, in all fairness, discovery is mutual and non-exclusive, so if you had information and you didn't provide it, that seems to be the base of the objection.

MR. ROZZI: Well, her saying that, is that the basis for it not being provided? We gave them the examinations.

THE COURT: All of them?

MS. DIENER: You gave me –

MR. ROZZI: I gave her the 145-page report.

MS. DIENER: 127-page report, and I asked for the 12 assessment tools and you said they were not allowed to be given to me.

THE COURT: Okay. Then, that's – I'll show that the State is objecting to HHH and will not admit it.

MR. ROZZI: I'm sorry, Judge?

THE COURT: It is not admitted.

MR. ROZZI: Thank you.

Q Do you have the document or the exhibit?

A I don't have the exhibit.

Q I may have just handed it to the Court.

MR. ROZZI: Did I do that?

THE COURT: Yes.

MR. ROZZI: I just want to make sure we got track of it.

THE COURT: Yes, yes.

MR. ROZZI: Okay, very good.

THE COURT: Yes, Jodie's got it.

MR. ROZZI: All right, that's fine.

Q Well, we'll do it this way: So tell the jury what you learned when you conducted the MCMI as it relates to Mr. Allen faking his behavior.

A There's no indication that he wasn't telling the truth or being straightforward or honest on that test.

Q And tell the jury what you learned from the result of the MCMI as it relates to his personality disorder.

A So in terms of personality – I'll say disorders are factors. I mean, I guess I'm gonna make a distinguishing characteristic because the test, as I mentioned, goes through and talks about just general personality traits. For me, that's important, because you have to understand how someone is in terms of their personality to understand if there's an event or something or stress happens how we can expect that they might either decompensate or it might be a better situation for them. So you're asking about personality factors, what I was talking about before, things that are long-standing. He's somebody who tends to keep more to himself, he's somebody who tends to be extremely dependent on others to be able to feel good about himself, he's more passive, he avoids confrontation, he avoids conflict, he has a strong fear of rejection or abandonment from others, and he also is somebody who again, in that piece of avoiding conflict or confrontation, he tends to be more quiet and pulls away and kind of steps back from situations. Those would be more of the personality factors, if you're just sticking with that.

Q Is there – I haven't asked this question I don't think today: Is there a way

for you to take these objective – how many objective tests did you do, like to the extent you can number them?

A I, frankly, would have to count.

Q Give us some idea.

A I actually think it's more like 25. I think when 12 was mentioned, I mean, they're different tests that have different components to it, so it might say one test, but it has different components.

Q Okay.

A I – it would be a guess, I would say somewhere around 25.

Q Did you compare and contrast the results of each of the objective tests to make sure that there's some validity in either a part or the whole of those tests?

A Yes. I'm looking for consistency always, whether it's the cognitive test or it's the emotional and personality tests, I'm looking for consistency. There are two tests that measure very similar things and I want to see, if I'm looking for – you know, if there's depression, we're seeing depression at about the same level on one test versus the other. The MCMI does a little bit better job of describing these personality factors we just talked about, you know, whether, again, someone's introverted or extroverted, are they aggressive or tend to be more passive, and so that offers a little bit different component than the other one, the MMPI, but with both of them, I'm looking for consistency about validity, whether or not there's a presence of a mental health disorder like depression or bipolar disorder or schizophrenia, those kinds of things.

Q Did you find consistency amongst those objective tests with regard to his state of psychosis?

A Yes.

Q Okay. Just explain to the jury in short, in summary, kind of what you found in that regard.

A So he's someone who has – again, I'm gonna use a clinical term of little emotional reserves, he's not very resilient. So in the face of stress, given that he has a long history of depression and anxiety, he is much more likely than the typical person, when he hits a stressful situation, to decompensate and then enter into a psychosis.

Q Okay. And with regard to that psychosis – I know everybody wants dates and times and numbers – just give the jury an idea in your mind as to when you think he was in that state of psychosis based on your review of the instruments?

A Well, I start seeing changes that make me concerned about what we call prodromal or initial symptoms of psychosis even between December and March of – December of 2022, into March of 2023, where you start seeing less of an emotional expression – they're called negative symptoms – so less of an emotional reactivity. There's notes and records where there's slowing of thinking. He's keeping more to himself. There are notes of him mumbling to himself. But really, when you're seeing the blatant symptoms of psychosis are really into April, May, and June of 2023. Now, from that point in time, after 2023, there is some improvement in psychotic or psychosis symptoms and you still see some residuals of psychosis going forward, but I wouldn't say it rises to the level of a full psychotic disorder after June/July time period.

Q So there was some planning out of his circumstances, but there are dips?

A Yes.

Q Okay. So tell the jury, with regard to this objective testing in summary, again, what you found – well, whether or not your findings regarding his faking

behaviors were consistent and what those findings were.

A On any objective test of personality, and I'll also say on any objective test of cognitive thinking – so his thinking skills – consistently across everything, any way that we look at faking – which I would say that, in itself, could be upwards of – there may be 30 different ways that we look of whether someone's faking on these types of objective tests – there's no indication of any type of faking, exaggeration, or underreporting symptoms.

Q Okay. Thank you for that. A couple of, I guess, loose ends, if you will. There's been some talk in the courtroom about SMI, serious mental illness; do you recognize that phrase?

A Yes.

Q Okay. Tell the jury, from a clinical standpoint, what does that phrase mean to you in the course of your work, especially with Mr. Allen, but generally, as well.

MS. DIENER: Judge, I would object to the response unless it pertains to that definition in the DOC pertaining to Mr. Allen, which I don't believe she's qualified to answer because there could be a misapplication or misinterpretation of the definition out in the clinical world where she's functioning.

MR. ROZZI: Judge, she's worked with – in the prison system. She's – you know –

THE COURT: Well, let's limit it, then, to the prison system.

MR. ROZZI: Yeah, I think that's – I appreciate that, I will do that.

Q So are you familiar with that designation?

A Yes.

Q And is – are you familiar with it in the context of the prison system?

A It only exists in the context of a prison system –

Q Okay.

A -- so yes, my familiarity is when I – we mentioned before that I've worked in prison systems before, and I also tend to evaluate people in prison systems, so I've seen the definition and understand serious mental illness.

Q Okay. So in the clinical setting, like in your professional setting, do you have I guess an equivalent to that?

A Yes.

Q Tell the jury what that is and talk –

MS. DIENER: Objection, Judge. That's not relevant to Mr. Allen.

MR. ROZZI: Well –

THE COURT: Overruled. I think it goes to the weight. I mean, I don't think we need to belabor this point, because he's not in a clinical setting, he's in a prison setting, but she can answer the question.

MR. ROZZI: Thank you.

A So in a clinical setting, it's typically – we have a cookbook, it's called the *Diagnostic and Statistic Manual* [sic], that gives us all of our disorders, what – any type of disorder that we've been talking about, and in that cookbook there is a term that's called severe mental illness or chronic mental illness, which would be relatively equivalent.

Q Okay. And is that – did Mr. Allen fall into that definition when he hit the doorstep of the DOC?

A Yes.

Q And while he was at the DOC?

A Yes.
Q Okay. You said – what'd you call that? The D – I've known it as the DSM-V.
A Again, we like our abbreviations. It's the DSM-V –
Q Okay.
A -- that's the shorter version, yes.
Q All right. When were the other discussions – well, I'm gonna ask you about this: Did you have a chance to review Dr. Wala's session reports or suicide monitoring reports?
A Yes.
Q Can you just estimate for the jury how many of those you might have looked at?
A Again, I'm not gonna be terribly accurate, 'cause it would be a guess. I mean, I think she had maybe 30 notes, 30, 50 notes.
Q Okay. And in those reports, did you observe any kind of trend or recording trend from her that you thought was unique in – to Rick's situation?
A I'm not sure I understand your question.
Q Fair enough. Was there anything about the way she recorded Rick's confessions and things of that nature that caught your attention?
A Well, one of the things that is hard about medical records in general is that we're reading it through someone else's story, essentially; right? They're writing what they're viewing in their words. Medical records don't typically have quotes throughout the entire medical record. There might be a few words that are in quotes. And so when someone's relaying a story, and in this case with Dr. Wala, she's writing about his confessions, the confessions come across almost as if

you're telling a narrative, like a child's story; right? It's got a beginning, it's got a middle, and it's got an end. What I did with any one of her reports or records that she wrote is I'm also looking at the same period of time, looking at videos, I'm looking at the auditory calls, I'm looking at what are suicide companions saying; and during that period of time, those tend to be a little bit more fragmented in terms of what the words are. And on some of the same days where she's writing what reads as very much a story, beginning, middle, and end, you're also hearing behaviors about him drinking out of the toilet, saying things that are not in context, you know, mentioning words that don't have anything to do with the conversation that he's having, it's not what we call logical and organized conversation. So there's just a contrast during that period of time of what she's writing versus what I was seeing on videotape and then seeing in other records.

Q What impact on Mr. Allen's mental health do you believe this confinement circumstance – we've used the phrase "solitary confinement" – would have on him or did have on him?

A And again, I'm not exactly sure, like, the totality of what you're asking, but in terms of what I was mentioning before, he's someone who, if you put him in a more stressful situation away from his family, those are two things that are kind of holding him together as having – before he was incarcerated, having organization in his day, knowing that he's gonna see his wife every day, being able to call his wife if he's having a bad day or he's worried, you know, that he's letting people down, being able to have her support him, you're pulling him completely out of that situation and putting him in an entirely new situation, you know, I would liken it – I mean, this is gonna be a – kind of an example, but we all know what confinement is like with COVID, and a lot of people didn't find

COVID comfortable because we're confined to our homes. For somebody like him, it's not even confinement, it's solitary confinement. He's entirely by himself, he doesn't have his family. During that period of time, he also has other prisoners yelling at him, telling him to kill himself, calling him a baby killer. He tends to be somebody who highly values what other people are saying, we talked about that earlier; and so when you hear those statements, he kind of – he's kind of a little bit of like a sponge, it just makes him feel worse and worse and worse. Plus, he doesn't have any kind of sensory – sensory deprivation is part of solitary confinement. He has lights on all the time. He doesn't have a window that he can look out and see if it's day or night, he's getting confused day or night. He's not sleeping a lot of days. There were notes that said that there were days where he's only sleeping maybe an hour for a couple days straight. He loses a substantial amount of weight. And I mention all of these factors because what we know about brain function is that when you lose a substantial amount of weight and you're not getting nutrients and you don't have a sense of what's day or night, there are changes in your brain that make you enter into this place where it's either a psychosis or what's called a delirium, where you can't figure out what's what. It's kind of like a funhouse, if you went to a funhouse when you were kid, you don't know what's real and what's not. And so essentially, those factors of being pulled away from his family, being in a very unusual circumstance for a prolonged period of time can contribute to changes in the brain, which then make it hard to distinguish what's reality and what's not.

Q We actually had a question about delirium, you just mentioned that. Tell the jury what that is and whether or not it's relevant to Rick Allen's situation.

MS. DIENER: Judge, I would object. The previous testimony was

that he was assessed for delirium and found not to be exhibiting any signs of delirium, so I would object to the question.

MR. ROZZI: Well, that would be a weight issue. That was –

THE COURT: No, but that was the testimony, so that –

MR. ROZZI: I'm sorry?

THE COURT: That was the testimony, so that would be sustained.

MR. ROZZI: Yeah, that was the testimony, but she's – if she has a different opinion, she's able to communicate that.

MS. DIENER: Judge, I don't believe any of her testing so far that she's testified to had to do with delirium.

MR. ROZZI: Could I ask her a preliminary question?

THE COURT: Yeah, go ahead.

Q Is delirium a state of mental health in your industry?

A Yes. It's – we talked about the DSM-V, it's in the DSM-V as a mental health disorder.

Q Is there – are – tell the Judge or the jury what – and the Judge – what kind of things cause delirium.

A Delirium can be caused by medical factors, so a lot of times you hear if somebody has a urinary tract infection or any kind of inflammation or infection, that directly relates to brain function and can change brain function. It can also be caused by medicines or substances, you know, when people have been taking drugs, illicit drugs, or they withdraw from drugs, you can enter into a delirium, where you're confused and not oriented, not knowing what's going on, not knowing what's reality. And also again, in the DSM, it states that you can enter into a delirium if you have changes due to sensory deprivation, such as in

solitary confinement.

MR. ROZZI: Judge, I think that she's met a foundation to talk about the existence as it relates to Mr. Allen.

THE COURT: Overruled. Although there was testimony that it was medical and –

MR. ROZZI: Yeah, okay. I acknowledge that. Thank you for that.

Q So is the idea of delirium even relevant to Mr. Allen's circumstances?

A I had a concern about delirium for a couple factors. One is delirium's known to be something that's present in solitary confinement; if someone's been in solitary confinement for a prolonged period of time with sensory deprivation, that they can enter into a state of delirium. The other things is that I saw for myself and I know that he was drinking out of a toilet and he was eating his own feces and he had that nutritional deficit, he's not eating a lot, those factors can all contribute to an inflammation within your body system, which directly relates to brain function and can get the same results of being disoriented and having difficulties distinguishing what's reality and what's not.

MR. ROZZI: I'd pass the witness.

MS. DIENER: Thank you.

THE COURT: Ms. Diener.

CROSS EXAMINATION OF DR. POLLY WESTCOTT

QUESTIONS BY MS. DIENER.

Q Dr. Westcott, let's first talk about your reference to solitary confinement and sensory deprivation. Can you explain what you're referring to with regard to sensory deprivation.

A Sensory deprivation would be any circumstance where you're limited in

terms of sensory input. So on a daily basis, most of us have the course of our lives where we're able to move from one location to the next, we have interactions with people that can help make us feel like we're human and have physical contact with other people, we can have conversations with other people. In solitary confinement, you're put into a smaller space; in some situations, lights are on all the time, which are – can be disorienting, where you can't tell day from night. In solitary confinement in this situation, I saw on the records that there were – there's evidence that his window was scratched and he wasn't even able to see outside, which can be disorienting for people. We think of – there's a lot of documentation of this type of phenomenon in prisoners of war, where they're kept in a location where they can't see outside.

Q Okay. So you're saying he was deprived of interaction with people; correct?

A Yes.

Q But Dr. Wala saw him daily from December 5 through August, Monday through Friday, every day for up to an hour; are you aware of that?

A I never –

MR. ROZZI: I'm gonna object to that as not representative of the facts that are in evidence. She said that there was daily visits, it was referenced on the suicide monitoring report. In cross examination, she acknowledged that many of those visits occurred because there was a mental health provider that would go to this door and talk to him, that was the evidence. So it mischaracterizes the evidence.

MS. DIENER: Judge, actually –

THE COURT: Go ahead.

MS. DIENER: Yes. Actually, her records reflect that she met with

him daily, Monday through Friday, for 15 minutes to one hour, depending on Mr. Allen's preference. That is not to be confused with a mental health professional stopping at his door to ask if he needs anything, in addition to Dr. Wala. There are records in this, admitted as exhibits, that show that she met with him on a daily basis. The jury's been given a collection of those. There's a larger collection that was also admitted. And so she was having daily contact with him.

THE COURT: Overruled.

MR. ROZZI: Thank you.

Q So did you understand that Dr. Wala was having daily sessions with Mr. Allen?

A So I remember reading in her records that were times that she went to his cell and wasn't able to get him to respond and so she didn't have a session with him.

Q Yes. Did you also see reports where she was getting him out every day, multiple days in a row?

A I wouldn't say that she – so I'm confused, 'cause initially you're saying – my understanding of your question was that she was seeing him daily for an hour. That was not my understanding looking at the records, that she didn't have him pulled out of his cell every day for an hour, that there were times where she did have him pulled out of the cell, there were also times where she went by his cell, he was unresponsive, and she did not meet with him.

Q And so you indicated that you reviewed 30 to 50 notes of Dr. Wala's reports; are we talking about the same behavioral observation report where it starts with his name, his date of birth, the date, the time, and then it has patient

complain section and then her clinical observations; are we talking about the same thing?

A Yes.

Q And so you only saw 30 to 50 of those?

A Again, that was an estimate. Unless I go back to my – there were an enormous amount of records in this case, I don't remember how many records, that was a guess.

Q I agree. If she met with him every day from December 5 to August, there would be hundreds; correct?

A Well, again, what I would say is I see notes from her; some of the times when she has notes, she's saying that he's unresponsive and she doesn't meet with him, so I wouldn't consider that a session that she was meeting with him.

Q Well, so who decided what notes you got? Did you get those from defense counsel?

A I asked for all of the records from Westville.

Q And you believe that's 30 to 50 notes?

A Again, without looking at my records – I'm talking about the notes that I can recall where there's content information versus if she's just stopping by, he's not responsive, and so there's not what I would consider a session.

Q Okay. You indicate that one of the things that would contribute to sensory deprivation would be being confined to a small space; correct?

A Correct.

Q Okay. Do you have any information as to the fact that his window was replaced, so he could see out of it, or to what extent it was scratched that he couldn't clearly see or are you just basing it on what Mr. Allen told you?

A I'm basing it on what was in the medical records. Mr. Allen did mention the window being scratched.

Q Okay. There was testimony that the light is on for his safety, but can be dimmed. Were you aware of that?

A Yes.

Q Okay. Did you have an understanding of his availability to leave his cell for rec multiple days per week and also for showers?

A Yes.

Q And did you have information regarding his ability to leave his cell to have his vitals taken on a daily basis by the nurse staff?

A Yes. And in both of those circumstances, that didn't occur every day.

Q Was that also based on an array of a limited number of reports?

A I'm not sure I understand your question.

Q I guess I'm questioning whether you got all of the records from DOC.

A I wouldn't know, but I would believe so, because there were every single day that he was there in Westville, I've seen an abundance of records, it's not just from Dr. Wala, it's from Dr. Martin, it's from suicide watchers, and so –

Q And nursing staff, as well?

A Yes.

MR. ROZZI: Please let the witness answer the questions.

A And so what I'm mentioning is that when there were daily checks for vitals or if there were circumstances to allow him to go outside, he was either refusing or he was concerned for his life to leave his cell, that he might be harmed or hurt in some way.

Q Did you also receive information from his counsel with regard to their

opinions about his confession statements?

A No.

Q And so in your report, you indicate that he made confession statements inconsistent with known facts; how would you know that?

A That I'm looking at information within the medical records where there's, at one point in time, for example, he says that Satan killed the girls. So, I mean, I would make the assumption or have the opinion that Satan didn't kill the girls.

Q That's not a confession statement though, is it?

A Correct.

Q Okay. Just to clarify: Mr. Rozzi asked you a question about whether your testing revealed that he was not faking behaviors at the time that – back in time, prior to your testing, and I believe you responded that you said that you could determine that he was not lying on the test; is that correct?

A Again, I'm not sure that I understand your question.

Q If I would look at page 122 and over to page 123 of your report, under the section "exaggeration/malingering" –

A Yes.

Q -- it says, on the first full sentence on page 123, "There's no evidence for deception or malingering throughout the cognitive examination." So that means you don't believe he's faking answers on the test; correct?

A That's correct.

Q Okay. How were you introduced to Mr. Allen? Did the attorneys meet with him with you and then leave you to your testing or how did that work?

A No, they weren't there at all during that period of time. I was initially – there was someone who met me after I went through security, I'm not sure what

her function was, she took me over to the building. I met with the superintendent for a period of time and then they took me to what looked like someone's office, I'm not sure whose office, and then the security guards brought him into the office where I was.

Q Was it discussed with Mr. Allen that you were there on behalf of his counsel to assist?

A I don't believe that I identified myself in that way. What I typically ask is if he was aware that the appoint – I start with, "Are you aware that the appointment had been made and that I was gonna be here today?" It didn't seem like he had remembered that I was going to be there. And then I explained to him that I'm going to do an evaluation today and that – explained the limits of confidentiality in the evaluation and that it's part of the legal trial, and then I give him – you know, it's his choice to be able to consent for the evaluation or to not consent to the evaluation, and that's typically what we go through.

Q So in that same section we were just talking about that ends on page 123, where you conclude, "All evidence supports that his presentation and testing are an accurate and valid reflection of his current emotional and cognitive functioning," that's referencing at the time of testing; is it not?

A That piece is referencing at the time of testing, yes.

Q Okay. I'd like to talk about his dependent personality disorder that you made reference to. That also appeared in Dr. Wala's reports; correct?

A I believe that she either said he had dependent features or traits. I don't remember her diagnosing dependent personality disorder.

Q And so you related that to his attachment to his wife; is that correct?

A Yes.

Q In the absence of his wife, would it – is it possible that he attaches to someone else?

A Not typically. Again, especially in a situation where someone has been with an individual for decades and also still has access by telephone, typically the pain and the hurt is consistent, and that was also consistent when I saw him in August in terms of his pain from being away from her. It's not typical that it just moves from person to person unless they become part of that inner circle; because, as I mentioned before, his typical fears are that most people don't like him, don't think that he's a worthwhile person, so he doesn't typically cling on or associate with other people in a strong way.

Q Okay. And so when he has a person that he clings to, like his wife, is that a person that you – and he has a dependent personality disorder, can you then conclude that that person is within his inner circle?

A Yes.

Q He trusts that person, he would maybe talk to them about things he wouldn't talk to others about?

A Yes.

Q Okay. And so if Dr. Wala documents throughout her time with him that he says things that, "You're like my wife, telling me what I want to hear," or "Please don't leave me," "I need to talk to Dr. Wala, there's things I need to talk about and there are only so many people I can trust," are those the kinds of things that could lead a person to believe he has transferred his dependency potentially to Dr. Wala, since his wife is not available?

A Not necessarily in this context. I mean, you have to keep in mind that she's one of the only people who was there and in helping profession and trying

to talk to him. He doesn't have any other people that he can talk to, I mean, so I wouldn't necessarily say that. He also has general anxiety features, and part of that is an anxiety of being abandoned by people and being rejected by people, and so he's searching for someone who will actually talk to him, and she's one of the only people, when he's in the facility, that will actually engage and talk with him.

Q So what I hear you saying is that you disagree that he would find her to be a confidante of sorts and let her into his inner circle, despite the things that – ways in which he may have referenced her?

A No. I think we're having a different conversation. I said that I don't think that he transferred dependent personality disorder features onto Dr. Wala. That doesn't mean that he didn't confide in her and talk to her to a certain extent about his problems, but it's not my opinion that he transferred that person that becomes that dependent personality feature to Dr. Wala.

Q Okay. Understood. Now, you do acknowledge in your report that people in a criminal setting may seek to avoid punishment by feigning symptoms of psychosis or insanity; correct?

A That's correct.

Q And for laypeople, feigning, exaggerating, malingering, it all comes down to faking, that's a layman's term; correct?

A Correct, correct.

Q Okay. And if the records that you were provided – isn't it correct that a lot of the videos didn't have a specific date stamp for you to be able to place them in a continuum?

A Some of them did and some of them did not, yes.

Q Okay. Now, Mr. Allen is seeing Dr. Wala, a clinical psychologist, and then also seeing Dr. Martin, a psychiatrist, and you're aware of that; correct?

A That's correct.

Q And they are having contact with him in real time with regard to these behaviors that are the focus of a psychosis diagnosis; correct?

A That's correct.

Q And so is there a certain amount of confidence you can have in them being there to observe daily functioning of Mr. Allen?

A Well, I take their observations into account, there's no doubt about that. The other piece that, again, is extremely unusual and helpful to me is that I have an abundance of videos and other reports besides them of – I mean, these suicide watch reports are almost down to the minute at points in time of what they're noticing, so I'm seeing a lot of other information, in conjunction with what their reports are of when they're seeing him.

Q So in your evaluation, you were giving weight also to suicide companion notes in order to assess the circumstances; correct?

A I wouldn't say obsess – assess the circumstances. They're talking about what his behaviors are. I would never say that they're somebody who can diagnose, and they don't diagnose in their notes, but –

Q Oh, no –

A -- the talking –

Q Yeah, I'm sorry, I must have not worded that correctly. When you're looking at all this information to determine what it may mean in your assessment, are you considering the suicide companion records in conjunction with the records of Dr. Wala and Dr. Martin?

A I'm giving them a certain amount of weight, yes.
Q Okay. So I wanted to come back to that previous question that I asked about, "Verbal confessions to the double homicide are inconsistent with facts know." You aren't aware of the facts of the homicide investigation; is that correct?
A I'm not aware of all the details of the facts, no.
Q Okay. Now, I think you've referred to, at least in your report, about psychosis being a – he was diagnosed with psych – brief psychosis with related stressors; are you related with that –
A Well, I'll say that –
Q -- in the Wala report?
A I will say that brief psychosis is actually a term from the DSM-IV, so a previous version of the DSM. We mentioned before the DSM-V is actually the latest version that's been out for many years. That term "brief psychosis" isn't in the DSM-V. The indication and what I put in my report is major depressive disorder with psychosis, that's the classification system we use now.
Q Okay. And when did it change from IV to V, do you know?
A Oh, I want to say 2015, somewhere around 2015, 2016. It's been a while.
Q Okay. So we're still talking about a period of psychosis that is not present when he necessarily enters DOC and it certainly is not necessarily as prevalent say after May or June; correct?
A That's correct.
Q Okay. And so when a person is experiencing psychosis, aren't there factors that are part of psychosis and then other factors that are not part of psychosis? For example, is everything that he says during psychosis considered a product

of that disorder?

A I'm not sure I really understand your question.

Q Yeah, it was a bad question, I apologize. So there's an onset of psychosis; correct?

A Yes. Usually psychosis is actually more of a gradual onset, and then I think – I don't want to guess entirely, so you tell me, but I think what you're asking, when somebody's in a psychotic state, whether it's a state – anybody who's in a psychotic state, they can be saying things that might be close to factual or not close to factual or they could be completely a different reality. In general, I would say when someone is in a psychotic state, the majority of what they're experiencing in the world around them is not the same reality that you and I are sitting in.

Q But a person in psychosis can answer questions maybe about things that are factual and provide a reliable answer, can they not?

A They can.

Q And so one of the things that was documented with regard to Mr. Allen was disorganized speech; is that correct?

A Yes.

Q And what does disorganized speech tell us with relationship to psychosis?

A So disorganized speech is just one symptom that can be seen in psychosis. There are many other symptoms of psychosis, but it means that someone's not able to as well put together like multiple sentences at the same time that make sense, that follow kind of a logical order.

Q So did you actually have the confession statements documented by Dr. Wala on April 5 and May 3rd when you were reviewing all of these records and

preparing your report?

A Yes.

Q And in your report, you summarized a lot of information that you considered; is that fair to say?

A Yes.

Q How did you decide what you would summarize and include in your report and what you would not summarize and include?

A I'm trying to, as best I can, put in the key factors of symptoms or changes in symptoms or if there are particular things that I find, unusual statements that wouldn't be an indicator of someone who is in a mentally healthy state.

Q And so when I read through your report, the detailed statement by Mr. Allen to Dr. Wala on April 5 of 2023, was not summarized. Is there a reason?

A Well, I think you're talking about – and I'd have to go back through the dates to look – I think you're talking about what we were mentioning before, that it was something that is in Dr. Wala's writing, there weren't quotes around it saying that this is exactly what he was saying at that point in time. I do mention several other times when he has confession statements to Dr. Wala that were more quotes.

Q So the April 5 one was not included. Then I turned to May 3rd, and your entries from May 3rd appear on page 71, for your reference; and on this particular date, he makes another detailed statement about his participation in the crime and yet you have three entries from May 3rd and none include those detailed statements. So did you not find them relevant to your assessment?

MR. ROZZI: Judge, I'm gonna object to the form of the question. Ms. Diener is inserting facts that are not part of the testimony today. She's –

yeah, it's –

MS. DIENER: Judge, she testified –

MR. ROZZI: It's facts not in evidence.

MR. DIENER: -- that she reviewed lots and lots of medical records, had 30 to 50 notes of Dr. Wala's that stand out to her, but that she had all of them available to her, and I'm just asking why that particular note of interest is not in her report.

THE COURT: Overruled.

MR. ROZZI: Thank you.

Q So the question was: You have three entries from May 3rd, 2023, and none of them do you reference the very detailed statement by Mr. Allen to Dr. Wala; is there a reason?

A Well, when we talked before about what was my job in this evaluation, my job was to be able to discuss and evaluate what were the breadth and extent of symptoms while he was there during this period of time when he had confessions, and I'm looking specifically at mental health symptoms or changes in his behavior or thinking status, which if you look at those dates – I'm just back at that 5/3 – I'm actually describing some of the mental health symptoms that were existing there that helped me understand that he's still having a psychotic state.

Q But the fact that Dr. Wala indicated on that date that psychotic symptoms were not present you did not note.

A So I would disagree with you. On May 3rd, it says that he – he's diagnosed with brief psychotic disorder and that's characterized by disorganized speech, grossly disorganized and catatonic behavior. I mean, she's talking about

symptoms of psychosis that are present.

Q There's actually an addendum on May 3rd to her May 2nd report, indicating that diagnosis to explain behaviors for the previous month; do you recall that?

A I don't have that in front of me.

Q Okay. And then, on May 10 – and I promise, this is the last one I'll ask you about – page 72. Now, May 10, if you may recall, is a session with Dr. Wala where he asked her to stay in the room while he called his wife, and you indicate in your note, "Mr. Allen had a call with Mrs. Allen"; do you recall that?

A Yes. I'm trying to find it on the page, because there were chunks that I grouped together. It's on page 72?

Q Yes. The very bottom entry in the –

A Oh, yes.

Q -- spreadsheet.

A Thank you.

Q I'll give you a chance to take a look at that.

A Yes, I see it.

Q Okay. So on that particular date, you note, "He told her, 'I did this,' and said, 'I think I'm losing my mind." Correct?

A Yes.

Q Did you listen to the phone calls that Mr. Allen made to his wife that day?

A I listened to the majority of the phone calls that he made to his wife. I don't remember particularly on that day.

MS. DIENER: Okay. I have no other questions, Judge.

THE COURT: Mr. Rozzi.

MR ROZZI: I have no further questions.

THE COURT: I'm sorry?

MR. ROZZI: I have no further questions.

THE COURT: Okay. Thank you. Does anybody on the jury have any questions for the doctor? All right. Would counsel approach.

(Sidebar conference conducted.)

THE COURT: "What is the difference between your diagnosis and insanity?"

MR. ROZZI: That's more a legal –

THE COURT: Well, but you didn't raise an insanity –

MS. DIENER: I don't think we can go there.

THE COURT: -- defense. You never raised an insanity defense.

MR. ROZZI: Yeah, I'd have to raise that.

MS. DIENER: You can't ask that.

THE COURT: "Are breakdowns in mental function spontaneous and more violent than a slow decline in mental health over time?"

MR. ROZZI: Can you read that again, I'm sorry.

THE COURT: "Are breakdowns in mental function spontaneous and more violent than a slow decline in mental health over time?"

MS. DIENER: I'm not sure what to do with that one.

MR. ROZZI: Yeah. I don't care.

MS. DIENER: I don't care.

MR. ROZZI: If you don't want to ask it, I'm good with it.

THE COURT: Okay.

MS. DIENER: Yeah. It seems a little (inaudible)

THE COURT: "What is the difference between delusions and

hallucinations?"

MS. DIENER: Oh.

MR. ROZZI: That's fine.

MS. DIENER: That's a good one.

THE COURT: "Do religious beliefs affect perception or acceptance of mental health issues?"

MS. DIENER: Ooo.

MR. ROZZI: We didn't talk about religion.

MS. DIENER: Yeah. I think that's –

THE COURT: No.

MS. DIENER: I don't think we –

THE COURT: No.

MS. DIENER: -- can tie those two together.

THE COURT: Wow.

MR. ROZZI: It's the full moon.

MS. DIENER: Full moon? Something.

THE COURT: "Can objective testing be interpreted multiple ways?"

MR. ROZZI: Yeah. That's – fine with that.

MS. DIENER: Yeah.

THE COURT: "Did your medical records prior to incarceration include any objective testing by the mental health providers who prescribed medications?"

MS. DIENER: That's okay.

MR. ROZZI: I don't know,

THE COURT: "Are you able to diagnose dysgraphia or does that

usually require a medical diagnosis?"

MR. ROZZI: That's not her.

MS. DIENER: Yeah, I don't see the relevance of that.

THE COURT: Pardon?

MR. ROZZI: We're gonna be talking about the common cold before this is over.

THE COURT: "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?"

MR. ROZZI: I don't care. She talked about those.

MS. DIENER: (Inaudible)

MR. ROZZI: Yeah.

THE COURT: "Is the MCMI considered a test that determines the control groups of his personality?"

MS. DIENER: Oh, dear. That's a no on that.

MR. ROZZI: Yeah, I don't –

MS. DIENER: They don't want anyone else to understand that and I don't either.

THE COURT: "Would the MCMI be an indicator of his honesty regarding some circumstances?"

MS. DIENER: I think we can ask that either. It's –

MR. ROZZI: Okay, okay.

MS. DIENER: We can't ask the witness that, so why would we ask if the test tells us that?

THE COURT: Okay.