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IN THE COURT OF COMMON PLEAS  
TRUMBULL COUNTY, OHIO

State of Ohio, : CASE NO: 2017-CR-403  
Plaintiff, :  
 :  
-vs- : TRANSCRIPT OF PROCEEDINGS  
Austin Taylor Burke, :  
Defendant. : VOLUME IV - JURY TRIAL

Be it remembered, that at the Jury Trial of the above-entitled cause, in the Court of Common Pleas, Trumbull County, Ohio, beginning on the 5th day of March, 2018, and continuing thereafter, as hereinafter noted, before the Honorable Andrew D. Logan, the following proceedings were had:

Official Court Reporter: Lori J. Rittwage

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March 8, 2018

THE COURT: We're in court out of the presence of the jury just to take care of a couple housekeeping items.

Mr. Becker, you had something for the record?

MR. BECKER: Yes, Your Honor. Yesterday I made the mistake of marking two exhibits as State's Exhibit 52. The first State's Exhibit 52 was a one-page document that was testified to by Deidre Keener that indicated she had received a call from the defendant on June 20, 2017, and had returned the call at about 10:50 p.m. It was a snapshot from her phone -- or a screen shot.

I then inadvertently marked the photographs of the crime scene with Detective Morris as well as State's 52. I've taken the liberty of changing that to State's 53. So that has been testified to, but it should be State's Exhibit 53 rather than 52.

(Whereupon, State's Exhibit 53, Photos, was introduced for identification.)

THE COURT: And 53 is a group of photographs then?

MR. BECKER: Yeah. It's a CD containing about, I'd say about 25 or 30 photos.

1 THE COURT: It's a CD?

2 MR. BECKER: Yeah. It's a CD.

3 THE COURT: Anything from defense counsel?

4 MR. OLSON: Nothing, Your Honor.

5 THE COURT: Again, we're just trying to get  
6 it straightened out here.

7 Anything else while the jury is still out,  
8 Mr. Becker?

9 MR. BECKER: Nothing on behalf of the  
10 state.

11 THE COURT: Mr. Olson, anything on behalf  
12 of the defendant?

13 MR. OLSON: Nothing.

14 THE COURT: Let's bring the jury up.

15 (Whereupon, a recess was had commencing at  
16 9:04 a.m. and concluding at 9:09 a.m.)

17 THE COURT: Good morning, Ladies and  
18 Gentlemen. We continue with the state's case this morning.  
19 Mr. Greaver, if you'll return to the stand. You remain under  
20 oath.

21 Mr. Olson, you may continue your cross.

22 MR. OLSON: Thank you, Your Honor.

23 \* \* \*

CONTINUING CROSS EXAMINATION

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BY MR. OLSON:

Q Morning, Detective.

A Morning, sir.

Q Yesterday when we broke we were just getting into --  
is it Deputy Galida's report?

A That's correct.

Q Before we go back to that report real quickly,  
though, during some cross examination we did go over some  
statements that were made to you by Makayla Egbert.

A Uh-huh.

Q Do you recall that?

A Yes, sir.

Q And during examination I was asking if you remembered  
if Makayla told you that Jess had been there and witnessed  
Austin coming back to the home; do you recall that? Do you  
recall the question?

A I do not. I do recall the question, yes, sir.

Q Okay. And I indicated that there was an audio  
recording of Makayla that made those statements; is that  
correct?

A Correct.

Q And you indicated that you did not recall the audio



1 tapes themselves; is that correct?

2 A Correct.

3 Q Since yesterday's examination, did you have an  
4 opportunity --

5 THE COURT: You may proceed.

6 MR. OLSON: Thank you, Your Honor.

7 BY MR. OLSON:

8 Q So since yesterday's questioning, did you have an  
9 opportunity to go back to your office, pull those interviews  
10 and listen to them?

11 A I did not.

12 Q Okay. Now, Detective, you would agree with me that  
13 you did meet with Makayla Egbert at the Niles Police  
14 Department on the 13th; is that correct?

15 A That is correct.

16 Q Okay. And the initial interview with Makayla Egbert  
17 was only by audio. It was not by video; is that correct?

18 A That is correct.

19 Q And I'm going to put this as close to you as  
20 possible. One second.

21 A Sure.

22 MR. BECKER: Your Honor, I'm going to  
23 object at this point. Can we approach?

1 THE COURT: You may.

2 (At sidebar:)

3 MR. BECKER: Your Honor, I think this is  
4 way beyond the scope. This is clearly hearsay. He's asking  
5 this witness to talk about a statement taken by a witness who  
6 hasn't even testified in this courtroom. They have the same  
7 ability to subpoena witnesses. They could have cross examined  
8 and they did cross examine Jessica Simms yesterday. And  
9 whatever answers she gave, they're stuck with it. They're  
10 collaterally trying to attack the testimony of Jessica Simms  
11 through hearsay through a third person who hasn't even  
12 testified. It's clearly hearsay.

13 THE COURT: What's the hearsay exception?

14 MR. OLSON: Your Honor, it would be a  
15 hearsay exception because we're not offering it for the truth  
16 of the matter, but the effect on the listener. This is part  
17 of the investigation.

18 THE COURT: Sustained.

19 MR. BECKER: Thank you.

20 (End of sidebar.)

21 BY MR. OLSON:

22 Q All right. So, again, you didn't listen to the  
23 interview of Makayla Egbert?

1 A I did not.

2 Q And you don't recall her saying anything about Jess  
3 witnessing this?

4 MR. BECKER: Objection. That's hearsay.

5 THE COURT: Asked and answered. He didn't  
6 hear anything. Let's go on.

7 BY MR. OLSON:

8 Q At the end of the interview with Makayla Egbert, was  
9 there a statement made by you or another detective indicating  
10 that you had received information regarding Brandon's body  
11 being in the woods and that you had gone there and  
12 investigated that and found it not to be credible?

13 A I do not remember that, sir.

14 Q You do not remember that. Okay. So on -- on the  
15 break that we entered into yesterday, we were getting into  
16 your -- the report of Detective Galida; is that correct?

17 A Correct.

18 Q And as part of your investigation, you received that  
19 report?

20 A I do remember this, yes, sir.

21 Q Okay. And we were questioning whether there was  
22 information being presented to you that turned out to be  
23 untrue or false; is that correct? Or to your detective staff

1 or whoever was assisting with the investigation?

2 A Information of?

3 Q Just random people that were calling in saying  
4 information that they were receiving.

5 A Correct.

6 Q Okay.

7 A Yes.

8 Q Okay. With respect to Detective -- or Deputy  
9 Galida's report, was there a call that Brandon Sample was seen  
10 and he was at a friend's house with Austin?

11 A Would that be in this report?

12 Q Correct. I'll refer you to the final paragraph of  
13 that report.

14 A Okay.

15 Q Now, again, is there indication within that record  
16 that stated that Deputy Galida received information that  
17 Brandon Sample had driven Austin to Cody's house -- and when I  
18 say Cody, Cody Snyder's house -- in a white pickup truck?

19 A It does say that.

20 Q Okay. And does it indicate that Detective or Deputy  
21 Galida responded there?

22 A It does.

23 Q And does it indicate that they did find Austin Burke

1 present at that address?

2 A That's correct.

3 Q Was there any indication that Brandon Sample was  
4 there?

5 A It does not appear so, no.

6 Q It actually says he was not there?

7 A Yes, it does.

8 Q Okay.

9 A "Victim was not present."

10 Q Also, there were reports going in through Niles; is  
11 that correct?

12 A Yes.

13 Q And you were receiving those reports as well?

14 A Yes.

15 Q Do you recall receiving a report of a telephone call  
16 that was made to the Niles City Police Department on June 14th  
17 at approximately 11:25 p.m.? Do you recall that?

18 A I do not.

19 MR. OLSON: I believe this would be Exhibit  
20 D.

21 BY MR. OLSON:

22 Q I'm going to show you what's been marked as  
23 Defendant's Exhibit D. Can you please identify what that

1 exhibit is?

2 (Whereupon, Defendant's Exhibit D, Call  
3 Summary, was introduced for identification.)

4 A It appears to be a dispatched call summary for the  
5 Niles City Police Department.

6 Q Okay. And what is the date of that dispatch summary?

7 A June 14, 2017.

8 Q Does it have a time?

9 A It does. 23:13 hours, which is 11:13 p.m.

10 Q Okay. And there is -- are there notes contained on  
11 that report?

12 A Yes, sir.

13 Q And can you identify what time those notes are taken?

14 A 23:25 p.m., 11:25 p.m.

15 Q So they're taken contemporaneously with the phone  
16 call coming in?

17 A Correct.

18 Q And in your experience as a police officer, have you  
19 interacted with dispatchers --

20 A I have.

21 Q -- in their job? And normally what happens is a  
22 telephone call comes in to the dispatch center and while  
23 they're taking that call they're typing down statements that

1 are being made?

2 A That's correct.

3 Q Okay. Can you tell the jury what that note says?

4 MR. BECKER: Objection.

5 THE COURT: It's not his document.

6 MR. OLSON: May we approach, Your Honor?

7 (At sidebar:)

8 MR. BECKER: Your Honor, it's hearsay.

9 You're reading in hearsay. I don't even know who called in.

10 You're asking hearsay upon hearsay. It's double hearsay.

11 It's a report from the dispatch on a call they got. We don't  
12 even know who it came from.

13 MR. OLSON: Your Honor, our position would  
14 be, this is his investigation. These are his records. This  
15 was -- it would at least survive --

16 THE COURT: I don't think he ever indicated  
17 he saw this report.

18 MR. OLSON: He said he received it.

19 THE COURT: I don't think he said that.

20 MR. OLSON: But I would say that this would  
21 at least be an exception through a business record. He's  
22 maintaining --

23 THE COURT: It is not his business record

1     though.

2                     MR. BECKER:  Yeah.

3                     MR. OLSON:  This trial is going to take  
4 forever, then, because we're going to subpoena --

5                     THE COURT:  Little late.  Do what you need  
6 to.

7                     MR OLSON:  Okay.

8                     (End of sidebar.)

9 BY MR. OLSON:

10  Q            As part of your investigation, did you follow up on  
11 leads that were indicating that Brandon Sample was being held  
12 captive by the -- by Austin Burke?

13  A            I was following up on leads that Austin was involved  
14 in his murder, yes.

15  Q            Were some of those reports that Austin was holding  
16 him captive?

17  A            I believe there was --

18  Q            For a drug debt?

19  A            I believe there was something like that.  I don't  
20 recall exactly what it was.

21  Q            Okay.  So you don't recall what was being called in  
22 to you by the Niles Police Department?

23  A            No, sir.



1 Q Okay. Does that report indicate that they called and  
2 left you a message?

3 A It just says that this info wants to be passed on --  
4 the caller wants info to be passed on.

5 Q Okay. You don't remember if that was faxed to you?

6 A I do not, sir.

7 Q So if a record would indicate it was faxed to you,  
8 you don't know if that was true or false?

9 A I do not.

10 Q Now, when you responded to the call that indicated  
11 that there was a belief that Josh -- that Brandon's body may  
12 have been in the woods behind grandma's house, you weren't  
13 sure what the source of that information was?

14 A I know Stephanie Sample told me that -- I believe she  
15 told me that Josh told her that.

16 Q Okay. So it was Josh that was feeding that  
17 information --

18 A Yes, sir.

19 Q -- that you were receiving?

20 A Yes.

21 Q Now, you don't know if he was telling other people  
22 that as well?

23 A I do not.

1 Q And, again, you did not interview him; is that  
2 correct?

3 A Not at that --

4 Q Immediately?

5 A No, sir. Not immediately.

6 Q Now, during the interview of Josh White, again, you  
7 conducted that interview; correct?

8 A Correct. Yes, sir.

9 Q And during that interview, you were questioning him  
10 the kind of clothing that Brandon Sample was wearing; is that  
11 correct?

12 A That's correct.

13 Q And you would agree with me that during that  
14 investigation, during that questioning, he continued to  
15 indicate to you that he really wasn't sure about the type of  
16 shorts or shirt that he was wearing?

17 A He had made mention that he thought he had gray Nike  
18 shorts on. And he said a couple different types of shirts it  
19 could have been.

20 Q Correct.

21 A That he could have had on. But he didn't remember  
22 precisely what kind of shirt he had on.

23 Q At one point, he said maybe a baseball shirt?

1 A Yes, sir.

2 Q Which is those three-quarter sleeves?

3 A Yes, sir.

4 Q And that wasn't the type of clothing that was being  
5 worn? Or was it? Was that the type of clothing that you  
6 found on Brandon Sample?

7 A Sir, the only thing I remember of the clothing that I  
8 have is the gray shorts. And I remember the blue shoe.  
9 Beyond that, I don't remember the shirt.

10 Q Okay. So the gray shorts that Josh said he was  
11 wearing, it did fit what you discovered on Brandon Sample that  
12 day?

13 A That, along with the shoes. Correct.

14 Q Okay. And he did identify specifically the types of  
15 shoes that Brandon Sample was wearing?

16 A Yes, sir, he did.

17 Q And, again, if we go back and we look at those  
18 pictures, one of those shoes had actually come off and got  
19 wedged between the 2 x 4 at the crime scene; is that correct?

20 A It was a piece of wood, yes, sir.

21 Q During that interview, Josh White also indicated to  
22 you that he still had clothing in Brandon Sample's vehicle; is  
23 that correct?

1 A He did.

2 Q He indicated that -- and he specifically referenced  
3 that he had a pair of shorts, camo shorts, that were in the  
4 car in the back seat that were covered in mud?

5 A He did.

6 Q Those shorts were never located or tested; is that  
7 correct?

8 A That is correct.

9 Q Now, again, you indicated -- and we looked at  
10 testimony yesterday -- the scene of the crime. You would  
11 agree with me that there was a lot of testimony that the scene  
12 was pretty dry?

13 A It was.

14 Q Okay. But we had testimony coming in that Brandon's  
15 clothes were soaking wet?

16 A I disagree with that. I don't know what the  
17 testimony was.

18 Q I'm asking you solely about the testimony yesterday.

19 A I don't recall testimony. I remember there being a  
20 question whether they were wet or not, yes.

21 Q Okay. And, again, Josh has muddy clothing, but this  
22 was never followed up on; correct?

23 A No, sir.

1 Q And, again, there was questions yesterday about the  
2 tires on the vehicle when it was found at the Niles bike path;  
3 do you recall that?

4 A Yes, sir.

5 Q And, again, the detective that was -- or the officer  
6 that was testifying about the location of the Niles bike path,  
7 he indicated that the area was dry?

8 A Correct.

9 Q Okay. And I questioned him, "Did you see mud on the  
10 tires?" And initially he said no, but on redirect he was  
11 presented again with a picture, and it showed mud on the, on  
12 the rear tire?

13 A Yes, sir, I remember that.

14 Q So we have somebody that comes to you admitting that  
15 he had shorts that were wet and covered in mud, we have a car  
16 with mud on the rear tire, and none of this was followed up  
17 on?

18 A No, sir.

19 Q Okay. No samples were taken from the pants to  
20 compare to see if it was the same source as what was found on  
21 the vehicle?

22 A No, sir.

23 Q That could be done?

1 A It could be, but from what I understand, all the  
2 testing -- dirt samples would just say that that's indigenous  
3 of northeast Ohio.

4 Q But you're not an expert?

5 A I am not an expert.

6 Q And you did not send this to a lab to see if there's  
7 different --

8 A No, sir. I brought it up, and that's what I was  
9 told. That all it would say is it would be indigenous to  
10 northeast Ohio.

11 Q So you brought up, what, the testing of the --

12 A The soil samples.

13 Q When you brought up about testing soil samples, are  
14 you talking about testing soil samples at the scene?

15 A Yes, at the scene.

16 Q Because you, again, would agree that you did not  
17 follow up on the shorts?

18 A I did not follow up on the shorts.

19 Q Now, also during this interview of Josh White, he  
20 came in and he was adamant that he had never met Austin Burke  
21 ever; is that correct?

22 A That is correct, yes, sir.

23 Q There was no explanation as to how Austin identified

1 him by name saying, "I think his name was Josh or Tyler or  
2 something like that"; correct?

3 A There was -- one of the text messages between Brandon  
4 and Austin, Josh had -- or Brandon had mentioned he had to  
5 take J White back to Akron.

6 Q J White. I mean, J could be John, Jim?

7 A It could be.

8 Q Jerry?

9 A It could be.

10 Q But he said "Josh"; correct?

11 A He said Josh or Tyler. He wasn't sure.

12 Q Okay. But, again, Josh in that interview did not  
13 know that those text messages were exchanged?

14 A That is correct.

15 Q You didn't question him as to, "Hey, how would Austin  
16 have known your name?"

17 A I did not. No, sir.

18 Q And, again, you got the phone records for Austin  
19 Burke?

20 A I did.

21 Q Okay. And you got the phone records for Brandon  
22 Sample?

23 A I did.

1 Q And, again, you would confirm that the number that  
2 Austin Burke had and the number -- and the reports that you  
3 received from Brandon Sample, they're indicating no call  
4 before June 11th of 2017; is that correct?

5 A That's correct.

6 Q Now, again, there is a phone call that we went over  
7 that was made on June 11th at 7:30 p.m. from Brandon Sample's  
8 phone to Austin Burke's phone; is that correct?

9 A That's correct.

10 Q And, again, that phone call lasted approximately two  
11 seconds?

12 A That's correct.

13 Q And we went over with the expert yesterday, that  
14 could be somebody sending their number?

15 A Correct.

16 Q So it would be recorded in their phone?

17 A Yes.

18 Q You would agree that two seconds is typically not  
19 long enough to have a conversation?

20 A I would agree with that.

21 Q Not long enough to make plans as to hooking up later?

22 A I would agree with that.

23 Q Now, we also have text messages that were on that



1 phone; is that correct?

2 A Yes, sir. On Austin's phone.

3 Q On Austin's phone?

4 A Correct, yes.

5 Q And, again, we were not able to read the text  
6 messages on Brandon's phone because Brandon's phone, the  
7 records have never been received?

8 A That is correct.

9 Q Okay. And those records were requested in December?

10 A December, January. I don't remember the exact date.

11 Q So approximately six or seven months after your  
12 investigation began?

13 A Yes.

14 Q That's when you followed up -- or made the initial  
15 request for records?

16 A That's correct.

17 Q Now, again, the text messages that we went over  
18 yesterday -- and not me and you, but what we've heard through  
19 testimony -- there was a text message from Brandon to Austin  
20 that says he was swimming at this chick's house; correct?

21 A Yes.

22 Q And he had to bring J White back to Akron; correct?

23 A Correct.

- 1 Q But wanted to know if Austin still wanted to link up?
- 2 A Correct.
- 3 Q Okay. Now, you would agree between that 7:30
- 4 telephone call and the 10:00 text messaging that was going
- 5 back and forth, there had been no other communication
- 6 identified on that phone?
- 7 A I'd have to look at the records to be certain on
- 8 that, sir.
- 9 Q We'll look at 'em.
- 10 A Sure.
- 11 Q I'm going to provide you again Exhibit A. Can you
- 12 look back through those records and go to -- the last page is
- 13 the telephone calls; is that correct?
- 14 A Yes, sir.
- 15 Q Okay. Can you identify again what those, the times
- 16 of those telephone calls are?
- 17 A One was at 12:26 a.m., and one was at 5:18 a.m.
- 18 Q Okay. And then let's go to page 3, I believe it was,
- 19 where the text messages start.
- 20 A Okay.
- 21 Q Is that correct?
- 22 A Yes.
- 23 Q Page 1 and 2 are just summary reports that were

1 generated by the extraction --

2 A Yes.

3 Q -- report?

4 A Yes.

5 MR. BECKER: If I may, are those UTC times  
6 or the correct times?

7 MR. OLSON: They're UTC times.

8 MR. BECKER: I just wanted to clarify that.

9 BY MR. OLSON:

10 Q And, again, we did go over Exhibit A yesterday was  
11 all UTC times?

12 A That's correct.

13 Q That's how the extraction report generates it through  
14 the phone?

15 A That's correct.

16 Q So, again, on the UTC times, we had a phone call  
17 coming in at approximately 7:30?

18 A Yes.

19 Q Okay. And the very first text message came in at  
20 what time?

21 A 2:01 a.m. UTC time.

22 Q Which would be 10:02?

23 A I believe it's four hours, minus four hours, so yeah.

1 Q So 10:02. What time was the text message that came  
2 in that said, "I'm at this chick's house" and "do you still  
3 want to link up?"

4 A That would have been at 2:05 a.m. UTC time, so 10:05  
5 p.m.

6 Q Okay. So between 10:02 and 10:05, was there any  
7 statement, "Hey" -- making plans?

8 A No, sir.

9 Q So, again, the first time that we see anything about  
10 still linking up is at 10:05?

11 A Correct.

12 Q And the only thing prior to that is a two-second  
13 phone call?

14 A Yes.

15 Q So how do you explain to us that there is a  
16 two-second phone call, no other communication at any point in  
17 time, but there's a question, "Do you still want to link up?"  
18 being sent to you by Brandon Sample?

19 A I cannot explain that, sir.

20 Q Would that be consistent with Austin's story that,  
21 "Brandon Sample picked me up as I was walking home from Willow  
22 Lake and drove me home"?

23 A It could be.

1 Q Right? Because they could have a conversation in the  
2 car; is that correct?

3 A They could have.

4 Q Right. And we have no other data that you've  
5 gathered through anything that indicated -- through family  
6 members or anybody else -- that Brandon Sample ever mentioned  
7 Austin Burke's name?

8 A No.

9 Q Again, during the interview, how did Josh White  
10 appear? Like what was his characteristics? Did he have a  
11 beard?

12 A I believe he had a small beard. Wasn't clean shaven.

13 Q Okay. And, again, Austin Burke told you that the guy  
14 that was in the front seat had a beard?

15 A He did.

16 Q And his name was Josh or Tyler or something like  
17 that?

18 A Yes. He wasn't sure.

19 Q We also did a complete phone extraction. Did you get  
20 copies of the phone extraction reports?

21 A From Austin's phone?

22 Q Correct.

23 A Yes, sir, I did.

1 Q Did you go through them?

2 A I did.

3 Q Okay. Did you see messages from a Carlos Rodriguez?

4 A That name sounds familiar, yes.

5 Q And with the messages -- did you read the messages  
6 between Carlos and Austin?

7 A I read a lot of them, sir. I don't remember which  
8 ones said what.

9 MR. OLSON: May I approach the witness,  
10 Your Honor?

11 THE COURT: You may.

12 BY MR. OLSON:

13 Q I'm going to show you what's been marked as  
14 Defendant's Exhibit E. Does that identify an extraction  
15 report?

16 A It does.

17 (Whereupon, Defendant's Exhibit E,  
18 Extraction Report, was introduced for identification.)

19 Q Okay. And does it have at the top the participants?

20 A It does.

21 Q And does it -- can you identify who those  
22 participants are?

23 A It says Austin Taylor and Carlos Rodriguez.

1 Q Okay. And you would agree with me that it shows on  
2 that extraction report how they -- who made the request to get  
3 together on Facebook Messenger; do you agree? At the top.

4 A It says, "Conversation, Instant Messages,  
5 Participants."

6 Q Does it say, "Carlos added you on Messenger. Add him  
7 back to reach him quickly when you want to chat"? Very top.

8 A Oh, yes, sir. I see it. Yes, sir.

9 Q And then there's some conversations that -- that  
10 happened between Austin and Carlos; is that correct? There's  
11 messages back and forth?

12 A Yes, sir.

13 Q Okay. There is one message on 6-20-2017 at 16:42 UTC  
14 time?

15 MR. BECKER: Your Honor, I'm going to  
16 object at this point. If we can approach.

17 THE COURT: You may.

18 (At sidebar:)

19 MR. BECKER: Your Honor, once again, he's  
20 trying to introduce hearsay statements from a Carlos  
21 Rodriguez. It is not admissible because it's not a statement  
22 against his interest. It's basically a statement saying that  
23 this defendant gave -- he's gonna say he gave him a ride home

1 that night and went to Akron. Now, he can either put his  
2 client on the stand and he can testify to that conversation or  
3 he can put Carlos Rodriguez on the stand. But he can't  
4 introduce a hearsay statement through this detective.

5 MR. OLSON: My position would be, one, this  
6 is his investigation. He's confirmed that he is familiar with  
7 those documents. This is a business record now. It was  
8 extracted from his phone. It became part of his investigative  
9 file. He reviewed the file. He said that he reviewed  
10 numerous text messages that were contained on that report. He  
11 can certainly testify as to what he did when he reads this  
12 message, if he followed up or he did not. I believe --

13 THE COURT: You can ask him if he followed  
14 up on it, but you can't ask him what was said.

15 MR. OLSON: Okay.

16 (End of sidebar.)

17 BY MR. OLSON:

18 Q Did you review this text message?

19 A Just now.

20 Q During your investigation?

21 A I reviewed a bunch of 'em, sir. I don't recall if I  
22 read through the whole thing or not.

23 Q You would agree with me that receiving information



1 through the suspect's phone in a homicide case can be very  
2 important evidence?

3 A I would agree with that.

4 Q And you would agree with me that if there are  
5 statements that are coming through those messages that are  
6 inconsistent with statements that are given to you by supposed  
7 witnesses that that would give you reason to follow up on the  
8 statements that were made to you?

9 A Could you repeat that? I'm sorry.

10 Q Okay. So if I get a message through an extraction  
11 report that is inconsistent with something that another  
12 witness told me in an interview, that's pretty important; you  
13 would agree?

14 A It would depend on the information.

15 Q Okay. And you may want to go and look for that  
16 person and question them as to, "Hey, how did you get this  
17 information?"

18 A Again, it would depend on the information.

19 Q Okay. Reading this text message, was there anything  
20 that you ever found to be concerning as relating to Josh  
21 White's statements?

22 A I do not recall, sir.

23 Q Did you ever receive any conversations or

1 communications that Josh White was telling somebody that he  
2 was -- that Austin Burke was with him when he got a ride to  
3 Akron?

4 A I do not.

5 Q You do not remember reading that?

6 A I do not, no, sir.

7 Q Or getting a call?

8 A I do not.

9 Q But if it's on the phone?

10 A If it's on the phone, if the information is on the  
11 phone, it's on the phone. Yeah.

12 Q Okay. Now, you would agree with me that during the  
13 interview with Josh White you never asked to see his phone?

14 A I did not.

15 Q Okay. You would agree with me that during this  
16 interview Josh White had his phone?

17 A He did.

18 Q Okay. Because when he was discussing about the TOMS  
19 shoes?

20 A Correct.

21 Q He was trying to get on to the website?

22 A That's correct.

23 Q So his phone is sitting there?

- 1 A That's correct.
- 2 Q You're doing a murder investigation?
- 3 A That's correct.
- 4 Q This is a person that was with Josh White -- or with  
5 Brandon Sample, we know, through other people the night of the  
6 murder?
- 7 A That's correct.
- 8 Q And he has his phone on him and you don't look to see  
9 if there's any communication?
- 10 A I did not.
- 11 Q And, again, you would agree with me that you got a  
12 complete phone extraction report for Austin Burke's phone?
- 13 A I did.
- 14 Q And you got that through a subpoena?
- 15 A I did.
- 16 Q And a subpoena is a request through the court that  
17 gives you the power to go and get somebody's personal  
18 property?
- 19 A That's correct.
- 20 Q You would agree with me that you could have done that  
21 for Josh White's phone as well?
- 22 A I could have.
- 23 Q And you would agree with me that you did not?

1 A I did not.

2 Q You would also agree with me that at no point in time  
3 did you call dispatch, as you did with Austin Burke's phone,  
4 and ask for pinging results?

5 A I don't believe Josh White would have qualified. His  
6 phone would not have qualified to be pinged.

7 Q But, again, you never made the call?

8 A I did not make the call, sir, no.

9 Q And would you agree with me that obtaining these  
10 detailed phone records and reports could have been used to  
11 confirm or dispel statements that were being made by Josh  
12 White?

13 A It's possible.

14 Q Right. Because if he was saying that he was dropped  
15 off at his house at 12:15 or 1:15 or whatever time that he  
16 said he was dropped off, if his phone records show that he was  
17 still in the Warren area at that time, then he was not being  
18 truthful with you; correct?

19 A Who are you speaking about?

20 Q Josh White. If he would have told you, "I was  
21 dropped off in Akron at 12:15 a.m. by Brandon Sample," but  
22 then you go and get his phone records and they would show that  
23 he was still in Akron at 12:15, he wasn't being truthful with

1 you?

2 A I don't understand what you're saying. So you're  
3 saying if he was dropped off in Akron at 10:15 and I got his  
4 phone records and they said that he was still in Akron at --

5 Q No, no, no. What I'm saying is if during his  
6 interview --

7 A Uh-huh.

8 Q -- he says to you, "Hey, on June 12 of 2017, Brandon  
9 Sample dropped me off at 12:15 a.m. in Akron, Ohio," if you  
10 would have received his phone extraction report and that phone  
11 extraction report would have shown you that he was still in  
12 Warren at 12:15, then his statement about being dropped off in  
13 Akron couldn't be true?

14 A I would agree with that, yes, sir.

15 Q Now, again, during this interview Josh White brings  
16 up the name Austin Taylor; is that correct?

17 A It could be.

18 Q Okay. You don't remember your interview with him?

19 A I remember him bringing up Austin's name, but I don't  
20 remember if he used his last name or not.

21 Q Do you remember if you were investigating initially  
22 an Austin Taylor instead of an Austin Burke, or if reports  
23 were coming in --

1 A Yes. Yes. That's correct.

2 Q Okay. So initially reports are coming in of an  
3 Austin Taylor?

4 A I had known Austin Taylor from previous things.

5 Q Okay. And so, again, later on you had to confirm  
6 that it was Austin Burke and not an Austin Taylor?

7 A I had known that prior.

8 Q Okay. But, again, there is witness statements coming  
9 in to you?

10 A Correct.

11 Q And that's the name that Josh White gave initially?  
12 You don't remember?

13 A I do not. I'm sorry.

14 Q But do you remember that during this conversation  
15 Austin -- Josh says that Brandon told him Austin was going to  
16 pay him a thousand dollars to do something?

17 A To help him with something, correct.

18 Q Didn't tell him what it was to help him with?

19 A That's correct.

20 Q Josh says he warns against it, says, "Don't do that"?

21 A That's correct.

22 Q You have the text messages, again, between Austin and  
23 Brandon; is that correct?

1 A That is correct.

2 Q Did you see any mention on any of those text messages  
3 about, "Hey, I got this thousand dollars for you. I need to  
4 hook up with you to go do this work"?

5 A There was not.

6 Q So another thing that you could not confirm that Josh  
7 White told you?

8 A Correct.

9 Q On June 16th -- that was the only interview that you  
10 did on June 15th; is that correct? If you looked at your  
11 records?

12 A That's correct.

13 Q And so the next day you have a second interview with  
14 Makayla; is that correct?

15 A That's correct.

16 Q And you have that interview yourself on video?

17 A That's correct.

18 Q Okay. And you're questioning her about what she  
19 knew?

20 A That's correct.

21 Q Through her you learn that she's now saying  
22 information was learned not through Jess but Rickey Roupe?

23 A That's correct.

1 Q The information you were learning was that Rickey  
2 told her that Brandon was at her house?

3 A That's correct.

4 MR. BECKER: I'm going to object.

5 THE COURT: I don't know if that has been  
6 testified to or not.

7 MR. BECKER: Okay. So go ahead.

8 BY MR. OLSON:

9 Q Was there any information you ever received that  
10 Rickey was making statements that Austin convinced Brandon to  
11 stay at Rickey Roupe's house with him and use drugs with him?

12 A That's correct.

13 Q Cocaine and pills; is that correct?

14 A I don't remember the drugs, but I remember that  
15 statement.

16 Q Okay. And in your report, does it indicate that  
17 Austin told Rickey that he set his head on fire?

18 A Yes.

19 Q Confirmed that that wasn't true; correct? There was  
20 no fire set to --

21 A I have not heard that from the coroner. You would  
22 have to ask the coroner that to be certain.

23 Q And now on June 16th you begin hearing that the --



1 Brandon Sample's car was dumped on the bike trail?

2 A I had heard that -- yes, yes.

3 Q Okay. Again, in the initial interview, do you recall  
4 Makayla made no mention to that, to the car and the bike  
5 trail?

6 A That is correct.

7 Q You also received some information that when Austin  
8 returned to Rickey Roupe's house that they had a bonfire in  
9 the back; is that correct?

10 A That's correct.

11 Q And there was a statement made that they burned  
12 Brandon Sample's clothes -- or excuse me -- Austin Burke's  
13 clothes?

14 A Yes, that was a statement.

15 Q Pam Roupe, the grandmother, went out, gathered up  
16 these clothes out of the fire pit and put them in a bucket for  
17 you?

18 A I believe she gathered up the ashes is what I was  
19 told.

20 Q Okay. Were you able to recover those?

21 A We looked at the house. I did not find a bucket of  
22 ashes.

23 Q During that interview, did she indicate to you that

1 Pamela Roupe was not home? If you recall.

2 A I do not recall, but I know Pam told me that she was  
3 not home.

4 Q She told you that she was not home?

5 A Yes.

6 Q Okay. Through discussions with Makayla, did you ask  
7 her if Austin admitted to her that he had killed Brandon  
8 Sample?

9 A I don't remember asking her that specifically.

10 Q Did she ever offer that, "He told me that he didn't  
11 do this"?

12 A No, I don't recall that.

13 Q So that's not part of the interview that you had with  
14 her?

15 A I don't recall, sir.

16 Q And you would agree with me that Makayla is the  
17 person that was probably closest with Austin out of that  
18 entire group of people?

19 A I would not agree with that.

20 Q Based upon your discussions with Makayla, she had  
21 indicated that she had been dating Austin in the past?

22 A She had, but she had also told me that Rickey had  
23 lied to us to protect Austin. So that would mean that Rickey

1 would have been --

2 Q I'm not asking you about what Rickey told you or what  
3 -- I'm saying length and knowledge. Who's known Austin out of  
4 that group of people the longest? Makayla? Who was from  
5 Bristol?

6 A Rickey had said he had known Austin since he was in  
7 diapers. So I don't know. I don't know, sir. I don't know  
8 the answer to that.

9 Q Now, again, this information that you received about  
10 Brandon convincing -- or Austin convincing Brandon to remain  
11 at Rickey Roupe's house and use drugs with him and not go back  
12 to Akron, that was inconsistent with the information you were  
13 getting from Mr. White indicating that they went to Billie  
14 Holness's house; correct?

15 A That's correct.

16 Q You also followed up with Billie Holness and learned  
17 through her that that was true, that they were there swimming?

18 A That's correct.

19 Q So that statement, if you believe that, it can't be  
20 true that Austin and Brandon were hanging out doing drugs at  
21 Rickey Roupe's house early in the afternoon or --

22 A I couldn't confirm that, sir.

23 Q You had an interview with Jessica Simms; is that

1 correct?

2 A That's correct.

3 Q Okay. And Jessica Simms indicated that she had left  
4 at midnight; is that correct? Midnight on the 11th into the  
5 12th?

6 A I don't have that in my notes, but it's on the video,  
7 it's on the video.

8 Q Now, again, we heard from Deidre Keener yesterday; is  
9 that correct?

10 A Correct.

11 Q And, again, that indication was Austin was hanging  
12 out at around 6:00 p.m. with Rickey, Pam, Nate, her, Hayle and  
13 Jess; is that correct?

14 A I believe that's what she testified to.

15 Q Okay. She confirmed Brandon Sample was not there?

16 A Early in the afternoon.

17 Q Correct?

18 A Correct.

19 Q Okay. She told you, "We didn't have a bonfire. We  
20 were hanging out in the kitchen"; correct?

21 A I don't believe she told me they didn't have a  
22 bonfire.

23 Q If that was on the video then --

1 A If she said that they did not have a bonfire and  
2 that's on the video, I don't recall that.

3 Q Okay. She confirmed with you that she had very  
4 limited contact with Austin Burke up to that day?

5 A Correct.

6 Q She had met him a handful of times?

7 A Correct.

8 Q She tells you that Austin leaves before midnight? Do  
9 you recall?

10 A After midnight, before 1:00.

11 Q Okay. Now, we heard testimony from Hayle and Jessica  
12 that indicated they left around midnight; correct?

13 A Correct.

14 Q And they said that Austin had left before them; is  
15 that correct? That was the testimony.

16 A Okay.

17 Q Do you recall that?

18 A If that was the testimony, sir. I don't recall.

19 Q I mean, this is your investigation.

20 A I understand.

21 Q I don't want to put words in your mouth, but did you  
22 make a timeline of who's telling you what and comparing the  
23 witness notes?

1 A I have everything in my notes, that I tried to  
2 remember to put into my notes.

3 Q Okay. And, again, we have a report that you  
4 generated; is that correct?

5 A Would that be my case notes?

6 Q Correct.

7 A Yes.

8 Q And also during interviews and things of that nature,  
9 you're writing down notes?

10 A Yes.

11 Q Contemporaneously as they're telling you things?

12 A Yes.

13 Q And then you take those notes and you go back and  
14 type them all up?

15 A Correct.

16 Q And, again, you're extracting what you felt was  
17 important based upon their statements to you, correct, to put  
18 into your final report?

19 A Correct, yes.

20 Q And you also had the benefit of while you're drafting  
21 this report to go back and listen to the interviews that were  
22 being provided to you; is that correct?

23 A Sure, yes.

1 Q And you also had the benefit of getting all the  
2 documentation from the Niles Police Department and the  
3 Trumbull County Sheriff's Office and looking at all this to  
4 compile your reports; is that correct?

5 A That's fair to say, yes, sir.

6 Q Okay. So you had the opportunity to make timelines,  
7 mark down who is telling you what, what time they were there,  
8 who was there? All this information, it was all at your  
9 fingertips through this investigation?

10 A Sure.

11 Q But today when you're here testifying in trial you  
12 would agree with me you don't have that?

13 A No, I do not have that, sir.

14 Q You would agree with me that that's pretty important  
15 information, to compare witness statements to confirm if  
16 they're true or false?

17 A I would agree with that, sure.

18 Q I mean, if somebody is telling me Austin and Brandon  
19 were hanging out at 6:00 or 8:00 at night at Pamela Roupe's  
20 house and using cocaine and pills, and another witness says  
21 Austin Burke was never there, and another witness says, "Well  
22 they showed up at midnight," these are all inconsistent; you  
23 would agree with me?

1 A I would agree with the times being inconsistent, yes.

2 Q And you would also agree if one person is saying Jess  
3 and Hayle and Rickey were present and then another person  
4 saying Jess and Hayle left, that could be inconsistent?

5 A The times would be inconsistent.

6 Q Right. So, again, when we're going back and we're  
7 looking at these notes and reports, it's important to get  
8 timelines and compare these statements?

9 A I would agree with that.

10 Q But, again, in this report, we're looking at when  
11 Deidre is talking to you, she's saying Austin left between 12  
12 and 1?

13 A After midnight, before 1:00, correct.

14 Q And, again, that's inconsistent with Jess and Hayle?

15 A The times would be inconsistent, sure.

16 Q She also told you that around 3:30 or 4:00 Austin  
17 came knocking on the door; is that correct?

18 A That is correct.

19 Q Okay. And he says that he wants to talk to Rickey?

20 A Correct.

21 Q Okay. But she tells him Rickey is sleeping, you  
22 can't talk to him; correct?

23 A Yes.



1 Q So Austin says, "Then I want to talk to you";  
2 correct?

3 A Correct. Yes, sir.

4 Q This person that he's met five or six times, he wants  
5 to talk to her? And goes in the house and tells her, "I'm  
6 gonna rob this dude"? That's what he says; correct?

7 A That's correct.

8 Q And -- again -- now, if we look at what she testified  
9 to yesterday, she testified that Austin stood at the door, he  
10 never went in the house; is that correct? If you remember.

11 A If that was the testimony. I don't remember, sir.

12 Q And if that was the testimony, you would agree with  
13 me that that's inconsistent to what she told you in the  
14 interview, that Austin went in the house?

15 A Well, it could be.

16 Q Now -- and again, during your interview of Deidre,  
17 she tells you that Rickey and Pam were sleeping and she was up  
18 playing on her phone; is that correct?

19 A I believe so, yes.

20 Q Okay. And so she never makes mention of the name  
21 Nate being there?

22 A She did not.

23 Q Okay. And, again, saying that Pam was there sleeping

1 is inconsistent with the statement that Pam made to you that  
2 said she wasn't there?

3 A That is correct.

4 Q And so those two are sleeping, Hayle is laying on her  
5 back playing on her phone?

6 A Deidre.

7 Q Or Deidre. I'm sorry. Thank you. Deidre is lying  
8 on her back, playing on her phone. She goes to the door,  
9 Austin makes these statements to her, she looks out the window  
10 and she's able to identify Brandon Sample from looking out  
11 that window; is that correct?

12 A She had told me that she didn't know who he was at  
13 that time, but after she had seen pictures of him she  
14 remembered that that was him.

15 Q Okay.

16 A And that he was in the white car.

17 Q But she didn't give you a description of what the  
18 white car was at that point in time?

19 A No, Deidre Keener did not tell me what kind of car it  
20 was. Just that it was a white car.

21 Q Okay. And she says, "I tried to talk Austin out of  
22 it, but he wouldn't listen and he left and I went back to  
23 bed"?

1 A That's correct.

2 Q She doesn't wake up Pam and say, "Hey, this kid just  
3 came here and said he was gonna rob another kid"; right?

4 A She did not.

5 Q She didn't wake up Rickey and say, "Hey, your buddy  
6 came here"?

7 A She did not tell me that she woke Rickey up.

8 Q She didn't call the police?

9 A She did not.

10 Q And your interview is on June 18 of 2017; is that  
11 correct?

12 A Correct.

13 Q That is six days after Brandon Sample went missing;  
14 is that correct?

15 A That's correct.

16 Q No prior telephone call or anything to you or another  
17 police department prior to that date; is that correct?

18 A To Deidre Keener?

19 Q By Deidre Keener to you or to Niles or to any other  
20 police department that was --

21 A No. No. She did not contact us.

22 Q And by the 18th, there's a lot of information out  
23 there now; is that correct?

- 1 A That's correct.
- 2 Q The car is out there, that it was found on the Niles  
3 bike path?
- 4 A That's correct.
- 5 Q The death of Brandon Sample was out there?
- 6 A That's correct.
- 7 Q The location of where he was killed is out there?
- 8 A I believe so, yes.
- 9 Q Or the location where he was found, not necessarily  
10 killed; correct?
- 11 A Yes.
- 12 Q Because through your investigation you were not able  
13 to determine where he was killed?
- 14 A I have no evidence to suggest that he was killed  
15 anywhere else but where we found him.
- 16 Q But you also have no evidence to show that he was  
17 shot there; correct?
- 18 A Other than him being there and being shot, that's all  
19 I have.
- 20 Q Correct. No bullet?
- 21 A No.
- 22 Q No forensic evidence?
- 23 A No, sir.

- 1 Q Nothing like that?
- 2 A No, sir.
- 3 Q So Deidre Keener then states that she woke up around  
4 7:00 a.m. and she left?
- 5 A Correct.
- 6 Q Okay. She said she had to go to work?
- 7 A Correct.
- 8 Q Told you she couldn't sleep, had to get out of there?
- 9 A Yes.
- 10 Q When she left, she indicated that Austin Burke was  
11 not present in that home; is that correct?
- 12 A That is correct.
- 13 Q That is inconsistent with the statement that was made  
14 by Nate the other day; is that correct?
- 15 A I don't remember.
- 16 Q You don't remember what Nate told you?
- 17 A I remember what he told me in the interview, but I  
18 don't remember what he testified to.
- 19 Q Okay. In the interview he told you that Brandon was  
20 there -- or excuse me, that Austin was there, woke him up --  
21 he woke up at like 6:00 a.m.?
- 22 A I don't remember. I don't remember the date that I  
23 interviewed Nate. I'll have to find that.

1 Q We'll get into that.

2 A Okay. All right.

3 Q So then Deidre goes on to tell you that on Monday,  
4 the 12th around 4:00 p.m. they're all back at Rickey Roupe's  
5 house; is that correct?

6 A That's correct.

7 Q And that they're sitting around the dining room  
8 table?

9 A Correct.

10 Q Okay. And Austin is there; correct?

11 A Correct.

12 Q Starts dropping hints of putting a bike on -- putting  
13 a car on a bike path?

14 A That's correct.

15 Q Okay. She indicated to you then that he didn't  
16 specifically state it but when she started looking at Facebook  
17 and the news media she put 2 and 2 together?

18 A That's correct.

19 Q And we heard her say "2 and 2 together" yesterday as  
20 well?

21 A That's correct, yes, sir.

22 Q But then later on in her interview she tells you that  
23 Brandon starts -- or Austin starts bragging about putting

1 Brandon's car on the bike path; is that correct?

2 A Correct.

3 Q So you would agree with me that there's some  
4 inconsistencies with the statements that Deidre is making as  
5 to some of the other information you were getting from people  
6 like Pam Roupe?

7 A That's correct.

8 Q And from people like Nate that we'll get into if  
9 you -- well, at this point you don't remember?

10 A Correct. I'll have to find out from my notes on that  
11 interview.

12 Q All right. Again, going back, just to make sure  
13 we're on the same page. Initially, when you get the first  
14 call from Makayla, she's indicating she got information  
15 through Jess Simms; is that correct?

16 A That's correct.

17 Q Now, when you speak to Jess Simms, Jessica tells you  
18 that she got all of her information through Rickey Roupe and  
19 other people -- Deidre; correct? She didn't say, "Austin  
20 Burke told me" or "I was present when Austin Burke came back  
21 and was covered in blood"?

22 A I have that Jess -- Jessica Simms stated that early  
23 Sunday morning Austin said he was going to rob this kid who

1 used to be a CO at DYS.

2 Q Okay. So let's go there real quick.

3 A Okay.

4 Q So in your report -- and, again, you're taking down  
5 notes contemporaneously as Jessica Simms is talking to you?

6 A That's correct.

7 Q And in your report it indicates that Austin Burke is  
8 present at the Roupe house on Sunday morning and begins making  
9 statements that he is going to rob Brandon Sample who used to  
10 be a CO at DYS?

11 A It says this kid used to be a CO at DYS.

12 Q Okay. And we concluded that that was Brandon Sample?

13 A That's correct.

14 Q Yesterday when she was testifying she said that he  
15 made the statement on Saturday; do you remember that?

16 A If that's what she testified to, okay.

17 Q You don't particularly remember it, but the testimony  
18 would be what the testimony is?

19 A Correct. Yes, sir.

20 Q But if she said yesterday during her testimony that  
21 it was Saturday and your notes said it was Sunday, that's  
22 inconsistent?

23 A That's correct, sir.



1 Q Okay. Also -- let's just go with Sunday. Okay. So  
2 she's indicating that Sunday morning around 10:00 a.m. or  
3 11:00 a.m. Austin Burke makes this statement to Jessica Simms  
4 or whomever else is there?

5 A Correct.

6 Q Says, "I'm going to rob Brandon Sample"; is that  
7 correct?

8 A This kid that used to be a CO at DYS, correct.

9 Q And, again, we go back into these phone records and  
10 there's no contact between Brandon and Austin at that time in  
11 the morning?

12 A At -- Sunday morning?

13 Q Correct. We went through the phone records. The  
14 first phone call came in 7:30 at night on Sunday, the 11th; is  
15 that correct?

16 A May I look at your --

17 Q Certainly. And for reference, the phone calls are  
18 the final page and the text messages are the third page.

19 A Yeah. That's correct, sir. Yes.

20 Q Okay. So there's no communication that you have from  
21 this extraction report of early morning conversations between  
22 Austin and Brandon at that time that Jessica Simms is saying  
23 that?

1 A That would be correct.

2 Q And, again, you did an investigation where you talked  
3 to a bunch of family members, friends, people like that, and  
4 everybody told you they never heard the name Austin Burke  
5 prior to him being identified as the person he was last seen  
6 with?

7 A Prior to the 13th?

8 Q Correct.

9 A No. No, they did not hear that name prior to the  
10 13th.

11 Q All right. Now, again, the explanation that Jessica  
12 Simms gave you was that Austin was picked up by Brandon as he  
13 was walking home from Willow Lake Park; is that correct?

14 A That Jess Simms told me?

15 Q Right. During her interview she said that she  
16 learned that Austin was riding around with --

17 A That's correct, yes.

18 Q -- with Brandon Sample all day and was trying to  
19 figure out a plan to rob him?

20 A That's correct.

21 Q Okay. That was inconsistent with all this testimony  
22 that we've heard from other people; is that correct?

23 A I have not heard that from anybody else.

1 Q And, in fact, we heard from Brandon's father who got  
2 up on the stand and testified that his son was home at 10:00  
3 in the morning; correct?

4 A I believe so, yes.

5 Q Left to go cut his grandmother's grass; correct?

6 A Yes.

7 Q Got on the telephone right around 3 or 4 and told him  
8 he was almost done cutting his grandmother's grass? You don't  
9 recall?

10 A I don't remember that.

11 Q If that's the testimony, that's the testimony?

12 A Yes.

13 Q But that, again, would be inconsistent with Jessica  
14 Simms' statements to you?

15 A It could be, yes.

16 Q Could be? I mean, I don't want to say "could be"?

17 A Well, it could be because I don't know if Austin was  
18 with him or not at that point.

19 Q Okay. You never heard that name?

20 A Correct.

21 Q At that point in time?

22 A Correct.

23 Q And you had GPS data on Austin Burke; is that

1 correct?

2 A That's correct.

3 Q You had the phone records that we went over  
4 yesterday?

5 A That's correct.

6 Q Except you had much more extensive phone records than  
7 what we had yesterday?

8 A Correct.

9 Q You had earlier dates all the way through maybe the  
10 20th?

11 A Correct.

12 Q Okay. And those -- and we got into it earlier;  
13 there's a difference between the mobility and the cell site  
14 data. One is pinging locations, and the other one is GPS?

15 A Correct.

16 Q You remember hearing that testimony?

17 A Yes. Yes.

18 Q And during that testimony -- I keep hitting that.  
19 I'm sorry.

20 During that testimony, the expert indicated that on  
21 the GPS you can punch that data in to Google Earth through  
22 your phone and you could come up with an address as to  
23 where -- an approximate location of where that cell phone is

1 located?

2 A Correct.

3 Q Did you do that?

4 A I did that.

5 Q Okay. And you would agree with me that during the  
6 morning hours up until 2:00 on the 11th Austin Burke was in  
7 the area of Niles?

8 A May I take a look?

9 Q This is mine. I did it. I don't know if you had --  
10 do you have yours that you went through?

11 A Okay. If that's what it is, that's what it says.

12 Q Okay. But again, you did it; correct?

13 A I did a lot of things, yes, sir.

14 Q Believe me, I understand.

15 A Yes, sir.

16 Q You have a very tough investigation that you're going  
17 through.

18 A Yes, sir.

19 Q A lot of data that you're going through. You would  
20 agree location of Austin Burke is a very important and key  
21 factor in your investigation?

22 A It is, sir.

23 Q So we have somebody that's saying Austin Burke is

1 riding around -- that would be in Bristolville -- at some  
2 point to set up a robbery of Brandon Sample?

3 A Okay.

4 Q Correct?

5 A Yes, sir.

6 Q And again, her statement was he was picked up from  
7 Willow Lake?

8 A Okay.

9 Q As he was walking home?

10 A Yes.

11 Q Correct?

12 A Yes, sir.

13 Q Now, if his GPS phone data showed that he was down in  
14 Niles, that can't be true; you would agree?

15 A Correct.

16 Q Okay. So, again, did you do that? Did you go  
17 through and note "Jess Simms told me" --

18 A I did not, no.

19 Q Okay. Hindsight, that's an important thing to do?

20 A It may have been.

21 Q Okay. Throughout this investigation you indicated  
22 that you did go through the GPS data?

23 A I did.

- 1 Q Look and see where this phone was?
- 2 A I tried my best.
- 3 Q And at one point did you mark on the GPS records some  
4 locations that you identified?
- 5 A I did.
- 6 Q One of those was Willow Lake; is that correct?
- 7 A That's correct.
- 8 Q So you actually confirmed a statement that Austin  
9 Burke made? His cell phone, at approximately 2:00 p.m., was  
10 at Willow Lake?
- 11 A Yes. In the area of Willow Lake, yes.
- 12 Q Well, if I give it to you, it would show you Willow  
13 Lake?
- 14 A Correct.
- 15 Q Is that correct?
- 16 A Yes.
- 17 Q You didn't put "area of Willow Lake"?
- 18 A No, I did not.
- 19 Q And again, as you went through that -- because you  
20 would then go through each one thereafter; you would agree?
- 21 A Yes.
- 22 Q That it continued to show he was at Willow Lake area?
- 23 A Correct.

1 Q Within a mile or so?

2 A That's correct.

3 Q And, again, we heard the data -- or the testimony  
4 from the expert that said, you know, you can't be pinpointed.  
5 It's not a laser beam shooting out of space --

6 A That's correct.

7 Q -- that shows you pinpoint, on the penny, where  
8 you're at?

9 A That's correct?

10 Q Correct?

11 A Yes.

12 Q So if this data showed that Austin Burke was in the  
13 Willow Lake area from 2:00 p.m. until 7:30 p.m., that would  
14 confirm his statement; correct?

15 A That would be consistent with what he told me,  
16 correct.

17 Q That would also dispel the statements that were made  
18 by people like Rickey Roupe that said that he was at his house  
19 between 6 and 8?

20 A It could, yes.

21 Q It could, or it would? I mean, if he's at Willow  
22 Lake until 7:30, he can't be in Niles?

23 A That's correct.



1 Q I mean, that's about 15 miles away?

2 A Yes, yes.

3 Q You'd agree?

4 A Yes.

5 Q So, again, looking at that, if the GPS data on his  
6 phone showed he was at Willow Lake, then Rickey's statement  
7 cannot be true?

8 A That would be inconsistent, correct.

9 Q And you were able to do this all the way up until,  
10 like I said, the 20th of June? You had the records to do  
11 this?

12 A That's correct.

13 Q Okay. And, again, if these records showed Willow  
14 Lake from 2:00 p.m. until 7:30 p.m. and then showed the area  
15 of his house, be consistent with Austin's statement to you?

16 A That he was in that area, correct.

17 Q Okay. And you had that data?

18 A Yes.

19 Q Okay. You also learned through your investigation of  
20 a person by the name of Cody Snyder came up?

21 A That's correct.

22 Q Okay. And you interviewed Cody Snyder?

23 A I did.

1 Q Okay. And there was some information that you  
2 received that Austin was at Cody Snyder's house or Cody Snyder  
3 had picked him up?

4 A That's correct.

5 Q Do you remember getting a Facebook message or posting  
6 that was from Cody Snyder that indicated he was at the  
7 house -- or he went to pick up Austin?

8 A That's correct, yes.

9 Q Okay. Did you go and confirm that with Cody's  
10 father?

11 A I did not.

12 Q Okay. Going back to Willow Lake, did you go to  
13 Willow Lake and ask for video?

14 A I did not.

15 Q Did you ask for a listing of people to interview to  
16 confirm Austin's presence there?

17 MR. BECKER: Your Honor, this is asked and  
18 answered.

19 THE COURT: Asked and answered. Let's move  
20 along.

21 MR. OLSON: I'm sorry, Your Honor. I do  
22 recall that.

23 BY MR. OLSON:

1 Q And would you agree, though, that that is information  
2 that you could have used to confirm or dispel Austin Burke's  
3 statements to you?

4 A Getting video?

5 Q Getting video, getting identification of people that  
6 were there?

7 A It may have, correct, yeah.

8 Q Now, during the interview of Deidre she indicated  
9 that Rickey told her he came back covered in blood; is that  
10 correct?

11 A Yes.

12 Q Austin came home covered in blood?

13 A Yes, I believe that's correct.

14 Q Okay. And that is inconsistent with what Rickey  
15 Roupe testified to yesterday?

16 A Yes.

17 Q That's inconsistent with what he told you in his  
18 interviews?

19 A That's correct.

20 Q She also said that Austin was playing with a gun?

21 A Yes.

22 Q Okay. But you received some statements from others  
23 that they hadn't seen Austin with a gun for days prior to

1 this -- to this homicide of Brandon Sample?

2 A I had received statements that Austin had had a gun.

3 Q Prior to?

4 A Yes.

5 Q Okay.

6 A Yes.

7 Q Rickey never made mention that on that Monday Austin  
8 was there with a gun?

9 A I don't remember Rickey saying that, no.

10 Q And this was Rickey's house?

11 A Correct.

12 Q She indicated to you that Austin -- or that after  
13 Austin made these statements to her she went directly to the  
14 Niles Police Department?

15 A Jess Simms did?

16 Q Correct.

17 A Yes.

18 Q And she made a statement to the effect that Austin  
19 was at the Roupe house playing with a gun?

20 A Correct.

21 Q Okay. Did you go and review the records, the  
22 dispatch records, from Niles Police Department from the  
23 20th -- or, excuse me, from that Monday at 2:00 a.m. to see

1 what was reported?

2 A I did.

3 Q Okay. So you're familiar with those records?

4 A That's correct.

5 MR. OLSON: I'm sorry. I think it's F. Is  
6 it F?

7 THE COURT: E.

8 MR. OLSON: E? Sorry, Your Honor.

9 MR. BECKER: What are we looking at here?  
10 I'm confused.

11 MR. OLSON: It's the dispatch summary. It  
12 is an F, Your Honor. I'm sorry.

13 BY MR. OLSON:

14 Q Detective Greaver, I'm showing you what's been marked  
15 as Defendant's Exhibit F. Is that the dispatch summary that  
16 you reviewed and you're familiar with?

17 A It is.

18 (Whereupon, Defendant's Exhibit F, Dispatch  
19 Summary, was introduced for identification.)

20 Q Okay. And there's statements made on there; is that  
21 correct?

22 A That's correct.

23 Q At the bottom it says "Notes"?

1 A That's correct.

2 Q And does it mention anything about a gun on there?

3 MR. BECKER: Your Honor, I'm going to  
4 object to this again.

5 THE COURT: He said he reviewed it. Does  
6 it mention anything?

7 A It just says, "Austin is known to carry a pistol."

8 BY MR. OLSON:

9 Q Okay. It just says, "Austin is known to carry a  
10 pistol." Does it indicate that he was being held hostage?  
11 That Brandon was being held hostage for a drug debt?

12 A "Held due to a drug deal."

13 Q Okay. And that -- what date was that report?

14 A On the 15th.

15 Q At 2:00 a.m.?

16 A 2:12 a.m., correct.

17 Q Okay. And that's before the discovery of the body;  
18 correct?

19 A That is correct.

20 Q And, again, we've heard a lot of testimony about the  
21 significant decomposition of the body when it was found?

22 A That's correct.

23 Q So that body wouldn't decompose, in your experience,

1 in a four-hour period of time in the condition it was in?

2 A You would need to ask the coroner that. I don't  
3 believe so, but you'd have to ask the coroner.

4 Q I'm saying in your experience?

5 A Correct.

6 Q I mean -- and so that report that we just looked at,  
7 it doesn't have any names? It just says, "Niles PD"?

8 A That's correct.

9 Q But based upon your investigation you learned that at  
10 that time was the time that Jessica Simms and Hayle Roupe did  
11 go to the police department?

12 A It was around that time, yes.

13 Q So that doesn't really confirm that they went into  
14 the police department and said, "Hey, Austin Burke has this  
15 gun at Pam Roupe's house"?

16 A Not this one.

17 Q The interview which was three days later?

18 A I have in my file a call log from Niles where they  
19 did say.

20 Q Okay. Does it also say about the drug debt?

21 A I don't believe so.

22 Q Okay. So their report changed?

23 A I can pull that out of my file if you'd like.

1 Q During your investigation you also became  
2 knowledgeable about a duffle bag and a backpack; is that  
3 correct?

4 A That's correct.

5 Q The duffle bag was at Pamela Roupe's house; is that  
6 correct?

7 A That's correct.

8 Q And the information that you were receiving was  
9 indicating that the clothes from the night of the killing were  
10 contained within that duffle bag; is that correct?

11 A I was told that everything from that night was in the  
12 duffle bag.

13 Q Okay. So you would think clothes, gun?

14 A Correct, yes.

15 Q Keys to the car?

16 A Correct.

17 Q Cell phone?

18 A Correct.

19 Q Wallet?

20 A Correct.

21 Q This stuff was all missing?

22 A Correct.

23 Q From Brandon?



- 1 A Correct.
- 2 Q And it would all relate to that night?
- 3 A That's correct.
- 4 Q You seized that bag; is that correct?
- 5 A I did.
- 6 Q After you got a warrant on it, went through it?
- 7 A Yes, correct.
- 8 Q You found nothing in there?
- 9 A That's correct.
- 10 Q So you would agree with me that you did not recover  
11 any gunshot residue?
- 12 A That's correct.
- 13 Q No blood?
- 14 A That's correct.
- 15 Q You would agree that there were no keys?
- 16 A That's correct.
- 17 Q No cell phone?
- 18 A That's correct.
- 19 Q No wallet?
- 20 A Austin's wallet.
- 21 Q Just Austin's?
- 22 A That's correct.
- 23 Q No credit card?

- 1 A That's correct.
- 2 Q No Speedway membership?
- 3 A That's correct.
- 4 Q You also received the backpack; is that correct?
- 5 A That's correct.
- 6 Q Again, same thing?
- 7 A That's correct.
- 8 Q Nothing in there?
- 9 A That is correct.
- 10 Q No clothes?
- 11 A Correct.
- 12 Q No cell phone, no keys?
- 13 A Correct.
- 14 Q To this date, you have not recovered the cell phone?
- 15 A That's correct.
- 16 Q You have not recovered keys?
- 17 A Correct.
- 18 Q You did not execute a search warrant on Josh White's
- 19 house --
- 20 A I did not.
- 21 Q -- to see what's there?
- 22 A I did not.
- 23 Q To be fair, you didn't execute a search warrant on

1 Austin Burke's home to see if it was there or not?

2 A That is correct. I did not.

3 Q No family came forward and said, "Hey, I found some  
4 suspicious property"?

5 A That is correct.

6 Q You interviewed Austin after he was taken into  
7 custody on this case; is that correct?

8 A That's correct.

9 Q He again stated to you, "Yes, I was with Brandon  
10 Sample that night"?

11 A He did.

12 Q 7:30?

13 A Correct.

14 Q "I was picked up from Willow Lake"?

15 A On the way home from Willow Lake, yes.

16 Q On the way home. And we already went through that  
17 that's not unbelievable, to say that Austin was walking home  
18 from Willow Lake to his house?

19 A Correct.

20 Q He again confirmed that there was another male in  
21 that car?

22 A He did.

23 Q That male had a beard?

1 THE COURT: Mr. Olson, we have been through  
2 this time and time again. You've asked that about three  
3 times. Let's move it along.

4 MR. OLSON: Yes, sir. This is the second  
5 interview, though, Your Honor. I want to show that it was --

6 THE COURT: Move it along.

7 BY MR. OLSON:

8 Q During that same interview, you questioned Austin  
9 about the telephone call that came in at 1:18; is that  
10 correct?

11 A I asked him if he had heard from Brandon.

12 Q And he said he did?

13 A He did.

14 Q And he said Brandon told him he was going to the east  
15 side of Warren to buy heroin; do you remember that?

16 A Yes.

17 Q And there was no followup on that to see if that was  
18 true?

19 A Correct.

20 Q And the 1:18 phone call was 48 seconds long?

21 A Something like that. 40 something. Yes. I don't  
22 remember, but yes.

23 Q And there was no phone calls after that?

1 A That's correct.

2 Q No text messages up until later the next day at  
3 the -- on the 12th when Austin starts texting, "Bro, where you  
4 at?"

5 A I believe that's correct.

6 Q And, again, by the 12th, at the time that Austin  
7 starts sending out that text, information is starting to be  
8 passed along that Brandon Sample was missing?

9 A Correct.

10 Q And we heard from other witnesses, to include Josh  
11 White, that said Austin was being tagged on Facebook of the  
12 missing person reports?

13 A I believe -- yes. Yes.

14 Q So Austin is like, "Yo, where you at? I'm, you know,  
15 being looked at about this. I can't have this kind of heat"?  
16 That was the text message?

17 A That's what he said, yes.

18 Q All right. On the 22nd, you went back to the scene.  
19 And you would agree with me that between -- oh, no. Excuse  
20 me. Strike that. On the 22nd, you went back to the scene?

21 A I did.

22 Q And, again, no shell casing?

23 A That's correct.

1 Q That was the last time you went to the scene; is that  
2 correct?

3 A That's correct.

4 Q I mean, at that point in time, you searched that  
5 scene twice?

6 A Correct.

7 Q No evidentiary value found there at all?

8 A That is correct.

9 Q The 23rd is when your interview with Rickey Roupe  
10 occurs?

11 A Yes.

12 Q Okay. And, again, in that interview he indicated  
13 Austin was there between 6 and 8 p.m.?

14 MR. BECKER: Your Honor, I'm going to  
15 object. This has been asked and answered at least three  
16 times.

17 THE COURT: Move it along.

18 MR. OLSON: Yes.

19 BY MR. OLSON:

20 Q Did Rickey say that Austin was at his house in the  
21 morning?

22 MR. BECKER: Objection. Asked and  
23 answered.

1 MR. OLSON: Your Honor, this was Nate. I  
2 asked about what Nate said.

3 THE COURT: Ask your question. Do not  
4 repeat another question that you've already asked, please.

5 MR. OLSON: Yes, Your Honor.

6 BY MR. OLSON:

7 Q Did Rickey tell you Austin was at the house at 6 a.m.?

8 A I don't see that in my notes, sir.

9 Q Okay. Your testimony -- or your interview with  
10 Rickey, Rickey indicated that initially that morning when he  
11 left he didn't say anything about killing Brandon; is that  
12 correct? He called him later on?

13 A I believe that's correct, yes.

14 Q Did you go through the phone messages between Rickey  
15 and Austin?

16 A I'm sure I did.

17 Q Okay. Do you recall seeing any messages exchanged  
18 between Rickey and Austin about this incident?

19 A I thought there was something that Rickey had asked  
20 Austin about it, but I don't recall exactly what it said.

21 Q And it was a denial?

22 A I believe so, correct.

23 Q Correct? I mean, again, you had thousands of

1 messages?

2 A Correct.

3 Q You did not uncover one message that had Austin  
4 admitting to doing this?

5 A That's correct.

6 Q Talked to numerous of his friends?

7 A That's correct.

8 Q You didn't go out and talk to any of these people  
9 either to say, "Hey, did Austin ever call you on the phone and  
10 say anything to you?"

11 A I talked to one.

12 Q Who was that?

13 A That Jeff Patty.

14 Q Okay. And he didn't know anything?

15 A No.

16 Q He just said that night Austin --

17 A They had a Facebook conversation.

18 Q Correct.

19 A Yes.

20 Q Do you recall in the interviews the witnesses such as  
21 Hayle or Jessica saying that Austin was going to rob Brandon  
22 for six to seven pounds of heroin?

23 A I believe that was Deidre that said that.



- 1 Q Okay.
- 2 A But, yes, I do recall somebody saying that.
- 3 Q Six to seven pounds of heroin is an awful lot of  
4 heroin; you would agree?
- 5 A Yes.
- 6 Q What would you say the street value of six to  
7 seven pounds of heroin is?
- 8 A I do not know the drug game, sir. I couldn't even  
9 guess to that. I have no idea.
- 10 Q But it's quite high?
- 11 A Astronomical.
- 12 Q Like hundreds of thousands of dollars?
- 13 A Yes.
- 14 Q That just wasn't credible to you?
- 15 A That's correct.
- 16 Q That's a statement that a witness made to you?
- 17 A That she was told by Austin, correct.
- 18 Q You interviewed Brandon Sample's girlfriend; is that  
19 correct?
- 20 A That is correct.
- 21 Q No mention of Austin Burke's name ever coming with  
22 her; is that correct?
- 23 A That is correct.

1 Q You did interview Cody Snyder?

2 A I did.

3 Q And he confirmed everything that Austin said, that he  
4 was picked up that night?

5 A No. No. Cody -- I had interviewed Cody because  
6 Austin had told me that he had been home all night.

7 Q But then the Facebook message that you got --

8 A Correct. Indicated that Austin had not been home all  
9 night, that he had went to Cody's house. And I interviewed  
10 Cody. And Cody confirmed that he had picked Austin up that  
11 night at his house.

12 Q Okay. And that was about 9:30?

13 A I don't recall the time, but it was in the evening.

14 Q Do you recall where Cody lives?

15 A It was near Austin.

16 Q Very close?

17 A Yes. I don't remember the address, but I remember it  
18 being near -- close to Austin.

19 Q And Cody did not remember how long Austin was there?

20 A He did not, and he did not remember if he stayed the  
21 night or not.

22 Q All right. So it could have been very brief and  
23 Austin went back home? And again --

1 A I don't know. I don't know.

2 Q Detective Greaver, I'm going to show you what's been  
3 marked as State's Exhibit 23. Again, are you familiar with  
4 that document?

5 A Yes.

6 Q That is the document you received from Brandon's  
7 father?

8 A That is correct.

9 Q And that's the printout of the telephone numbers that  
10 were coming in and going out of Brandon's phone call?

11 A That's correct.

12 Q All the way up through the 12th of June?

13 A Correct.

14 Q And we had a phone call that was identified at 1:18  
15 a.m. as an incoming call; is that correct?

16 A That's correct.

17 Q And we confirmed that that (330) 891-7261 number was  
18 Austin Burke?

19 A That's correct.

20 Q Okay. There are two phone calls after that; would  
21 you agree?

22 A That's correct.

23 Q One was at 2:14 a.m.?

- 1 A Yes, sir.
- 2 Q And it shows destination?
- 3 A Akron, Ohio. Well, Akron.
- 4 Q Okay. And it has a phone number?
- 5 A It does.
- 6 Q (330) 573-8234?
- 7 A Correct.
- 8 Q We confirmed with Mr. Sample that he was not familiar  
9 with that phone number; is that correct?
- 10 A I believe so.
- 11 Q And did you investigate that number?
- 12 A I did not.
- 13 Q And not only do we have one phone call made at 2:14  
14 a.m.; we have a second one on -- at 2:15 a.m. to the same  
15 exact number?
- 16 A Correct.
- 17 Q And that was the very last phone call that was made  
18 by Brandon Sample's phone?
- 19 A Correct.
- 20 Q After that phone call, based upon the testimony we've  
21 heard from Brandon's father, all phone calls were going  
22 directly to voicemail?
- 23 A That's correct.

- 1 Q Okay. And there were only text messages coming?
- 2 A Correct.
- 3 Q You're familiar with cell phones?
- 4 A Yes. Somewhat.
- 5 Q Right. I'm sure if I had a 12-year-old up there they  
6 could tell us a lot more about a cell phone --
- 7 A Yes, sir, that's correct.
- 8 Q -- than what we can say. But unless there's a  
9 password on a phone, anybody could send a text from a phone;  
10 is that correct?
- 11 A That's correct.
- 12 Q As long as I have the device, I can send a text  
13 message from that phone?
- 14 A As long as there's not a password on it.
- 15 Q If there is a password, as long as I know that  
16 password?
- 17 A Correct.
- 18 Q And, again, we don't know if Brandon's phone had a  
19 password or not?
- 20 A Do not.
- 21 Q And based upon your investigation, you cannot say  
22 that Brandon Sample was still alive at 4:30 a.m. on June 12th  
23 of 2017; is that correct?

1 A I cannot say that, correct.

2 Q So you would agree with me that this number, pretty  
3 important, as to the person that owns that?

4 A It may have been.

5 Q I mean, conversation could have happened that we will  
6 never know about?

7 A Correct.

8 Q Could have been a person that actually saw Brandon  
9 Sample?

10 A It may have been.

11 Q Talked to him. And did you do anything to try to  
12 find out who that number was?

13 A I did not.

14 Q And in the course of your investigation, you would  
15 agree with me -- there was one person familiar or had a link  
16 to Akron; correct?

17 A That's correct.

18 Q And that was Josh White?

19 A That's correct.

20 Q So the last phone call was made to an Akron number,  
21 and we know the last destination for certain for Brandon  
22 Sample -- or -- for Brandon Sample was Akron, Ohio? I mean,  
23 that's where he was going?

1 A I have statements that he went to Akron, and I have  
2 statements that he was in Niles also.

3 Q Correct. By these witnesses we heard from?

4 A Correct.

5 Q With the inconsistent testimony?

6 A That's correct.

7 Q And through your investigation, did you go out to try  
8 to find out if, in fact, Brandon Sample owed anybody money for  
9 drug debts?

10 A I did not.

11 Q Okay. And, again, this was an individual that you  
12 learned initially at your investigation may have had a drug  
13 problem?

14 A That's correct.

15 Q When Brandon Sample's body was found, he was clothed;  
16 correct?

17 A Correct.

18 Q Gray shorts?

19 A (No response.)

20 Q Gray shorts?

21 A Gray shorts.

22 Q A black shirt pulled up over his head?

23 A I don't know if it was black or not, but there was a

1 shirt pulled up over his head.

2 Q Dark colored?

3 A Yes.

4 Q Was there like another, like a tee shirt on him? Or  
5 was that just part of his -- like the shirt? Did he have two  
6 shirts on?

7 A I don't recall him having two shirts on.

8 Q Okay. So we know he had a dark-colored shirt pulled  
9 up over his head?

10 A Correct.

11 Q Socks, underwear, all of that? Do you know?

12 A I don't recall his socks or underwear.

13 Q When he was removed from the scene, he still had that  
14 clothing on; is that correct?

15 A That's correct.

16 Q When he got to the coroner's office, he still had  
17 that clothing on?

18 A You'd have to ask the coroner that. I was not there.

19 Q At some point in time, was -- were you detectives  
20 contacted about the retrieval of the clothing?

21 A We were.

22 Q Okay. And there was a conclusion made about that  
23 clothing; is that correct? To just destroy it?



- 1 A That's correct.
- 2 Q So that clothing is not here today?
- 3 A It is not.
- 4 Q And that clothing was not tested; is that correct?
- 5 A Not to -- no, it was not. Not to my knowledge.
- 6 Q You didn't do GSR on it? Gunshot residue?
- 7 A No.
- 8 Q You didn't do fiber strips --
- 9 A No.
- 10 Q -- to see if maybe there was something there?
- 11 A No, sir.
- 12 Q It may be difficult to find something. I mean, the  
13 body, we don't know how long it was there?
- 14 A I'm not an expert, but in the state that the body was  
15 in, it would be highly unlikely.
- 16 Q Highly unlikely, but not impossible?
- 17 A You'd have to ask an expert that, I don't know.
- 18 Q During your investigation, did you ask an expert?
- 19 A I did not.
- 20 Q And you were in contact with a lab; right? On the  
21 fragments and the other stuff that were recovered, you had  
22 communication with lab techs from --
- 23 A I don't believe I had direct communication with them,

1 but our evidence technician had --

2 Q And you could have made that request as the lead  
3 detective?

4 A I could have.

5 Q To have strips done or to contact to see if it was  
6 worthwhile?

7 A I could have.

8 Q And you didn't?

9 A I did not.

10 Q Okay. You would agree in a lot of investigations,  
11 especially in the drug areas, we'll do what we call a wiretap  
12 or a phone interception; correct? Where you have a party call  
13 another party and try to get them making incriminating  
14 statements. Have you ever been involved in that?

15 A I have not been involved in that, no, sir.

16 Q Do you know in the drug investigations if that's  
17 done?

18 A I do not. I don't investigate drugs, sir.

19 Q All right. You didn't look to try to have another  
20 one of these witnesses call Austin Burke and try to get him to  
21 make an incriminating statement?

22 A No, sir, I did not.

23 Q Okay. You would agree with me that you never checked

1 to see if there was any relationship between any of the  
2 parties at the Roupe household and the household where Josh  
3 tells you he was picked up in in Niles?

4 A I did not.

5 Q Okay. And you would agree with me, Niles isn't a  
6 huge community? It's pretty small?

7 A I don't know that pretty small is right, but it's not  
8 a huge community. I'll agree with that.

9 Q Okay. And, again, there could have been some  
10 relationship between those people?

11 A I had not had any reason to believe that. I was not  
12 given --

13 Q But you didn't do an investigation?

14 A I was not given any information to indicate that.

15 Q All right.

16 A To follow up on that.

17 Q But to be fair, today and yesterday when you  
18 testified, you didn't even remember the guy's name?

19 A That's correct.

20 Q Throughout your investigation, was the name Jill  
21 Davis coming up a lot?

22 A I remember the name coming up. I don't know if it  
23 was coming up a lot. But I remember it coming up.

1 Q Did you interview her at all?

2 A I did not.

3 Q Did you see what types of communications she was  
4 having with Jessica Simms who came in here and testified?

5 A I believe that I did. I don't recall exactly what  
6 they were.

7 Q During our review of the crime scene, we noted a blue  
8 tarp that was right near the body; is that correct?

9 A That's correct.

10 Q That tarp had some dust and dirt on it; correct?

11 A It may have.

12 Q I mean, if you don't remember.

13 A I don't remember.

14 Q If I showed you it, you would recall it though;  
15 correct?

16 A Yes. I recall the tarp being there, yes.

17 Q Did you seize that tarp?

18 A I did not.

19 Q Did you direct that it be seized?

20 A I did not.

21 Q You would agree that a tarp could be used to cover a  
22 body?

23 A It was not covering the body.

- 1 Q I'm saying --
- 2 A It could be, sure.
- 3 Q Correct. If the body was placed into the car or into  
4 a trunk, we can cover a body with a tarp? We can roll the  
5 body up in a tarp?
- 6 A You could.
- 7 Q If this crime occurred out on the street or the  
8 pathway to the crime scene, I can use a tarp to drag the body.  
9 Dead weight is pretty heavy?
- 10 A Yes. I would imagine it is.
- 11 Q Easier to drag than to maybe pick up or carry or  
12 something like that?
- 13 A It could. I don't know.
- 14 Q Tarp could have contained information relating to  
15 this investigation of this crime? Could have?
- 16 A It may have. I did not look at the tarp as evidence.
- 17 Q Even though it was within feet of the body?
- 18 A Yes. I did not view it as evidence.
- 19 Q And somebody that may have used that for this crime,  
20 maybe to conceal the body or to assist them with the body,  
21 they wouldn't want that on them? They would discard it?
- 22 A Correct. I would agree with that.
- 23 Q Makes sense? Sure. So, I mean, discarding it near

1 the body, leaving it alone; correct?

2 A I don't know, sir.

3 MR. OLSON: May I have a moment, Your  
4 Honor?

5 Your Honor, I have no further questions.

6 THE COURT: All right. Ladies and  
7 Gentlemen, we'll take this opportunity for our midmorning  
8 break. We'll take 15 minutes. Do not discuss this case among  
9 yourselves, nor with anyone else. Do not form or express an  
10 opinion.

11 (Whereupon, a recess was had commencing at  
12 10:44 a.m. and concluding at 11:04 a.m.)

13 THE COURT: Detective Greaver, return to  
14 the stand.

15 MR. BECKER: Thank you, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. BECKER:

18 Q Sounds to me like, Detective Greaver, you got the  
19 wrong guy; right?

20 A I don't believe that.

21 Q Okay. Well, let's talk about some things in this  
22 investigation that are important.

23 First of all, you were questioned about Josh White

1 referring to someone named Austin Taylor; is that correct?

2 A I believe so.

3 Q All right. And I think you'll recall the testimony  
4 of Josh White that he looked up Austin Taylor on Facebook;  
5 correct?

6 A I believe so.

7 Q I'm going to hand you what I'm going to mark as  
8 State's Exhibit 54. Do you recognize what State's Exhibit 54  
9 is?

10 A It is a Facebook page.

11 (Whereupon, State's Exhibit 54, Facebook Page, was  
12 introduced for identification.)

13 Q Of who?

14 A Austin Taylor.

15 Q And is that Austin Taylor, Austin Taylor Burke in  
16 this case?

17 A It is, sir.

18 Q Okay. So if I went on Facebook, which I did during  
19 the break, and printed this picture out and looked for Austin  
20 Taylor, this is the Facebook page; right?

21 A That's correct.

22 Q And you heard the testimony of Josh White saying that  
23 he did look up the Facebook page of Austin Taylor; correct?

1 A I believe so, sir.

2 Q And that's the Facebook page of one Austin Taylor who  
3 is, although without the tattoos, the defendant in this case?

4 A That is correct.

5 Q Now, there was a lot of discussion about text  
6 messages and extraction reports and things like that. The  
7 extraction report that was previously marked as State's  
8 Exhibit 47 that JoAnn Gibb testified to yesterday; is that  
9 correct?

10 A I believe so.

11 Q All right. And you recall that the text messages up  
12 until -- well, actually, all the text messages on June 11th  
13 between Austin Burke and Brandon Sample had been deleted from  
14 his phone; correct?

15 A That is correct.

16 Q And they were able to retrieve those? JoAnn Gibb was  
17 able to retrieve those; correct?

18 A That is correct.

19 Q And, in fact, one of those text messages stated --  
20 from Brandon Sample to the victim -- stated, "I'm at this  
21 chick's house swimmin'. I'm gonna have to take J White back  
22 to Akron in a little bit. But do you still want to link up  
23 when I get back?" Do you remember that?



- 1 A Yes, sir.
- 2 Q Okay. And then there's conversation that they were  
3 gonna hook up?
- 4 A That's correct.
- 5 Q That was deleted?
- 6 A That's correct.
- 7 Q All of those were deleted?
- 8 A Correct.
- 9 Q And you'd agree that when you interviewed both times  
10 this defendant he never told you that he had plans to meet up  
11 with Josh -- or I'm sorry -- Brandon Sample that night;  
12 correct?
- 13 A I believe so.
- 14 Q All right. And there was extensive cross examination  
15 about whether or not there had been a phone call for two  
16 seconds and then that was my contact number and then you could  
17 save that as my contact number; correct?
- 18 A Correct.
- 19 Q But you don't have any idea whether or not Brandon  
20 Sample and Austin Burke spoke face-to-face at any point in  
21 this case; correct?
- 22 A I do not.
- 23 Q Could have?

- 1 A Could have.
- 2 Q Wouldn't be on any phone record?
- 3 A That's correct.
- 4 Q All right. And you did find information that they  
5 actually knew each other; is that correct?
- 6 A Yes.
- 7 Q And you were able to confirm that Austin Burke was in  
8 prison -- or I'm sorry -- in DYS at the same time that Brandon  
9 Sample was an employee there?
- 10 A That's correct.
- 11 Q All right. Now, you were asked, I believe -- and I  
12 think you answered this today -- but yesterday you were asked  
13 whether or not there was information -- or the only  
14 information you had that Austin was with Brandon that night or  
15 was going to meet him was from Josh; correct?
- 16 A That's correct.
- 17 Q But we do know that there was also conversation  
18 between the defendant and Austin [sic] that they were going to  
19 hook up on those deleted phone calls; correct?
- 20 A Between Brandon and Austin.
- 21 Q Or those deleted text messages?
- 22 A Yes.
- 23 Q Okay. And you were asked a lot about phone records

1 at 2 in the afternoon, about who was swimming at Willow Lake,  
2 and who would have seen him there. Brandon Sample was alive  
3 at 2:00 on Sunday, the 11th; correct?

4 A As far as I know, yes, sir.

5 Q All right. And, in fact, whether he was swimming at  
6 2:00 or 1:00 or 3:00, you agree that in investigations  
7 sometimes people get their times mixed up or don't have the  
8 exact time?

9 A Yes, sir.

10 Q Is that anything unusual in your line of work?

11 A It is not.

12 Q Sometimes you can talk to three or four witnesses and  
13 they'll give you three or four different times as to when  
14 something happened?

15 A That is correct.

16 Q All right. Now let's talk about, really -- well,  
17 let's talk about something else. You were questioned about  
18 searching Austin Burke's house; correct?

19 A I was.

20 Q All right. What do you need in order to obtain a  
21 search warrant?

22 A Probable cause.

23 Q All right. You have to have some type of -- and what

1 is probable cause?

2 A Facts that would lead a reasonable person to believe  
3 a crime has been or will be committed.

4 Q And to search a certain location, you have to have  
5 information that something happened there?

6 A That's correct.

7 Q Or that some piece of evidence is there?

8 A That's correct.

9 Q What witness or what piece of evidence did you have  
10 that anyone told you was located at Austin Burke's house?

11 A I had none.

12 Q All right. So you couldn't just go search his house;  
13 right?

14 A That's correct.

15 Q And you couldn't get a search warrant?

16 A That's correct.

17 Q All right. And that's why you didn't search his  
18 house?

19 A That is correct.

20 Q So let's talk about Austin Burke. You interviewed  
21 him two times; correct?

22 A That's correct.

23 Q Where did he tell you he was both times on the

1 evening -- or early morning hours of June 12?

2 A At his house.

3 Q All right. And there's quite a bit of information  
4 that he was not at his home all night; correct?

5 A That is correct.

6 Q That would include witness statements?

7 A Correct.

8 Q That would include his cell phone records; correct?

9 A That's correct.

10 Q That would include words from his own mouth -- or  
11 from his own phone?

12 A Correct.

13 Q When he texted Brittani Merten and told her at 2:08  
14 in the morning that he was in Niles; right?

15 A That's correct.

16 Q What witness in this case told you that Josh White  
17 was in Niles during the relevant period of time? I'm not  
18 talking about earlier in the day or some other time. During  
19 the relevant period of time when other witnesses put this  
20 defendant and Brandon Sample together in Niles?

21 MR. OLSON: Objection. Hearsay.

22 THE COURT: Overruled.

23 THE WITNESS: Could you repeat the question

1 for me?

2 BY MR. BECKER:

3 Q What witness told you that Josh White was in Niles  
4 during the relevant period of time?

5 A I did not -- no witness told me that, sir.

6 Q What witness told you that Josh White left the car on  
7 the bike path in Niles?

8 A I did not have a witness tell me that, sir.

9 Q What witness told you that Josh White shot Brandon  
10 Sample on Hatchet Man Road?

11 A I did not have a witness tell me that.

12 Q The source of your information to go rely -- or I'm  
13 sorry -- to go look on Hatchet Man Road, who was that  
14 emanating from?

15 MR. OLSON: Objection. Hearsay.

16 A Austin Burke.

17 THE COURT: Overruled.

18 THE WITNESS: Austin Burke.

19 BY MR. BECKER:

20 Q And when you went to Hatchet Man Road, what body did  
21 you discover on Hatchet Man Road?

22 A Brandon Sample's body.

23 Q Okay. And following the coroner's report -- you were

1 asked about testing for GSR and you could have looked at the  
2 clothes. GSR, are you familiar with what GSR is?

3 A I am.

4 Q What is it?

5 A Gunshot residue.

6 Q Okay. Did the -- did the Trumbull County Coroner  
7 tell you the cause of death of Brandon --

8 MR. HARTWIG: Objection.

9 MR. BECKER: Well, let me ask this.

10 BY MR. BECKER:

11 Q Pursuant to the investigation, were you made aware of  
12 the cause of death of Brandon Sample?

13 A I was.

14 Q And what was the cause of death?

15 A Gunshot wound.

16 Q So if you tested the shirt, that -- you already know  
17 he's shot; right?

18 A Correct.

19 Q You were also asked about the tarp and the items on  
20 there. What witness in this case told you that there was a  
21 tarp involved?

22 A I did not have a witness tell me that.

23 Q You were questioned extensively about searching the

1 car in Niles, that there could have been gunshot residue in  
2 the car, blood in the car. What witness in this case told you  
3 that Brandon Sample was shot in the car?

4 A I did not have a witness tell me that.

5 Q Okay. And the evidence and testimony that you were  
6 presented in this case, or the evidence and the statements  
7 that you received, all pointed to Josh -- or I'm sorry --  
8 Brandon Sample's body being found where?

9 A At Hatchet Man Road.

10 Q And where did you find Brandon Sample's body?

11 A On Hatchet Man Road.

12 MR. BECKER: I have nothing further.

13 THE COURT: Recross.

14 MR. OLSON: Your Honor, I have no  
15 questions.

16 THE COURT: All right. You may step down.  
17 Thank you.

18 Call your next witness.

19 MR. BECKER: Thank you, Your Honor. State  
20 would call William Prince.

21

22

23



1 \* \* \*

2 WILLIAM PRINCE,

3 having been duly sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BECKER:

6 Q Would you state your name for the record, please?

7 A William Matthew Prince.

8 Q Where are you employed at?

9 A I'm employed with the ATF National Tracing Center in  
10 Martinsburg, West Virginia.

11 Q And how long have you been employed there?

12 A I've been employed there since I retired out of the  
13 Air Force for 15-½ years.

14 Q What are your current-- or what is your current title  
15 there?

16 A I am the section supervisor in charge of records  
17 custodian and out-of-business records search requests.

18 Q So what are your duties there?

19 A My duties are to oversee documents that are  
20 certified, make sure they're accurate. And when the records  
21 custodian isn't there, I'm the records custodian. And I'm  
22 actually the one that certifies the documents myself too.

23 Q So let me ask you. At ATF and where you're at, your

1 duties are basically records come in regarding firearms that  
2 are registered and you also said out-of-business records?

3 A When -- what we do is we trace the firearm history of  
4 roughly 400,000 firearms a year from police departments all  
5 over the country, crime guns recovered.

6 And also as part of the Crime Gun Control Act in  
7 1968, firearms dealers, when they go out of business, they're  
8 required to turn in their out-of-business records to the ATF.  
9 And that's where I work, at the National Tracing Center.

10 Q And what is done with those out-of-business records  
11 when they're received at your department?

12 A They're microfilmed. Or nowadays they're digitally  
13 imaged and they're scored electronically. And then when  
14 police departments need information for them or we have to  
15 trace firearm histories for law enforcement, we access those  
16 records to assist law enforcement.

17 Q All right. I want to direct your attention  
18 specifically to a firearm trace that was submitted to your  
19 agency on June 23, 2017, by David Morris of the Cortland  
20 Police Department. Are you familiar with that firearms trace  
21 request?

22 A Yes, I am.

23 Q All right. Did you, as a result of that request,

1 perform an actual firearms trace?

2 A We have about 350 people that work at the tracing  
3 center. Our federal employees and contractors actually trace  
4 the firearm, but I did certify the documents at the request.

5 Q So you would not have personally looked it up, but  
6 you are the custodian of those records; correct?

7 A Exactly. Back when the firearm trace was submitted,  
8 we have dozens of people that do data entry that would  
9 actually trace the firearm.

10 Q Okay. I'm going to hand you what's been marked for  
11 purpose of identification as State's Exhibit Number 9. It is  
12 a four-page document. And I'm going to ask if you recognize  
13 State's Exhibit Number 9?

14 A Yes, I recognize it.

15 Q And what is State's Exhibit Number 9?

16 A This is a certified copy of a firearm trace summary  
17 report.

18 (Whereupon, State's Exhibit 9, Firearm Trace Summary, was  
19 introduced for identification.)

20 Q And is that the trace request that was made by the  
21 Cortland Police Department on June 23, 2017?

22 A Yes, it was.

23 Q Do you, looking at that document, know the make,

1 model, and serial number of the firearm that was traced?

2 A Yes, I do.

3 Q Could you please tell this jury what the firearm was  
4 and the serial number that was requested to be traced?

5 A Yes. It's a Taurus .22 pistol, model PT22, and the  
6 serial number Y100112.

7 Q All right. I'm going to hand you what's been marked  
8 previously for purposes of identification in this courtroom as  
9 State's Exhibit Number 1. And I'm going to ask you if you can  
10 see on this firearm a serial number?

11 A Yes, I've seen this serial number.

12 Q And could you tell the jury what the serial number is  
13 for that firearm?

14 A Yes, it's Y100112.

15 Q Is that the same serial number as the documentation  
16 that you were requested to submit a trace on on June 23rd?

17 A Yes, it is.

18 Q Okay. Thank you. And as a result of that trace,  
19 were you able to determine if that firearm was registered to  
20 any purchaser?

21 A Well --

22 Q Yeah. I may be missing --

23 A There's no national firearm registration.

1 Q I understand.

2 A But it was successfully traced from Taurus  
3 International in Miami, Florida to the wholesaler, to the  
4 retail dealer, to an individual purchaser.

5 Q Might want to pull that microphone back in front of  
6 you.

7 A Sorry.

8 Q Okay. So it was traced from its point of origin  
9 where it came into the country, to the retailer, to eventually  
10 a person that actually purchased it?

11 A Yes. And Taurus is out of Brazil, but it was  
12 actually manufactured in Miami.

13 Q All right. So this firearm, the one that -- State's  
14 Exhibit 1, the one that you were asked to trace, who did you  
15 actually trace it last being registered to?

16 A The individual purchaser that the retail firearms  
17 dealer sold the firearm to was Jamie Lee Sell.

18 Q And was there an address where Jamie Lee Sell  
19 indicated she lived at?

20 A Oh, yes. It's required, yeah. 5106 Miller South  
21 Road, Bristolville, Ohio 44402.

22 Q Okay. Now I'm going to hand you what's been marked  
23 for purposes of identification -- I'm sorry, purposes of

1 identification as State's Exhibit Number 10. And this is a --  
2 this is an 8-page document. I'm going to ask if you recognize  
3 State's Exhibit Number 10?

4 A Yes, I recognize it.

5 (Whereupon, State's Exhibit 10, Firearms Transaction  
6 Record, was introduced for identification.)

7 Q All right. What is State's Exhibit Number 10?

8 A This is a firearms transaction record.

9 Q And because the business that that document was  
10 generated at is out of business, they were required by federal  
11 law to then turn those back over to the ATF; is that correct?

12 A Correct.

13 Q And as you've previously testified to, they are  
14 digitally imaged and you have a digital image of that in your  
15 records as the records custodian at ATF; correct?

16 A Correct.

17 Q And, again, with respect to State's Exhibit 10, is  
18 the same serial number indicated on that, the same gun and  
19 serial number?

20 A Yes. It's the same firearm, same make, model, serial  
21 number.

22 Q As you just testified to in State's Exhibit 9 and  
23 State's Exhibit 1?

1 A Yes, it is. In fact, this is the source document  
2 that enabled us to successfully trace the firearm to the  
3 purchaser.

4 Q And, again, the purchaser listed in State's Exhibit  
5 Number 10 is whom?

6 A The purchaser listed in there -- in fact, the  
7 purchaser fills this out along with the firearms dealer.  
8 Jamie Lee Sell.

9 Q And is that the same address as the trace request  
10 that's in State's Exhibit 9?

11 A Yes, it is.

12 Q Okay. And those records are certified by you as the  
13 record keeper? You have the originals. Whether or not  
14 they're digital, but they are originally kept in your  
15 business?

16 A Exactly, yes. This is a true certified copy that I  
17 myself personally certified.

18 MR. BECKER: Okay. I have nothing further,  
19 Your Honor.

20 THE COURT: Cross?

21 MR. HARTWIG: No cross, Your Honor.

22 THE COURT: You may step down. Thank you.

23 Call your next witness.

1 MR. BECKER: Your Honor. The state would  
2 call Brandon Rice.

3 I'm sorry, Your Honor. I'm going to call Leah Smith.  
4

5 \* \* \*

6 LEAH SMITH,  
7 having been duly sworn, was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. BECKER:

10 Q Okay. Would you state your name for the record,  
11 please?

12 A Leah Smith.

13 Q Leah, how old are you?

14 A 15.

15 Q And Leah, you're going to have to pull that  
16 microphone down to your mouth so we can hear you.

17 Okay. You're -- how old are you?

18 A 15.

19 Q When did you turn 15?

20 A March 17th.

21 Q I want to direct your attention to on or about  
22 June 20, 2017, of last -- of 2017. Do you recall the day that  
23 you were with your friends and you guys had gone swimming



1 someplace?

2 A Yes.

3 Q Please tell the jury where you went swimming at on  
4 June 20th.

5 A Willow Lake.

6 Q And who was with you on June 20, 2017?

7 A Mel -- Melanie, Donavon, Austin, Stacie, Nick, and  
8 Justin.

9 Q Okay. You're gonna have to pull that a little  
10 closer. You've got to be a little bit louder.

11 All right. Was there ever a point that you saw a man  
12 named Nathan there?

13 A No.

14 Q You never saw a man named Nathan?

15 A No.

16 Q Okay. Austin?

17 A I saw Austin there, but not Nathan.

18 Q Did you know him as Nathan or Austin then?

19 A Austin.

20 Q You knew him as Austin. Okay. Now, at some point  
21 you guys went back to someone's apartment; is that correct?

22 A Yes, sir.

23 Q Do you recall whose apartment you went to?

1 A Melanie's.

2 Q Do you recall where that was at?

3 A In Cortland.

4 Q All right. Do you know what county Cortland is in?

5 A (Witness shakes head.)

6 Q Okay. That's all right. I'm going to show you what  
7 have been marked for purpose of identification as State's  
8 Exhibits 31, 32, 33 and 34 and ask if you recognize them. 31,  
9 32, 33, and 34. Do you recognize those photographs?

10 A Yes.

11 (Whereupon, State's Exhibits 31-34, Photos, were  
12 introduced for identification.)

13 Q Okay. With respect to each one, please refer to the  
14 number on the back and tell me what we're looking at.

15 A For picture 31, this is Melanie's bedroom.

16 Q All right.

17 A 32, that's her closet.

18 Q All right.

19 A 33, that's in her room next to her bed.

20 And for 34, that's still in her room.

21 Q Okay. Do those look like how her apartment looked on  
22 June 20th, 2017?

23 A Yes, sir.

1 Q All right. Is that a pretty clean apartment,  
2 everything nice and tidy?

3 A No.

4 Q I'm going to publish these for the jury. With  
5 respect to State's Exhibit 31, you said that's her bedroom?

6 A Yes.

7 Q State's Exhibit 32 you describe as her closet?

8 A Yes.

9 Q All right. State's Exhibit 33, you describe that as  
10 also being in her bedroom closet?

11 A Yes.

12 Q And State's Exhibit 34; correct?

13 A Yes.

14 Q All right. Those are fair and accurate pictures of  
15 what it looked like at her apartment on that day; correct?

16 A Yes.

17 Q I'm going to hand you -- well, let me ask you this.  
18 At some point, the individual you knew as Austin, did he and  
19 you guys all go back to the apartment?

20 A Yes.

21 Q Do you recall whether it was light or day -- I'm  
22 sorry -- night or day?

23 A We got there like, in like the late evening.

1 Q All right.

2 A And we all hung out.

3 Q Still sunlight though?

4 A Yeah.

5 Q All right. I'm going to show you what's been marked  
6 for purpose of identification as State's Exhibit 14 and ask if  
7 you recognize State's Exhibit 14?

8 A Yeah.

9 (Whereupon, State's Exhibit 14, Photo, was introduced for  
10 identification.)

11 Q And do you recognize the four people in that  
12 photograph?

13 A Yes, sir.

14 Q Who are the four people in that photograph?

15 A Austin, Melanie, Donavon, and me.

16 Q I'm sorry. Say it -- you have to speak up a little  
17 bit louder. Austin?

18 A Austin, Melanie, Donavon, and me.

19 Q All right. And I'm going to publish this photograph  
20 for the jury. And do you know whether that photograph was  
21 taken -- or where it was taken at?

22 A In Melanie's living room.

23 Q At Melanie's living room?

- 1 A Uh-huh.
- 2 Q That day?
- 3 A That morning, I think.
- 4 Q Okay. Well, I'm going to show you State's Exhibit --
- 5 and you see yourself there?
- 6 A Yes.
- 7 Q You're on the far right?
- 8 A Yes.
- 9 Q Which one is Donavon?
- 10 A The one to the left of me.
- 11 Q That would be here?
- 12 A Yes.
- 13 Q Who is this individual?
- 14 A Melanie.
- 15 Q That's whose apartment it was?
- 16 A Yes.
- 17 Q Who is this individual?
- 18 A Austin.
- 19 Q All right. Now, I want to direct your attention --
- 20 and this is -- this is a window behind you here?
- 21 A Yes.
- 22 Q That's daylight. It's not dark?
- 23 A Yeah.

1 Q All right. Now, I want to direct your attention to  
2 later on in the evening after it got dark. Did Melanie have  
3 some cats there?

4 A Yes.

5 Q And did something happen with the cats?

6 A Yeah, it got outside.

7 Q Both of them?

8 A Just one.

9 Q Just one. And what did you guys do, then, to look  
10 for the cats?

11 A We all went outside and we were looking.

12 Q And at some point was Austin there or did he leave?

13 A I have -- I honestly don't remember.

14 Q You don't remember him looking for the cats?

15 A No. I know it was just me and Donavon.

16 Q At some point, did you lose track of where Austin  
17 was?

18 A Yeah.

19 Q And at some point, did he return to the apartment?

20 A Yes.

21 Q Approximately what time do you remember him coming  
22 back to the apartment?

23 A I don't know. It was just probably around like 9 or

1 10 maybe.

2 Q All right. And after Austin got back to the  
3 apartment, a short time later the police arrive?

4 A Yes.

5 Q What did the police do when they arrived?

6 A They came in and they started searching the house.

7 Q Well, did they ask to -- everyone what their names  
8 were?

9 A Yeah.

10 Q And what did Austin tell the police his name was?

11 A Nathan.

12 Q Did you know that to be incorrect?

13 A Yes.

14 Q Did you say anything to the police?

15 A No.

16 Q Why not?

17 A I was scared.

18 Q When Austin came back to the apartment, did you see  
19 anything in his hands?

20 A Yes.

21 Q What did you see?

22 A Money.

23 Q A lot?

- 1 A Yeah.
- 2 Q Do you know what he did with the money?
- 3 A He was just flapping it around and counting it.
- 4 Q Did you see -- ever see Austin with a gun that night?
- 5 A No.
- 6 Q All right. Now, the photograph that I have up here,  
7 State's Exhibit 14, do you recall how Austin was dressed that  
8 day?
- 9 A Yes.
- 10 Q What kind of pants did he have?
- 11 A Gray sweatpants.
- 12 Q And can we see gray sweatpants here?
- 13 A Yes.
- 14 Q And those are the pants Austin was wearing?
- 15 A Yes.
- 16 Q Do you recall when he came back, was he wearing this  
17 shirt or a different shirt?
- 18 A Different shirt.
- 19 Q What kind of shirt did he have on?
- 20 A A black hoodie.
- 21 Q Do you know where the black hoodie went to?
- 22 A No.
- 23 Q The individual that you knew as Austin that's in this



1 picture and you saw with a large sum of money at about 10 or  
2 11:00 on June 20th, is he here in this courtroom?

3 A Yes.

4 Q Can you please identify him?

5 A (Witness indicates.)

6 MR. BECKER: Allow the record to reflect  
7 she's identified the defendant.

8 A He's to the right of me.

9 Q Excuse me?

10 A He's right there.

11 Q Oh, okay. Yeah.

12 MR. BECKER: Your Honor, I have nothing  
13 further.

14 THE COURT: Cross.

15 MR. HARTWIG: Thank you, Your Honor.

16 CROSS EXAMINATION

17 BY MR. HARTWIG:

18 Q Good morning, Leah.

19 A Good morning.

20 Q So before June 20th, did you know Austin?

21 A Yes.

22 Q All right. How well did you know him?

23 A We were talking for awhile.

1 Q Okay. Talking by Facebook?

2 A Yeah.

3 Q All right. And, in fact, more than a week before the  
4 20th did you know him?

5 A Yes.

6 Q Months or years?

7 A Probably a couple months.

8 Q Couple months. Okay. And you guys frequently, then,  
9 communicated by Facebook; correct?

10 A Yes.

11 Q All right. You had indicated to police when they  
12 interviewed you that you did not know Austin was using an  
13 alias; do you recall saying that?

14 A Yes.

15 Q All right. So as far as he represented to you, he  
16 was always Austin Burke?

17 A Yes.

18 Q Yes. Okay. So what time did you guys go swimming  
19 that day?

20 A We left early in the morning and we were there all  
21 day and then we were gonna go back to Melanie's apartment to  
22 have a movie night.

23 Q And when the cat got outside and you and Donavon went

1 looking for the cat, how long were you outside?

2 A Probably for like ten minutes.

3 Q Okay. In the interview you had with police, you  
4 indicated to them you were not sure if or when Burke left the  
5 residence; do you recall saying that?

6 A Yes.

7 Q All right. So when the Prosecutor asked you if you  
8 lost track of him, meaning you had no idea where he was, he  
9 could have still been in the apartment?

10 A Yes.

11 Q Yes. Okay. And do you recall not mentioning to  
12 police that he came back with a bunch of money?

13 A Yes.

14 Q All right. So today is the first time we're hearing  
15 of that story; would you agree with me?

16 A Yes.

17 MR. HARTWIG: Okay. No further questions.

18 THE COURT: Redirect.

19 MR. BECKER: Nothing further, Your Honor.

20 THE COURT: You may step down. Thank you.

21 Call your next witness.

22

23

1 \* \* \*

2 DONAVON BUNNER,

3 having been duly sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BECKER:

6 Q Would you state your name for the record?

7 A Donavon Bunner.

8 Q All right. Donavon, I'm going to have you pull that  
9 mike close to your mouth. Get it as close as you can.

10 A Donavon Bunner.

11 Q There you go. That's better. All right. How old  
12 are you, Donavon?

13 A 17.

14 Q And when is your birthday?

15 A June 4, 2000.

16 Q June 4th?

17 A (Witness nods head.)

18 Q Okay. Donavon, I want to direct your attention to  
19 June 20th of last year. Were you with some friends at Willow  
20 Lake?

21 A Yeah.

22 Q All right. Prior to that, though, you had been at  
23 McDonald's at some point?

- 1 A Yeah. I was getting my orientation.
- 2 Q For a job there?
- 3 A (Witness nods head.)
- 4 Q And at some point someone had to come and pick you up  
5 and then you went back to Willie Lake; correct?
- 6 A Yes, sir.
- 7 Q Now, can you please tell this jury who was at -- do  
8 you recall -- first of all, do you recall what time it was  
9 that you ended up going to Willow Lake?
- 10 A I do not. I do not, no.
- 11 Q You don't remember the time?
- 12 A (Witness shakes head.)
- 13 Q Okay. But you know you went there?
- 14 A Yeah.
- 15 Q Now, when you got to Willow Lake, do you remember who  
16 was there?
- 17 A Yeah. It was me, Mel, Justin, Leah, Stacie, and  
18 Austin.
- 19 Q And you had known Austin previously; correct?
- 20 A Yes.
- 21 Q And at some point you guys left Willow Lake and went  
22 to another location?
- 23 A Yeah. We went back to Mel's apartment.

- 1 Q And do you know what city Mel's apartment was in?
- 2 A Cortland.
- 3 Q Do you know what county Cortland is in?
- 4 A Trumbull, I'm assuming.
- 5 Q Well, do you know or do you not know?
- 6 A I do know, yeah.
- 7 Q So it's in Trumbull County?
- 8 A (Witness nods head.)
- 9 Q Now, what time -- or when you got back to Trumbull,  
10 what did you guys -- or I'm sorry, when you got back to  
11 Cortland, what did you do?
- 12 A We were just hanging out in the apartment.
- 13 Q I'm going to show you what's been marked for purpose  
14 of identification as State's Exhibit 14. Do you recognize  
15 State's Exhibit 14?
- 16 A Yeah.
- 17 Q What is State's Exhibit 14?
- 18 A Picture of me, Leah, Mel, and Austin.
- 19 Q All right. I'm going to publish this to the jury.  
20 Where was this photograph taken at?
- 21 A Mel's apartment.
- 22 Q And was it taken that day?
- 23 A Yeah.

- 1 Q And it's daylight, obviously; right?
- 2 A Yep.
- 3 Q We can see sunshine on your shoulder here and a  
4 window. So if Austin Burke had told his mother in a recorded  
5 phone call that he just got to that apartment before he was  
6 arrested, that would be incorrect?
- 7 A Can you say that again?
- 8 Q He was there -- if Austin had said he had only been  
9 there ten minutes that day, that would be incorrect; right?
- 10 A Yeah.
- 11 Q Because he's there right now; right? And it's  
12 daylight.
- 13 A Yeah.
- 14 Q All right. Do you remember a point in time where  
15 Melanie's cat or cats got out of the house?
- 16 A Yeah.
- 17 Q Do you remember if it was one or two cats?
- 18 A Two cats.
- 19 Q Two cats got out. And what did you guys do to go  
20 look for the cats?
- 21 A Went outside to look for the cats.
- 22 Q Do you remember who went outside?
- 23 A Everybody.

1 Q And at some -- and who is everybody?

2 A Everybody that was there. Me, Justin, Leah, Stacie,  
3 Austin. Everybody went to look for the cats.

4 Q Now, at some point, did you locate both cats or just  
5 one of them?

6 A We found one cat.

7 Q Later on, do you recall at some point Austin coming  
8 back to the apartment?

9 A Yeah, I was under the impression we was all looking  
10 for the cats, but yeah.

11 Q And shortly after that, the police arrived?

12 A Yes.

13 Q And do you recall the police asking everyone for  
14 their names and where they -- their information?

15 A Yeah.

16 Q Did you tell them what your name was?

17 A Yes.

18 Q Did you give them the correct name?

19 A Yeah.

20 Q Did Austin tell the police his correct name?

21 A He told him his name was Nathan.

22 Q He told them his name was what?

23 A Nathan.



1 Q You knew that not to be true; correct?

2 A Yes, sir.

3 Q Did you tell the police that?

4 A No.

5 Q Why not?

6 A I was scared. I didn't want to -- like, I don't  
7 know. I just --

8 Q Now, did you rob the Pizza Joe's?

9 A No, sir.

10 Q Did you have a gun that day?

11 A No, sir.

12 Q Did you ever get any money?

13 A No, sir.

14 Q Did you ever have any money that day?

15 A No, sir.

16 Q The individual who told the police his name was  
17 Nathan and he's depicted in that photograph, State's  
18 Exhibit 14, is he here in the courtroom today?

19 A Yes, sir.

20 Q Can you please point to him?

21 A (Witness indicates.)

22 MR. BECKER: And let the record reflect  
23 he's identified the defendant. I have nothing further, Your

1 Honor.

2 THE COURT: Cross.

3 CROSS EXAMINATION

4 BY MR. HARTWIG:

5 Q Morning, Donavon.

6 A Good morning.

7 Q So your testimony is that you guys went swimming  
8 earlier in the day; correct?

9 A (Witness nods head.)

10 Q Yes?

11 A Yes, sir. My bad.

12 Q This picture marked as State's Exhibit 14 that you  
13 just reviewed --

14 A Yes, sir.

15 Q -- was taken at Melanie's apartment; correct?

16 A Yes, sir.

17 Q And that was taken prior to you going swimming?

18 A No. Afterwards.

19 Q Okay. What time did you get back to the apartment?

20 A I'm not sure. Not too -- we weren't there any like  
21 way too long of a time. We weren't there for too much long.

22 Q All right. When did the cat get out?

23 A Probably about 15 minutes after us being there.

- 1 Q All right. It was dark at that point; correct?
- 2 A Yeah. So 15 like --
- 3 Q I'm sorry. Say that again.
- 4 A It was like 20 -- 20 minutes after us being there.
- 5 We weren't there for --
- 6 Q You weren't there very long. So this picture,  
7 although it is shows some light, it soon became dark?
- 8 A Yes, sir.
- 9 Q Then the cat gets out; right? And then everyone in  
10 the apartment, including Austin, you guys go out to look for  
11 the cat; right?
- 12 A Yes, sir.
- 13 Q All right. Now, you were interviewed by police when  
14 they came over?
- 15 A Yes, sir.
- 16 Q At that point in time, you told 'em everything that  
17 you recall from that evening; correct?
- 18 A Yeah.
- 19 Q You wanted to be honest with them; correct?
- 20 A Yes.
- 21 Q All right. Is Leah your girlfriend?
- 22 A No.
- 23 Q Just a friend?

1 A (Witness nods head.) Yeah.

2 Q Okay. She came and testified that the only two  
3 people that left the apartment to go look for the cat were you  
4 and her. That's not true, is it?

5 A No.

6 Q You're positive that it was everybody?

7 A Yeah. I'm positive.

8 Q All right. Do you have any idea why she would come  
9 in and not tell the truth?

10 A No.

11 Q No. Okay. So you didn't mention anything to the  
12 police that while you were at the apartment after you were  
13 looking for the cat that Austin came back with a whole bunch  
14 of money, sat down, and counted it in front of you and Leah?

15 A No.

16 Q Right. Because that didn't happen?

17 A No.

18 MR. HARTWIG: All right. No further  
19 questions.

20 THE COURT: Redirect.

21 REDIRECT EXAMINATION

22 BY MR. BECKER:

23 Q Well, you just didn't see that; right?

1 A Yeah.

2 Q You were in different parts of the apartment?

3 A What did you say?

4 Q Were you and Leah always in the same room in the  
5 apartment?

6 A No. I mean, we were all just listening to music,  
7 like hanging out and walking around the apartment.

8 Q So some people were in the bedroom?

9 A At certain times.

10 Q And some people were in other parts of the house,  
11 like the living room or the kitchen?

12 A At certain times, yeah.

13 Q So if Leah said she saw this defendant with a lot of  
14 money, you may not have been there when that happened;  
15 correct?

16 A Correct.

17 MR. BECKER: Okay.

18 THE COURT: Recross.

19 REXCROSS EXAMINATION

20 BY MR. HARTWIG:

21 Q You told police, based on the police report, you were  
22 lying on the couch when Austin came back in; correct?

23 A No. I told them that I was in the bedroom. I was

1     laying down.

2     Q           If the report indicates that you said you were lying  
3     on the couch when Burke comes back to the living room, that's  
4     not accurate?

5     A           Yeah. I thought you said when the cops showed up.

6     Q           Oh, no, no, no. When Burke showed up?

7     A           Yeah. I was lying on the couch.

8     Q           All right. So when he walks in, you're lying on the  
9     couch; correct?

10    A           Yeah.

11    Q           And at that point when he walks in, he doesn't have a  
12    bunch of money on him; correct?

13    A           Not that I saw, correct.

14    Q           And did he just hang out like you guys were hanging  
15    out before?

16    A           Yeah, we were all listening to music, smoking hookah.

17                   MR. HARTWIG: All right. Thank you.

18                   THE COURT: You may step down. Call your  
19    next witness, please.

20                   MR. BECKER: Stacie Cassidy.

21

22

23

\* \* \*

STACIE CASSIDY,

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BECKER:

Q Would you state your name for the jury, please?

A Stacie Cassidy.

Q Stacie, how old are you?

A 23.

Q When is your birthday?

A May 7th of '94.

Q Stacie, I want to direct your attention to June 20th of 2017. On that date, do you recall going to Willow Lake with some friends?

A Yes.

Q Who all went to Willow Lake with you?

A Donavon, I was with Justin -- or no, Justin wasn't there. Justin's friend Nick was there because I brought him there. And I believe Leah was there. And then Austin was there.

Q All right. Did you know Austin as Austin on that date?

A No. I just met him that day.

1 Q And what name did he tell you he was?

2 A Nathan.

3 Q All right. Now, I want to direct your attention  
4 to -- some point, did Donavon have to go to work or need  
5 picked up from McDonald's?

6 A Yes.

7 Q Do you know who did that?

8 A I believe it was Mel because I went with Nick to  
9 Mel's apartment. And we were there for like roughly two hours  
10 by ourselves waiting for them to come back. And that was what  
11 she was doing in the time.

12 Q And eventually all those people came back to Mel's  
13 apartment?

14 A Yes.

15 Q So who would have been at Mel's apartment in the  
16 afternoon or early evening of June 20th?

17 A It would have been Justin, Leah, Donavon, Austin, and  
18 myself, and Kimberly.

19 Q Okay. Do you have any contact with Kimberly anymore?

20 A No. I just met her that one day.

21 Q And you wouldn't have a number for her how to get  
22 ahold of her?

23 A Huh-uh.



1 Q Now, at some point in the apartment, then, did the  
2 cats get out?

3 A Yes.

4 Q And when the cats got out, what did everyone do?

5 A We went outside. We were looking for the cats. We  
6 did find the one. We were looking roughly about 9:00, 9:30.

7 Q Would this have been dark or light then?

8 A Yes, it was dark.

9 Q And do you recall what time you got back from -- what  
10 time the other people got back from Willow Lake?

11 A It was roughly about, I'd say 8, 8:30, around that  
12 time.

13 Q All right. I showed you at one point a photograph  
14 marked as State's Exhibit 14. I'm going to hand it to you  
15 again. Do you recognize State's Exhibit 14?

16 A I recognize the people. I believe that was taken the  
17 same day.

18 Q All right. You didn't take that picture though?

19 A No.

20 Q And you're not in that picture?

21 A No.

22 Q You recognize all four individuals in that photograph  
23 though; correct?

1 A Yes.

2 Q You can just put that on the rail there.

3 Now, at some point, did you lose track of where this  
4 Nathan individual was?

5 A Yes. Because I had just met him. So I kind of  
6 wasn't really paying attention to like what he was doing and  
7 the cats got out at the time. So since I was friends with  
8 Mel, I was helping her find the cats because they jumped out  
9 the window. And I was like kind of concerned because she  
10 lived so close to the street that like maybe they would get  
11 out and someone would run them over.

12 Q And at some point then later on did Nathan come back  
13 to the apartment?

14 A Yes.

15 Q Did you see that or were aware of that?

16 A Not at the time. But like when I went back, we found  
17 the one black cat. We brought the cat inside. And he was  
18 already inside. So I didn't actually see him go inside.

19 Q All right. And at some point did the police arrive?

20 A Yes. It was probably roughly about ten, maybe ten,  
21 fifteen minutes after like we had all gotten in the house. So  
22 we just got in the house and then the cops were knocking on  
23 the door.

1 Q And at some point did the police start asking  
2 everyone in the apartment what their names were?

3 A Yes. They asked for their names and then if they  
4 could give their socials.

5 Q Did you give them your name?

6 A Yes. And my social.

7 Q Did you, at any point, ever hear Nathan than give his  
8 name as Nathan?

9 A Yes.

10 Q He told the police his name was Nathan?

11 A Yes.

12 Q Did you ever discover he went by another name?

13 A Just reading up on the news. That was about it.  
14 Because, like I said, I just met him for I'd say like 15,  
15 30 minutes that day. We had brief interaction.

16 Q Did you have a gun that day?

17 A No.

18 Q Did you rob Pizza Joe's?

19 A No.

20 Q And the person that you met on June 20th, 2017, and  
21 told you his name was Nathan and also told the police his name  
22 was Nathan, do you see him here in the courtroom today?

23 A Yes.

1 Q Could you please identify him?

2 A Right there. (Witness indicates.)

3 MR. BECKER: All right. Thank you. I have  
4 no further questions.

5 THE COURT: Cross.

6 MR. HARTWIG: Thank you.

7 CROSS EXAMINATION

8 BY MR. HARTWIG:

9 Q Morning, Stacie.

10 A Morning.

11 Q How long did you guys leave the apartment to look for  
12 the cat?

13 A I'd say roughly probably like 30 minutes to an hour.  
14 We were outside for what seemed like awhile.

15 Q Okay. Because somebody else came in and just  
16 testified before you that it was like ten minutes?

17 A I mean, I feel like it was longer than that.

18 Q Okay. But Austin was in the apartment when you left?

19 A Yes.

20 Q Right. And when you came back, he was in the  
21 apartment?

22 A Yes.

23 Q Right. And you never mentioned to police that he had

1 any money; correct?

2 A No.

3 Q All right. And do you recall giving a written  
4 statement to police?

5 A Yes.

6 MR. HARTWIG: All right. Your Honor, may I  
7 approach?

8 THE COURT: You may.

9 BY MR. HARTWIG:

10 Q I'm handing you what's been marked as Exhibit G I  
11 believe it is, Your Honor. Can you identify that for me?

12 A Yes. This was my statement.

13 (Whereupon, Defendant's Exhibit G, Witness  
14 Statement, was introduced for identification.)

15 Q All right. And when did you -- when did you write  
16 that out?

17 A This would have been the night it happened. Or  
18 rather the morning. Because it was like, I think the cops  
19 came about 11ish. And then we were there until like 2 in the  
20 morning was when we were allowed to be released. So it was  
21 like a lengthy process.

22 Q And when it came down to the part that you wrote  
23 regarding Austin's whereabouts that night, what's the last

1 sentence say? What was your indication?

2 A "I just met him today. I exchanged no words with  
3 him. He was there the whole night."

4 Q I didn't hear the last part?

5 A "I just met him today. I exchanged no words with  
6 him. He was there the whole night."

7 Q Okay. So back when it happened, which was awhile  
8 ago, your recollection was Austin was in the apartment the  
9 whole time?

10 A Uh-huh.

11 Q Yes?

12 A Yes.

13 MR. HARTWIG: Thank you. No further  
14 questions?

15 THE COURT: Redirect.

16 REDIRECT EXAMINATION

17 BY MR. BECKER:

18 Q You don't know where he was, though, when you were  
19 looking for the cats for half an hour or an hour or so?

20 A Correct.

21 Q He could have been gone?

22 A Yeah. Because for all I know, he might have still  
23 been in the apartment because I didn't see anybody leave

1 because we were looking for the cats.

2 MR. BECKER: Okay. Thank you.

3 THE COURT: Recross.

4 REXCROSS EXAMINATION

5 BY MR. HARTWIG:

6 Q Just to be clear, the Prosecutor got up and said,  
7 "While you were outside for 30 minutes to an hour," but you  
8 did testify on cross you're not sure about how long you were  
9 outside?

10 A I'm not a hundred percent positive because we were  
11 like -- I wasn't really paying attention to the time, but it  
12 was anywhere it seemed like 30 minutes to an hour.

13 Q Okay. And you never saw Austin with any money at any  
14 point?

15 A No.

16 MR. HARTWIG: Okay. Thank you.

17 THE COURT: You may step down. Thank you.

18 Call your next witness.

19 MR. BECKER: Thank you, Your Honor. State  
20 would call Justin Borawiec.

21

22

23

\* \* \*

JUSTIN BORAWIEC,

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BECKER:

Q Would you state your name for the record?

A Justin Borawiec.

Q There you go. That's better. Justin, how old are you?

A 17.

Q And when is your birthday?

A March 28 of 2000.

Q I want to direct your attention to June 20th of last year, which was 2017. On that date, did you go to Willow Lake and go swimming?

A Yes, sir.

Q And who was with you when you were there swimming?

A Leah, Donavon. I'm not really sure off the top of my head --

Q All right.

A -- who all was there.

Q Okay. Was an individual named Austin there?

A Yes, sir.



- 1 Q Okay. Had you known Austin previously?
- 2 A No, sir.
- 3 Q That was the first time you had met him?
- 4 A Yes, sir.
- 5 Q Eventually, did you all go back to an apartment in  
6 Cortland, Ohio?
- 7 A Not the same day I don't think, but yeah.
- 8 Q Not the same day?
- 9 A I don't know if I -- it might have been that night.  
10 I'm not really positive.
- 11 Q Yeah. In the evening hours, did you go back?
- 12 A Yeah.
- 13 Q So it's the same day, it's just now getting into the  
14 evening and night time hours?
- 15 A I think so, yes.
- 16 Q All right. And at some point, do you remember  
17 Melanie -- well, first of all, whose apartment was it?
- 18 A It was Melanie's.
- 19 Q And did you know Melanie?
- 20 A Yes, I was like best friends with her at the time.
- 21 Q And when you were at the apartment there -- so you  
22 knew where she lived?
- 23 A Yes, sir.

1 Q And it was in Cortland?

2 A Yes, sir, right off of Main Street.

3 Q Do you know what county that's in?

4 A Trumbull County.

5 Q And do you know how close it is to the Pizza Joe's?

6 A Right across the street, basically.

7 Q And you live in Cortland; right?

8 A Yes, sir.

9 Q Now, at some point, did Melanie's cats get out?

10 A Yes, sir.

11 Q Was it one of them or both of 'em?

12 A (No response.)

13 Q If you remember.

14 A I don't really remember, no, sir.

15 Q And do you remember who went out and started looking  
16 for the cats?

17 MR. OLSON: Objection, Your Honor.

18 Speculation. He said he didn't remember the cats missing.

19 THE COURT: No, I think he remembered that.

20 Overruled. Go ahead and answer.

21 BY MR. BECKER:

22 Q Do you remember anyone going out and looking for  
23 cats?

- 1 A I think a couple people did, yes.
- 2 Q Were you one of them?
- 3 A No.
- 4 Q Were you able to see Austin the entire evening?
- 5 A Not the entire evening, no, sir.
- 6 Q At some point, you didn't know where he was?
- 7 A Yes, sir. Correct.
- 8 Q And at some point, were you there when he returned to  
9 that apartment?
- 10 A Yeah. Yes, sir.
- 11 Q And was there a time shortly after that that the  
12 police arrived?
- 13 A Yes, sir. It was right after the fact.
- 14 Q And after the police arrived, do the police start  
15 asking everyone in the apartment what their names and socials  
16 and dates of birth were?
- 17 A Yes, sir.
- 18 Q Did you hear Austin tell them what his name was?
- 19 A Yes. He said it was Nathan.
- 20 Q Did you know that to be incorrect?
- 21 A No. No, sir, I did not.
- 22 Q Well, I thought you knew him as Austin?
- 23 A I knew him as Nathan. That's what I got introduced

1 to him as.

2 Q Oh, you knew him as Nathan?

3 A Yes, sir.

4 Q You now know that it's really Austin?

5 A Yes, sir.

6 Q So prior to the police arriving, you thought his name  
7 was Nathan?

8 A Yes, sir. Correct.

9 Q He told him his name was Nathan?

10 A Correct.

11 Q And as far as you knew, his name was Nathan?

12 A His name was Nathan, yes.

13 Q Now, did you rob the Pizza Joe's that night?

14 A No, sir.

15 Q Did you have a firearm that night?

16 A No, sir.

17 Q Did you have any large sum of money on you that  
18 night?

19 A No, sir, I did not.

20 Q The individual that you knew as Nathan and who you  
21 heard tell the police his name was Nathan, is he here in the  
22 courtroom?

23 A Yes, sir.

1 Q Can you please point to him?

2 A (Witness indicates.)

3 MR. BECKER: Let the record reflect the  
4 witness has identified the defendant. I have nothing further,  
5 Your Honor.

6 THE COURT: Cross.

7 MR. HARTWIG: Thank you.

8 THE WITNESS: Am I good to get up?

9 CROSS EXAMINATION

10 BY MR. HARTWIG:

11 Q How you doing, Justin?

12 A Good. How are you, sir?

13 Q Good. So you testified you met Austin on June 20th?

14 A What was that?

15 Q Did you testify that you met Austin on --

16 A Yes, sir.

17 Q -- June 20th?

18 A Yes, sir.

19 Q But you knew him on June 20th as Nathan?

20 A Yes, sir.

21 Q All right. Never talked to him before? This was it?  
22 This was the very first time?

23 A Yeah. I just got introduced to him. Barely a word

1 spoken.

2 Q Okay. Had you ever even heard of somebody named  
3 Austin before?

4 A No, sir.

5 Q An Austin Taylor, Austin Burke?

6 A No, sir.

7 Q Okay. When the police came over, you gave a written  
8 statement; correct?

9 A At Melanie's? Yes, sir.

10 Q I'm sorry?

11 A At Melanie's. Yes, sir.

12 Q At Melanie's apartment?

13 A Yeah. It was like a voice statement. Like they  
14 recorded my voice. Or they wrote it down maybe. It was in  
15 the passenger seat of a cruiser and they had me say my  
16 statement.

17 Q Okay. Give me just one moment.

18 A Okay.

19 MR. HARTWIG: Your Honor, may I approach?

20 THE COURT: You may.

21 BY MR. HARTWIG:

22 Q Justin, I'm going to hand you what's been marked as  
23 Defense Exhibit H.

1 A Okay.

2 (Whereupon, Defendant's Exhibit H, Witness  
3 Statement, was introduced for identification.)

4 Q Can you take a look at that and see if you can  
5 identify that for me?

6 A Yes, sir.

7 Q What is that?

8 A My statement.

9 Q All right. So that's a written statement?

10 A Yes, sir.

11 Q Okay. Now, at the time you gave that written  
12 statement, all the facts of what you observed that night were  
13 fresh in your mind; correct?

14 A Yes, sir.

15 Q All right. Now, would you agree with me -- well,  
16 hold on a sec. I'll withdraw that.

17 You had testified that you lost track of Austin while  
18 he was in the apartment?

19 A Yes, sir.

20 Q All right. You never mentioned that to police; would  
21 you agree with me?

22 A I don't know.

23 Q Okay. Well, read your statement.

1 A Okay.

2 Q Would you agree with me that what you wrote in your  
3 statement was he went to the bathroom?

4 A Okay.

5 Q At which time you wouldn't see him; correct?

6 A Yeah. I was on the couch.

7 Q Yeah, you were on the couch?

8 A Uh-huh.

9 Q And then he comes back to the living room; correct?

10 A Yes, sir.

11 Q All right. You don't mention anything in that  
12 statement that he leaves the apartment or returns from the  
13 apartment; would you agree with me?

14 A Yes, sir.

15 Q Okay. So you don't mention anything in there that  
16 you saw him return with money or anything like that; correct?

17 A No, sir.

18 Q All right. Now --

19 MR. HARTWIG: Approach again, Your Honor?

20 THE COURT: You may.

21 BY MR. HARTWIG:

22 Q I'm handing you what's been marked as Defense Exhibit  
23 I?



- 1 A Okay.
- 2 Q Excuse me. Was that G? This should be H. Take a  
3 look at that.
- 4 A Okay.
- 5 Q Starting at the top, can you identify -- well, let me  
6 ask you this. Do you have a Facebook page?
- 7 A Yes, sir.
- 8 Q And do you post on Facebook?
- 9 A Barely.
- 10 Q Okay. Does that indicate that that is a Facebook  
11 message from your account?
- 12 A Where at?
- 13 Q The highlighted section. Is that your name?
- 14 A Yes, sir.
- 15 Q All right. What's the date? The highlighted date?
- 16 A 6-17 of 2017.
- 17 Q All right. So that's June 17th, three days before  
18 the robbery at Pizza Joe's; would you agree with me?
- 19 A I don't remember when the robbery was.
- 20 Q Well, we're talking about the evening of June 20th.
- 21 A Okay.
- 22 Q That you wrote the statement?
- 23 A Okay. Yes, sir.

- 1 Q The day that you first met Austin?
- 2 A Yes, sir.
- 3 Q Right?
- 4 A Yeah.
- 5 Q Who is the first message to on June 17th from your  
6 Facebook account?
- 7 A Where does it say the message?
- 8 Q Would you agree with me that that's your name here?
- 9 A Yes.
- 10 Q It says, "Participant, Justin Nathaniel Borawiec";  
11 right?
- 12 A Correct.
- 13 Q And it's to an Austin Taylor?
- 14 A Okay.
- 15 Q Okay?
- 16 A Okay.
- 17 Q And that is on June 17th, 2017; would you agree with  
18 me?
- 19 A Sure. That's what it says, yeah.
- 20 Q Okay. So it appears you are sending a message. "You  
21 are now connected on Messenger."
- 22 A Yes.
- 23 Q Justin Borawiec with Austin Taylor?

1 A That's what it says, yes, sir.

2 Q Okay. That's on June 17th?

3 A Okay.

4 Q Subsequent messages --

5 MR. BECKER: Speak into the microphone.

6 THE WITNESS: Okay. I'm sorry.

7 MR. HARTWIG: All right. Thank you.

8 Q Okay?

9 A Okay.

10 Q Would you agree with me, then, there is messages on  
11 June 17th, June 19th, all from you to an Austin Taylor and  
12 from Austin Taylor to you?

13 A That's what it says, yes. Correct.

14 Q All right. So you were communicating with Austin  
15 Taylor prior to June 20th; correct?

16 A I don't remember any of this, no, sir.

17 Q Okay. You don't dispute that that's your Facebook?

18 A That is my Facebook, correct.

19 Q Right. And you don't dispute that it's showing that  
20 you're messaging with an Austin Taylor; correct?

21 A That's what it says, yes. Correct.

22 MR. HARTWIG: Okay. No further questions.

23 Thank you.

1 MR. BECKER: Your Honor, may I approach the  
2 witness? I didn't get a chance to see the exhibit.

3 MR. HARTWIG: Oh, I'm sorry.

4 THE WITNESS: I don't remember any of that,  
5 to be honest with you.

6 MR. BECKER: I have nothing further, Your  
7 Honor.

8 THE COURT: You may step down. We've  
9 gotten ourselves to the luncheon time. We'll take an hour  
10 lunch. It's right about noon. We'll come back at 1:00.

11 Do not discuss this case among yourselves, nor with  
12 anyone else. Do not form or express an opinion.

13 (Whereupon, a recess was had commencing at  
14 12:05 p.m. and concluding at 1:11 p.m.)

15 THE COURT: Mr. Becker, you may call your  
16 next witness.

17 MR. BECKER: Thank you, Your Honor. The  
18 state would call Melanie Engle.

19 \* \* \*

20 MELANIE ENGLE,  
21 having been duly sworn, was examined and testified as follows:  
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DIRECT EXAMINATION

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BY MR. BECKER:

Q Okay. Would you state your name for the record, please?

A My name is Melanie Engle.

Q Melanie, how old are you?

A I'm 20 years old.

Q And when is your birthday?

A 11-05 of '97.

Q So you were 19 in June of last year?

A Yes, sir.

Q All right. I want to direct your attention to June 20th of 2017. On that date, were you living in the city of Cortland, Ohio?

A Yes, sir.

Q Where were you living at?

A At 241 West Main Street, Apartment C.

Q How long had you been living there?

A Seven or eight months. Since October of last year.

Q Did you have any roommates?

A No.

Q Now, on that date, did you end up going to Willow Lake that day?

- 1 A Yes.
- 2 Q Who did you go to Willow Lake with?
- 3 A Justin Borawiec and Leah.
- 4 Q Do you know Leah's last name?
- 5 A I do not.
- 6 Q Do you know how they all got there?
- 7 A I -- I remember I drove Justin and Leah with me.
- 8 Q All right.
- 9 A And then I -- I think everyone just kind of met  
10 there.
- 11 Q Now, who would be "everyone met there?" Who would  
12 that be?
- 13 A Stacie, Nick, Austin, Kimmy, me, Justin, Leah and  
14 Donavon.
- 15 Q Who is Nick?
- 16 A Nick was a friend of ours.
- 17 Q All right. And so Nick was there swimming as well;  
18 correct?
- 19 A Yes.
- 20 Q And at the time, there was an individual named Nathan  
21 there?
- 22 A Yes.
- 23 Q Did you know him by any other name?

- 1 A I did not, no.
- 2 Q You just knew him as Nathan?
- 3 A Nate.
- 4 Q He introduced himself to you as Nate?
- 5 A Vaguely. Just like, "Nate" and "hello."
- 6 Q Okay. And after awhile, you guys were done swimming.  
7 And where did you go to?
- 8 A We went back to my apartment.
- 9 Q And that's the apartment in Cortland that you  
10 mentioned?
- 11 A Yes.
- 12 Q So who went back to the apartment in Cortland?
- 13 A It was everybody that had been at the -- at Willow  
14 Lake, but we took different cars.
- 15 Q All right. So now at your apartment in Cortland, who  
16 is all there?
- 17 A Justin, Leah, Donavon, Nate, Stacie, and Nick.
- 18 Q Now, at some point, I'm going to hand you what's been  
19 marked for purpose of identification as State's Exhibit 14 and  
20 ask if you recognize State's Exhibit 14? Do you recognize  
21 that?
- 22 A I do.
- 23 Q What is State's Exhibit 14?

1 A That is a picture of Leah, Donavon, myself, and Nate.

2 Q And where was that picture taken at?

3 A In my apartment.

4 Q And do you recall what day that picture was taken?

5 A I do not recall.

6 Q Well, if you just met Nate, would it have been taken  
7 that day?

8 A I believe it was taken earlier that day. Before we  
9 left.

10 Q All right. So before you went to Willow Lake, Nate  
11 was at your house?

12 A Yes.

13 Q Okay. And that's the first day you had ever met that  
14 Nate fellow; right?

15 A Personally? Or on a more personal level, I think  
16 yes. We had seen each other briefly at parties and other  
17 occasions.

18 Q That's the first time he had ever been to your house;  
19 right?

20 A Yes, that's the first time he had been at my house.

21 Q Or to your apartment. Okay. So I'm going to show  
22 this to the jury. This photograph was taken at sometime  
23 during the day?



- 1 A Yes.
- 2 Q And the individual you knew as Nate, he's to the left  
3 there?
- 4 A Yes.
- 5 Q And can you tell me, do you see what kind of pants  
6 he's wearing in that picture if I hand it to you?
- 7 A It looks like gray sweats.
- 8 Q Okay. And you had seen him throughout the day with  
9 gray sweatpants on?
- 10 A Yes.
- 11 Q All right. Donavon is the middle kid there?
- 12 A Yes.
- 13 Q Beside you. And that's Leah Smith?
- 14 A Yes, sir.
- 15 Q Do you recall who took that picture?
- 16 A I do not recall specifically, no.
- 17 Q But it had to have been taken June 20th because that  
18 was the first time he had ever been to your apartment, Nate?
- 19 A Yes.
- 20 Q So at some point, then, you all went back to your  
21 apartment, including Nate; correct?
- 22 A Yes.
- 23 Q After you're done swimming?

- 1 A Yes.
- 2 Q And you were there for quite awhile?
- 3 A Quite awhile? No. Maybe an hour.
- 4 Q All right. And at some point, one or both of your  
5 cats got loose?
- 6 A Yes. Both of my cats. When everybody -- I believe a  
7 couple people went outside to smoke and when they came back  
8 inside the cats got out.
- 9 Q Did people go out to look for the cats?
- 10 A Yes.
- 11 Q And who went out and looked for the cats? If you  
12 remember.
- 13 A Nick, Justin, Donavon, and I believe Nate.
- 14 Q Now, at some point, did you sort of lose track of  
15 where Nate was?
- 16 A Yes, because I was more concerned with knowing that  
17 Nick was upset.
- 18 Q And Nick was upset about what?
- 19 A That Donavon and I were talking.
- 20 Q And let me ask you. I guess the implication was Nick  
21 was trying to have a relationship with you?
- 22 A Yes.
- 23 Q And he was jealous of Donavon?

1 A Yes.

2 Q So what happened to Nick?

3 A He walked down to Burger King.

4 Q And do you recall approximately what time that was?

5 A I got a message from my sister at around -- I think  
6 just about 10 that he was in the lobby.

7 Q All right. Now, I'm going to show you what I'm going  
8 to mark for purposes of identification as State's Exhibit 54.

9 THE COURT: You had 54.

10 MR. BECKER: Oh, I'm sorry. Thank you.

11 THE COURT: It's 55.

12 MR. BECKER: 55.

13 BY MR. BECKER:

14 Q I'm going to ask you to look at State's Exhibit 55.

15 Do you recognize what that is?

16 A That's a message between me and my sister.

17 (Whereupon, State's Exhibit 55, Text Message, was  
18 introduced for identification.)

19 Q And what's your sister's name?

20 A McKenna.

21 Q And what time did she ask you that Nick was in Burger  
22 King?

23 A 9:58.

- 1 Q 9:58 on June 20th?
- 2 A Yes, sir.
- 3 Q And she basically said, "What's he doing here looking  
4 like a crack addict?"
- 5 A Yes.
- 6 Q Do you know Nick to be a crack addict?
- 7 A No, he was upset.
- 8 Q He was upset. So I'm going to publish for the jury  
9 State's Exhibit 55 and the relevant portion of that. "M" is  
10 for your sister McKenna?
- 11 A Sir.
- 12 Q I'm sorry. The "M" there is for your sister McKenna?
- 13 A Yes.
- 14 Q And this is your phone. This is an incoming text  
15 that you received from McKenna?
- 16 A Yes, sir.
- 17 Q And the date is June 20th at 9:58 p.m.; correct?
- 18 A Yes, sir.
- 19 Q So you were still at the house then; right?
- 20 A No. I had already left.
- 21 Q To go down to Burger King?
- 22 A Because I was looking for him.
- 23 Q All right.

1 A Because he hadn't come back and I knew he was looking  
2 for the cats.

3 Q All right. And is this a fair and accurate copy --  
4 or a picture of your cell phone and the message you had with  
5 your sister McKenna at 9:58 on June 20th?

6 A Yes, sir.

7 Q So when you got to Burger King, what happened?

8 A He was already eating his food. So we sat down and  
9 we talked for awhile and we waited until he was finished.

10 Q Then what did you do?

11 A And then I drove him home in Vienna.

12 Q I'm sorry. You drove him home where?

13 A To Vienna.

14 Q And when you got home to your apartment at 241C,  
15 Cortland, what happened as you got home?

16 A The police were all -- there was already police  
17 everywhere. And I -- I came home and I was just coming up my  
18 stairs and I had just, you know, just finished taking off my  
19 shoes and everything when we heard the knock on the door.

20 Q I just want to be specific. The police were not in  
21 your apartment or at your apartment, but they were outside of  
22 it?

23 A Yes.

1 Q All right. They didn't come and knock on the door  
2 until you arrived?

3 A Yes.

4 Q Then what happened?

5 A And then I was in the kitchen when they asked -- that  
6 they needed everybody's social and everything like that. And  
7 then they got everybody's socials and everything and then they  
8 left and I walked them out to the door. And then they came  
9 back probably three, four minutes later.

10 Q And what happened when they came back?

11 A They identified that somebody wasn't telling the  
12 truth.

13 Q And who was not telling the truth?

14 A Who I knew to be Nick. Not Nick. Nate.

15 Q Nate?

16 A Nate.

17 Q And that individual, is he here in the courtroom  
18 today?

19 A Yes, sir.

20 Q Can you please point to him?

21 A (Witness indicates.)

22 Q That's the individual that you recognize as Nate, the  
23 defendant in this case?

1 A Yes, sir.

2 Q All right. Now, Leah, I'm going to show -- or I'm  
3 sorry. I'm going to show you some photographs that have been  
4 marked 31 through State's Exhibit 37. I'm going to ask you to  
5 look at each one of these individually.

6 A (Witness complies.)

7 (Whereupon, State's Exhibit 35, Photo, was introduced for  
8 identification.)

9 Q Do you recognize those photographs?

10 A Yes.

11 Q What are they?

12 A Pictures of my room after it had been searched.

13 Q Was your room pretty messy or pretty neat?

14 A It was pretty messy, yes.

15 Q All right. And were there a lot of clothes and bags  
16 of clothes?

17 A Yes.

18 Q Things strewn around? All right. So I'm going to  
19 publish these very briefly. State's Exhibit 31, do you  
20 recognize that photograph?

21 A Yes, sir.

22 Q I'm sorry. What is that a picture of?

23 A A picture of my dresser towards the end of my bed and

1 miscellaneous things.

2 Q State's Exhibit 32?

3 A That is of my closet.

4 Q State's Exhibit 33?

5 A The heater, miscellaneous objects on the floor.

6 Q State's Exhibit 34?

7 A Baskets of clothing and my dresser in the background.

8 Q State's Exhibit 35?

9 A My bed and next to my bed the door. And the bed.

10 (Whereupon, State's Exhibit 35, Photo, was introduced for  
11 identification.)

12 Q Now with particular attention to this picture, I'm  
13 going to point out to you a pair of gray tennis shoes here.  
14 Are those your tennis shoes?

15 A No, sir.

16 Q But they're in your bedroom?

17 A Yes, sir.

18 Q Okay. And State's Exhibit 36, that's a close-up of  
19 those tennis shoes; correct?

20 A Yes, sir.

21 (Whereupon, State's Exhibit 36, Photo, was introduced for  
22 identification.)

23 Q And finally, State's Exhibit 37. Do you recognize



1 that?

2 A I do not, no.

3 (Whereupon, State's Exhibit 37, Photo, was introduced for  
4 identification.)

5 Q Do you recognize this basket?

6 A The basket, yes.

7 Q Do you recognize the bag in there?

8 A No.

9 Q All right. Now, at some point, all were required to  
10 give statements to the police? You also consented to them to  
11 search -- they asked if they could search your apartment;  
12 correct?

13 A Yes, sir.

14 Q And you signed a written consent to search? You  
15 didn't say, "No, get a search warrant," or, "Get out of here"?

16 A Yes, sir.

17 Q So you let them search?

18 A Yes, sir. I even asked if they wanted to bring in,  
19 you know, dogs or, you know, anything else to help.

20 Q Whatever they could to help?

21 A Yeah.

22 Q And during the night -- or during that search, they  
23 took those gray shoes? Or do you know what they took?

1 A I do not know what they took.

2 Q Okay. We'll talk to the police about what they took.

3 And then eventually you gave a statement. They were  
4 done and they left and the next day happened; correct?

5 A Yes.

6 Q Now, the next day, your mother came to help, I think,  
7 move you out of there?

8 A Yes, sir.

9 Q All right. There was a little bit of a dispute  
10 between you and your mother and some arguments that night  
11 about a fellow being arrested in your apartment as a suspect  
12 in something?

13 A Yes, sir.

14 Q Now, also at your apartment -- do you have a hobby or  
15 something that you like to do?

16 A I like to do crafting.

17 Q And did you have some of that crafting at your  
18 apartment during this time?

19 A Yes. I had wooden roses and a box full of  
20 miscellaneous glitter and glue and whatnot.

21 Q I'm going to show you what's been marked for purposes  
22 of identification as State's Exhibit 39 and ask if -- that is  
23 State's Exhibit 39. The two pictures at the top, do you

1 recognize those?

2 A I do.

3 Q What are those?

4 A Vases of flowers I had arranged.

5 Q And that's one of your hobbies? You like to do that?

6 A Yes.

7 Q All right. There's two pictures at the bottom of  
8 those; one has like a little baggie and the other one appears  
9 to have a gun in there; correct?

10 A Yes, sir.

11 Q Did you create those vases and flowers and then put  
12 in the gun and the baggie there?

13 A No, sir.

14 Q So when you created those, there was no gun or baggie  
15 in?

16 A No, sir.

17 Q All right. The next day, however, your mother looked  
18 at these; correct?

19 A Yes, sir.

20 Q And she discovered these items in there?

21 A Yes, sir.

22 Q And what did you do at that point when your mother  
23 discovered that?

1 A She handed me -- she had picked up the baggie and  
2 handed it to me. And I put it in my shirt and I walked out  
3 and I went and got the police officer. And the police officer  
4 came in and my mom had -- my mom picked the flowers up and  
5 showed that -- and showed them where she found them.

6 Q You didn't put those there?

7 A No.

8 Q Even though you created those arrangements?

9 A Yes.

10 Q All right. I'm going to show you -- and those are  
11 fair and accurate pictures of the arrangement of flowers and  
12 what was inside those pots?

13 A Yes.

14 Q Okay. I'm going to show you State's Exhibit 38, it  
15 is two photographs, and ask if you recognize those two  
16 photographs?

17 A I do not, sir.

18 (Whereupon, State's Exhibit 38, Photos, was introduced  
19 for identification.)

20 Q You --

21 A I remember it happening, yes.

22 Q Well, where are those two photographs at?

23 A In my kitchen.

- 1 Q All right. At the Cortland address?
- 2 A Yes, sir.
- 3 Q Okay. I'm going to publish this to the jury. Two  
4 photographs on State's Exhibit 38. All right. This is your  
5 kitchen at that apartment?
- 6 A Yes, sir.
- 7 Q There's a trash bag here. Do you recall where that  
8 trash bag was?
- 9 A Where the -- well, it looks -- if that's my hair box,  
10 then it would have been in the bathroom.
- 11 Q All right. And eventually it ended up here in the  
12 kitchen; correct?
- 13 A Yes, sir.
- 14 Q And this is your hair box?
- 15 A Yes, sir.
- 16 Q And I know you eventually or someone found some money  
17 in there; correct?
- 18 A Yes, sir.
- 19 Q Quite a large sum of money?
- 20 A Yes, sir. I was never told the actual amount.
- 21 Q Now, you didn't put that money in there, did you?
- 22 A No, sir.
- 23 Q And you didn't claim that money, did you?

1 A No, sir.

2 Q You didn't rob the Pizza Joe's, did you?

3 A No, sir.

4 Q Did you ever have a gun in your apartment?

5 A No, sir, never.

6 MR. BECKER: I have nothing further, Your  
7 Honor.

8 THE COURT: Cross.

9 MR. OLSON: Thank you, Your Honor.

10 CROSS EXAMINATION

11 BY MR. OLSON:

12 Q Good afternoon, Melanie. How are you?

13 A Good. How are you?

14 Q Okay. Melanie, you indicated that on June 20th of  
15 2017 you had gone to Willow Lake with Justin and Leah; is that  
16 correct?

17 A Yes, sir.

18 Q Do you recall what time that was?

19 A I cannot tell you, truthfully.

20 Q Okay. Was it in the morning? Afternoon? Do you  
21 recall that?

22 A I believe it was towards the morning.

23 Q Okay. And nobody else went with you; is that

1 correct?

2 A I don't -- I believe there was -- we all kind of met  
3 there.

4 Q When you say, "We all kind of met there," who is  
5 "we"?

6 A Nick and Stacie and me and who I knew as Nate and  
7 Kimmy.

8 Q Did you all leave from your house or did just the  
9 three of you go and then Nate -- the person you know as Nate  
10 and Nick meet you there?

11 A I believe we split off in the morning and then went  
12 back because Kimmy and I think Nate didn't have their bathing  
13 suits or something along those lines. But I cannot recall  
14 them being in the car when we went in to Willow Lake.

15 Q Okay. So is it your testimony here today that the  
16 person that you knew as Nate was at your house in the morning?

17 A Yeah. Yes.

18 Q Okay. How did he get there? Do you know?

19 A I picked Kimmy and him up.

20 Q And do you know what time you picked them up?

21 A No, sir. I couldn't tell you.

22 Q Melanie, you have a -- and, again, your testimony is  
23 you never met -- you never knew Austin personally before that

1 date? Saw him at parties, but really didn't know him; is that  
2 correct?

3 A Yes.

4 Q Didn't know what his name was?

5 A No.

6 Q What was the first time you were introduced to him  
7 and it was identified that his name was Nate?

8 A I think the first time that I -- it was at a --  
9 Kimmy's house at a lake.

10 Q Okay. And do you remember when that was?

11 A I do not remember the exact date, no.

12 Q Okay. But as of the 20th of June, you still knew him  
13 as Nate; is that your testimony?

14 A Yes, sir.

15 Q You have a Facebook account; is that correct?

16 A Yes, sir.

17 Q Okay. I'm going to show you what is marked as  
18 Defendant's Exhibit J. At the top of that document, does it  
19 identify that that's a Facebook Messenger program?

20 A Yes.

21 (Whereupon, Defendant's Exhibit J, Facebook  
22 Messages, was introduced for identification.)

23 Q Okay. And does it show who the participants are?



1 A Yes.

2 Q Okay. And can you identify who those participants  
3 are?

4 A Myself and Austin Taylor.

5 Q Okay. And who do you know as Austin Taylor?

6 A I knew him as Nate.

7 Q On Facebook? So -- and let's get an idea of how  
8 Facebook Messenger works. It's through the Facebook program;  
9 is that correct?

10 A Yes, sir.

11 Q Okay. And when you get on Facebook, you can become  
12 friends with somebody; is that correct?

13 A Yes, sir.

14 Q And then they have their own messenger service on  
15 that program that you can communicate back and forth?

16 A Yes, sir.

17 Q It's almost like text messaging; you'd agree?

18 A Yes, sir.

19 Q And when you become friends with somebody and you  
20 send out this request, you know what their name is; correct?

21 A Yes, sir.

22 Q And on that document there, it shows that the  
23 person's name was Austin Taylor; is that correct?

- 1 A Yes, sir.
- 2 Q And what date did you become friends or what date are  
3 you communicating with Austin Taylor on that document?
- 4 A The 20th.
- 5 Q Is there a date of the 19th?
- 6 A Yes.
- 7 Q 6-19 of 2017; is that correct?
- 8 A Yes, sir.
- 9 Q Okay. And so we know that as of 6-19 of '17 you were  
10 communicating with Austin Taylor?
- 11 A Facebook, you can put what's not your real name.
- 12 Q Okay.
- 13 A I had automatically -- I had assumed that his name  
14 was Nate but that he was going by a nickname. Or maybe his  
15 nickname was Nate.
- 16 Q Okay. Now, you also on the date of this incident,  
17 you made a written report at approximately 12:50 in the  
18 morning; is that correct? To the police officers.
- 19 A The following day? So the 21st?
- 20 Q Oh, yes. It would be the 21st.
- 21 A Yes, sir.
- 22 Q Okay. Do you recall the written statement that you  
23 made?

1 A Not word for word, no.

2 Q Okay. If I'd give it to you, would it refresh your  
3 recollection of what was on there?

4 A Yes, sir.

5 Q I'm now showing you what's been marked as Defendant's  
6 Exhibit K. Can you review that document?

7 A (Witness complies.)

8 (Whereupon, Defendant's Exhibit K, Witness  
9 Statement, was introduced for identification.)

10 A Excuse me. What?

11 Q Review the document. Do you recognize it?

12 A Yes.

13 Q Okay. And is that the written statement that you  
14 made on the 21st at 12:50 a.m.?

15 A Yes.

16 Q Okay. And in that written document does it say that  
17 you went to Willow Lake around 11 or 12?

18 A Yes, sir.

19 Q And after you went to Willow Lake it indicates that  
20 you brought Donavon to McDonald's; is that correct?

21 A Yes, sir.

22 Q And Donavon had his orientation that day?

23 A Yes, sir.

1 Q Okay. After orientation, you brought Donavon back to  
2 Willow Lake; is that correct?

3 A Yes, sir.

4 Q And then it indicates in there when you got to Willow  
5 Lake your group was joined up with a person that you knew as  
6 Nate; is that correct?

7 A Yes, sir.

8 Q Okay. So that didn't indicate that Nate was at your  
9 house earlier in the day and then traveled to Willow Lake with  
10 you guys; is that correct? It indicates he joined with you  
11 there?

12 A Yes, sir.

13 Q Okay. You continued to go swimming while you were  
14 there; is that correct? Is that what it states?

15 A Yes, sir.

16 Q You were there until Willow Lake closed; is that  
17 correct?

18 A I left to go back to work.

19 Q Okay.

20 A And then they let me leave early. So I went back to  
21 Willow Lake.

22 Q Okay.

23 A And then we left.

- 1 Q Okay. And it says that you left after closing of  
2 Willow Lake; is that what it says?
- 3 A Yes.
- 4 Q Okay. Do you recall the time that Willow Lake  
5 closes?
- 6 A I do not recall what time it closes.
- 7 Q Okay. Is it in the early evening hours?
- 8 A I believe so.
- 9 Q After you go to Willow Lake and it closes, you leave;  
10 is that correct?
- 11 A Yes, sir.
- 12 Q Now this person that you know as Nate is with you?
- 13 A Yes, sir.
- 14 Q You go to his house?
- 15 A Yes, sir.
- 16 Q Okay. He gets some snacks?
- 17 A Yes, sir.
- 18 Q And then you travel to your house; is that correct?
- 19 A Yes, sir.
- 20 Q Do you recall what time that you get to your house?
- 21 A I do not recall exactly what time.
- 22 Q Okay. Was it is dark out by then, like dusk?
- 23 A Yes.

1 Q Okay. You indicate in there that you all took  
2 showers?

3 A Yes.

4 Q Okay. So -- including the guy that you knew as Nate,  
5 he took a shower at your house; is that correct?

6 A Yes, sir.

7 Q At some point in time your friend Nick leaves the  
8 apartment; is that correct?

9 A Yes, sir.

10 Q You indicated he became upset because you were  
11 talking to Donavon?

12 A Yes, sir.

13 Q Do you know what time he left your house?

14 A Probably about 15 minutes before I had went looking  
15 for him.

16 Q Okay.

17 A So at about -- probably about 9:30.

18 Q But you can't be exact as to the time today?

19 A No, sir.

20 Q And while he was -- when he left, you continued to  
21 text him; is that correct?

22 A Text Nick?

23 Q Yes.

- 1 A Yes.
- 2 Q He told you he'd talk to you later, he'd see you on  
3 Saturday?
- 4 A Yes, sir.
- 5 Q You told him you were going to come pick him up?
- 6 A Yes, sir.
- 7 Q Is that correct?
- 8 A Yes, sir.
- 9 Q He said, "No, leave me alone"?
- 10 A Yes, sir.
- 11 Q He said he was fine? "I'll talk to you later"?
- 12 A Yes, sir.
- 13 Q And then at approximately 9:58 is when your sister  
14 text you and said that Nick was at the Burger King looking  
15 like a crack addict; is that correct?
- 16 A Yes, sir.
- 17 Q How far away is Burger King from your house?
- 18 A Maybe a minute drive. It's just down the road.
- 19 Q A minute drive. How far of a walk?
- 20 A Of a walk? Probably about 10 to 15 minutes.
- 21 Q You would agree that in that document, that written  
22 statement that you made, before Nick left, you did not  
23 identify any other person leaving; is that correct? No one

1 else left from your apartment that's identified in that  
2 document, the written statement?

3 A Yes.

4 Q Then you indicated that you go to the Burger King,  
5 you pick up Nick?

6 A Yes.

7 Q He was eating at that point in time?

8 A Yes.

9 Q So if it's a minute drive, you got there right around  
10 10, we'll assume?

11 A Yes, sir.

12 Q He got there at 9:58. You immediately went when you  
13 talked to McKenna?

14 A Well, I was already out looking for him.

15 Q Okay.

16 A So when I texted him, I probably got there about  
17 10:04, 10:05.

18 Q Okay. Yeah. And then you sat there, let him eat and  
19 then you drove him home?

20 A Yes, sir.

21 Q Where did he live?

22 A In Vienna.

23 Q Okay. How far of a drive was it from Vienna -- from



1 Cortland Burger King to Vienna? Do you recall?

2 A Probably about 20 minutes.

3 Q Okay.

4 A I was on -- my mom pulled up the GPS and showed the  
5 officers.

6 Q Okay. So 20 minutes to Vienna, 20 minutes back?

7 A Yes, sir.

8 Q Okay. And in your written statement it indicates  
9 that when you got back to your house, you went and did your  
10 makeup; is that correct?

11 A Yes, sir. I got up and they had said, "Do you want  
12 to go?" So I immediately walked to my bathroom and did my  
13 makeup.

14 Q And then shortly after that the cops were there; is  
15 that correct?

16 A Yes, sir.

17 Q What time did the cops arrive?

18 A What time exactly, I can't say.

19 Q Do you recall roughly what time it was? Was it after  
20 10:30? Was it 11? Just so we know a time frame.

21 A I -- they were rushing me to go, so I had walked up  
22 the stairs and they said, "We should go to a hotel or we  
23 should go to the hookah lounge or something."

1 Q Who said that to you?

2 A Who I knew as Nate and just that it was kind of a  
3 group decision.

4 Q Okay. Did you ever see this person that you knew as  
5 Nate with any cash on him, large amounts of cash?

6 A No. I was never alone with him after I got home.

7 Q Okay. Did you ever see this person named Nate with a  
8 firearm in his possession?

9 A Not that I -- no.

10 Q Okay. And you indicated in your report when you got  
11 there everybody was there; is that correct?

12 A Yes.

13 Q Okay. And nobody was acting suspicious or looking  
14 different than when you had left?

15 A No. That's why I didn't know what was going on.

16 Q And here today you cannot tell this jury that you  
17 ever witnessed the person that you knew as Nate leave your  
18 apartment?

19 A Other than to look for my cats, no.

20 Q Okay. Do you recall what time you went to look for  
21 your cats?

22 A I do not recall what time it was.

23 Q Was it -- was that before or after Nick left?

1 A That was before Nick left. Because Nick left while  
2 they were looking.

3 Q Did Nick go out to help you look?

4 A Yes. Nick went out to help look.

5 Q Okay. And then after you -- do you know how long it  
6 took you to look for the cats?

7 A No, I don't remember, but I know that -- I believe  
8 Justin was still outside. Justin had just come inside  
9 whenever he -- and he told me that Nick had walked away.

10 Q Did everybody, after looking for your cats, go back  
11 into your apartment?

12 A I think they came in to talk for a little bit, but  
13 they might have left afterwards. I can't say for certain  
14 though.

15 Q Okay. Because eventually you left to go look for  
16 Nick?

17 A I -- yeah. Once I heard that he had left, I left.

18 Q Now, you also made a second statement at 3:49 on the  
19 21st as well; is that correct?

20 A Yes, sir.

21 Q In that statement -- is that your statement as you  
22 remember it?

23 A Yes, sir.

1 Q And in that statement you would agree with me that  
2 you indicated that you were the one that moved that trash bag  
3 we saw on the dishwasher or whatever that may have been and  
4 hung it there?

5 A Yes. I had moved all of my trash bags into the  
6 kitchen.

7 Q Okay. So you did that yourself?

8 A Yes, sir.

9 Q Okay. I just wanted to be clear with that.

10 And, again, the bullets that were found in that  
11 little satchel, you did not find that; you're saying your mom  
12 found that?

13 A Yes, sir.

14 Q And you do not know who put that there?

15 A No, sir.

16 Q Okay. You also found a firearm; is that correct?

17 A Yes, sir.

18 Q And you do not know who put that there?

19 A No, sir.

20 Q Correct?

21 MR. OLSON: One moment, Your Honor.

22 I have no further questions.

23 THE COURT: Redirect.

1 MR. BECKER: Very briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. BECKER:

4 Q Melanie, you were gone to Burger King prior to the  
5 robbery happening at Pizza Joe's; correct?

6 A Yes, sir.

7 Q And by implication, then, Nick was nowhere near there  
8 when the robbery at Burger King happened?

9 A Pizza Joe's, but yes.

10 Q Pizza Joe's?

11 A Yes, sir.

12 Q And you have no idea who or if anybody left your  
13 apartment from the time you went to Burger King you said at  
14 about 10:04 or 10:05 until you got back from taking him out to  
15 Vienna which you said was maybe 11:00 or so?

16 A Well, I actually left my house prior to my sister  
17 texting me.

18 Q Okay.

19 A So from --

20 Q 9:50?

21 A At least 9:58, but probably about 9:55 I wasn't at my  
22 apartment.

23 Q And you got back what time, do you think, from

1 Vienna?

2 A I want say it was 10:45, 10:50.

3 Q So you have no idea if anyone would have left or  
4 anyone came in and out of your apartment?

5 A No, sir.

6 Q Now, you were asked about the trash bag that got  
7 moved. You moved that trash bag with your hair dye in it that  
8 eventually had the money in it; correct?

9 A Yes, sir.

10 Q Okay. When did you do that?

11 A Right after the -- when the police officers were --  
12 had just left.

13 Q All right.

14 A We were collecting up the trash and stuff.

15 Q All right.

16 A So I had gone to the bathroom and I -- while I was in  
17 there, I pulled -- I got the trash from in the bathroom and  
18 moved it into the kitchen with another trash bag.

19 Q Did you look in there very carefully?

20 A No.

21 Q You just grabbed it and put it in the kitchen?

22 A Yes, sir.

23 Q And, again, you didn't have any money? You wouldn't

1 have put any money in there?

2 A No, sir.

3 MR. BECKER: All right. Thank you.

4 THE COURT: Recross.

5 MR. OLSON: Nothing further, Your Honor.

6 THE COURT: You may step down.

7 Call your next witness.

8 MR. BECKER: Thank you, Your Honor.

9 Stephanie Taylor.

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STEPHANIE TAYLOR,  
having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BECKER:

Q Would you state your name for the record, please?

A Stephanie Taylor.

Q Stephanie, where do you live at?

A In Cortland, Ohio.

Q And do you have any children?

A I do.

Q What are their names?

A All of them?

Q Yeah.

A Let's see. I have Glen, Cassi, James, Zachary,  
Melanie, McKenna, Aleah and Gabriella.

Q That's a full house.

A Yes, it is.

Q Your daughter, Melanie, in June of 2017, was she not  
living with you?

A She was not.

Q Do you recall where she was living at in June of  
2017?



1 A She was living on, I believe that's High Street in  
2 Cortland.

3 Q All right. Do you know what county that's located  
4 in?

5 A Trumbull.

6 Q Now, on June 20th, 2017, did something happen in the  
7 downtown area of Cortland and you became concerned for your  
8 daughter?

9 A I did.

10 Q And what did you find out had happened?

11 A I received a text message from one of my daughters  
12 saying that Pizza Joe's had been robbed, which is right across  
13 the street from the apartment. And I texted her and said,  
14 "Don't go home. I want you to come here and stay here  
15 tonight. They haven't found whoever did this."

16 Q You knew at that time she was not at her apartment?

17 A I believe I did. Or I just assumed she wasn't at  
18 home yet.

19 Q Now, she actually went back to the apartment;  
20 correct?

21 A I believe she did. She said she did.

22 Q All right. And then at some point the next day or  
23 early that next morning you, I think, decided that

1 Stephanie -- or I'm sorry -- that Melanie needed to come back  
2 home?

3 A Yes.

4 Q All right. So you went to the apartment. When is  
5 the first time you went to the apartment after the robbery?

6 A It was lunchtime the following day and I asked her  
7 where she was. And she was driving around with -- doing some  
8 errands. And I said, "You have to answer me. Where are you?"  
9 And she wasn't answering me very quickly. And so I pulled her  
10 up on GPS and I drove to where she was and sat in the parking  
11 lot while she was at Giant Eagle and waited for her to come  
12 out. And she said that she was hungry. We went and ate at  
13 McDonald's and then she received a phone call from an  
14 investigator saying that they wanted to go back into her  
15 apartment and look for whatever they hadn't found yet.

16 Q All right. And you met the officers back at her  
17 apartment then?

18 A Yes.

19 Q And she had to unlock the door and let them in?

20 A Yes.

21 Q Now, you were in the apartment while the officers  
22 continued to search the apartment. Did you find something  
23 after they left or as they were leaving after they had looked?

1       A           At that point, I had asked if I could clean. And I  
2       had a garbage bag and I was just sweeping my arm across any  
3       flat surface into a trash bag. And I went into the kitchen  
4       and there were two vases on the floor of wooden roses and I  
5       picked up the roses out of one container and there was a --  
6       something black, a bag looking thing at the bottom. I picked  
7       it up and it was heavy. Squeezed it. And there were bullets.  
8       And then I called to my husband and said, "I have -- there's  
9       bullets." And so he said, "Don't touch anything." And then  
10      he went and got the officers. And as he was walking down to  
11      get the officers, I lifted the roses and there was a gun in  
12      the other --

13     Q           You didn't find the gun itself; you found the  
14     bullets?

15     A           I found the bullets in the right-hand container and  
16     then on the left, the left flower pot, I lifted the roses and  
17     there was a gun.

18     Q           So both of them you lifted out?

19     A           Uh-huh.

20     Q           Okay. I'm going to show you what's been marked for  
21     purposes of identification as State's Exhibit 39. There's  
22     actually four photographs there. Can you identify the four  
23     photographs in State's Exhibit 39?

1 A Those are the roses and the flower pots.

2 Q All right. I'm going to hand you what's been marked  
3 for purpose of identification as State's Exhibit Number 5 and  
4 ask you if you recognize the contents of State's Exhibit  
5 Number 5?

6 A That looks like it.

7 Q And you squeezed this and you said there's bullets  
8 inside there?

9 A Uh-huh.

10 Q That appears to be what you found?

11 A Yes.

12 Q In one of those flower vases?

13 I'm going to hand you what's been marked for purposes  
14 of identification as State's Exhibit Number 1. Does that look  
15 like what you observed in the other flower pot?

16 A I could only see it from the end.

17 Q Okay.

18 A So --

19 Q All right. But you then called the police; is that  
20 correct?

21 A Oh, yes. My husband came up and was like, "Don't  
22 touch anything." And they came right up.

23 MR. BECKER: All right. I have no further

1 questions, Your Honor.

2 THE COURT: Cross?

3 MR. OLSON: We have nothing.

4 THE COURT: You may step down. Thank you.

5 Call your next witness.

6 MR. BECKER: Thank you, Your Honor.

7 \* \* \*

8 SHAWN MARX,

9 having been duly sworn, was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BECKER:

12 Q Shawn, if you could pull that microphone a little bit  
13 closer to you.

14 Would you state your name for the record?

15 A Shawn Marx.

16 Q Shawn, where do you live at?

17 A 260 West Main.

18 Q West Main?

19 A In Cortland.

20 Q All right. Is that -- do you know what county that's  
21 in?

22 A Trumbull.

23 Q Shawn, how long have you lived there?

1 A Oh, I moved in in the end of May.

2 Q Of what year?

3 A This year. Or last year. '17.

4 Q 2017?

5 A Uh-huh.

6 Q I want to direct your attention to June 20th, 2017,  
7 in the evening hours. Were you outside of your apartment at  
8 some point around 10:15 or so?

9 A Yeah, I was on the stoop smoking a cigarette.

10 Q And did something unusual happen as you were out on  
11 the stoop?

12 A Yeah. Somebody ran out of Pizza Joe's and ran right,  
13 right to me.

14 Q Now, where is Pizza Joe's in relation to where you  
15 were -- your apartment is and your stoop where you were  
16 smoking?

17 A If I'm sitting on my stoop, it's to the left two  
18 buildings up about a hundred yards.

19 Q All right. And do you recall how this individual was  
20 dressed?

21 A In dark clothing. He was shuffling around. He ran  
22 behind a pickup truck and he was shuffling around doing  
23 something. And he took off stuff and I could see his face.

1 He looked at me, I looked at him, and he ran.

2 Q And at this point, did that person have a mask on or  
3 anything?

4 A Not when I saw him, no.

5 Q All right. And were you able to identify who that  
6 was?

7 A Yeah.

8 Q Who was it?

9 A It's the defendant.

10 Q All right. And would you point the defendant out in  
11 this case?

12 A Right there (Witness indicates.)

13 Q How close to you -- or how close to him were you?

14 A From me to you.

15 Q About maybe 20 feet?

16 A Under a street light.

17 Q All right. And did you tell the police you  
18 identified him at that time?

19 A No. I just -- I didn't know where he went. I was  
20 worried about him trapping him in. I went around the other  
21 side of the building.

22 Q Where did he go?

23 A He shot in-between a house and the one building. He

1 ran through that. And I went around the building to make sure  
2 he didn't get across 46.

3 Q Okay. So for the jurors that may not know, you're on  
4 the same side as Pizza Joe's?

5 A Right.

6 Q He went across the street?

7 A Correct.

8 Q And what is across the street?

9 A Daybreak Music.

10 Q And did he go to what would be the west side of  
11 Daybreak Music, or to the east side of Daybreak Music?

12 A He went to the left side. I don't know which one is  
13 the east side.

14 Q All right. The left side. If you're looking at  
15 Daybreak --

16 A It would be the left side. There's a parking lot. I  
17 went to the right side.

18 Q And did you ever see him come out that way?

19 A No.

20 Q You don't know where he went, though, from there?

21 A No.

22 Q You told the police you had seen him run out?

23 A No. I haven't seen him around. All I seen him was



1 running out that night.

2 Q Yeah, but -- what I'm saying is you told the police  
3 you saw him come out of Pizza Joe's?

4 A Oh, yeah, absolutely.

5 Q Did you see anything in his hands?

6 A No, but he had something in his pocket. It was  
7 shiny. I assumed it was a pistol or something.

8 Q But you couldn't see it?

9 A No.

10 Q All right. The individual you saw that night, is he  
11 here in the courtroom?

12 A There he is right there.

13 Q All right. That's the individual?

14 A I said he had a really bad haircut. That was my --

15 Q Now, you are wearing glasses, I see? Were you  
16 wearing your glasses at that time?

17 A Yeah.

18 MR. BECKER: All right. Thank you,  
19 Mr. Marx.

20 THE COURT: Cross.

21 CROSS EXAMINATION

22 BY MR. OLSON:

23 Q Mr. Marx, on the date of the incident on the 20th and

1 following into that night, you had to give a written  
2 statement; is that correct?

3 A A what?

4 Q A written statement to the police officers?

5 A Yeah.

6 Q And you would agree with me that the written  
7 statement that you provided indicated that the man was about 6  
8 feet tall; correct?

9 A Right around there.

10 Q Had short dark hair?

11 A Uh-huh.

12 Q Correct. Blue jeans? Was wearing blue jeans?

13 A Something dark. So I assumed blue jeans.

14 Q Well, you said blue jeans.

15 A Okay.

16 Q Is that what -- I mean, I can show it to you.

17 A Sure. Sure.

18 Q He was wearing a red shirt?

19 A Uh-huh.

20 Q Carrying a sweatshirt; is that correct?

21 A It's been a long time, but yeah, go ahead.

22 Q And wearing tennis shoes? Tennis shoes?

23 A Uh-huh. Yeah.

1 Q You would agree with me that nowhere in your written  
2 statement did you say that you saw a man with tattoos on his  
3 face?

4 A I didn't need to.

5 Q You didn't need to?

6 A Why would I say that? They already had the picture  
7 of it. He ran right up to me.

8 Q I'm going to show you Exhibit M. Are you familiar  
9 with that document?

10 A Yeah. Pardon me.

11 (Whereupon, Defendant's Exhibit M, Police  
12 Report, was introduced for identification.)

13 Q Mr. Marx, are you familiar with that document?

14 A It's a police report.

15 Q Okay. And it shows your name on it?

16 A Uh-huh.

17 Q Shows your signature at the bottom?

18 A Uh-huh.

19 Q And, again, when the officers came to you, they asked  
20 you to provide all of the details that you knew about that  
21 evening?

22 A Uh-huh.

23 Q Is that correct? And you would agree with me that

1 nowhere on that document --

2 A No, it doesn't.

3 Q Please let me ask the question. You would agree with  
4 me that nowhere on that document does it say that the man ran  
5 out of the store, came up to you and you noticed that he had  
6 tattoos on his face?

7 A No.

8 MR. OLSON: No further questions.

9 THE COURT: Redirect.

10 MR. BECKER: Nothing further, Your Honor.

11 THE COURT: You may step down. Thank you.

12 Call your next witness.

13 MR. BECKER: Thank you, Your Honor.

14 \* \* \*

15 BRITNI WILLIAMS,

16 having been duly sworn, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. BECKER:

19 Q Would you state your name for the record, please?

20 A Britni Williams.

21 Q Britni, how old are you?

22 A 18.

23 Q Britni, I want to direct your attention to June 20th,

1 2017. Where were you working at in June of 2017?

2 A Cortland Pizza Joe's.

3 Q How long had you worked there?

4 A About eight months.

5 Q Now, a little after 10:00 that night, did something  
6 unusual happen at Pizza Joe's?

7 A Yes.

8 Q What happened?

9 A We were closing and a man came in demanding money.

10 Q And did you see a gun?

11 A Yes.

12 Q Can you describe the gun?

13 A It was small, silver. That's about it.

14 Q All right. Didn't really get a lot of details with a  
15 gun pointed at you?

16 A No.

17 Q I'm going to show you what has been marked for  
18 purposes of identification as State's Exhibit Number 30. And  
19 I'm going to ask if you can identify what's going on in  
20 State's Exhibit 30. Do you recognize this location?

21 A Yes. That's the lobby.

22 (Whereupon, State's Exhibit 30, Video, was introduced for  
23 identification.)

- 1 Q And this location is in what city?
- 2 A Cortland.
- 3 Q Do you know what county it's in?
- 4 A Trumbull.
- 5 Q I'm going to stop this right here. Who is the other  
6 lady that's in the store with you?
- 7 A Jamie.
- 8 Q All right. And where were you at when you came out?
- 9 A I was in the kitchen cleaning.
- 10 Q Why did you have to come out?
- 11 A Because she did not know how to open the register.
- 12 Q Only you knew how to open the register?
- 13 A She freaked out and did not remember.
- 14 Q Okay. What did you do after he left?
- 15 A We went to a phone and called the police.
- 16 Q Now, were you able to get a look at much of that  
17 person's face?
- 18 A No.
- 19 Q Is that a fair and accurate copy of the events as  
20 they happened after 10:00 on June 20th, 2017?
- 21 A Yes.
- 22 Q And you saw yourself in there opening the register?
- 23 A Yes.

1 Q Do you have any idea how much money you gave that  
2 individual?

3 A Let's see.

4 Q If you don't know, it's okay.

5 A I don't.

6 Q The better person would be -- would be Stephanie  
7 Kerstetter who the owner or manager there?

8 A Yes.

9 Q Okay. And she's out in the hallway?

10 A (Witness nods head.)

11 Q Thank you.

12 THE COURT: Cross.

13 MR. HARTWIG: Thank you, Your Honor.

14 CROSS EXAMINATION

15 BY MR. HARTWIG:

16 Q Hi, Britni. It took about two or three minutes, this  
17 whole ordeal, or less?

18 A I can say probably less.

19 Q Less. Okay. You had indicated in your written  
20 statement, I believe, that he was in for at least two or  
21 three minutes, but we have the video so we know the timing of  
22 it?

23 A Yeah.

1 Q It might have seemed a little longer, but it was  
2 pretty quick?

3 A Yes.

4 Q And you didn't give a lot of details because you  
5 couldn't see his face; right?

6 A No.

7 Q What you had indicated was a man walked in, had a  
8 gun, had a ski mask; right?

9 A Uh-huh.

10 Q You said he was tall, wearing sweat pants and a  
11 hoodie; right?

12 A Yes.

13 Q Would you agree with me after watching the video that  
14 he wasn't wearing gloves?

15 A Yes.

16 Q He had a gun in his right hand and when he asked for  
17 the money -- he comes up and puts both hands out and says,  
18 "Put it in here"; is that what he said?

19 A Yes.

20 Q And you didn't indicate to the police that you  
21 noticed that he had tattoos on either hand?

22 A I didn't notice that.

23 Q You didn't notice? All right.



1 MR. HARTWIG: All right. No further  
2 questions. Thank you.

3 THE COURT: Redirect.

4 MR. BECKER: No, sir.

5 THE COURT: You may step down. Thank you.  
6 Call your next witness.

7 MR. BECKER: Stephanie Kerstetter.

8 \* \* \*

9 STEPHANIE KERSTETTER,  
10 having been duly sworn, was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. BECKER:

13 Q Would you state your name for the record, please?

14 A Stephanie Kerstetter.

15 Q Stephanie, do you own any businesses here in Trumbull  
16 County?

17 A I general manage three businesses.

18 Q I'm sorry. You're the general manager of a business  
19 here in Trumbull County?

20 A Yes.

21 Q What business is that?

22 A Cortland, Lordstown and Champion.

23 Q For what business is it?

- 1 A Pizza Joe's.
- 2 Q Okay. I'm sorry.
- 3 A Sorry.
- 4 Q You might have said that. I might not have heard.  
5 June 20, 2017, was the Cortland Pizza Joe's robbed?
- 6 A Yes, it was.
- 7 Q And were you notified that it had been robbed?
- 8 A Yes, I was.
- 9 Q Did you go out there that night?
- 10 A I did.
- 11 Q Why did you go out there?
- 12 A Because they were robbed at gunpoint so...
- 13 Q As a manager, you felt it was your responsibility?
- 14 A Oh, absolutely.
- 15 Q And at some point did you determine a dollar amount  
16 of money that was missing?
- 17 A I did.
- 18 Q How did you do that?
- 19 A At the end of the night, there's a report that's run.  
20 And we put the numbers in the computer and it comes out with a  
21 number.
- 22 Q And were you able to determine the dollar amount of  
23 money that was taken on June 20th, 2017?

1 A I was.

2 Q How much was that?

3 A \$775.

4 Q Even?

5 A Yes.

6 Q Now, is it possible it could be off a dollar or two?

7 A Absolutely.

8 Q But it wouldn't have been off 230 or so dollars?

9 A No, sir.

10 Q Okay. So if there was \$230 missing, it's missing?

11 A Right.

12 Q Okay. That location is located in what county?

13 A Trumbull County.

14 MR. BECKER: Okay. I have nothing further.

15 THE COURT: Cross?

16 MR. HARTWIG: No cross, Your Honor.

17 THE COURT: You may step down. Thank you.

18 MR. BECKER: Your Honor, can we approach

19 real briefly?

20 THE COURT: You may.

21 MR. BECKER: Dr. Germaniuk is the last

22 witness, and I don't know how long you guys are going to be

23 with him. I don't know if you just want to take a break now

1 and finish him up. Or if you guys are not going to be too  
2 long with him, we can just keep chugging.

3 MR. HARTWIG: I don't think we're going to  
4 real long, but it's not going to be five minutes.

5 THE COURT: If he's the last witness, we'll  
6 take a break now.

7 (End of sidebar.)

8 THE COURT: I think we're down to the last  
9 witness, but I think it's going to take awhile so we're going  
10 to take a break first.

11 MR. BECKER: There's three other witnesses.  
12 I'm sorry. They're police officers. They may be a little  
13 while too.

14 THE COURT: We'll still take our break.

15 MR. BECKER: I'm sorry. I'm losing my  
16 mind. Let's just take a break and I'll bring 'em up because  
17 they're downstairs.

18 THE COURT: We're going to take a break.

19 Do not discuss this case among yourselves, nor with  
20 anyone else. Do not form or express an opinion.

21 (Whereupon, a recess was had commencing at  
22 2:09 p.m. and concluding at 2:28 p.m.)

23 THE COURT: Mr. Becker, you may call your

1 next witness.

2 MR. BECKER: Officer Brandon Rice of the  
3 Cortland Police Department.

4 \* \* \*

5 OFFICER BRANDON RICE,  
6 having been duly sworn, was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. BECKER:

9 Q Would you introduce yourself to the jury, please?

10 A My name is Brandon Rice. I am a police officer for  
11 the city of Cortland.

12 Q How long have you been there?

13 A 15 years.

14 Q I'm going to direct your attention to June 20th,  
15 2017. Were you working that day?

16 A Yes.

17 Q And were you called to Pizza Joe's about 10:12 p.m.  
18 in reference to an armed robbery?

19 A Yes.

20 Q All right. What did you do when you first arrived?

21 A I was one of the midnight officers coming on to shift  
22 so when I arrived I went to the apartment on Main Street just  
23 to assist the guys. They had already taken Austin Burke into

1 custody.

2 Q All right. So you didn't quite -- you weren't on  
3 duty when the robbery actually happened?

4 A Right. I was just getting ready to come on. I think  
5 I got to the scene about 22:45.

6 Q All right. So that would have been 10:45?

7 A Yeah.

8 Q And it wasn't too much longer after that that you  
9 found out they had a suspect in custody?

10 A Yes.

11 Q All right. What did you do with that -- did you  
12 search anything in the apartment?

13 A No, I transported him.

14 Q You just -- your role was just to transport the  
15 suspect?

16 A Yeah.

17 Q Who was identified at that point as Austin Taylor  
18 Burke?

19 A Yes.

20 Q Now, when you got him to the station, did you take  
21 custody of anything from his person?

22 A I took a Samsung cell phone out of his right pants  
23 pocket.

1 Q All right. Did you take anything else?

2 A No.

3 Q I'm going to hand to you what's been marked for  
4 purposes of identification as State's Exhibit Number 3. I'm  
5 going to ask you to identify State's Exhibit Number 3.

6 A The cell phone and the battery from the cell phone.

7 Q All right. That you took from the individual?

8 A Yeah.

9 Q All right. Is the individual you got that from on  
10 June 20th, 2017, here in the courtroom?

11 A Yes.

12 Q Could you please identify him?

13 A (Witness indicates.)

14 Q He's the defendant in this case?

15 A Yes.

16 Q And you didn't have any search before or after that  
17 apartment?

18 A No. I searched him when I got him up to the station.

19 Q They were done with their work?

20 A Yeah.

21 MR. BECKER: Okay. I have nothing further,  
22 Your Honor.

23 THE COURT: Cross.

1 MR. OLSON: Just very briefly.

2 CROSS EXAMINATION

3 BY MR. OLSON:

4 Q Officer Rice, you would agree, then, you didn't  
5 interview any witnesses; is that correct?

6 A No.

7 Q And you also would agree with me that you just  
8 recovered that cell phone and no other items? There was no  
9 money mixed with it or anything like that?

10 A Just the cell phone.

11 Q Okay. And Mr. Burke didn't indicate to you that he  
12 had any other clothing that was missing or anything like that;  
13 is that correct?

14 A I don't believe I even spoke to him.

15 MR. OLSON: Okay. Nothing further, Your  
16 Honor.

17 THE COURT: Redirect?

18 MR. BECKER: No, Your Honor.

19 THE COURT: You may be excused.

20 MR. BECKER: State would call Officer John  
21 Weston.

22

23



\* \* \*

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OFFICER JOHN WESTON,

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BECKER:

Q Okay. Would you state your name for the jury?

A John P. Weston.

Q Where are you employed?

A City of Cortland Police Department.

Q How long have you been there?

A Full time, for 23 years. I've been there since 1988.

Q I want to direct your attention to June 20th, 2017.

Were you employed with the city of Cortland on that date?

A Yes, I was.

Q Were you on duty that day?

A I had came on duty that day for midnight turn for the 21st, yes.

Q Approximately what time would you have gotten on duty for midnight turn?

A Approximately 22:45 hours.

Q So about quarter 'til 11?

A Yes, sir.

Q At that point, were you aware that there had already

1     been a robbery at the Pizza Joe's?

2     A           Yes, I was.

3     Q           What did you do in -- well, first of all, did you  
4     respond to the scene?

5     A           I did respond to the scene and I assumed command of  
6     the scene as I was the senior officer.

7     Q           What did you do when you arrived there?

8     A           Initially, I got a report from the officers that were  
9     there. I learned that there was a canine track in progress.  
10    I went to Pizza Joe's where the robbery occurred. I viewed  
11    the videotape of the event.

12   Q           All right. What did you gain from the videotape of  
13   the event?

14   A           That Pizza Joe's was robbed at gunpoint by a male  
15   wearing a hoodie, gray sweatpants, and he had a mask of some  
16   sort over his head.

17   Q           All right. Do you recall indicating -- being able to  
18   determine what type of tennis shoes he had?

19   A           I don't recall that, no.

20   Q           All right. If I were to show you some of the  
21   security video, would that refresh your memory?

22   A           Yes, it would.

23   Q           Okay. I'm going to show you what's been marked for

1 purpose of identification as State's Exhibit Number 30. And  
2 do you recognize this location?

3 A Yes. That's Pizza Joe's in the city of Cortland.

4 Q Now, let me ask you. Were you able to determine  
5 whether or not the date and timestamp was a little off?

6 A I do recall something about the timestamp being off,  
7 but I can't remember exactly what it was at this time.

8 Q All right. So let me ask you. If the police reports  
9 indicated that the timestamp -- or I'm sorry -- that the  
10 robbery occurred at about 10:12 p.m., that would be about an  
11 hour and four minutes after this timestamp; correct?

12 A That sounds correct, yes.

13 Q Is that anything unusual?

14 A No. That happens with video cameras and surveillance  
15 systems a lot, for the time to be off.

16 Q Does this appear to be what you reviewed?

17 A Yes, this is one of 'em.

18 Q I believe there's also a few other camera angles; is  
19 that correct?

20 A Yes, there is. I believe there is an outside view.

21 Q And did you review those as well?

22 A That is correct.

23 Q I'm going to show you a different camera angle. Are

1 you familiar with this camera angle?

2 A Yes, that's the outside of the doorway.

3 Q And I'm going to replay this, just restart this here.  
4 Were you able to determine the direction of where that person  
5 was coming from?

6 A In that -- he was coming from a southwest direction.

7 Q And later on, were you able to identify any  
8 individuals in that direction, that general direction?

9 A Can you repeat the question?

10 Q The angle where that person ran from, is that the  
11 location where the individual that gave you a false name was  
12 later arrested from?

13 A That is correct.

14 Q And we're looking at another camera -- same camera  
15 angle but the person leaving; correct?

16 A Yes.

17 Q All right. And at one point were you or fellow  
18 officers able to determine the color or type of shoes he was  
19 wearing?

20 A I believe, if I recall, they were like a gray type  
21 tennis shoe.

22 Q All right. That refreshed your memory?

23 A Yes, it does now. Those are the same shoes we found

1 in the bedroom in the apartment across the street.

2 Q There were shoes just like that in an apartment  
3 across the street?

4 A That is correct.

5 Q Now, there were some other camera angles as well, I  
6 believe from the back. What is this view looking at?

7 A This is looking at the side parking lot of Pizza  
8 Joe's. Where the subject is going now is the drive-thru  
9 walking up alongside the building.

10 Q And this is before the robbery?

11 A That's correct.

12 Q So this area here is to the left?

13 A Yes. The Pizza Joe's is on the left. Right there  
14 where you see the subject disappearing from view, that's the  
15 drive-thru area.

16 Q Are you familiar with this building?

17 A I am.

18 Q What building is that?

19 A It's an apartment building and it also used to house  
20 Jo-Kar Kennels. They are no longer there.

21 Q The apartment where you made an arrest, you have to  
22 go around this building?

23 A That is the same apartment building. It was the

1 upstairs east side apartment.

2 Q And this individual here -- or I'm sorry -- this  
3 building down the street, is there a witness that was  
4 identified through there?

5 A There was. He lived two doors down from that vacant  
6 building.

7 Q Wouldn't be this building. This would be the next  
8 one down?

9 A It's one or two down from there, yes.

10 Q That's a fair and accurate view of the events that  
11 night?

12 A Yes, it is.

13 Q And this is after the robbery, you'll see him go  
14 basically down the street?

15 A Right alongside that building and down the street to  
16 the south.

17 Q And then finally the last camera angle. You were  
18 able to obtain a view -- this is a continuation of after the  
19 robbery; is that correct?

20 A That's correct.

21 Q I'll pause this right here. So if Mr. Marx was in  
22 front of these buildings, he would be about 20 feet from that  
23 person?

1 A Approximately, yes.

2 Q Now, Officer Weston, eventually you were able to get  
3 consent after you reviewed that to search an apartment; is  
4 that correct?

5 A That is correct. From the resident, Melanie Engle.

6 Q How is it that you came to suspect that there was  
7 something going on at 241C Main Street -- West Main Street in  
8 Cortland?

9 A During the investigation of the robbery, the dog, the  
10 canine had done a track that went south and then came back  
11 north. While they were doing that, we were also being advised  
12 through dispatch that a ping was being made to a cell phone  
13 for a subject that had a murder warrant and he was located in  
14 Jo-Kar Grooming's building.

15 Q We just saw the black and white videos from behind  
16 Pizza Joe's. You identified that building as part of the same  
17 building as the apartment complex?

18 A That is correct, yes.

19 Q Now, eventually you and your fellow officers went to  
20 241C, Cortland?

21 A Yes. Myself and K-9 Officer Edwards from Warren City  
22 went to 241C. Melanie let us in. She told us there were  
23 other people in the house. We went upstairs and asked if

1 anybody saw what happened across the street at Pizza Joe's.

2 Q And were you able to get information from the  
3 individuals inside there, such as their date of birth, social,  
4 and their names?

5 A Yes. I asked them all for date of birth, socials --  
6 not socials, but dates of birth and phone numbers.

7 Q All right. Did an individual in that apartment  
8 identify himself as Nathan Novicky?

9 A Yes, he was, with a birth date, I believe, of  
10 10-10-97.

11 Q And were -- you eventually found out that that was  
12 not true?

13 A I did, yes.

14 Q How did you do that?

15 A We collected names and dates of the birth numbers and  
16 phone numbers for everybody in the apartment. Went downstairs  
17 to further conduct more investigation outside. Then I  
18 obtained a picture of the murder warrant suspect.

19 Q The individual whose phone was pinging in that area?

20 A Yes.

21 Q All right. And what happened then?

22 A I could clearly see that the one gentleman that was  
23 sitting on the couch upstairs was the guy with the murder



1 warrant.

2 Q And that individual, is he here in the courtroom  
3 today?

4 A He is.

5 Q Can you please identify him?

6 A He's seated at the table there with a checkered shirt  
7 on beside the two men in suits.

8 Q And did you -- or were you able to determine his real  
9 name?

10 A Yes, Austin Burke.

11 Q And Mr. Burke never volunteered that he was Austin  
12 Taylor Burke; correct?

13 A He did not, no.

14 Q In fact, he told you he was Nathan Novicky?

15 A That is correct.

16 Q And he even gave you a fake date of birth?

17 A And a fake phone number.

18 Q Yeah, and a fake number. He was then placed in  
19 custody and taken by one of your fellow officers, I believe,  
20 Brandon Rice?

21 A Yes. We -- myself and Officer Edwards took him into  
22 custody. I directed Officer Rice to take him to the station,  
23 not to speak with him. Take him up there, process him and

1 take him down to Warren City -- on the Warren City warrant to  
2 the Trumbull County Jail.

3 Q All right. Now, did you stick around and do any  
4 searching, or did you go inside again to 241C West Market  
5 Street, Cortland, Ohio?

6 A I did, yes.

7 Q And I'm going to hand you what's been marked for  
8 purposes of identification as State's Exhibits 31, 32, 33, 34,  
9 35 and 37. Exhibits 31, 32, 33, 34, 35, 36 and 37. I'm going  
10 to ask if you recognize those exhibits?

11 A Yes, I do.

12 Q Do those photographs all fairly and accurately depict  
13 the scene inside of 241C West Market, Cortland, Ohio.

14 A Yes, West Main Street, yes.

15 Q I'm sorry. West Main Street. And in those  
16 photographs are a pair of gray Nike tennis shoes; is that  
17 correct?

18 A That is correct.

19 Q And did you obtain or do you know of a fellow officer  
20 that would have obtained them that night?

21 A Yes, we took those in as evidence, yes.

22 Q Were there a pair of gray sweat pants taken as well?

23 A There was a pair of gray sweat pants and a plastic

1 Sparkle bag that were both located in the white hamper that's  
2 depicted in one of these pictures. It had a Bob Marley album  
3 cover thrown over top of them. Picked that up and inside  
4 there was the gray sweat pants and the bag. The pants had the  
5 pocket outside of them just as they were on the video of the  
6 Pizza Joe's robbery.

7 Q Okay. I'm going to -- I'm not going to print it out,  
8 but there was a photograph and we have it if need be, but  
9 there was a photograph of that laundry basket which you said  
10 had a Bob Marley album --

11 A Yes.

12 Q -- on top of that plastic bag in the laundry basket?

13 A That is correct. That's Exhibit 37.

14 Q All right. Those items were all gathered for what  
15 reason?

16 A As evidence to be used for later testing possibly or  
17 identification of the subject.

18 Q What physical characteristics -- I'm sorry. Were any  
19 of those items depicted on State's Exhibit 30, the security  
20 video?

21 A Yes.

22 Q All right. I'm going to hand you what's been marked  
23 for purposes of identification as State's Exhibit Number --

1 State's Exhibit Number 7 and State's Exhibit Number 8 and  
2 State's Exhibit Number 4.

3 With respect to State's Exhibit Number 4, can you  
4 tell me what's contained in that item?

5 A This is the pair of Nike shoes that were taken from  
6 the apartment in the back bedroom.

7 Q And do those appear to be the same or similar as the  
8 Nike shoes depicted on the security video?

9 A They do to me.

10 Q I'm going to hand you State's Exhibit Number 7 and  
11 ask if you recognize State's Exhibit Number 7?

12 A These are the gray sweatpants seen in the video at  
13 the Pizza Joe's robbery. And as you can see, the pocket is  
14 still in the shape that we found it outside just like it was.

15 Q And --

16 A In the video.

17 Q In the video, the pocket -- one of the pockets is  
18 inside out?

19 A Yes, you can see.

20 Q Okay. I'm going to have you look at State's Exhibit  
21 Number 8 and ask if you recognize State's Exhibit Number 8?

22 A Number 8 is the clear Sparkle bag that was also found  
23 in the white hamper under top of the Bob Marley album on top

1 of the sweatpants.

2 (Whereupon, State's Exhibit 8, Plastic Bag, was  
3 introduced for identification.)

4 Q All right. And finally I'm going to show you what's  
5 been marked for purposes of identification as State's  
6 Exhibit Number 6. Oops, I'm sorry. Wait a minute. My bad.  
7 Okay.

8 Do State's Exhibits Number 4, 8 -- yeah, 4 and 8, do  
9 they appear to be in the same or substantially the same  
10 condition as when you first recovered them?

11 A That's correct.

12 Q As well as State's Exhibit Number 7?

13 A That is correct also.

14 Q Okay. Now, you were not present the next day when a  
15 firearm and money were recovered in this case; correct?

16 A I was not.

17 MR. BECKER: All right. Thank you,  
18 Officer.

19 THE COURT: Cross.

20 MR. OLSON: Thank you.

21 CROSS EXAMINATION

22 BY MR. HARTWIG:

23 Q Good afternoon, Officer.

1 A Good afternoon, sir.

2 Q Was there any video surveillance of the same person  
3 going in to Pizza Joe's?

4 A Try that one more time for me.

5 Q Okay. We saw surveillance of a person -- the back of  
6 Pizza Joe's near the drive-thru; correct?

7 A That's correct.

8 Q And we see a person run from Pizza Joe's to the south  
9 and cross the street; correct?

10 A That's correct.

11 Q So before the robbery, is there any surveillance of a  
12 person entering Pizza Joe's?

13 A Yeah, your first video shows that. Shows the guy  
14 coming --

15 Q At the drive-thru area?

16 A No, in the front door.

17 Q Oh, from inside?

18 A No. I believe that you can see from the outside,  
19 from him coming in. Then you see him come to the counter.  
20 And then there's another view of him leaving out that same  
21 front door.

22 Q Okay. All right. I may have missed that, but okay.

23 So we see him come in and then run outside, correct, to the

1 south?

2 A He went out and skated around the building and went  
3 through the parking lot.

4 Q To the parking lot?

5 A So he actually went a little bit north and along the  
6 buildings and across the road.

7 Q Would you agree with me that the video shows him  
8 continuously going to that building and then continuously  
9 going across the street?

10 A Going to which building, sir?

11 Q I'm sorry?

12 A Going to which building?

13 Q After he crosses the parking lot, there is a white  
14 building there?

15 A Yep.

16 Q That building.

17 A Yes.

18 Q Once he gets there, he crosses the street; correct?

19 A In a direction, yes, but not directly across the  
20 street. Looks like a little bit of an angle.

21 Q All right. So he takes a little bit of an angle.  
22 But my point is, I'm asking you, he doesn't stop at any point;  
23 right? He runs along the parking lot and runs across the

1 street; correct?

2 A I believe if you watch the video he does slow down a  
3 little bit.

4 Q He doesn't stop is what the question was?

5 A I don't recall that. I'd have to see the video  
6 again.

7 Q Okay. All right. The person that was in the store  
8 robbing these young women went to great lengths to disguise  
9 themselves; correct?

10 A That is correct.

11 Q All right. Covered their entire face; correct?

12 A Mostly covered, yes.

13 Q Right. Didn't want to be identified; right?

14 A I wouldn't think, no.

15 Q This particular person did not wear gloves; would you  
16 agree with me?

17 A Yes.

18 Q You agree with me that both hands, both hands, were  
19 visible; correct?

20 A One hand come out of the pocket, I believe, but I  
21 don't -- I'd have to see the video again.

22 Q We just watched the video; right?

23 A Okay. If you want to play it again, I'd be happy to



1 look at it.

2 Q Okay. If you want pop that on. Stop right there.

3 All right. Would you agree with me at that point the person's  
4 face and body are covered up but his hands are not covered?

5 A Yes. One hand has the gun, the other one has a  
6 plastic bag in it, yes.

7 Q So would you agree with me there is no attempt by  
8 this person to hide any distinguishing features on his hands,  
9 if there were?

10 A If you say so, I guess.

11 Q Well, we are looking at the same still photo,  
12 Officer. I'm not trying to fight with you here, but I'm  
13 asking you, do you see any distinguishing features on his  
14 hands?

15 A Not from this camera, no.

16 Q And did the clerks, either of the clerks, identify  
17 any distinguishing features on his hands?

18 A Not that I'm aware of.

19 Q All right. So both clerks, neither one, noticed  
20 anything; correct?

21 A Not at that time I don't guess.

22 Q Now, do you think if a person went to great lengths  
23 to disguise themselves, if they had distinguishing features on

1 their hands that they would want to cover those up, for fear  
2 of being identified?

3 A Hypothetically you would think that, yeah.

4 Q Okay. Do you recall learning from the clerks that a  
5 description included that the person was of mixed race?

6 A I don't recall that, no.

7 Q All right. Did you review the written statements of  
8 Jamie Hillard and Danielle Garces?

9 A I'm sure I did at the time, but I don't recall.

10 Q You don't recall whether in their written statements  
11 they described the person as --

12 A I do not recall every detail of their statement.

13 Q You'd have no reason to not believe the fact that  
14 they're contained in their written statements?

15 A I have no reason not to believe that, no.

16 Q Okay. Now, the person who claimed to identify the  
17 robber said he was sitting out front on his porch smoking a  
18 cigarette?

19 A Yes. Mr. Shawn Marx, yes.

20 Q Did you speak to him as part of the investigation?

21 A I did, yes.

22 Q All right. Were you present when he gave a written  
23 statement?

1 A I don't know if I was present when he gave a written  
2 statement. I heard -- he gave an oral statement to me.

3 Q Did you write that down?

4 A No.

5 Q Okay. Did you bring him in to the station and do an  
6 interview with him?

7 A No, we would have had one of the other guys take a  
8 written statement from him probably.

9 Q In your experience -- you've been around a long time.  
10 What's a photo lineup?

11 A A photo lineup is when you take pictures of a bunch  
12 of people of similar facial features and races and stuff and  
13 have somebody pick out the person, if they can.

14 Q All right. And what's the point of that?

15 A To identify a subject.

16 Q I know, but why do you have like protocols for them?  
17 Right? There's all kind of rules with a photo lineup?

18 A Sure.

19 Q Why?

20 A So that you don't get the wrong guy.

21 Q Exactly, right? You don't just take a picture of  
22 somebody, walk up and go, "Hey, is it this guy?"; right?

23 A Right.

1 Q You have to have a blinded administrator, for  
2 example; right?

3 A That is correct.

4 Q Right? You're only allowed to show the lineup two  
5 times?

6 A That's correct.

7 Q If they can't identify it, then you have to stop?

8 A That is correct.

9 Q And, again, the point is, you run through all of  
10 those rules so you can determine whether there's reliability  
11 to a supposed identification; correct?

12 A That's the theory behind it, yes.

13 Q Right. Otherwise you could bring somebody in and  
14 say, "Yeah, it's that person sitting there"; right?

15 A It depends on what the circumstances are, but yes.

16 Q Now, in this case, did you bring Mr. Marx in and say,  
17 "Hey, sit down. We're going to go through all of the rules  
18 and protocol to do a photo lineup"?

19 A No.

20 Q All right. Do you have any idea why one of these  
21 shoes in front of you, these gray tennis shoes, one has a  
22 lace, one doesn't?

23 A Not a clue.

1 Q All right. Would you agree with me that the person  
2 that's on the video is running across the parking lot?

3 A Yes.

4 Q All right. Did you ever find a lace that goes with  
5 that shoe there?

6 A No.

7 Q All right. Did you ever find a red shirt in the  
8 apartment?

9 A No.

10 Q Did you ever find a ski mask in the apartment?

11 A No.

12 Q All right. So what was found was you found some  
13 sweats, shoes, some money, a gun, but no mask, no red shirt;  
14 correct?

15 A Correct.

16 MR. HARTWIG: I have no further questions.

17 Thank you.

18 THE COURT: Redirect.

19 REDIRECT EXAMINATION

20 BY MR. BECKER:

21 Q Officer Weston, I left State's Exhibit 30 on here.  
22 Is it -- you might even want to step down and look at the  
23 laptop. Is it possible that the left hand of this person may

1 have some markings?

2 A Would you like me to step down?

3 Q Yeah, if you could. Or is it just simply too hard to  
4 tell? But it's a possibility?

5 A Oh, sure, it's a possibility.

6 Q And it appears as if some of the plastic bag is  
7 around his hand as well?

8 A That's correct.

9 Q Okay. Go ahead and have a seat there. And I'm  
10 sorry. I didn't quite understand it. Did you say under cross  
11 examination that Mr. Marx did, in fact, identify the  
12 defendant? Did you say he identified someone?

13 A He didn't pick anybody out, no.

14 Q Oh, okay.

15 A No. He just gave us information about the subject  
16 that fled. There was no reason to do a photo lineup.

17 Q So he didn't -- but there's also such a thing that's  
18 called a showup; right?

19 A Right.

20 Q And sometimes you can just bring someone if it's  
21 within an immediate time. That wasn't done either in this  
22 case?

23 A No, it wasn't.

1 Q Okay. And you would agree that in your experience of  
2 20 plus years victims of crimes, particularly firearm crimes,  
3 aren't necessarily paying attention to hands and tattoos and  
4 things like that?

5 A That's correct. They're usually looking at the gun  
6 pointed at them.

7 Q And especially when they're 17-year-old girls?

8 A That is also correct.

9 MR. BECKER: I have nothing further.

10 THE COURT: Recross.

11 MR. HARTWIG: Yes.

12 REXCROSS EXAMINATION

13 BY MR. HARTWIG:

14 Q Officer, while he's pulling up another video, would  
15 you agree with me that rather than looking at a still photo  
16 from a computer of the robber's left hand that being in person  
17 approximately two feet away would give you a better  
18 perspective or view of any distinguishing features?

19 A I would say normally, but when you got a gun pointed  
20 at you, things are different.

21 Q Okay. Good point. But as far as if you were going  
22 to look at somebody's hands, you would have a better view if  
23 you're in person two feet away than you looking at this video?

1 A Oh, absolutely.

2 Q Now, Mr. Marx, when he did talk to you, he did not  
3 give a description of anything other than supposed height,  
4 weight, build, and clothing; correct?

5 A That's my recollection, yes.

6 Q Right. So if he had said, "Hey, listen, this person  
7 has tattoos on his face," right, or "on his neck," that would  
8 have been pretty important information; right?

9 A Yes.

10 Q You would have certainly have noted that; correct?

11 A If he told me, yes.

12 Q So apparently he did not tell you that?

13 A I don't recall that.

14 Q All right. Because, again, you would have noted it;  
15 right?

16 A Most likely.

17 Q All right. Okay, Officer. So we see this guy go  
18 across the parking lot to that corner; correct?

19 A That's correct.

20 Q All right. And then from there at an angle across  
21 the street; correct?

22 A Also correct.

23 Q All right. Do we -- before the robbery, do we ever



1 see anybody come across the street back towards the building?

2 A Not that I'm aware of.

3 Q All right. Do we see anybody from this view, from  
4 this area here, come across the street before the robbery?

5 A Not that I recall.

6 Q All right. Just that someone comes out, goes to the  
7 corner, and at an angle that way; correct?

8 A Yes.

9 Q And, again, the person who comes across here doesn't  
10 stop but continues right across the street; correct?

11 A Yes.

12 Q Would you also agree with me that the person who is  
13 crossing the street here still has the black garment that he  
14 had on inside the store?

15 A Appears that way.

16 Q Yeah. Doesn't appear that he stops and takes it off;  
17 right?

18 A Doesn't appear to, no.

19 Q No. And in fact if you watch -- if you watch him --  
20 if you can continue that. Thank you. So he slows down, I'll  
21 give you that, but he just, as a continuous motion, continues  
22 across the street; would you agree?

23 A Yes.

1 Q He doesn't take off his hoodie, stick it under his  
2 arm; right?

3 A The hoodie? No.

4 Q No, right?

5 A We don't know if he took the mask off though. You  
6 can't tell that from the pictures.

7 Q You can't tell that either; right?

8 A No.

9 Q But in order to do that, he probably would have  
10 stopped somewhere and did that. But all we see is a  
11 continuous -- all the way across the street; correct?

12 A Yes.

13 MR. HARTWIG: All right. No further  
14 questions.

15 THE COURT: All right. You may step down.  
16 Thank you.

17 Call your next witness.

18 MR. BECKER: Officer Nick Mancini.

19 \* \* \*

20 OFFICER NICHOLAS MANCINI,  
21 having been duly sworn, was examined and testified as follows:  
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23

DIRECT EXAMINATION

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BY MR. BECKER:

Q Would you state your name for the record, please?

A Patrolman Officer Nicholas Mancini.

Q Where are you employed?

A City of Cortland.

Q How long have you been there?

A Approximately 15 years, the last five years full time.

Q I want to direct your attention to June 20, 2017.

Were you on duty at that date?

A Yes.

Q And were you on duty or coming on duty?

A I was on duty.

Q All right. And at approximately 10:12, 10:15 p.m., was there a call in reference to an armed robbery at Pizza Joe's?

A Yes.

Q What did you do when you heard that call?

A We first responded to the area and started checking the area for the suspect.

Q Did you ever review the security video?

A Yes. After I was requested to go to the Pizza Joe's.

1 Q All right. And for the sake of argument, you've seen  
2 the security videos, both the front and the back and inside  
3 the store?

4 A Yes.

5 Q All right. Now, I'm going to show you part of  
6 State's Exhibit 30 and ask if you recall this section of  
7 State's Exhibit 30 and reviewing this. This is the security  
8 video of the front door. It may help, but can you see the  
9 direction from where the person came from, just coming before  
10 they went into Pizza Joe's?

11 A Yes.

12 Q And where did they come from?

13 A They came from the west.

14 Q Would that be --

15 A It would be towards State Route 46.

16 Q All right. And is that the location -- well, are you  
17 sure about that? From the west?

18 A Yes.

19 Q Well, this road runs north or south -- or east and  
20 west?

21 A Yes, it runs east and west.

22 Q So this person is coming across the street, not down  
23 the street; right?

1 MR. OLSON: Objection. Leading.

2 THE COURT: Just get it sorted out here.

3 A From the video right there, he came from the west.

4 But if you look at a previous video, you can see --

5 Q The back way?

6 A Yes.

7 Q But prior to running into -- there is prior video of  
8 him in the back of the store?

9 A Yes.

10 Q Okay. But I'm talking about when he actually went in  
11 the store, he came in from which direction?

12 A The north.

13 Q All right. The north?

14 A Or excuse me. He ran into the store from the --  
15 coming into it to the north.

16 Q All right. So he's coming to us from the north?

17 A Yes.

18 Q Across the street, is that an area that you began to  
19 search after this robbery?

20 A Yes.

21 Q What was the significance of searching that area?

22 A There was three of us, so we all started checking  
23 different areas.

1 Q And it's after -- you reviewed the video from Pizza  
2 Joe's, and at some point you narrowed in on a location as 241  
3 West Main Street, Apartment C; correct?

4 A Yes.

5 Q What caused you to focus in on that area?

6 A I was told to head that way from the other officers  
7 because they already conducted the investigation that led them  
8 there.

9 Q And when you got there, were you part of a search of  
10 that location?

11 A Yes.

12 Q So there had already been a consent to search signed  
13 by the occupant?

14 A I was part of it when we had the lady sign it for us.

15 Q And she was cooperative?

16 A Yes.

17 Q She didn't say, "No, I don't want you to do the  
18 search"?

19 A No.

20 Q And, in fact, you did find in that location some  
21 items that were taken; correct?

22 A Yes.

23 Q And I'm going to hand you -- have you look at what's

1     been marked for purposes of identification as State's Exhibit  
2     Number 4. Do you recognize State's Exhibit Number 4?

3     A           Yes.

4               (Whereupon, State's Exhibit 4, Tennis Shoes, was  
5     introduced for identification.)

6     Q           How do you recognize it?

7     A           Through the writing and the shoes.

8     Q           All right.

9     A           The markings. And my signature is underneath  
10    Patrolman Brandon Rice.

11    Q           So you and Officer Rice would have obtained this and  
12    then put it in the bag, and you were present when he grabbed  
13    that?

14    A           Yes.

15    Q           Okay. These items are a pair of Nike tennis shoes;  
16    is that correct?

17    A           Yes.

18    Q           Are these the same -- substantially the same  
19    condition as when you retrieved them on June 20th?

20    A           Yes.

21    Q           Might have been after midnight, the 21st?

22    A           Yes, it would have been.

23    Q           What was the significance of these shoes in relation

1 to the video?

2 A When I watched the video, I noticed the white  
3 markings on the gray shoes to be --

4 Q You're talking about the markings on the back?

5 A Yeah. Yep.

6 Q And also located in that house -- I'm going to have  
7 you look at State's Exhibits 31 through 36 and ask if you --  
8 I'm sorry, 37. 31 through 37, do you recognize those  
9 photographs?

10 A Yes, I do.

11 Q All right. Do those photographs all fairly and  
12 accurately depict the scene as you saw it on June 20th, into  
13 the 21st?

14 A Yes.

15 Q All right. Could you describe, was that apartment  
16 neat and tidy or was it a little messy?

17 A It was a little messy. It was --

18 Q Extremely messy?

19 A I've seen worse, but it was messy.

20 Q You then found State's Exhibit 4, which were the  
21 shoes?

22 A Uh-huh.

23 Q There was a photograph of a trash -- or a baggie -- a



1 Sparkle bag, which is I believe State's Exhibit Number 8; do  
2 you recognize State's Exhibit 8?

3 A Yes.

4 Q And you were present when Exhibit State's 8 was  
5 found?

6 A Yes.

7 Q Your signature is on there?

8 A Yes.

9 Q Just like it is on State's Exhibit 4?

10 A Yes.

11 Q State's Exhibit 8 is in the same or substantially the  
12 same condition as when it was when you recovered it?

13 A Yes.

14 Q Okay. And that was located where?

15 A In a white hamper or clothes basket.

16 Q Was there something on top of it that had to be moved  
17 to locate it, do you recall?

18 A I do not recall at this time.

19 Q Okay. I'm going to show you what's been marked for  
20 purposes of identification as State's Exhibit Number 7 and ask  
21 if you recognize State's Exhibit Number 7?

22 (Whereupon, State's Exhibit 7, Sweatpants, was introduced  
23 for identification.)

- 1 A Yes.
- 2 Q How do you recognize that?
- 3 A My signature.
- 4 Q You were present when this was found?
- 5 A Yes.
- 6 Q And this is a pair of gray sweatpants with the pocket  
7 pulled out?
- 8 A Yes.
- 9 Q All right. Actually be the right pocket. What was  
10 the significance of these gray sweatpants with the right  
11 pocket pulled out?
- 12 A Because when I was watching the video I noticed when  
13 he pulled the gun out of his pocket the pocket come inside  
14 out.
- 15 Q Okay.
- 16 A And when Officer Weston --
- 17 Q Okay. Now, you were never able to locate a hoodie or  
18 a mask; correct?
- 19 A Correct.
- 20 Q You were never able to locate that night the  
21 dark-colored sweatshirt?
- 22 A Correct.
- 23 Q That night, you were not able to locate a firearm?

- 1 A Correct.
- 2 Q You were not able to locate any money that night;  
3 correct?
- 4 A Correct.
- 5 Q So now the next day came around, which was the 21st,  
6 and I believe sometime in the afternoon of the 21st you went  
7 back to that apartment and started looking again?
- 8 A Yes.
- 9 Q What was the reason in doing that?
- 10 A I believe during the morning hour the day shift  
11 officers were down there. So when I come on on afternoon  
12 turn, since I was there the night before, I went down to  
13 assist with anything that they needed.
- 14 Q And were you present when a firearm was located?
- 15 A No.
- 16 Q All right. But you were called back almost  
17 immediately after that when something else was found in that  
18 apartment; correct?
- 19 A Yes.
- 20 Q What was found in the apartment?
- 21 A The -- I was called back once the firearm was found.
- 22 Q All right.
- 23 A So then when I was back there, we had them fill out

1 statements. And then I went up and started checking the  
2 kitchen area again.

3 Q All right. And what did you find in the kitchen  
4 area?

5 A I located a blue grocery bag with garbage inside and  
6 a hair coloring dye box with a large amount of money.

7 Q I am going to hand you what's been marked for  
8 purposes of identification as State's Exhibit 38. It's two  
9 photographs. Do you recognize those two photographs?

10 A Yes.

11 Q The hair dye box and the blue trash bag you saw, are  
12 they in that photograph?

13 A Yes.

14 Q And is that the -- does that fairly and accurately  
15 depict the scene as you saw it on June 21st?

16 A Yes.

17 Q I'm going to hand you what's been marked for purposes  
18 of identification as State's Exhibit Number 6 and ask if you  
19 recognize State's Exhibit Number 6?

20 A Yes, I do.

21 (Whereupon, State's Exhibit 6, Plastic Bag, was  
22 introduced for identification.)

23 Q Okay. I'm going to pull out of State's Exhibit

1 Number 6 -- well, first of all, there's a blue trash bag;  
2 correct?

3 A Yes.

4 Q And a bunch of garbage?

5 A Miscellaneous garbage.

6 Q Miscellaneous garbage. And I'm going to show you  
7 what is a hair color box. It says "Color silk, beautiful  
8 color," and there seems to be a large amount of money inside  
9 there; correct?

10 A Yes.

11 Q Did you count that money?

12 A Not on scene. Once we returned to the station it  
13 was.

14 Q And do you know approximately how much money was in  
15 there?

16 A I believe it was \$545.

17 Q All right. And it was found just like that in this  
18 hair dye box?

19 A Yes.

20 Q Which was in this blue trash bag?

21 A Yes.

22 Q And that is in the same or substantially the same  
23 condition other than it was in this blue bag when you found

1 it?

2 A Yes.

3 Q All of these events occurred in what city?

4 A City of Cortland.

5 Q And what county?

6 A Trumbull County.

7 MR. BECKER: I have nothing further, Your  
8 Honor.

9 THE COURT: Cross.

10 MR. OLSON: Thank you, Your Honor.

11 CROSS EXAMINATION

12 BY MR. OLSON:

13 Q Good afternoon, Officer Mancini.

14 A Good afternoon.

15 Q You indicated that you were on duty on the 20th at  
16 10:12; is that correct?

17 A Yes.

18 Q Now, we watched the video. And the video indicated  
19 that this robbery occurred at approximately 10:08; is that  
20 correct?

21 A Yes.

22 Q And did you check that time at any point in time to  
23 see if that was the accurate time? I mean, I know it shows

1 9 --

2

3 A Uh-huh.

4 Q -- 12. Did you confirm whether it was just an hour  
5 off?

6 A I do not recall.

7 Q Okay. And so, again, if we assume that that was an  
8 hour off, the robbery occurs at 10:08, you get to dispatch at  
9 approximately 10:12; is that correct?

10 A Yes.

11 Q Approximately how long did it take you to get there?

12 A Approximately less than a minute.

13 Q Less than a minute. So you're there by 10:13?

14 A Uh-huh.

15 Q When you get to the store, do you get out of the car  
16 and immediately begin scanning, or were you driving around?

17 A We were driving around.

18 Q And, again, you would indicate at that point in time  
19 you had seen nobody?

20 A Uh-huh.

21 Q The suspect runs across the street, goes along some  
22 buildings and then kind of goes out of view on the video; is  
23 that correct?

1 A Yeah.

2 Q And as you're scanning around, does anybody ever get  
3 out of the vehicle to start going to look for the suspect?

4 A I can't account for the other officers. I can say I  
5 didn't.

6 Q You didn't. Okay. At some point in time, you were  
7 directed to go back towards the Pizza Joe's and to that  
8 apartment; is that correct?

9 A Yes.

10 Q What time -- do you remember what time that was?

11 A No, I do not.

12 Q Okay. Do you go to the Pizza Joe's after responding  
13 back?

14 A (No response.)

15 Q So you were patrolling around; correct?

16 A Uh-huh.

17 Q You come back because you're told to go to the  
18 apartment that's across the street?

19 A After I searched the area I was told to go to Dairy  
20 Queen and set up a perimeter.

21 Q Where is the Dairy Queen in relation to this?

22 A It would be up -- the next block. Basically up the  
23 block.



1 Q Okay. Did you interact with any witnesses at that  
2 point?

3 A No.

4 Q All right. Did you ever interact with any witnesses  
5 that night?

6 A Yes.

7 Q Okay. Who did you speak with?

8 A I believe his name was Shawn Marx.

9 Q Okay. And Mr. Marx, when you get with him, did he  
10 identify what the suspect looked like?

11 A He just said a male. That's all I can remember at  
12 this time.

13 Q Okay. He did not identify that the male had tattoos?

14 A No. He never told me that. He just told me the  
15 direction that the male ran. And that's why I started  
16 checking that area.

17 Q Okay. Did he indicate to you that the male had  
18 the -- a sweatshirt under his arm and was wearing a red shirt?

19 A I cannot recall at this time.

20 Q Okay. Did you ever review his written statement?

21 A No.

22 Q Okay. Now, you indicated that on the next day you  
23 returned to the apartment that's across the street from Pizza

1 Joe's; is that correct?

2 A Yes.

3 Q And during the search of that residence you  
4 ultimately recovered \$545; is that correct?

5 A On my second time there, yes.

6 Q Correct. And it was stashed inside of a hair dye  
7 box?

8 A Yes.

9 Q Is that correct? Did you eventually learn how much  
10 money was actually stolen from the Pizza Joe's?

11 A I never got a full count. There's other officers  
12 that said there was an approximate amount, but Pizza Joe's  
13 never told me because they didn't have an amount that night.

14 Q Did you know what the approximate amount was that was  
15 given to you?

16 A The next day.

17 Q And how much was that?

18 A They said somewhere between 7 and \$800.

19 Q And at no other point in time did you ever recover  
20 any additional money, or no other money was turned over to  
21 you; is that correct?

22 A No.

23 Q Now, we went through some of the clothing items that

1 you seized from that apartment that night. And with  
2 particularity, the gray Nike shoes?

3 A Uh-huh.

4 Q How popular, in your opinion, do you think Nike shoes  
5 are?

6 A Nike shoes?

7 Q Right.

8 A They're popular.

9 Q Okay. And you can't say how many people have gray  
10 shoes with white markings? You don't know what the sales of  
11 those shoes were? A lot of people could have them; correct?

12 A I could say after looking at a lot of people  
13 throughout my shift I don't recognize anybody with shoes like  
14 that.

15 Q Okay. Now on the video, however, you see the male  
16 suspect running from the Pizza Joe's; is that correct?

17 A Yes.

18 Q These shoes that we had here today, there was no  
19 laces on the one shoe; is that correct?

20 A Yes.

21 Q You do not ever see the shoe flopping off his foot or  
22 falling off or anything like that in the video?

23 A On the video, no.

1 Q And do you ever recover another shoelace?

2 A We never --

3 Q Did you recover the -- any red shirt?

4 A No, we did not.

5 Q No sweatshirt? You didn't recover the sweatshirt?

6 A No, we didn't recover the sweatshirt.

7 Q Didn't recover a mask?

8 A No. There was many sweatshirts and shirts inside the  
9 house. There was no way of knowing. We weren't gonna recover  
10 every piece of the girl's clothing in her apartment.

11 MR. OLSON: All right. One moment, Your  
12 Honor.

13 I have nothing further.

14 THE COURT: Redirect.

15 MR. BECKER: No, sir, Your Honor.

16 THE COURT: You may step down. Thank you.  
17 Counsel, approach.

18 (Whereupon, a discussion was held off the  
19 record.)

20 THE COURT: Ladies and Gentlemen, I believe  
21 we are down to the last witness. I have a matter of  
22 housekeeping I have to deal with with counsel outside of your  
23 presence. So we are going to give you a ten-minute break.

1           Do not discuss this case among yourselves, nor with  
2 anyone else. Do not form or express an opinion.

3                         (Whereupon, a recess was had commencing at  
4 3:19 p.m. and concluding at 3:26 p.m.)

5                         (At sidebar:)

6           THE COURT: We're in the courtroom, but out  
7 of the presence of the jury prior to the examination of  
8 Dr. Germaniuk. There's a general objection being made. Let's  
9 put it on the record and any proffer that you would like to  
10 present.

11                        MR. HARTWIG: Thank you, Your Honor.

12                        Your Honor, we were -- we were provided the coroner's  
13 report and certificate of death as part of this case. Two  
14 weeks prior to trial, we were informed that x-rays that were  
15 supposedly performed at the time of the autopsy were now  
16 available for our view. There were no findings of those  
17 x-rays included in the original coroner's report at all.

18                        Now, I spoke to Dr. Germaniuk today prior to his  
19 testimony, and he indicated to me that he brought the x-rays,  
20 that last night he discovered what appears to be another  
21 bullet fragment contained within the skull. He is surmising  
22 that it is from a second gunshot wound, although he can't find  
23 an entrance or exit wound to match that particular shot.

1           So, he's speculating that perhaps there was a second  
2 gunshot wound. We are asking that that part of his testimony  
3 be excluded, for a couple reasons. One, we didn't have  
4 opportunity to prepare for that cross examination with an  
5 expert or even a consultant. And it was not included in the  
6 original report. So it's beyond the scope of his expert  
7 report.

8           THE COURT: Mr. Becker.

9           MR. BECKER: Your Honor, I think it's  
10 certainly permissible for the Doctor to have a different  
11 opinion or change his opinion. Certainly if he would be on  
12 the witness stand and the cross examination was going the  
13 other way and they were able to get him to change his opinion,  
14 he's entitled to change his opinion. I think they're more  
15 than entitled to cross-examine him and they can discuss that  
16 in closing and the fact that he didn't put that in the initial  
17 report. I certainly think it's fair for cross-examination and  
18 closing, but it would be proper to allow him to opine as an  
19 expert that perhaps he did miss and make a mistake and there  
20 was just perhaps two bullets.

21           THE COURT: I'm going to overrule your  
22 objection. We'll allow him to speak to the issues here and  
23 then everything can be argued, again, on closing.

1 MR. HARTWIG: Thank you, Your Honor.

2 MR. OLSON: Thank you, Your Honor.

3 MR. BECKER: Thank you, Your Honor.

4 (End of sidebar discussion.)

5 (Whereupon, a recess was had commencing at  
6 3:28 p.m. and concluding at 3:32 p.m.)

7 THE COURT: Mr. Becker, you may call your  
8 next witness.

9 MR. BECKER: Doctor Humphrey Germaniuk.

10 \* \* \*

11 DR. HUMPHREY GERMANIUK,  
12 having been duly sworn, was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. BECKER:

15 Q Good afternoon, Doctor.

16 A Good afternoon.

17 Q Apologize for the lateness of your appearance here  
18 today. But with that said, would you please introduce  
19 yourself to the jury and tell the jury what your occupation  
20 is?

21 A My name is Humphrey Don Germaniuk, spelled  
22 H-u-m-p-h-r-e-y D-o-n G-e-r-m-a-n-i-u-k. And my occupation is  
23 the coroner and medical examiner for Trumbull County, Ohio.

1 Q And could you please tell the jury your background  
2 that's prepared you for this position?

3 A Well, really, my training, education and experience  
4 began more than 40 years ago. When I was 19, I volunteered at  
5 the Manhattan Medical Examiner's Office in the summer of 1973  
6 where I assisted in over a thousand autopsies. And it was  
7 love at first sight. Because from that moment on, I knew  
8 exactly what I wanted to do.

9 I went to Wagner College in Staten Island, New York  
10 where I was a biology major, a nursing major, and a chemistry  
11 minor.

12 After that I proceeded to the city of Perugia,  
13 P-e-r-u-g-i-a, in Italy where for one year I took various  
14 courses in philosophy, architecture, literature, and liberal  
15 arts.

16 From there, I went to the University of Turin,  
17 T-u-r-i-n, in Italy. And I was there from 1977 until 1981  
18 when I transferred to the University of Rome in Italy.  
19 Graduated from the University of Rome in 1984 with the M.D.  
20 degree.

21 After that, I went to The Ohio State University  
22 Hospitals to do four years of specialty training in pathology;  
23 two years in anatomic pathology, and two years in clinical



1 pathology.

2 After I finished those four years, I then went to  
3 Miami in Dade County where I began my specialty training in  
4 forensic medicine or forensic pathology. I was there from  
5 1988 to 1989.

6 In 1989, I went to Syracuse, New York and was an  
7 assistant medical examiner there from 1989 until 1993, after  
8 which I proceeded to Washington D.C. and I was appointed the  
9 deputy chief medical examiner of the nation's capitol.

10 I was the deputy chief until I think 1996 or 1997  
11 when I was then appointed by Mayor Marion Barry as the chief  
12 medical examiner for Washington D.C. So I was there until  
13 1998. The city was broke. We didn't have a budget or money  
14 or much of anything.

15 And having trained at Ohio State, I was very familiar  
16 with the geography in this part of the state. And so when  
17 they were looking, I was a knockin'. And so I came here in  
18 1998 and have been here ever since.

19 Q Okay. And at some point you were elected as the  
20 duly-elected coroner for Trumbull County; is that correct?

21 A That was in 2008.

22 Q And you have been elected since then two other times?

23 A Yes.

1 Q All right. Now, Doctor, are you a member of any  
2 medical associations or professional associations?

3 A Yes.

4 Q And could you tell the jury what those associations  
5 and organizations are that you belong to?

6 A I'm a member of the National Association of Medical  
7 Examiners which represents forensic pathologists throughout  
8 the country.

9 I'm a member of the Ohio State Coroner's Association  
10 which also represents the coroners in the state of Ohio.

11 I was a past member of the American Society of  
12 Clinical Pathology and a past member of the College of  
13 American Pathology. And except the organizations cost too  
14 much money a month for getting a magazine. So I am no longer  
15 members of that. But I served for quite a bit. In the  
16 College of American Pathology, I sat on the Forensic Pathology  
17 Committee where we established standards for the practice of  
18 forensic medicine throughout the country.

19 With the American Society of Clinical Pathology, it  
20 was similar as far as getting involved in forensic pathology.  
21 So that's in a nutshell from what I can remember.

22 Q And, Doctor, during the course of your career, you  
23 have performed, safe to say, thousands of autopsies?

1 A I'm past 8,000 forensic autopsies at this time.

2 Q And you have previously testified as an expert  
3 witness in forensic pathology in numerous jurisdictions  
4 throughout the country; correct?

5 A I have been certified as an expert in forensic  
6 pathology in the state of Florida, in the state of New York,  
7 in the District of Columbia, in the state of Maryland, in the  
8 state of Virginia.

9 Q And you have previously testified as an expert  
10 witness here in the state of Ohio?

11 A Yes.

12 Q And you've previously testified as an expert witness  
13 here in Trumbull County; correct?

14 A Yes.

15 MR. BECKER: All right. At this time, I  
16 would move to have Dr. Germaniuk declared an expert in  
17 pathology.

18 THE COURT: Any questions?

19 MR. HARTWIG: No questions. No objection.

20 THE COURT: He will considered be expert.

21 BY MR. BECKER:

22 Q Doctor, can you tell the jury, what exactly is an  
23 autopsy?

1       A           The word autopsy comes from the Greek, which means to  
2       see for yourself. Prior to approaching the patient, you try  
3       to get as much information as you can. It's just like when  
4       you go to see your doctor. They don't start banging you with  
5       a reflex hammer or setting you up for a CAT scan. They ask  
6       you a bunch of questions. What brings you here? How long  
7       have you had it? Ever had it before? Anyone else in your  
8       family have it? What brings it on? What makes it go away?  
9       And the same thing before we approach our patients; we try to  
10      get as much information as we possibly can. We try to go to  
11      the scene, if at all possible. We try to get an emergency  
12      medical technician's report. Try to get the police report.  
13      Subpoena the hospitals to see if there's any medical records.  
14      They become part of the permanent case file. So this way  
15      before you approach the patient you have some idea of what's  
16      going on with them, where they've been, what they've done, any  
17      underlying disease processes.

18     Q           All right. When you examine an individual that has  
19     died of-- well, first of all, let me ask you this. In Ohio,  
20     when is it required that a coroner perform an autopsy on an  
21     individual?

22     A           It is the function of the coroner. We interviewed  
23     someone yesterday looking for a position here in Trumbull

1 County with our office and basically his coroner is pretty  
2 much clueless as far as what cases need to be brought in, what  
3 do not need to be brought in, who gets an autopsy, who doesn't  
4 get an autopsy.

5 We're basically regulated by Ohio Statute 313 as far  
6 as unexplained deaths, sudden deaths, deaths happening during  
7 the course of work, motor vehicle accidents, suspicious  
8 deaths, suicides, possible homicides, poisoning, and where  
9 there was no apparent medical history that accounted for the  
10 person's death, they would bring in that case.

11 Q All right. Doctor, I'm going to direct your  
12 attention to June of 2017 last year and in particular on  
13 June 19, 2017, an autopsy that you performed at 9:30 a.m. I  
14 believe it was styled your Case Number 17-159, and it was the  
15 autopsy of one Kenneth Brandon Hayes Sample. Did you bring  
16 that file with you here today?

17 A Yes. May I refer to it?

18 Q Yes.

19 A Yes, I was notified on the 15th of June in 2017 at  
20 10:12, and then I did the autopsy on June 19th beginning at  
21 9:30 in 2007 -- 17.

22 Q I'm sorry. Go ahead.

23 A No. In 2017.

1 Q 2017. And, Doctor, can you relay to this jury what  
2 you did in relation to the autopsy of Kenneth Brandon Hayes  
3 Sample and your findings relating to that autopsy?

4 A Well, basically our investigators got the information  
5 that he was last seen Sunday night, the 11th of June. The  
6 patient's car was found in the woods off the bike trail in  
7 Niles. He was decomposed. He had a medical history of  
8 depression and anxiety. And according to his parents there  
9 was a pain medication addiction. So because it appeared to be  
10 an unnatural death he then became our case 17-159 and we began  
11 to expand the notes that we took.

12 Q And when you examine a body, I believe there are  
13 three axes to an autopsy; is that correct?

14 A Right. You'll have -- autopsy revolves around three  
15 axes.

16 The first is the external examination. What does  
17 this individual look like without any medical therapy? What  
18 kind of scars, tattoos, do they have? So what does the body  
19 look like without any additional information regarding injury  
20 or medical therapy?

21 The second axis is medical therapy. What medical  
22 therapy has this patient received?

23 The third axis is basically what injuries do they

1 have?

2 And so once you've arrived at those three axes -- and  
3 really the fourth one is toxicology, testing for drugs and  
4 poisons.

5 Once you've gone through those four axes you could  
6 then, within reasonable medical certainty, arrive as to a  
7 cause and manner of death.

8 Q And can you please relate what you did on June 19,  
9 2017, for the autopsy of Kenneth Brandon Hayes Sample and  
10 relate your findings to this jury?

11 A Well, the first thing to do is to identify him. And  
12 so we had his dental x-rays from Dr. Wilson who was his  
13 dentist. We subpoenaed those. Got them. Compared those  
14 dental x-rays against the jaw that we had. And it matched.  
15 That was of Mr. Sample. So he was positively identified.

16 Second thing was he was in moderate decomposition, so  
17 we spent a lot of time doing total body x-rays. I think we  
18 took seven -- probably more than seven -- x-rays of the entire  
19 body looking for any kind of trauma or fragments or anything  
20 like that.

21 And then after that we began our external  
22 examination.

23 Q All right. With respect to those x-rays, did you

1 find anything in the body that appeared -- as if it shouldn't  
2 have been in the body?

3 A Yes.

4 Q What did you find?

5 A There's at least one definite gunshot wound and one  
6 probable gunshot wound.

7 Q Where were those gunshot wounds located?

8 A One gunshot wound was to the back of the head. The  
9 other one gunshot wound was to the right side of the neck.

10 Q All right. Did you bring those x-rays with you here  
11 today?

12 A Yes, I did.

13 Q Could you show the jury what we're referring to? And  
14 I don't know if you would be able to publish them up here for  
15 the jury, but you might be able to hold them up and they could  
16 see?

17 A Here we go. Basically these are the x-rays of  
18 Mr. Sample that we took on the 19th. We know it's Mr. Sample  
19 because he was identified by dental x-rays. And it's the 19th  
20 because we have our sticker here and my initials. We have the  
21 metallic fragments inside the skull that you can see here.  
22 And we have another fragment outside the skull tissue. Not an  
23 exit wound. It's probably consistent with another gunshot



1 wound. So probably -- one definite and probably a second one  
2 here to the neck.

3 Q And I don't know if it'll help if we put it on there  
4 or not. Maybe not?

5 A No. Oh, yeah, it does.

6 Q Okay. And, Doc, I'm going to hand you a laser  
7 pointer here. Maybe you can point out what you're talking  
8 about. The yellow button. I'm sorry, Doctor.

9 A Yeah. That's one of the fragments inside the head.  
10 And this is the one outside in the tissues of the neck.

11 Q All right. That x-ray is the exact x-ray of --

12 A It's the original.

13 Q The original of Brandon -- I'm sorry -- Kenneth  
14 Brandon Hayes Sample?

15 A Yes.

16 Q And do you have another x-ray of the body?

17 A Yeah. The second x-ray is from a different view. As  
18 you can basically see, the fragments inside his skull, and you  
19 can see the other fragments here in the soft tissues of his  
20 neck, probably behind his ear.

21 Q All right. Thank you, Doctor.

22 A (Witness resumes witness stand.)

23 Q Now you mentioned that the body was in a state of

1 decomposition; is that correct?

2 A Yes.

3 Q What was being -- can you describe where the  
4 decomposition was and the extent of decomposition?

5 A Well, it was moderate decomposition. Basically you  
6 had darkening of the skin, skin slippage, the body was covered  
7 in maggots. In fact, the maggots took the skin off his face  
8 so you could see the bones. The maggots took the skin off the  
9 scalp so you can see the skull bones. In portions of the arm,  
10 maggots took all of the tissue away so you can actually see  
11 the exposed bone there.

12 Q And with reference to the x-rays you took, was there  
13 any other location on the body that you noticed any type of  
14 gunshot wounds or any type of fragments?

15 A No.

16 Q All right. So continuing with your external  
17 examination, what did you do then?

18 A Basically with the external examination, one gunshot  
19 wound was pretty obvious. The maggots had done their job.  
20 And so we had exposed skull. And there was a perforation in  
21 the back of the left side of his skull. Basically the maggots  
22 had eaten most of the brain. So what we were dealing with was  
23 dust. You try to palpate it and squish it and see what you

1 can retrieve, but there really wasn't much to retrieve.

2 The second fragment on the side of the neck, once  
3 again when you're dealing with decomposing human skin and  
4 maggots, we originally palpated it and then you apply gentle  
5 water to wash off the maggots and stuff and I lost the  
6 fragment, unfortunately. I accept responsibility for it.  
7 Those things do occur. And I wasn't able to retrieve the  
8 fragment.

9 Q Now, Doctor, you continued to the examination, and I  
10 believe then you did an internal examination; is that correct?

11 A Yes.

12 Q And please relate your findings from the internal  
13 examination.

14 A Basically, my autopsy findings regarding the internal  
15 examination were moderate decompositional change and a  
16 penetrating gunshot wound to the head.

17 Q And, Doctor, were you then able to look at and make  
18 any findings regarding the cause and manner of death of  
19 Kenneth Brandon Hayes Sample?

20 A Yes.

21 Q And can you relate those findings to this jury?

22 A After completing the autopsy, the cause of death was  
23 penetrating gunshot wound to the head. And the manner of

1 death was homicide.

2 Q Doctor, did you then put -- well, did you then  
3 eventually get a report regarding the toxicology contained in  
4 Kenneth Brandon Hayes Sample?

5 A Yes. I did.

6 Q All right. And I believe in the toxicology you found  
7 that there was .087 of ethanol in his body; is that correct?

8 A That's correct. 0.087. Slightly above the legal  
9 limit for public intoxication.

10 Q And can you explain to the jury, would that  
11 necessarily mean that the individual you examined, Kenneth  
12 Brandon Hayes Sample, was drunk or intoxicated?

13 A No. When you have decompositional change, why does  
14 your body change? The bacteria -- we begin to ferment.  
15 Fermentation makes beer, it makes wine, it makes good grain  
16 whiskey. So when you ferment you also produce alcohol. So in  
17 dealing with a decomposed body, a blood alcohol or chest fluid  
18 alcohol of 0.087, there's either consumption, decomposition,  
19 or a combination of both. And I can't really distinguish  
20 between those three.

21 Q All right. Doctor, did you put your findings into a  
22 report?

23 A Yes, I did.

1 Q I'm going to hand you what's been marked for purposes  
2 of identification as State's Exhibit Number 19. It is a  
3 one -- it is a six-page document with the toxicology attached  
4 to it. So it's a total of seven pages. If you can compare  
5 that with your original.

6 A State's Exhibit Number 19 consists of six pages of  
7 autopsy protocol and one page of toxicology, or drug testing,  
8 which are true and accurate copies of the originals in the  
9 case file.

10 (Whereupon, State's Exhibit 19, Autopsy Report, was  
11 introduced for identification.)

12 Q Thank you, Doctor. Doctor, you took some autopsy  
13 photos during this autopsy. I'm going to hand you State's  
14 Exhibit Number 20 which contains two photographs and ask if  
15 you can identify State's Exhibit Number 20?

16 (Whereupon, State's Exhibit 20, Autopsy Photos, was  
17 introduced for identification.)

18 A State's Exhibit Number 20 are photographs of the  
19 wound of entrance in the left side of the back of the skull.  
20 And it's got our case number in it, my stamper in it, and it's  
21 stamped 17-159.

22 Q And does that photograph depict some of the decay  
23 and, I guess, infestation?

1 A Yes, it does.

2 Q All right. And what does it -- what are some of  
3 those things that you can see there?

4 A Well, as I said earlier, most of the flesh had been  
5 eaten off by maggots. In fact, in the wound of entrance you  
6 can basically see one of the maggots crawling in.

7 Q All right.

8 A So it depicts some of the findings.

9 Q I'm going to publish that photograph to the jury --  
10 or those photographs. I'm going to hand you the laser pointer  
11 again.

12 Tell the jury how it is that you orient -- I see your  
13 case number there, the 17-CR -- or I'm sorry, 17-159 number  
14 there. How do you orient the placard that you use?

15 A Basically to orient, I always have it pointing  
16 towards the top of the head. And so this way we know that  
17 this is the top of the head up here, this is the neck or the  
18 bottom of the head down here. So in all of my photographs  
19 that I've done for 40 years or so and also when I teach my  
20 students, I always tell them to properly orient the photograph  
21 so you have some idea of which way is up, down, pointing  
22 towards the head or not pointing towards the head.

23 Q All right. And from this portion -- or from this

1 picture, where would that potential second gunshot or the  
2 second fragment have been?

3 A On the right side.

4 Q On this same side?

5 A Yeah, the right side.

6 Q All right. And, Doctor, I think you see in  
7 the injury there, is that actually a maggot that we're looking  
8 at?

9 A Well, the second one has got the maggot. But this  
10 one might have portions of a metallic fragment which we  
11 removed. It is later submitted to the police. And I said,  
12 "Fragment recovered from skull." And the police said it's not  
13 a bullet fragment. It's metallic stuff.

14 Q So let's look at the second photograph. And I think  
15 in that photograph you can still see the maggot infestation?

16 A Yeah. There's one right there.

17 Q Now, Doctor, let me ask you a couple of questions.  
18 First of all, these photographs fairly and accurately depict  
19 the originals that you took or -- and the body of Kenneth  
20 Brandon Hayes Sample?

21 A Yes, they do.

22 Q Okay. Doctor, let me ask you a couple of questions  
23 here. The first is, would a body in the state and condition

1 of Kenneth Brandon Hayes Sample, would it be possible for you  
2 to determine if there were any bruising?

3 A No. Basically you decompose, you bloat, there's  
4 darkening of the skin, the skin slips away like degloving. So  
5 you have skin slippage. So it's difficult if not impossible  
6 to distinguish any kind of bruising.

7 Q And with respect to the infestation of maggots and  
8 the deterioration of the body, is it -- would it be unusual if  
9 the body were wet, even if conditions were dry for a number of  
10 days?

11 A Not unusual. What happens when you decompose? You  
12 end up bloating or swelling up. There is simply bodily  
13 tissues that were expanded by fermentation. Fluids begin to  
14 exit the body. And that would basically account for wet  
15 clothing.

16 Q All right. So even your clothes would be wet, even  
17 if the area had been dry where the body was for a number of  
18 days?

19 A Yes. We get them inside of apartments even though  
20 they haven't been out in the rain.

21 MR. BECKER: All right. Doctor, I thank  
22 you for your testimony here today. I believe they'll have  
23 some questions on cross examination.



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THE COURT: Cross.

MR. HARTWIG: Thank you.

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CROSS EXAMINATION

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BY MR. HARTWIG:

Q Good afternoon, Doc.

A Good afternoon, Mr. Hartwig.

Q We know one another; correct?

A Yes, we do.

Q Just thought I'd tell the jury that we've worked on both sides of cases?

A That's correct.

Q Right? That, you know, on behalf of the state and I've also consulted with you privately on defense cases?

A That's correct.

Q I always enjoy listening to your testimony. So, Doc, when the body of Brandon Sample came to your office, decomposing, blood and maggots on it, what's the very first thing you do? Do you disrobe the body?

A Yes. We take the clothes off. When they're wet, we hang them up to dry. Once they're dried, we turn them over to the appropriate police agency.

Q Okay. And is that part of the protocol, is to take all the clothing, list it all, document its condition, take photographs?

A Well, we don't take photographs of the clothing. We

1 leave that up to the laboratory or the police to do. What we  
2 removed as far as clothing goes was one pair of gray shorts,  
3 one pair of red, white and blue American Eagle brand boxer  
4 briefs, one dark color Gildden, G-i-l-d-e-n, tee shirt, and one  
5 blue canvas shoe which was a slip-on. So he really had four  
6 items of clothing.

7 Q Okay. What color was the tee shirt?

8 A The what?

9 Q The tee shirt.

10 A Let's see here. Dark color.

11 Q Okay. Do you recall whether or not there was an  
12 undershirt on the body?

13 A Not in what we received.

14 Q Okay. Do you recall the positioning of the shirt  
15 when it arrived at your office?

16 A No.

17 Q No? All right. And you and I talked a little bit  
18 about this case a week ago maybe or somewhere around there;  
19 correct?

20 A Yes, that's correct.

21 Q And I inquired about whether or not you had  
22 photographs of the autopsy?

23 A Yes.

1 Q And what was it that you told me at that point?

2 A That I photographed the entrance wound and the skull.

3 Q Didn't you also indicate, though, that the  
4 photographs were lost by your office?

5 A As part of the download -- normally at the end of the  
6 year we download all of our photographs. And usually it's on  
7 a 32 gigabyte hard drive. But in 2017 we had so many  
8 photographs that we were unable to download all of the  
9 photographs and some got lost. Luckily, before the download  
10 for the 2017 cases we did make a compact disc and turn it over  
11 to police. I think those are the photographs that are intact.

12 Q Okay. Did you observe on the body any evidence of  
13 close-range firing?

14 A No. Not in a decomposing body. You really can't  
15 distinguish soot or stippling or anything like that. I think  
16 I put that in my protocol; that you really can't appreciate  
17 the range.

18 Q Can you just tell the jury what -- in your  
19 experience, what is the stippling that you're talking about or  
20 the soot?

21 A Basically, when you pull the trigger on a firearm  
22 there is an explosion that takes place that propels the  
23 projectile. Why does the projectile travel the furthest? It

1 has the most mass. What has lesser amounts of mass?

2 Basically, burning gunpowder, unburned gunpowder, residue from  
3 the last gunshot, oil if the firearm has been cleaned. That  
4 is the next step behind the projectile. So that would be  
5 stippling or peppering. That's what it looks like on the  
6 skin. Sometimes you can make a thumbnail sketch determination  
7 just looking at the stippling. But usually what you want to  
8 try to do is get the police to get the same lot of ammunition  
9 and the same firearm, fire it up against a bunch of white  
10 sheets and this way they can measure out the actual distance.

11 The last phase is what's known as soot. What has the  
12 least amount of mass? The smoke from the burning gunpowder.  
13 And sometimes you can see the soot deposition on the skin,  
14 especially in suicide cases where people have contacted  
15 gunshot wounds or where there's close-range fire.

16 In this case, I wasn't able to determine any soot,  
17 nor was I able to determine any stippling.

18 Q Did you note any on the clothes, particularly on the  
19 tee shirt?

20 A No.

21 Q No you didn't observe any, or no you didn't look for  
22 it or?

23 A I looked, but I didn't observe any.

1 Q Okay. Do you know -- do you have any notes regarding  
2 whether or not the tee shirt was examined for any bullet  
3 holes?

4 A It should have been, but I don't have any notes  
5 regarding that type of report.

6 Q All right. So it should have been looked at and  
7 noted, but you didn't do that?

8 A That's correct. The police usually do that.

9 Q Okay. And then you -- after you were done with the  
10 clothes, you gave them back to the police; correct?

11 A Yes.

12 Q All right. And we've learned that those clothes have  
13 since been destroyed?

14 A That's unfortunate.

15 Q Okay. All right. So the whole point of trying to  
16 observe and note soot and GSR is to determine the range of  
17 firing; correct?

18 A Yes. GSR is gunshot wound residue.

19 Q Okay. And if you look at all those factors without a  
20 decomposing body, you're able to determine the range, how  
21 close somebody might be when they're shot?

22 A You may or may not. If you have clothing that is  
23 sopping wet with decompositional fluid, you've got maggots all

1 over the place, I'll leave that up to the experts with their  
2 magical chemical tests to determine what we have.

3 Q So at least in this case, in your opinion, you can't  
4 give an opinion within a reasonable degree of medical  
5 certainty?

6 A No, I cannot. That's why I turn it over to the  
7 police that will take it to the crime lab and they'll have  
8 their magical chemical tests to see what we have.

9 Q Did you measure the wound that's in the back of the  
10 skull?

11 A Yes.

12 Q Do you have a picture of that or a note?

13 A It's in a picture.

14 Q This picture here, Doc?

15 A Yeah. It's a one-quarter of an inch round  
16 perforation.

17 Q Okay. Is it true that when a bullet goes into the  
18 back of let's say the skull, it sort of bevels inward?

19 A Yes.

20 Q Okay. And it stretches the skin upon entrance;  
21 correct?

22 A Well, it will tear through the skin.

23 Q Yeah.

1 A There wasn't any skin left.

2 Q Okay. And is it common that for that bullet hole to  
3 shrink back? To shrink?

4 A Not with bone, no. Bone is pretty sturdy. It's not  
5 gonna shrink with bone.

6 Q In this particular case, you're not a ballistics  
7 expert?

8 A No.

9 Q You are a gun enthusiast; correct?

10 A Yes, I have an extensive collection of firearms. Not  
11 because I'm some kind of a coo-coo but because when you're  
12 dealing with forensic pathology part of our work involves  
13 firearms. Which end of the barrel does the bullet come out  
14 of? How do different firearms work? Where is the safety on a  
15 .45-caliber semiautomatic? Single action, double-action  
16 revolvers. Things like that.

17 Q So would you agree with me that it would be  
18 impossible to determine what caliber of bullet entered the  
19 skull?

20 A Well, small.

21 Q Small?

22 A But it's not the meatballs, like the .38s or  
23 .40-caliber or .45s. Probably .32-caliber or under.



1 Q Okay. So it could be .22, .25, .32?

2 A Yeah, somewhere in that range.

3 Q All right. And because we're unable to recover any  
4 fragments to compare, that would make it speculative to  
5 determine caliber; correct?

6 A That would be correct.

7 Q Did you note bloodstaining on the tee shirt?

8 A Sometimes you can. Especially when there's  
9 decompositional change, that pretty much -- the bodily fluids  
10 will intermingle with any kind of blood and you really can't  
11 make that determination. The crime laboratory should be able  
12 to make that determination regarding blood, regarding what is  
13 decompositional fluid. That's more of a chemical test. I  
14 believe they still use Ninhydrin, n-i-n-h-y-d-r-i-n, but  
15 there are probably other chemical tests now that are far more  
16 advanced.

17 Q Would you also agree with me, Doc, that you're unable  
18 to determine when the body -- when the person died?

19 A Well, time of death is from when the person was last  
20 seen or heard from until they are found.

21 Q So you can't say it happened on a certain day?

22 A No, I can't pull out a stopwatch and say at exactly  
23 this moment on this particular day is when this body was

1 deceased.

2 Q And that would be the same for time and location;  
3 correct?

4 A Yes.

5 Q So in your investigation you can't determine that  
6 Brandon Sample was shot where he was found; correct?

7 A That's correct.

8 Q All right. Were there any other potential causes of  
9 death?

10 A No.

11 Q All right. And how did you determine that?

12 A Well, by doing a complete and thorough postmortem  
13 examination. He was a young man of age 22 years. Heart,  
14 besides decompositional change, was fine. Coronary arteries  
15 was fine. No evidence of previous heart attacks. Lungs were  
16 fine. Liver was fine, aside from decomposition. Same thing  
17 with the kidneys and all the other organs.

18 Q Okay. So, Doc, was there any evidence that either  
19 the body or the clothes were burnt?

20 A For what?

21 Q Burnt?

22 A Burnt?

23 Q By fire. Any evidence of --

1 A None that I saw.

2 Q Okay. And you examined the entire body and the  
3 clothes?

4 A Yes.

5 Q No evidence whatsoever of fire being set to the body?

6 A That's correct.

7 Q Okay. Any evidence that the body had been dragged  
8 through dirt, gravel, mud, anything like that?

9 A Sometimes you can tell. Sometimes you can't. If you  
10 were to drag me and then leave me to rot, basically the  
11 decompositional change would erase all of that evidence of any  
12 kind of dragging.

13 If you have drag marks, it's usually on the skin.  
14 But if you've got no skin because of decomposition you can't  
15 really tell if there's drag marks or not.

16 Q And as you indicated in direct testimony, you also  
17 couldn't determine whether the body had been beaten or  
18 anything like that?

19 A No, I could not make that determination.

20 Q So unable to determine whether there was a struggle  
21 prior to being shot?

22 A That's correct.

23 Q You were able to determine that there was one

1 entrance wound; correct?

2 A Yes.

3 Q And no exit wounds?

4 A That's correct.

5 Q So although you indicate that there's a probable  
6 second bullet, you can't find an entrance wound to go along  
7 with that theory; correct?

8 A Well, basically the maggots would find the entrance  
9 wound for you and that's where they would begin lunch. Why  
10 work? You have a hole. You've got blood. You've got bodily  
11 fluids. They'll start their lunch right there and continue on  
12 eating. So really the decompositional change and maggots will  
13 obscure all that evidence.

14 Q Well, we do see one entrance wound, though, that has  
15 a maggot infestation; correct?

16 A Correct.

17 Q We just don't see a second one?

18 A Because basically you're dealing with maggots. I  
19 mean, they took out bones of his face. There was no face  
20 left. Basically the neck was -- portions of that were gone.

21 Q And, Doc, just to be -- just to be fair, you didn't  
22 include the theory that there was a probable second bullet  
23 wound in your original coroner's report to us; correct?

1 A That's correct.

2 Q All right. You just came up with that, told me that  
3 outside today for the first time?

4 A Yes.

5 Q Okay. With regard to the one entrance wound that we  
6 did find, you had indicated in your report, I believe, that it  
7 came from left to right, slightly downward to upward; correct?

8 A I believe so.

9 Q All right.

10 A Yeah.

11 Q That being said, would you agree with me that you're  
12 unable to determine the positioning of the body at the time of  
13 the entrance of the bullet?

14 A That's correct.

15 Q So you wouldn't be able to determine whether Brandon  
16 was standing?

17 A No, I wouldn't.

18 Q Or kneeling or laying flat on his stomach; correct?

19 A No.

20 MR. HARTWIG: Just one moment. Thank you.

21 THE WITNESS: Sure.

22 BY MR. HARTWIG:

23 Q Doc, based on the entrance wound that we talked

1 about, left to right, down to up, are you able to determine in  
2 any way based on your experience whether this would have been  
3 a left-handed shooter, right-handed shooter?

4 A You can't tell.

5 Q Because you can't tell which way the body was?

6 A Well, you can't tell if it's left handed or right  
7 handed. I mean, there are some people here that shoot a rifle  
8 left handed and some people that shoot a handgun right handed.  
9 So you really can't tell what the hand position was of the  
10 shooter.

11 Q Okay.

12 A If he was holding it in his right hand or the shooter  
13 was holding it in their left hand.

14 Q Are you familiar with transfer gunshot residue?

15 A Yes.

16 Q All right. So typically a lot of times you see on a  
17 shooter the residue will kick back and be on the person's  
18 hands, clothes?

19 A That's correct. You would do a gunshot residue or  
20 the police would do a gunshot residue on your suspected  
21 shooter.

22 Q Sure. And then the idea of transfer gunshot residue  
23 is that if it's --

1 MR. BECKER: I'm going to object. I don't  
2 think this is his area of expertise.

3 THE COURT: Is it, Doc? Do you know?

4 THE WITNESS: Well, with transfer, a  
5 limited amount of knowledge, sure. You have cylinder flare  
6 and things like that.

7 THE COURT: Overruled.

8 BY MR. HARTWIG:

9 Q So would you expect to have gunshot residue on a  
10 shooter?

11 A May or may not.

12 Q Okay. If it was, would you expect it to be easily  
13 transferred to other things such as a -- other clothing,  
14 steering wheel, or anything you would touch?

15 A It may. It may not.

16 MR. HARTWIG: All right, Doc. Good seeing  
17 you. Thank you.

18 THE WITNESS: Okay.

19 THE COURT: Redirect.

20 MR. BECKER: No, Your Honor.

21 THE COURT: All right, Doctor. You may  
22 step down. Thank you.

23 THE WITNESS: Thank you very much.

1 THE COURT: Mr. Becker, does that conclude  
2 your presentation of witnesses?

3 MR. BECKER: Subject to the admission of  
4 exhibits, yes.

5 THE COURT: Hold on for a second.

6 Ladies and Gentlemen, that will conclude our  
7 presentation for today then. I have some things I have to  
8 deal with with counsel outside of your presence. That will  
9 take us until about 4:30. We'll come back in tomorrow morning  
10 at 9:00 and deal with the nature and extent of the defense  
11 case. There's a good chance we will resolve this case with  
12 final arguments and give it to you for deliberations tomorrow.  
13 Supposed to be some nasty weather out there. Be careful  
14 coming in.

15 Do not discuss this case among yourselves, nor with  
16 anyone else. Do not form or express an opinion. Have a  
17 pleasant evening. Our alternates still have to be in tomorrow  
18 morning.

19 (Whereupon, the jury was excused at 4:14  
20 p.m.)

21 THE COURT: We're on the record out of the  
22 presence of the jury. The defendant is present. We're here  
23 regarding the conclusion of the state's case. Mr. Becker, you



1 have certain exhibits you'd like to offer into evidence?

2 MR. BECKER: Yes, I do, Your Honor. Your  
3 Honor, at this time, I would move for admission of State's  
4 Exhibits 1 through 55 inclusive. I believe they've all been  
5 testified to and authenticated by the various witnesses or  
6 stipulated to. Some of the phone records were actually  
7 stipulated to.

8 THE COURT: All right. Any objections?

9 MR. OLSON: Your Honor, we do have an  
10 objection to Exhibits 11, 12 and 13. 11 is the photo of the  
11 defendant with the two guns with a tag on it that reads, "My  
12 two baddest bitches and they loyal." We believe that, number  
13 one, it was never properly authenticated. There was nobody  
14 that testified as to who took that photograph, when it was  
15 taken, when that was placed on to the phone.

16 Secondly, we believe that there's no probative value.  
17 Or, if there's any probative value, it's certainly outweighed  
18 by the prejudice, especially given the tag that goes over that  
19 photograph.

20 With respect to the video of Austin shooting a gun,  
21 same objections, Your Honor.

22 THE COURT: Which one was that?

23 MR. OLSON: That's 12.

1 THE COURT: That's 12. Okay.

2 MR. OLSON: That was recovered from  
3 Meredith Loges' telephone. Once again, there was no testimony  
4 by her as to when that photograph -- when that video was taken  
5 or what relevance it has to this case, especially if the  
6 firing of that firearm was done prior to the events that are  
7 in question before Your Honor today. We object that there's  
8 no relevance to that.

9 And then, finally, the photo of the defendant with  
10 the gun and the gray Nike shoes. That's Exhibit 13. Same  
11 objection. Once again, there was no evidence or there was no  
12 testimony as to when those photographs were taken.

13 And, again, they are cumulative and unduly  
14 prejudicial. We saw the Nike shoes. We saw the gun. We  
15 heard about the ownership of the gun. We heard testimony from  
16 others that indicated possession of my client with that  
17 firearm. So, again, we would ask that those three exhibits be  
18 excluded.

19 THE COURT: Mr. Becker.

20 MR. BECKER: Your Honor, I think they're  
21 highly probative of the charges of having weapons under  
22 disability. Specifically, photograph 11 depicts the same gun.  
23 It was testified to by probably half a dozen witnesses that

1 the defendant was identified in that photograph. And that it  
2 was the same firearm that they had observed him numerous times  
3 with. I think it's clearly probative of him being in  
4 possession and having weapons under disability, as well as  
5 going to the armed robbery and the specifications and the  
6 aggravated murder and the firearm specification.

7 With respect to Number 12, the video of him shooting  
8 the gun, his girlfriend testified that that was taken sometime  
9 in June. And she testified that she left the country on  
10 June 9th. And of course the charge is on or about June --  
11 with respect to the one weapon under disability, on or about  
12 June 12th. That clearly shows within days of the crime he had  
13 a firearm.

14 13 is extremely important in the fact that not only  
15 does it show him with a gun and the gray Nike tennis shoes,  
16 his hand was identified by numerous witnesses and the tattoos,  
17 and those same or almost similar gray Nike tennis shoes were  
18 found on June 20th in the apartment.

19 So we believe all three of those photographs are  
20 extremely probative of not only the weapons under disability  
21 charges but as well they all go to the robberies, the firearm  
22 specifications and both aggravated robberies and the firearm  
23 specification and the aggravated murder, and we'd ask the

1 Court to overrule that.

2 THE COURT: Objection overruled. 11, 12  
3 and 13 will be admitted into evidence along with the balance  
4 of the Exhibits 1 through 55. You didn't have any other  
5 objections?

6 (Whereupon, State's Exhibit Nos. 1-55 were  
7 admitted into evidence.)

8 MR. HARTWIG: No, Your Honor.

9 THE COURT: All right. With that, the  
10 state rests?

11 MR. BECKER: Yes, Your Honor.

12 THE COURT: All right. Motion?

13 MOTION

14 MR. OLSON: Your Honor, we would make a  
15 Rule 29 motion. It's our position that the state has failed  
16 to meet its burden with respect to all of the crimes and  
17 specifications charged against my client. Even when looking  
18 at the evidence in light most favorable to the state, we  
19 believe that the state has failed to meet its burden.  
20 Therefore, ask for a dismissal of all charges.

21 THE COURT: Mr. Becker.

22 MR. BECKER: Your Honor, we believe and the  
23 Court is well aware in a light most favorable to the

1 prosecution there is overwhelming evidence of the defendant's  
2 guilt of each and every one of these charges as could be  
3 interpreted by a fair and reasonable jury.

4 THE COURT: I am going to overrule your  
5 Rule 29 motion and we'll proceed.

6 So it's up to the defense at this point in time. Do  
7 you wish to call any additional witnesses here tomorrow?

8 MR. OLSON: Your Honor, we do not  
9 anticipate calling any witnesses. I will also for the record  
10 renew my objection based upon the venue. We raised that  
11 pretrial motion. Again, it's our position that the state,  
12 especially on the murder charge, has failed to demonstrate  
13 that the actual crime occurred within Trumbull County and,  
14 therefore, we'd move for a dismissal on that ground.

15 THE COURT: Right.

16 MR. OLSON: And the renewal of the joinder  
17 of the robbery case with the murder case, as well as the  
18 failure to sever the firearm.

19 THE COURT: Again, we ruled against your  
20 request to sever the June 20th matters from the others.  
21 That's noted for the record. And all of the other prior  
22 rulings of the Court stand. Venue, I believe, is a jury call  
23 and they'll make that call accordingly.

1 MR. HARTWIG: One clarification for the  
2 record, Your Honor, with regard to one of our exhibits. We  
3 had mistakenly identified Justin Borawiec's voluntary  
4 statement as Exhibit H. We have corrected it to be Exhibit I.

5 (Whereupon, Defendant's Exhibit I, Witness  
6 Statement, was introduced for identification.)

7 THE COURT: That's Borawiec's statement?

8 MR. HARTWIG: Yes.

9 THE COURT: All right.

10 MR. BECKER: What was I?

11 MR. HARTWIG: I is --

12 MR. BECKER: There was a previous I.

13 MR. HARTWIG: Well, that is the previous I.

14 Wait a second.

15 MR. OLSON: I think we marked two Hs.

16 THE COURT: I didn't have an I.

17 MR. HARTWIG: Yeah. We did. We marked two  
18 Hs.

19 THE COURT: So you don't intend to call any  
20 further witnesses?

21 MR. HARTWIG: We don't.

22 THE COURT: You have certain exhibits you'd  
23 like to have admitted into evidence? Go ahead.

1 MR. OLSON: Your Honor, we'd move for the  
2 admission of Exhibits A through M that have been presented  
3 throughout the course of this trial.

4 THE COURT: Okay. Mr. Becker, any  
5 objections?

6 MR. BECKER: Yes, Your Honor. I would  
7 object -- first of all, I'd object to Exhibit A, as the times  
8 are incorrect on that report. They're using the UTC time. I  
9 don't know what the significance of that is.

10 Also, I think I would object to Exhibit -- I don't  
11 know which one this is.

12 MR. OLSON: This is all A.

13 MR. BECKER: Yeah. I'd object to all of A.  
14 It's already admitted into one of the state's exhibits except  
15 for -- part of it is, but the times are off. They're using  
16 the wrong UTC time and I believe they were all testified to  
17 anyway in the previous State's exhibit. Additionally --

18 THE COURT: The state has that same  
19 information?

20 MR. BECKER: Yeah. That's in State's  
21 Exhibit either 47 or 48 I believe.

22 THE COURT: The reason you want a different  
23 set of those is?

1 MR. OLSON: The only question I would have,  
2 Your Honor, is during the testimony regarding the state's  
3 exhibit that's the same as A there was an indication that the  
4 7:30 telephone call was not included. As long as that  
5 telephone call --

6 THE COURT: Check that out and see right  
7 now.

8 MR. BECKER: Where is that at? I don't  
9 have an objection to entering that in there.

10 MR. OLSON: That came at the end.

11 MR. BECKER: Can we just enter that in as  
12 A?

13 MR. OLSON: Yeah.

14 MR. BECKER: Yeah, that's fine. I don't  
15 have an objection to B, just being the one page with the two  
16 calls. You're going to have to figure out the time. Whatever  
17 the time is.

18 THE COURT: Is that Exhibit B?

19 MR. BECKER: Their Exhibit A.

20 MR. OLSON: That would be Exhibit A.

21 THE COURT: Exhibit A is going to be  
22 limited to the one page and then there's no objection;  
23 correct?



1 MR. BECKER: Right.

2 THE COURT: All right. Very well.

3 MR. BECKER: Exhibit B, I think, is just a  
4 L.E.A.D.S. report. I don't think there was any -- it was  
5 testified to, but it's full of hearsay. I don't know who  
6 created it or where it came from. The record keeper is not  
7 here. We'd object to that. It's basically just saying that  
8 Brandon suffers from mental illness and it's got the  
9 defendant's mother's phone number written on it and it's got  
10 notes. I think it's been testified to and I think it's  
11 improper to enter that. I don't even think Detective Greaver  
12 realized -- was able to say that was his.

13 THE COURT: Regarding that?

14 MR. OLSON: Your Honor, it would be our  
15 position that it is probative and I believe Detective Greaver  
16 did indicate that he received that report, he was familiar  
17 with that report, and that he thought that those notes that  
18 were contained on that record were his. So for those purposes  
19 I would say that it is admissible.

20 THE COURT: I am going to overrule your  
21 objection. That'll come in. All right.

22 MR. BECKER: All right. Exhibit C is  
23 clearly, it's just a police report. It was written by Brian

1 Galida. It's a one-page document. I think that's clearly  
2 hearsay. I think the author of it was not here. I think it's  
3 obviously improper to allow some reports in and not others.  
4 If we're going to introduce all the police reports, we might  
5 as well introduce every police report. And I think it's  
6 improper to allow just one page in one police report. It has  
7 been testified to.

8 MR. OLSON: Your Honor, our position was it  
9 is part of the investigative file. He did testify to it,  
10 confirmed the information contained therein, and it's  
11 probative to the matter.

12 THE COURT: I'm going to sustain the  
13 objection. That will be out.

14 MR. BECKER: Thank you, Your Honor.

15 Your Honor, same thing with Exhibit D. It is the  
16 Niles City call summary. It's, again, a hearsay report from  
17 the city of Niles. I think it's improper to permit that to be  
18 admitted into evidence.

19 THE COURT: Mr. Olson?

20 MR. OLSON: Your Honor, we'd have the same  
21 position, but I recognize based upon the Court's previous  
22 rulings, but we would ask for its admission anyway.

23 THE COURT: Sustained. That's out.

1 MR. BECKER: Your Honor, Defense Exhibit E  
2 is a one-page document. I don't have an objection to that.  
3 It came from the extraction report. I would note for the  
4 record, though, that the time is wrong. So they'll have to  
5 explain that.

6 THE COURT: That will be in.

7 MR. BECKER: F, same objection to the  
8 previous --

9 THE COURT: It's a dispatch summary.

10 MR. BECKER: It's a dispatch summary, yeah.  
11 I think that's improper.

12 THE COURT: Sustain the objection to that.

13 MR. BECKER: Your Honor, State's Exhibit G  
14 is a written statement from Stacie Cassidy. And while I think  
15 they're entitled to cross-examine, which they did on that, I  
16 think it's improper to introduce those.

17 THE COURT: I think that's G, I, H --

18 MR. BECKER: I don't have -- yeah, that  
19 would be G, I, K, L, M. I don't see an H.

20 THE COURT: H, isn't that Melanie?

21 MR. BECKER: There's an H and an I. I'm  
22 not sure which one. H is now the Facebook messages of Nathan  
23 Borawiec.

1 THE COURT: Okay. You're objecting to all  
2 of the statements?

3 MR. BECKER: Yeah.

4 THE COURT: I'm going to sustain the  
5 objection to all of the statements. Again, the testimony is  
6 from the witness stand. I don't like to put statements in.

7 MR. BECKER: Okay. So that would be G,  
8 H or I --

9 MR. OLSON: What did you mark? I thought  
10 that you just marked it as I, Your Honor.

11 THE COURT: I thought -- there was a  
12 statement -- I've got the statement from police on behalf of  
13 one of the witnesses as G. I, I had as Justin Borawiec's  
14 statement. I thought that was his statement. H, I had as  
15 Melanie's statement.

16 MR. BECKER: No. H is actually Nathan --  
17 H, I believe, is Nathan Borawiec's Facebook page.

18 THE COURT: Facebook. That's a different  
19 thing. I'm talking about the statements now.

20 MR. BECKER: So I think those all should  
21 be --

22 THE COURT: And K was a statement?

23 MR. BECKER: Correct.

1 THE COURT: And L is a statement?

2 MR. BECKER: And so is M.

3 THE COURT: And M is a statement. Right.

4 All the statements go out.

5 MR. BECKER: All right. And then we have  
6 no objection to the Facebook conversations involving Nathan  
7 Borawiec, which I believe is Exhibit H?

8 MR. OLSON: Yes.

9 MR. BECKER: And the Facebook conversation  
10 involving Melanie Engle which is marked as Exhibit J.

11 THE COURT: Okay. So we're set then?

12 MR. OLSON: Yes, Your Honor.

13 THE COURT: All of the exhibits as noted  
14 will be admitted in. And I sustained the objection to certain  
15 other ones. I think the record is clear on that now.

16 So I'll allow counsel to make sure you've got those  
17 sorted out prior to tomorrow then.

18 (Whereupon, Defendant's Exhibits A, B, E, H  
19 and J, were received into evidence.)

20 With that, you -- I'm assuming you're going to renew  
21 your motion?

22 MR. OLSON: Yes, Your Honor.

23 THE COURT: And I'm going to overrule your

1 motion.

2 With that, you rest?

3 MR. OLSON: Yes, Your Honor.

4 THE COURT: Very well. We've had a chance  
5 to -- let's go off the record.

6 (Whereupon, a discussion was had off the  
7 record.)

8 THE COURT: We can go back on the record.  
9 We've had a chance to discuss the charge in general. There's  
10 been a request that's not in the charge that's been delivered  
11 to everyone regarding a limiting instruction regarding the use  
12 of the prior criminal acts for having weapons while under a  
13 disability. It's an appropriate request. The state is going  
14 to deliver that proper language to my magistrate who will  
15 place it in there and that will be in as part of the charge.

16 MR. OLSON: Thank you, Your Honor.

17 THE COURT: Other requested additions or  
18 objections to this charge?

19 MR. HARTWIG: Nothing further.

20 THE COURT: Anything, Mr. Becker?

21 MR. BECKER: No, Your Honor. I have  
22 nothing to add.

23 THE COURT: Very well. Then the charge

1 will be ready. We'll come on in tomorrow morning. We'll do  
2 closings, the charge, and we'll have the jury out hopefully in  
3 the morning. We're off record.

4 (Whereupon, the hearing concluded at  
5 4:35 p.m.).

6 (Note: For further proceedings, please  
7 refer to Volume V.)

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