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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 II - 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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On behalf of the State of Ohio:

Atty. Christopher D. Becker
Trumbull County Prosecutor's Office
160 High Street
Warren, OH 44481
Phone: (330) 675-2426
Email: psbecker@trumbull.co.oh.us

On behalf of the Defendant:

Atty. Bradley G. Olson
Dimeo Olson Law Group, LLC
28 North Mill Street
New Castle, PA 16101
Phone: (330) 318-3453
Email: brad_olson_jr@yahoo.com

Mr. Edward Hartwig
120 Marwood Circle
PO Box 3965
Boardman, OH 44513
Phone: (330) 718-9499

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MARCH 6, 2018

THE COURT: Good afternoon, Ladies and Gentlemen. We continue with the case today. You saw the jury view and you had my initial instructions yesterday. Now it's the opportunity for opening statements of counsel.

Opening statements are a concise and orderly description of each side's claims and defenses and the evidence counsel expect to produce to support those claims or defenses. Each side will address you once during opening statements. The state will address you first.

Mr. Becker, you may proceed.

MR. BECKER: Thank you, Your Honor.

OPENING STATEMENT

MR. BECKER: May it please the Court, Mr. Olson, Mr. Hartwig, the defendant in this case, and most importantly, thank you Ladies and Gentlemen of this Jury. I want to thank you, first of all, for your time, your patience and your service to this community. As I indicated to you yesterday, probably short of serving in the military there is no greater service that you can provide this community than serving as a juror on jury duty. You can see the process that we went through to get just you 12 jurors. It took about a half a day. Sometimes it takes even longer. And both parties

1 ask you to do your job diligently, and I'm sure you Ladies and
2 Gentlemen will do that and pay attention and really put your
3 efforts into this case.

4 So when we went through that process yesterday, one
5 of the things that I mentioned and will be in the jury
6 instructions is reasonable doubt. And as you can pretty well
7 clearly see from the questioning from both sides, we just want
8 jurors who use their reason and common sense. The same kind
9 of reason and common sense that you would use in your daily
10 lives. Because reasonable doubt is just that. It's a doubt
11 based on reason and common sense. That's why I went through
12 the examples about buying a house. And I know Mr. Stimpert, I
13 used the example of being married with the wedding ring and
14 those kind of examples to see what you folks would look for in
15 a particular case. You're going to use the same tools,
16 though, and the Court is going to tell you you're going to use
17 the same tools that you use in your daily lives. Whether it
18 is a dispute at work or a dispute between your children and
19 siblings. Just like you do in your daily lives. And just
20 like buying a car or buying a home or dealing with coworkers
21 or dealing with your children, you're going to use those same
22 skills here in the courtroom and when you go back to
23 deliberate in this case.

1 So let's get to the heart of this case. Let's talk
2 about why we're here in March of 2018. On June 11th in the
3 late evening hours or leading into the early morning hours of
4 June 12, 2017, 22-year-old Kenneth Brandon Hayes Sample -- who
5 went by the name of Brandon -- was in Warren with some friends
6 of his. You will hear testimony from an individual named Josh
7 White. Josh will tell you he had known Brandon since they
8 were probably 11 or 12 years old. They were very good
9 friends. Josh and Brandon, in the evening of June 11th, about
10 6, 7, 8:00 at night, mowed Brandon's grandmother's yard and
11 then they went swimming at a friend's home.

12 Josh White, at the time, did not drive. He didn't
13 have a car. And he was living over on the east side of Akron
14 in the Ellet area. I don't know if anyone is familiar with
15 that area of Akron, but it's this side of Akron. Brandon
16 drove Josh White home to Akron in the late hours of June 11th
17 or early morning of June 12th. Brandon and Josh told --
18 Brandon told Josh, rather, that he was gonna hang out with
19 Austin, and Austin was gonna give him a thousand dollars.

20 Now, in statements to Detective Greaver, this
21 gentleman seated here beside me, the lead detective in this
22 case, this defendant stated he was with Brandon and the kid
23 from Akron on the evening of June 11, 2017.

1 Josh White will say he was not with Austin. He was
2 not with him and they were not there. Now, Josh White will
3 testify that he never saw Brandon -- or I'm sorry, the
4 defendant in this case -- on that evening. Never saw him.
5 Wasn't with him.

6 Now, before we get into a lot of things, I want you
7 to understand that there was a search warrant later on about a
8 week after this time period when this defendant was arrested
9 and his cell phone was searched. Police got a search warrant.
10 They searched it and found the contents. There is a crime lab
11 in the state of Ohio called the Bureau of Criminal
12 Investigation. You will hear that referred to a lot in this
13 case as BCI, but it's the Bureau of Criminal Investigation.
14 And they have all kinds of experts. They have fingerprint
15 experts, they have firearms experts, and they have computer
16 experts. And people that analyze phones go into the phones,
17 look what's in there, get the contents and give copies.

18 Well, a search of this defendant's cell phone found
19 that he had received a message from Brandon Sample. And it's
20 listed on his cell phone as "B Samp's." And it was stated that
21 Brandon had to take J White back to Akron in a bit, but do you
22 still want to link up when I get back? And the defendant
23 responded he would be on the west side of Warren.

1 Now, I'll tell you a little bit about those text
2 messages in a minute, but they were located by the forensic
3 expert by the name of JoAnn Gibb from BCI when she opened that
4 phone and made copies of it.

5 Those text messages about this defendant meeting
6 B Samps, or Brandon Sample -- and the numbers show up so the
7 phone numbers are Brandon Sample's and this defendant's phone
8 number -- were deleted from the phone. However, JoAnn Gibb,
9 because she can do this, was able to pull those deleted text
10 messages off the defendant's phone. And she will testify in a
11 couple days, probably tomorrow in this case, as to how she did
12 that. And you'll have copies of those text messages,
13 including the deleted text messages.

14 So on June 12, 2017 at about 12:15 a.m., Brandon
15 dropped off his friend Josh White in Akron, and Brandon,
16 whether -- or, I'm sorry, Josh will take the witness stand and
17 tell you it's about 12:15. It was a Sunday night. He had to
18 work the next day. He was working, I believe, at a heating
19 and air conditioning place in Akron, Ohio.

20 The defendant, also on his cell phone, there was a
21 text from a girl named Brittani Merten. Brittani Merten will
22 come into this courtroom and testify. And there will be
23 copies of the messages from this defendant and Brittani

1 Merten. This defendant was on his phone at 12:08 in the
2 morning on June 12th and he stated that he was "out in Niles"
3 with a W. He mistyped it, misprinted it, whatever. But
4 Niles.

5 This is actually on June 12th. I'm sorry. I have
6 the wrong date here. This should be June 12th. Around 3 to 4
7 a.m. on June 12th the defendant was with Brandon Sample in
8 Brandon Sample's white Chevy Malibu. That Chevy Malibu was at
9 713 Mason Street which if you recall was our last stop on our
10 quite lengthy jury view yesterday. It was the house we went
11 to after we went to the bathroom and to the bike trail.

12 Nathan Moats, Deidre Keener and Jessica Simms and
13 Hayle Roupe were at 713 Mason Street in Niles and saw this
14 defendant with Brandon Sample and that white Chevy Malibu
15 about 3 to 4 a.m.

16 The defendant was with Brandon, as I said. He had a
17 Chevy Malibu. And out of the presence and out of the hearing
18 of Brandon, he told these people in the house that he was
19 going to rob Brandon. Now this is at 713 Mason Street.

20 We also have another expert coming from BCI named
21 Bill Moska1. Bill Moska1 took the phone records from this
22 defendant's cell phone. And when your cell phone is in use
23 it's constantly making use with cell phone towers and giving a

1 longitude and latitude about where this handset it. Where it
2 is.

3 The defendant's cell phone was using towers to make
4 calls in the area of 713 Mason Street in the morning of June
5 12th at approximately 3 to 4 a.m. And you will have a map that
6 Bill Moskal -- basically all he does is he takes the longitude
7 and latitude from the times and puts them on a map. And
8 you'll see the map that Mr. Moskal put together.

9 Those cell phone tower records will show this
10 defendant's phone usage was using cell phone towers in Niles
11 on June 12, 2017 from about 2:08 a.m. through 3:07 a.m. And,
12 again, Deidre Keener, Hayle Roupe, Jessica Simms, Nathan Moats
13 will all confirm that he was at 713 Mason Street with Brandon
14 Sample and Brandon Sample's white Chevy Malibu.

15 This defendant gave two statements to Detective John
16 Greaver when he was questioned after he came up as a suspect.
17 This defendant told this detective "I was home in
18 Bristolville, Ohio all night on June 12th, early morning hours
19 of June 12th." And you'll actually hear a recorded
20 conversation with this detective.

21 The cell phone towers that Bill Moskal -- or the cell
22 phone records that Bill Moskal mapped and put on a map he did
23 page by page by page. And you will see that at 3:46 a.m. on

1 June 12th the defendant's cell phone records will show him
2 using towers in the Warren, Ohio, area.

3 At approximately 4:40 a.m. on June 12th, 2017,
4 Brandon Sample sent a text message. And you will have his
5 cell phone records that he sent a message to his father Ken
6 Sample who will testify probably tomorrow morning. Ken will
7 say he stated to his son, "Hey, when are you coming home?"
8 And Brandon said, "I'm on my way home now." That's the last
9 time anyone heard from Brandon Sample's cell phone ever.

10 Ken Sample will testify then that he made numerous
11 calls to his son that went directly to voicemail after 4:40
12 a.m. on June 12th.

13 Cell phone tower records, again, will show -- and
14 Bill Moskał will have a map -- that this defendant's phone was
15 used very close to where Brandon Sample's body was found which
16 was that location we went to out in the mud. And god bless
17 you folks who got off the bus because I didn't get out of the
18 car. But in that area which is known as Hatchet Man Road,
19 that's where his body was found. And the records will show
20 that even though the defendant lives up there in Bristolville
21 that at about 4:51 and past 5:00 a.m. his cell phone was using
22 cell phone towers in that area.

23 The cell phone towers will show the defendant using

1 towers near State Route 46 and 422 at approximately 5:45 a.m.
2 on June 12th.

3 The defendant's cell phone was, again, using towers
4 in the Niles area in the same location where 713 was then at
5 9:57 a.m. on June 12th.

6 At approximately 7:36 a.m., Niles Police received a
7 call of a bicycle off the bike path. You were there yesterday
8 and you saw that embankment that goes down to the river. I'm
9 pretty sure that's the Mahoning River there. They went out
10 and you will hear from officers who found -- oops -- who found
11 the white Chevy Malibu in the woods off the bike path in
12 Niles, Trumbull County, Ohio. They ran that registration and
13 determined that the vehicle did, in fact, belong to Brandon
14 Sample.

15 Now, this is at 7:36 in the morning. Brandon was not
16 really reported missing -- you'll hear testimony as to when he
17 was reported missing later that day. But you know where that
18 bike path location was and where Brandon Samples's car was in
19 relationship to 713 Mason Street. Not very far. I know it
20 took awhile to get there on the bus, but as the crow flies
21 it's about .7 miles from the bike path to 713 Mason Street.

22 You will see photos of that car. It is in the
23 bushes, basically. There were a lot of trees there, and it's

1 basically wedged between some trees and some logs there. And
2 as I indicated to you, that location is about 7-tenths of a
3 mile from 713 Mason Street.

4 Witnesses will testify, then, that they saw the
5 defendant back at 713 Mason Street in the morning hours of
6 June 12th, 2017. And the defendant told some of those
7 witnesses that he put Brandon's white Chevy Malibu off the
8 bike path right where the Niles Police found it earlier that
9 morning. Witnesses will tell you that. Cell phone records
10 will show you that the defendant's phone was used in the
11 morning hours, as I said to you -- I think it's 9:56 -- near
12 713 Mason Street.

13 The defendant's cell phone, again, I want you to
14 remember that some of those text messages to Brandon's -- or
15 I'm sorry -- to Brandon Sample were deleted up until those
16 last phone calls. There's also a phone call from the
17 defendant to the victim at about 1:18 a.m. on June 12th. The
18 deleted text messages show Brandon Sample asking to pick up
19 the defendant on the evening of June 11th, 2017. The
20 defendant stated he would be on the west side of Warren. And
21 you will have those deleted text messages that were pulled out
22 by JoAnn Gibb from BCI.

23 There's also a phone call, as I indicated, made from

1 the defendant to Brandon Sample at around 1:18 a.m. on
2 June 12th, 2017. Those records are confirmed by both the
3 defendant's cell phone records and the victim's cell phone
4 records. They matched. There was definitely a call made at
5 1:18 a.m. Now, remember all the deleted text messages that
6 were recovered from his phone.

7 Now the evidence is going to show from this
8 defendant's phone on June 13, 2017, after dumping Brandon
9 Sample's car on the bike path and admitting to killing him to
10 witnesses, he began texting Brandon Samples's phone. These
11 messages were not deleted. By June 13th, it was publicly
12 known that Brandon Sample was missing. His family had
13 reported him missing in the evening hours of June 12th. The
14 Warren Police were out looking for him. It was on Facebook.
15 It was on the news. There was concern as to where Brandon
16 Sample was since he had told his father in the early morning
17 hours of June 12th that he would be home at 4:40 a.m., that he
18 was on his way.

19 So the first text message that's not deleted from
20 this defendant's phone to Brandon Sample after the deleted
21 texts I told you about on June 11th, the one that he didn't
22 delete or someone didn't delete, says, "Yo, is you straight
23 nigga? You're all over Facebook. WTF," which means what the

1 fuck? "HMU," which means hit me up, call me.

2 At approximately 6 p.m. on June 12th is when Kenneth
3 Sample had reported his son missing. And Ken Sample will take
4 the witness stand and tell you that he reported him missing.
5 That's a whole day before this defendant starts texting
6 Brandon Samples's phone. And the messages aren't deleted.

7 As Mr. Sample will testify, he had not heard from his
8 son until 4:40 a.m. earlier that day.

9 Detective Greaver was assigned to the case when they
10 determined that Brandon Sample was a missing person. And
11 basically from June 12th through June 15th Warren Police began
12 obtaining information that the victim may have been killed on
13 Hatchet Man Road. And you'll hear witnesses that will take
14 this witness stand and tell you that out of the words of this
15 defendant he told them he killed Brandon, he made him get on
16 his knees and shot him in the head on Hatchet Man Road.

17 Now, are there problems in this investigation? Sure.
18 There's always problems. I'll tell you some of them right
19 now. First of all, Brandon's phone, cell phone, was never
20 recovered. Don't know where it is. We also have tried
21 repeatedly to get -- and Detective Greaver will testify --
22 that the phone company has not given us Brandon Sample's phone
23 records, despite a grand jury subpoena. There were fragments

1 recovered at the autopsy which ended up not even being metal
2 fragments. And you'll hear from the individual here. We'll
3 have the coroner testify. There's unknown DNA on the magazine
4 of a gun that's recovered in this case. And we'll talk about
5 this gun in a moment. And we'll have a DNA expert come in and
6 we'll ask her some questions.

7 So let's go back to what the defendant told the
8 police. He told the police that he was with Brandon Sample
9 and in Brandon Sample's car on June 11th. Of course Josh
10 White says he wasn't with them when they were mowing yards and
11 swimming and when he went back to Akron.

12 However, the defendant was seen by other individuals
13 with Brandon Sample when the cell phone tower records and
14 calls were being made and the text message saying he was in
15 Niles, N-i-l-e-w. He was seen with Brandon Sample in Brandon
16 Sample's car.

17 Now, the defendant made numerous statements to
18 witnesses that he had shot Brandon in his head on Hatchet Man
19 Road. And that information was given to this detective. The
20 defendant stated he put Brandon's car in the bike path. And
21 you will hear evidence and testimony from witnesses who will
22 have told -- will tell you that from this witness stand and
23 say that this defendant told them that.

1 So on the morning of June 15, 2017, this Detective
2 and other investigators began searching Hatchet Man Road. The
3 area where you were located at. This officer located
4 Brandon's body on Hatchet Man Road which is the area that we
5 went on the jury view yesterday.

6 Now, you're going to see that that area is a very
7 different place on June 15th, 2017. Obviously there's no
8 snow. There is a huge amount of overgrowth. And you will see
9 photographs depicting that area. There was an active logging
10 area going on there. And you'll see pictures of stacks of
11 wood that were apparently being cut or milled or something
12 there.

13 In any event, these officers found Brandon's body
14 four days later. And you can imagine the state of that body
15 being out in a June month in Ohio for about four days out in
16 the woods. And you will see, unfortunately, photographs of
17 that body as it was recovered.

18 Now, there's an individual named Rickey Roupe. And
19 Rickey Roupe and this defendant's girlfriend, Meredith Loges,
20 are going to come into this courtroom and testify that just a
21 few weeks prior to all of these events this defendant was with
22 them at Nelson Ledges Parks and asked them if they wanted to
23 see a scary place and took them to a place called Hatchet Man

1 Road in the dark.

2 Meredith will testify that she took this defendant
3 and Rickey Roupe to that area and it was dark and that's where
4 they went.

5 That area, Hatchet Man Road, is near the defendant's
6 home in Bristolville which is 5106 Miller South Road. This
7 detective went there in order to speak to him on one occasion.

8 You will hear the testimony of Trumbull County
9 Coroner Dr. Humphrey Germaniuk. He is a forensic pathologist.
10 He will testify that -- and you will see his autopsy report
11 and hear his testimony. Brandon Sample was shot one time in
12 the head. There were fragments in his head on an x-ray.
13 Dr. Germaniuk did not retrieve those. He'll explain why on
14 the witness stand, why he could not basically get those
15 fragments. He will testify and hopefully he will bring the
16 x-rays of Brandon Sample's head and the bullet fragments.
17 Shouldn't say "hopefully." He will. And you will see the
18 gunshot wound to his head in autopsy photos.

19 Dr. Germaniuk will testify that his expert opinion as
20 the forensic pathologist and the duly elected coroner of
21 Trumbull County, Ohio, that a firearm was used to kill Brandon
22 Sample, and it was most likely a smaller caliber handgun.

23 The evidence and testimony then will show this

1 defendant in possession of a .22-caliber handgun. It's a very
2 unique .22-caliber handgun. It's a very small handgun,
3 probably fits in the palm of your hand, and it has a marbled
4 type handle. Some pictures it looks blue. When you see it
5 here when we present it in evidence it's blue, brown. It's
6 marble. You can clearly see it's marble.

7 Witnesses will take the witness stand and testify
8 that they saw this defendant with that firearm. On this
9 defendant's cell phone are photographs with this defendant
10 with that firearm. And that will be presented to you as
11 evidence.

12 Meredith Loges, this defendant's girlfriend, has on
13 her cell phone a video that she made on June 8, 2017 of this
14 defendant shooting what appears to be that marble-handled .22.
15 And you will see that video.

16 One of the pictures recovered from the defendant's
17 phone shows him with two guns on his lap and the statement in
18 quotes, "My two baddest bitches. And they loyal." Witnesses
19 will identify the gun that's in that photograph and this
20 defendant as the person whose lap they are seated on. And
21 you'll see it's a partial -- you'll see probably half his
22 face.

23 Now, there's going to be testimony on June 20th, 2017

1 there was a robbery at Pizza Joe's. An armed robbery. You'll
2 see a video of it. You'll see a person go in with a mask,
3 hoodie, handgun. You will see a small caliber handgun in the
4 person's hand. Very small. That same marble-handled .22
5 firearm was later recovered after the aggravated robbery of
6 Pizza Joe's on June 20th, 2017. So I don't want to confuse
7 you. But we've got the murder, the aggravated robbery and the
8 crimes related to the death of Brandon Sample. And then on
9 June 20th, about eight days later, we have the robbery at
10 Pizza Joe's where we went also on the jury view.

11 The firearm recovered after Pizza Joe's robbery was
12 registered to an individual named Jamie Sell. Guess what the
13 evidence and testimony will show who Jamie Sell is in relation
14 to this defendant? It's his mother. And that gun that was
15 recovered after the Pizza Joe's robbery, marble-handled .22,
16 was recovered in the apartment across the street from Pizza
17 Joe's and registered to none other than defendant's mother.

18 This defendant is prohibited by law -- and you're
19 going to hear two counts -- from having a firearm because he's
20 been adjudicated a delinquent due to an aggravated burglary
21 charge when he was a juvenile. By Ohio law he is not
22 permitted to have a firearm. That charge is actually called
23 weapons under disability. It doesn't mean he's disabled.

1 It's the disability of having a prior conviction or an
2 adjudication that makes it that crime. Under Ohio law, he's
3 prohibited. So there will be a charge both for the June 11th
4 and 12th dates and the June 20th date of the robbery at Pizza
5 Joe's.

6 You will have a recorded jail phone call. And you
7 will hear from a corrections officer at the Trumbull County
8 Jail all of the jail phone calls are recorded except, of
9 course, with their attorneys. We're not allowed to record
10 those. You will hear the call. You will hear, "This is a
11 recorded phone call." It was made on June 27th, 2017. The
12 defendant's mother asked the defendant if the gun was
13 registered. And he stated "No, I don't think so." As they
14 continued to talk the defendant told his mother, "You're
15 talking too much about the case."

16 So let's go to June 20th and how we got that
17 marble-handled .22 and the robbery at Pizza Joe's.

18 There is a group of teenagers who will testify that
19 they were swimming at Willow Lake. They all eventually ended
20 at Melanie Engle's apartment which is located at 241 West Main
21 Street, Apartment C. You'll recall that from the jury view.
22 We walked around the house by the music store. You had to go
23 around the house and there was that gate and you saw

1 Apartment C.

2 At one point in the evening Melanie Engle's cat got
3 out and people started to look for it. The defendant stated
4 basically he was gonna go do something.

5 At approximately 10:08 p.m., a man with a hoodie and
6 gray sweat pants and a gun robbed the Pizza Joe's in downtown
7 Cortland. The robber got approximately \$760. Security video
8 will show basically a person running from that apartment
9 complex. You'll see the Pizza Joe's security video. And
10 you'll see someone running from that direction to the
11 apartment. Then they run basically the same direction and
12 they go around the music store there in Cortland. The person
13 was wearing gray sweat pants and gray Nike tennis shoes.

14 The defendant was seen by an individual named Shawn
15 Marx who was outside of his apartment and down the street from
16 Pizza Joe's, saw -- I'm sorry. Shawn saw the person run
17 around the back of Daybreak Music.

18 After the robbery, Cortland Police learned from the
19 Warren Police Department that they were receiving pings --
20 because they were already trying to find this defendant in
21 relation to the murder back on June 12th for Brandon Sample --
22 and they were pinging his phone in that area. The Warren --
23 I'm sorry, the Cortland Police then went to that apartment.

1 They saw some movement in there and went to that apartment.
2 And when they arrived at 241 West Main Street, Apartment C,
3 that apartment around the house there, they contacted this
4 defendant. And he said, "My name is Nathan Novicky." And he
5 gave them a date of birth and a social for Nathan Novicky.

6 Well, the Cortland Police then were able to obtain a
7 photograph of this defendant and they went back in because
8 they knew he was wanted for aggravated murder at that point.
9 And when they compared them they said, "Hey, you're Austin
10 Burke. You're not Nathan Novicky."

11 Witnesses will testify the defendant had on gray
12 sweat pants. In fact, you'll see a picture taken that
13 afternoon. And this defendant's wearing gray sweat pants.
14 Witnesses in the apartment will say that the defendant had a
15 large sum of money just before the police arrived.

16 The defendant also called Deidre Keener, the
17 people that -- one of the people that he had seen back in
18 Niles on June 11th and 12th. And you will have a phone call
19 from Deidre Keener showing that just before he was arrested he
20 had called them and said, "Hey, I came into a large sum of
21 money."

22 That apartment was quite messy. You'll see
23 photographs from the Cortland Police. There was clothes

1 everywhere. Bags of clothes. A disaster. Cortland Police,
2 however, were able to find a pair of gray sweat pants and a
3 pair of gray Nike tennis shoes. They, unfortunately, never
4 found the gray -- or I'm sorry -- the black hooded sweatshirt.

5 I will tell you something about these gray Nike
6 tennis shoes though. In additional photographs that this
7 defendant had on his phone of him holding that marble-handled
8 .22, he took a -- well, someone took a picture looking down.
9 That same marble-handled .22 is in his hand with a pair of
10 gray Nike tennis shoes on.

11 Now, the next day, June 21st, Melanie Engle, whose
12 apartment it was there at 241C in Cortland, Stephanie Taylor
13 was at the apartment to help her daughter move out. She said
14 "Hey, listen, this is too much. You've got to move out.
15 You've got to move back home. Get out of here."

16 And as they were cleaning the apartment, that's when
17 they found the .22-caliber marble-handled firearm in a vase of
18 artificial flowers. You'll see photographs of that, and you
19 will see the very gun Cortland Police found. It is the same
20 marble-handled handgun that witnesses testified they had seen
21 the defendant with leading up to and during the course of
22 these events.

23 It's the same .22 marble-handled handgun, the

1 evidence and testimony will show, that this defendant had
2 pictures of, including the one picture with that same gun
3 saying, "My two baddest bitches. And they loyal."

4 The same .22 marble-handled handgun that is
5 registered with the Alcohol, Tobacco and Firearms. And you
6 will hear from an expert and you will have certified copies of
7 their records showing that that gun, which we have, with the
8 same serial number is registered to none other than Jamie
9 Sell, the defendant's mother.

10 You will hear the phone call from the defendant while
11 he was in jail asking if his mother -- or his mother asking if
12 the gun was registered. He was saying, "No, I don't think
13 so." You'll have that in evidence.

14 Now, the police did find \$545 the next day in a hair
15 dye box in the trash. Now, the owner of the Pizza Joe's is
16 going to say there was about 750, 760. Where the other \$200
17 went, no one knows.

18 You'll also hear testimony from an individual by the
19 name of Tim Cook. Tim Cook was an inmate at the Trumbull
20 County Jail. And he overheard this defendant admit to others
21 that he had killed Brandon Sample. Tim Cook will take the
22 witness stand and testify to that. Tim Cook got no
23 consideration from the state of Ohio. He wasn't released from

1 jail. He didn't get a plea deal. He didn't get out of jail
2 that day. And he came and he told this detective in a
3 recorded statement that's what he heard. In fact, we wouldn't
4 have even known about Tim Cook until he called this detective.

5 So let's review the charges. We are going to have on
6 June 12th the aggravated murder of Brandon Sample with the
7 firearm, the aggravated robbery and the firearm specification
8 of Brandon Sample, taking the white Chevy Malibu and the cell
9 phone which was never recovered. You'll have tampering with
10 evidence since we never found Brandon Sample's cell phone.
11 Having weapons under disability which, of course, he was
12 adjudicated as a delinquent for an aggravated burglary not
13 permitted to have a firearm.

14 The charges on June 20th are related to the
15 aggravated robbery with a specification of the robbery at
16 Pizza Joe's with a firearm. And then, again, having weapons
17 under disability because, again, he's not allowed to have a
18 firearm because of that felony adjudication in juvenile court.

19 Ladies and Gentlemen, that's going to be the evidence
20 and testimony in this case. I'm sure you're going to see a
21 bunch of teenagers up here and there will certainly be
22 teenagers up here. Some of them are 14, 15 years old when
23 this happened. Some of them are going to be scared. Some of

1 them didn't quite tell the police all the story when they
2 first talked to them. Some of them came back in later and
3 said, "Hey this is what I heard. I was scared." You're going
4 to get to evaluate all of them. And you're going to have to
5 determine is it reasonable for a 14- or 15-year-old to be
6 scared of this guy. Somebody who told them he killed
7 somebody. That's what your job is here today. And all the
8 other things; the cell phone records, the phone, the phone
9 records, the deleted text messages. All of this evidence will
10 be presented to you. And most importantly, the firearm that
11 this defendant has photographs with him of that this
12 defendant's mother has registered to her with the Alcohol,
13 Tobacco and Firearms.

14 Ladies and Gentlemen, at the close of this case, we
15 feel that that presumption of innocence that we talked about
16 the other day, yesterday, will be gone and you will have no
17 other choice but to find this defendant guilty as charged.

18 Now, when these witnesses take the witness stand, I'm
19 sure -- these two gentlemen are fine attorneys. They're going
20 to cross-examine them. They're going to have all kinds of
21 good questions. They may even stumble on a few of these
22 teenagers, 14-, 15-, 18-, 19-year-olds. But remember the
23 facts. And remember the one thing that I told you yesterday

1 is I didn't pick these people. He did. These are the people
2 he went to and associated with. Not me.

3 Ladies and Gentlemen, I'm sure Mr. Olson or
4 Mr. Hartwig is going to speak to you at this point. I want to
5 thank you for your time, your patience, and, again, for your
6 duty, citizenship here in Trumbull County, Ohio.

7 THE COURT: Mr. Olson.

8 MR. OLSON: Thank you, Your Honor.

9 OPENING STATEMENT

10 MR. OLSON: May it please the Court,
11 Mr. Becker, Ladies and Gentlemen of the Jury. First, I would
12 like to thank you for your service. I agree with Mr. Becker
13 that one of the most important functions that we have in this
14 country is to serve on jury duty because it is you that
15 prevent tyranny from being in our country. It is you that
16 prevent tyranny from happening in this country. We're not
17 like North Korea where when the state says you did something,
18 you're automatically guilty and the case is closed and we move
19 on. Instead, we have to demand that our government proves the
20 case against us. And as the Judge explained to us very early
21 on when we were doing voir dire, the statement of counsel is
22 not the evidence. So while Mr. Becker, who is an expert in
23 his field -- Mr. Becker has been a prosecutor for a long time.

1 Mr. Becker knows how to clean up evidence to present it in a
2 nice fashion that seems convincing when we're standing up
3 here. Mr. Becker wants to pull out the positives of his
4 testimony that is going to be on this stand and try to get you
5 in the mindset right away that Austin Burke committed these
6 crimes.

7 However, what Mr. Becker does not tell you are all
8 the negatives. When we went through this voir dire process
9 yesterday, many questions were asked of you. And if you look
10 back, the questions that were asked by both the prosecution
11 and the defense didn't focus on mainstream topics such as what
12 your race is, what your religion is, what your political
13 affiliation is, what's your profession is. That's not what's
14 important here. What's important is your ability to remain
15 fair and impartial and your ability to avoid sympathy in this
16 case. Because we all recognize in this room a tragic event
17 happened. There's no denying that. There was a tragedy that
18 happened. But sympathy does not fit into our justice system.
19 Because sympathy allows people to become prejudiced and see
20 facts in a different light when maybe that fact doesn't exist.

21 Speculation. We made sure that there would be no
22 speculation; that you would hold the state to its burden to
23 demonstrate the facts that would prove beyond a reasonable

1 doubt. We asked of you, what would you demand in important
2 matters that affect your own personal life, what evidence do
3 you want to see? Because, Ladies and Gentlemen, they can make
4 all the excuses that they want. "We couldn't get Brandon
5 Sample's phone records. We subpoenaed them, but we never
6 received them." Well, you see, the important matter is,
7 Brandon Sample's phone would show you where Brandon Sample
8 was. Because while the state wants to sit here and they want
9 to say that Brandon Sample was with Austin Burke on the night
10 of June 11th through June 12th, they have no evidence of this.
11 They will not be able to show you that.

12 They will not be able to show you with convincing
13 evidence -- yes, they will bring in some teenage kids that
14 will walk through this door, get up on this stand and testify.
15 But listen to the details of their testimony. Because we're
16 not listening to details that have minor deviations. If you
17 recall back in voir dire, the jury selection process,
18 Mr. Becker was saying, "Well, you wouldn't hold it against us
19 if there was a minor deviation such as one witness said 2:00
20 and the other one said 2:30?" Of course not. That's not what
21 we're looking at. We're looking at major deviations in the
22 story. Who was present. What time they were present. Was
23 Brandon Sample at this house? Or was he not? Because you're

1 going to hear different variations of all these stories. And
2 what it comes down to is they are stories. They are not
3 truths. They are lies. They are not truths.

4 The evidence will show that in the early afternoon
5 Brandon -- Austin Burke, like he told the police, went to
6 Willow Lake. And I don't know if you saw it yesterday when we
7 went on the jury view as we were leaving Peck Leach Road,
8 which they are referencing as Hatchet Man Road, as we were
9 driving down 46 through Bristolville you saw Willow Lake Park
10 up on the right-hand side. Austin Burke told the police, "I
11 was there until about 7:30. At 7:30 on Route 46, Brandon
12 Sample, who I've known from my past, pulled up behind me and
13 gave me a ride home." He didn't tell the investigators, "I
14 don't know who Brandon Sample is. I've never had contact with
15 him. I don't know what you're talking about. I was never in
16 that car." He told them, "Yes, I was with him at 7:30. He
17 gave me a ride home. He told me that he had to bring his
18 buddy Josh or something like that back to Akron."

19 So they want you to believe that when Josh White
20 comes in here, Josh White is going to tell you, "Well, I never
21 met Austin Burke in my life. He was never in that car." So
22 magically Austin Burke knew his name, knew what he looked
23 like, and knew where he lived. Magically. They can't give

1 you an explanation. You know why? Because they never
2 followed up on Josh White's story.

3 The only thing that they confirmed about Josh White
4 is at 11:00 p.m. that he was, in fact, with Austin Burke
5 swimming at a friend's house in Warren, Ohio. That friend did
6 confirm that Brandon Sample was required or asked to bring
7 Josh White back to Akron to give him a ride home.

8 Josh White in his interview tells the investigator,
9 "I had to call my brother at 12:15 because I don't have a lock
10 to the latch." When Josh White was giving that interview, his
11 brother, father, and his mother, all of whom through this
12 interview he indicated he had contact with, were all there.
13 All they had to do was bring these individuals in to the room
14 and ask them, confirm the story. Did they do that? No, they
15 did not.

16 These individuals -- and, again, Josh White
17 admittedly was with Austin Burke on the night of June 11th --
18 or excuse me -- with Brandon Sample on the night of June 11th.
19 Did they pull his phone records and confirm Josh White made it
20 back to Akron at the time he said? That he did not travel
21 back to this area? They did not.

22 They were able to -- they were able to get Austin
23 Burke's phone records. They weren't able to get Brandon

1 Sample's phone records. They weren't able to get Josh White's
2 phone records. They didn't execute any search warrants. They
3 don't have a weapon. They don't have a bullet. They have
4 nothing but accusations that are made by some teenage kids and
5 maybe somebody else that has a deceitful motive as to why he
6 wants to say he never saw Brandon Sample -- or Austin Burke
7 with Brandon Sample.

8 So, again, Ladies and Gentlemen, when we take all of
9 the evidence -- that's the evidence that these witnesses will
10 testify to, not what the prosecution will tell you it is --
11 it's up to you to determine what that evidence is.

12 We will get into a robbery of the Pizza Joe's in
13 Cortland that occurred several days later. And, again, when
14 we look at this evidence, they're again not giving you the
15 full details up here. See, what they didn't tell you, yes,
16 Austin Burke was located at an apartment that was across the
17 street from the Pizza Joe's that was robbed. But there was an
18 individual there that left very shortly before the robbery
19 occurred at the Pizza Joe's across the street.

20 The girl that was renting the apartment left to go
21 pick him up after she receives a text message from her friend
22 at approximately 10:00 p.m. that says, "Hey, why this
23 individual in here looking like a crackhead?"

1 That individual, while he gave some statements on the
2 phone to the police officers saying, "Yeah, I was there that
3 night. I left before the robbery occurred." When the police
4 asked him to go in, he refused.

5 The money. Again, they're indicating that
6 approximately 700 and some odd dollars was stolen from the
7 Pizza Joe's. When the Cortland Police release a crime scene
8 back to a family to clean out the apartment and the girl that
9 left to go and pick up the other individual that left that
10 evening was able to go in there, outside the supervision of
11 any police officer, and begin cleaning the apartment, all of a
12 sudden some evidence pops up; a firearm and \$500 in cash.
13 They told you, they can't explain where \$200 went. Well,
14 Austin Burke was arrested when they identified him and he had
15 no money on him.

16 They can't explain the missing pieces to the puzzle.
17 And that is reasonable doubt. They can't explain why they
18 can't get evidence to come in here and show you how Austin
19 Burke is linked to these crimes. That is reasonable doubt.
20 Anybody can put facts up into a vacuum and summarize them in a
21 light most favorable to their side. But it, again, is you who
22 will have to sit here and listen to each individual witness,
23 listen to their testimony, compare that testimony to the

1 testimony of the others, and I will show you that the state
2 cannot meet its burden, and the only verdict that you can
3 return with is a verdict of not guilty.

4 Thank you, Ladies and Gentlemen.

5 THE COURT: Mr. Becker, you may call your
6 first witness.

7 MR. BECKER: Thank you, Your Honor.

8 Your Honor, the state would call Josh White.

9

10

* * *

11

JOSHUA C. WHITE,

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

13

DIRECT EXAMINATION

14

BY MR. BECKER:

15

Q Would you introduce yourself to the jury, please?

16

A My name is Josh White. I was Brandon's like best
17 friend for a very long time.

18

Q Okay. Josh, we're going to get into that.

19

A Okay.

20

Q I want to slow you down a little bit here. Where do
21 you live at right now?

22

A I live in Hubbard. I live on 6975 Stewart Sharon
23 Road.

1 Q Okay. I want to direct your attention back to June
2 of 2017. Where were you living at in June of 2017?

3 A I was living in Akron at my mom's house.

4 Q Okay. Do you know where that was located at?

5 A I don't know the exact address, but I know it was on
6 Shelburn Avenue.

7 Q And would that -- where would that be in relation to
8 like downtown Akron, if you know?

9 A I guess it would be about 10 minutes, 15 minutes from
10 downtown Akron.

11 Q Would that be on this side of Akron, closer to
12 Warren, or on the other side of Akron?

13 A I'm not sure, honestly.

14 Q Okay. All right. That's okay. Now, you said you
15 were familiar with Brandon Sample. How did you know Brandon
16 Sample?

17 A I knew Brandon Sample because when I was like 12 I
18 moved to Howland and I like moved right down the street from
19 him.

20 Q So you had known him since you were about 12 years
21 old?

22 A Yeah, correct.

23 Q Went to school with him?

- 1 A Yes.
- 2 Q All right. And how old are you today?
- 3 A I'm 22 years old.
- 4 Q And was Brandon in the same grade with you?
- 5 A Yeah. He was a grade above me.
- 6 Q All right. So he would have been a year older than
7 you. When is your birthday?
- 8 A My birthday is January 26, 1996.
- 9 Q So you just turned 22?
- 10 A Yes.
- 11 Q All right. Now, can you describe what your
12 relationship was with Brandon?
- 13 A Yeah. He was my best friend. He was like a big
14 brother to me.
- 15 Q And I want to direct your attention now to June 11th
16 of 2017. That would have been a Sunday. Do you recall being
17 in the Warren area on June 11, 2017?
- 18 A Yes.
- 19 Q Okay. Did you -- were you driving or did you have a
20 car at the time?
- 21 A No, I did not.
- 22 Q All right. You did didn't have a car and you didn't
23 drive? Or both?

- 1 A No, I -- both.
- 2 Q Okay. So you didn't have a driver's license and you
3 didn't have a car?
- 4 A Yeah, correct.
- 5 Q So somehow you got to Warren, Ohio. Do you remember
6 how you got to Warren, Ohio?
- 7 A Yeah. Like my mom brought me down.
- 8 Q Your mom that you were living with at the time in
9 Akron?
- 10 A Yeah.
- 11 Q All right. So what did you do on June 11th, 2017?
- 12 A Was that the Sunday?
- 13 Q Yeah.
- 14 A I hung out at my friend Jake's house for a little bit
15 in Niles.
- 16 Q Okay.
- 17 A And that's when like probably at 5:00 Brandon had
18 contacted me to hang out. And he picked me up and we went to
19 his grandma's house.
- 20 Q Okay. I want to slow you down a little bit there.
21 Do you remember approximately what time Brandon picked you up
22 on Sunday, June 11th?
- 23 A Probably about 5:00, 5:30.

1 Q And on June 11, 2017, do you know what kind of car he
2 had?

3 A Yeah. He had a white Malibu.

4 Q Okay. I'm going to show you photographs that have
5 been marked for purposes of identification as State's
6 Exhibits 43, 44, 45 and 46.

7 (Whereupon, State's Exhibit Nos. 43-46,
8 Photos, were introduced for identification.)

9 And can you look at those photographs and tell me if
10 you recognize that vehicle, and is that similar to the vehicle
11 that Brandon had?

12 A Yes.

13 Q Okay. Give me one second here. All right. So you
14 say he picked you up in that vehicle about 5:30 p.m?

15 A Correct.

16 Q And that's when you were at your friend's house in
17 Niles?

18 A Correct.

19 Q All right. Where did you guys go from there?

20 A We went to his grandma's in Bristol.

21 Q And what did you do at his grandmother's house in
22 Bristol?

23 A We mowed her grass.

1 Q Now, are you familiar where Willow Lake is?

2 A No.

3 Q No? Okay. On the way going to mow his grandmother's
4 grass, did you pick up anybody?

5 A No.

6 Q All right. After you mowed his grandmother's
7 grass -- well, first of all, do you remember what kind of day
8 it was? Was it cold? Hot? Rainy?

9 A It was a hot humid day.

10 Q All right. And did you help Josh -- or I'm sorry --
11 did you help Brandon mow the yard at his grandmother's?

12 A Yes, I did.

13 Q All right. Do you remember approximately how long
14 that took?

15 A We were there for probably about an hour, an hour and
16 a half.

17 Q And from there where did you go?

18 A We went to -- on Bruce Drive to this girl's house
19 that I know to go swimming.

20 Q Okay. Do you know what city Bruce Drive is in?

21 A It's in -- it's by the glass McDonald's. It may be
22 in Niles.

23 Q Okay. And what did you do when you got to this house

1 on Bruce Drive?

2 A We just got there and we went swimming and we hung
3 out there for a little bit.

4 Q All right. And did you know the people that own that
5 house?

6 A Yes.

7 Q Okay. Who were -- what were their names?

8 A I know the girl who lives there. Her name is Billie
9 Holness.

10 Q All right. How long were you at Billie Holness's
11 house?

12 A We were there until probably until like almost
13 11:00 at night.

14 Q And what did you do then?

15 A He took me back to Akron.

16 Q Okay. And why did you have to go back to Akron?

17 A Because I worked in the morning at 6.

18 Q Now, do you recall approximately what time you got
19 back to Akron, Ohio?

20 A About 12:30.

21 Q All right. And on the way going back to Akron, did
22 your friend Brandon tell you about meeting up with anybody
23 later that night?

1 A Yes, he did.

2 Q What did he tell you?

3 A He told me that somebody had offered him some money
4 to do something. And he wouldn't specify what it was that he
5 had to do.

6 Q And did he tell you who the person was?

7 A Yeah.

8 Q Who did he say it was?

9 A He said it was Austin.

10 Q Had you ever met Austin?

11 A No.

12 Q Okay. You had just known him through what Brandon
13 had told you?

14 A Correct.

15 Q All right. So he dropped you off at about 12:30 in
16 Akron?

17 A Correct.

18 Q And is that the last time you ever spoke to Brandon?

19 A That was the last time I ever spoke to Brandon.

20 MR. BECKER: Your Honor, I have no further
21 questions.

22 THE COURT: Mr. Hartwig.

23 MR. HARTWIG: Thank you, Your Honor.

* * *

CROSS EXAMINATION

1
2
3 BY MR. HARTWIG:

4 Q Good afternoon, Mr. White.

5 A Good afternoon.

6 Q Back on June 12th, 2017, did you have a beard?

7 A A beard?

8 Q Yes, a beard.

9 A Yeah, but not like thick. It was just stubble.

10 Q Okay. Did you shave it off on the morning of June
11 13th, June 14th before you spoke to police?

12 A No.

13 Q Did you see your interview? You're clean shaven.

14 A Well then, yeah, I shaved, but --

15 Q I'm just asking you whether you shaved off your beard
16 before you spoke to police? That's all.

17 A Yeah. I just cleaned it up. I always keep it pretty
18 clean.

19 Q I looked at your Facebook page. You have a Facebook
20 page; right?

21 A Correct.

22 Q You post a lot on there; correct?

23 A Yeah.

1 Q You have a friend named Carlos Rodriguez?

2 A Yeah. That's my cousin.

3 Q Okay. And your cousin contacted you after this
4 investigation started on June 15th and June 20th. Do you
5 recall that?

6 A Yes.

7 Q All right. And he was saying, "Hey, man, people are
8 saying that you're the one that was responsible for Brandon
9 Sample's death"; do you recall that?

10 A No.

11 Q You don't recall him saying that and you saying,
12 "Yeah, that shit's crazy. I know"?

13 A No.

14 Q Okay. Do you do drugs?

15 A I do not.

16 Q All right. And you said your buddy Brandon Sample
17 didn't do drugs. He never would do heroin; correct?

18 A No, he would never do heroin.

19 Q All right. There were witnesses who told the police
20 they witnessed him doing heroin on the night this happened;
21 are you aware of that?

22 A I am not. I have never seen him use heroin.

23 Q All right. But you say, hey, you've known him your

1 whole life. He wouldn't do that; right?

2 A Correct.

3 Q Isn't it possible maybe you didn't know him the way
4 you thought?

5 A I mean, he might have. He might have battled with
6 something that I didn't know of, but I was with him all the
7 time. So I --

8 Q You were with him all the time?

9 A Yeah, and I had never seen him use heroin.

10 Q And you were very close with him? He confide in you
11 with a lot of things?

12 A Yeah.

13 Q All right. So on the ride home he brings up somebody
14 he had never met before that day; correct?

15 A Correct.

16 Q And he just says some guy says, "Hey, do something
17 for me for a thousand bucks"; right?

18 A Yeah.

19 Q That's your story, but yet your best friend isn't
20 going to tell you what that is when it's just the two of you
21 in the car; is that what you're saying?

22 A Yeah.

23 Q All right. Does he have a nickname?

- 1 A B Samp?
- 2 Q Yeah.
- 3 A Yeah. His nickname is B Samp.
- 4 Q All right. Who gave him that nickname?
- 5 A I don't know. That's just what he's been called for
6 awhile.
- 7 Q Okay. And he claims he told you he had never been
8 with Austin Burke before that day; correct?
- 9 A Correct. I think he said that he met him at DYS.
- 10 Q All right. Now, you were with Brandon the entire
11 time, and you claim that you never picked up Austin Burke in
12 Brandon's car that day; correct?
- 13 A That is correct.
- 14 Q All right. But somehow or another on the way home
15 your best friend says Austin Burke, who you've never heard of,
16 he claims he didn't ever meet him before, all of a sudden is
17 gonna give him a thousand dollars that day; right?
- 18 A Yeah.
- 19 Q Right. Somehow or another Austin Burke, when
20 investigated, tells the police, gives a full description of
21 you. Name. What you look like. You've got a beard. Are you
22 aware of that?
- 23 A No, I was not.

1 Q All right. How would he know what you looked like if
2 he had never met you before and you had never seen him?

3 A Probably how you knew. Through Facebook. Facebook
4 is very public.

5 Q All right. Did you look up Austin on Facebook?

6 A Yes, I did.

7 Q And what name did you look him up under?

8 A Austin Burke.

9 Q All right. Are you aware that his Facebook is not
10 under Austin Burke?

11 A No, not really. It was sent to me from a friend to
12 look at his profile.

13 Q On your Facebook pages, is there any reason you would
14 say, "Crackers took my 40 so I'm gonna buy a Draco"?

15 A Yeah. That's Kodak Black lyrics.

16 Q Okay. And "Sellin' dope getting money like I should.
17 Shit is second nature"?

18 A Yeah. That's also lyrics from Retch.

19 Q Okay. "Whippin' hoopties tryna boost raw chronic"?

20 A That's Earl Sweatshirt.

21 Q "I just put Xan in my codeine. I might rob you for
22 it."

23 (Court reporter requests clarification.)

1 MR. HARTWIG: Go ahead.

2 A That's Earl Sweatshirt. It's a song called Earl
3 called Earl. So those are all lyrics, song lyrics.

4 Q Okay. "I put Xan in my Codeine. I might rob you for
5 it"?

6 A Yeah. That's Future.

7 Q Okay. "Two dope boys in the Cadillac strap." Are
8 you into the gang scene or the gangster scene?

9 A No. I listen to that type of music. But that's
10 Vince Staples. I post lyrics on my Facebook. So...

11 Q Are you aware that your friend had called somebody
12 back in Akron after -- at some point later, in the late
13 evening hours?

14 A No.

15 Q Okay. So when the police came to talk to you on
16 June 15th, would you agree with me that you had a cut on your
17 hand?

18 A Yeah. I had a cut on my hand.

19 Q Okay. You also indicated on your knuckles that you
20 had markings that you had claimed you had punched a bed post;
21 correct?

22 A Yeah.

23 Q All right. The police never came and checked your

1 phone; correct?

2 A Correct.

3 Q All right. You claim you had muddy clothes that were
4 still in Brandon Sample's vehicle; correct?

5 A Muddy clothes?

6 Q Yes. Muddy clothes.

7 A No, I have those shorts.

8 Q Camo shorts full of mud, that you swam in basketball
9 shorts, two pairs of pants in the trunk. You guys left -- you
10 left 'em there?

11 A Well, yeah, I had pants in the trunk, but I have
12 those shorts.

13 Q Were those pants -- were those trunks ever recovered?

14 A The pants that -- the shorts?

15 Q The ones you left in the vehicle?

16 A No.

17 MR. HARTWIG: Just one moment, Your Honor.

18 BY MR. HARTWIG:

19 Q You were contacted by police on -- by phone, I
20 believe, right after June -- on June 13th, I believe; correct?

21 A Correct.

22 Q Right. And did you not make a statement to the
23 detective that says, "I would check the woods behind his

1 grandma's home"?

2 A Yes, I did say that.

3 MR. HARTWIG: All right. No further
4 questions, Your Honor.

5 THE COURT: Redirect.

6 REDIRECT EXAMINATION

7 BY MR. BECKER:

8 Q Did you kill Brandon Sample?

9 A I did not.

10 Q Why would you tell the police, then, to check the
11 woods behind his grandma's house?

12 A I just had a bad feeling. It's a heavy wooded area
13 and I heard that's where he was from and I was just trying to
14 help out.

15 Q Okay. You heard that's where who was from?

16 A Austin Burke.

17 Q Okay. And you knew a little bit more about Austin
18 Burke from your friend? You knew that he had met him in DYS;
19 right?

20 A Correct.

21 Q What's DYS?

22 A Detention Youth Center. I don't know what it stands
23 for. It's the Indian River like -- it's like the kid prison

1 or wherever where B Samp's worked at.

2 Q Okay. So your friend Brandon Sample worked there for
3 awhile?

4 A Yeah.

5 Q And that's how he knew this defendant; right?

6 A Yes.

7 Q Okay. You had never met this defendant; right?

8 A Correct.

9 Q Okay. And you cooperated with the police; right?

10 A Correct.

11 Q You came down and gave 'em a statement?

12 A Correct.

13 Q And how did you get those cuts on your hands?

14 A This one that's a scar on my pinky, I got that from a
15 glass bottle. I opened it -- I opened a beer bottle with a
16 wrench and it broke and I cut my hand open.

17 And then this on my hand, that's because I did punch
18 my bed post when I found out that my friend had passed away.
19 I was very upset.

20 Q All right. And the police asked you about that and
21 you were honest with 'em?

22 A Correct.

23 MR. BECKER: I have nothing further.

1 THE COURT: Recross.

2 MR. HARTWIG: Thank you, Your Honor.

3 REXCROSS EXAMINATION

4 BY MR. HARTWIG:

5 Q So at the time that the -- excuse me. At the time
6 the police had called you the next morning, obviously you
7 hadn't spoke to Brandon Sample; correct?

8 A Correct.

9 Q Right? You had never met Josh White you claim;
10 correct?

11 A Excuse me?

12 Q Or excuse me. You had never met Austin Burke before;
13 correct?

14 A Correct.

15 Q Right? You would have no way of knowing where he
16 lived; correct? Because you don't know him?

17 A Correct.

18 Q All you know is your friend said he met him at DYS
19 for the very -- and he's bringing him up for the very first
20 time; correct?

21 A Correct.

22 Q All right. But by the next morning, you tell the
23 police where to go look for the body, and it happens to be now

1 where you claim you knew where Austin Burke was from; correct?

2 A It wasn't -- it wasn't exactly when I had woken up.
3 I had spoken to his sister and other people previously before
4 the detectives had contacted me. And that's where I had
5 gathered all my information from because everyone already knew
6 who he was. So...

7 MR. HARTWIG: All right. Thank you.

8 THE COURT: You may step down.

9 Mr. Becker, you may call your next witness.

10 MR. BECKER: Thank you, Your Honor. State
11 would call Meredith Loges.

12 * * *

13 MEREDITH LOGES,

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

15 DIRECT EXAMINATION

16 BY MR. BECKER:

17 Q Would you please state your name for the record?

18 A Meredith Loges.

19 Q And Meredith, how old are you?

20 A 18.

21 Q Meredith, where do you live at right now?

22 A Warren, Ohio.

23 Q All right. And you are a student somewhere; is that

- 1 correct?
- 2 A Correct.
- 3 Q Where are you a student at?
- 4 A Miami University.
- 5 Q Okay. And how old are you?
- 6 A 18.
- 7 Q Now, you know an individual by the name of Austin
8 Taylor Burke; is that correct?
- 9 A Correct.
- 10 Q How did you know -- meet Austin?
- 11 A I met him at church.
- 12 Q All right. And Austin Taylor Burke, when did you
13 meet him?
- 14 A About four years ago.
- 15 Q All right. And what's your current relationship with
16 him?
- 17 A We're dating.
- 18 Q You're dating?
- 19 A Correct.
- 20 Q You're in Miami down in Oxford, Ohio?
- 21 A Correct.
- 22 Q You're a full-time student?
- 23 A Yes.

1 Q Okay. How long have you been dating Austin Taylor
2 Burke?

3 A Since last summer.

4 Q The summer of 2017?

5 A Yes, sir.

6 Q And when did you start dating him?

7 A I don't know. Between like June and August.

8 Q Between June and August?

9 A Yeah.

10 Q All right. Now, first of all, I want to direct your
11 attention -- was there at some point a day that you were with
12 Austin Taylor Burke at Nelson Ledges park swimming or hanging
13 out?

14 A Yeah. We hung out there once.

15 Q Was anybody else with you?

16 A Yes.

17 Q Do you remember who that was?

18 A No. I don't know.

19 Q Does the name Rickey Roupe sound familiar?

20 A Yeah. I think he was there one time.

21 Q All right. And was there a time sometime in June
22 that you drove your car and Austin and that other individual
23 to somewhere in Trumbull County, Ohio, someplace where he said

- 1 he knew there was something scary?
- 2 A Yes.
- 3 Q Okay. Who told you it was a scary place to go see?
- 4 A I think Austin and Rickey. I'm not sure which one.
- 5 Q Well, who told you how to get to this location?
- 6 A Austin.
- 7 Q All right. You drove your car, and Austin told you
8 how to get there; right?
- 9 A Correct.
- 10 Q Did you go in the daytime or the nighttime?
- 11 A Nighttime.
- 12 Q Do you remember what the name of that location was?
- 13 A Hatchet Man Road.
- 14 Q All right. And what did you guys do when you got to
15 Hatchet Man Road?
- 16 A We tried finding a house, but we turned back.
- 17 Q Now, had you ever seen that individual that was there
18 with you before? Did you ever see him again?
- 19 A I only saw him like twice. Rickey? Or Austin?
- 20 Q You saw him twice?
- 21 A Rickey?
- 22 Q Yeah.
- 23 A Yeah. I saw him like two times. Twice.

1 Q You're going to have to speak up a little bit. Pull
2 that microphone there.

3 So the one time you saw him, Austin directed you to
4 go to -- how to get to Hatchet Man Road; right?

5 A Yes.

6 Q All right. And when did you see Rickey Roupe the
7 other time?

8 A We were just at Austin's house.

9 Q And where would that be at?

10 A Bristolville.

11 Q All right. And who lives in Bristolville?

12 A Austin.

13 Q All right. Had you been to Austin's house?

14 A Yes.

15 Q All right. So is it fair to say that Rickey Roupe
16 was your friend or Rickey Roupe was Austin Burke's friend?

17 A Austin Burke's friend.

18 Q All right. Now, you started dating Austin, you said,
19 in about June of 2017?

20 A Around that time.

21 Q All right. And I believe you were out of the country
22 for awhile sometime in June; is that correct?

23 A Correct.

1 Q What did you do that you were out of the country?

2 A I went on a cruise.

3 Q All right. And where did your cruise go?

4 A Bermuda.

5 Q Do you recall what days you were out of the country?

6 A I believe June 9th through the 14th.

7 Q All right. Now, had you ever seen Austin Burke with
8 a gun?

9 A Yeah.

10 MR. OLSON: Objection.

11 THE COURT: Overruled.

12 A Yes.

13 BY MR. BECKER:

14 Q Can you describe that gun?

15 A It was silver.

16 Q Okay. Can you tell us anything about the handles?

17 A It had some like markings on the handle that were
18 kind of marbled.

19 Q All right. And was it a big gun or little gun or a
20 rifle? What kind of gun was it?

21 A It was a smaller gun.

22 Q All right. I'm going to show you what's been marked
23 for purposes of identification as State's Exhibit Number 1 and

1 ask if you recognize State's Exhibit Number 1?

2 (Whereupon, State's Exhibit No. 1, Gun, was
3 introduced for identification.)

4 A I don't -- I don't know.

5 Q This doesn't look like the gun you saw?

6 A It looks similar, but I don't know if it's the same
7 one.

8 Q Okay. You're still dating him; right?

9 A Uh-huh.

10 Q This gun, does this look familiar to you?

11 A I don't know. It looked a little similar.

12 Q I'm going to show you what's been marked for purposes
13 of identification as State's Exhibits 11, 13, and 13A.

14 MR. OLSON: Your Honor, may we approach?

15 THE COURT: You may.

16 (At sidebar:)

17 MR. OLSON: I'm presenting an objection to
18 State's Exhibit 11. There's no relevance. This is an attempt
19 to paint my client with bad character evidence. So I don't
20 believe that it's relevant or admissible at this point.

21 THE COURT: Whether it's admissible is a
22 different thing, but right now I'm thinking he wants to
23 show -- trying to identify the gun, I think.

1 MR. BECKER: Yeah. Your Honor. These
2 pictures were taken from the defendant's gun -- phone rather.
3 They will be testified to by JoAnn Gibb when she comes. They
4 clearly show that firearm or a similar looking firearm. There
5 will be lots of testimony. The one picture is clearly him.
6 And there's tattoos on his hand that witnesses are going to
7 identify that show that gun in his hands.

8 MR. OLSON: So, again, I would say this is
9 cumulative then. They can present one. She can identify the
10 tattoos on my client's hands and the firearm that's in the
11 picture.

12 THE COURT: Your objections are noted. I
13 am going to overrule them and let you proceed.

14 MR. OLSON: Thank you, Your Honor.

15 MR. BECKER: Thank you, Your Honor.

16 (End of sidebar.)

17 BY MR. BECKER:

18 Q Meredith, I'm going to show you State's Exhibits 11,
19 13 and 13A and ask if you recognize those photographs? Do you
20 recognize those?

21 A Yes.

22 Q Okay. And what are State's Exhibits --

23 MR. BECKER: Well, if I may, I'd like to

1 publish these for the jury.

2 THE COURT: Yes, you may.

3 BY MR. BECKER:

4 Q This is State's Exhibit 11. Do you recognize State's
5 Exhibit 11?

6 A Yes, vaguely.

7 (Whereupon, State's Exhibit 11, Photo, was introduced for
8 identification.)

9 Q All right. You just saw it up there; right?

10 A Uh-huh.

11 Q Okay. Who is the individual in that photograph? Who
12 is that individual there?

13 A Austin Burke.

14 Q All right. And do you recognize either one of those
15 firearms?

16 A I don't know. I've seen the picture. I don't know
17 if I've seen them in person.

18 Q But you've seen him with a gun; correct?

19 A Correct.

20 Q Okay. Did you see him with those guns?

21 A I don't know. I don't remember.

22 Q Okay. I'm going to show you State's Exhibit
23 Number 13. I'm sorry. Yeah, Number 13. Do you recognize

1 State's Exhibit Number 13?

2 A Yes.

3 (Whereupon, State's Exhibit 13, Photo, was introduced for
4 identification.)

5 Q Do you recognize whose hands those are with the
6 tattoos?

7 A Yes.

8 Q Whose hands are those?

9 A Austin Burke.

10 Q And this is a close-up. This is State's Exhibit 13A.
11 Do you recognize State's Exhibit 13A?

12 (Whereupon, State's Exhibit 13A, Photo, was introduced
13 for identification.)

14 A Yes.

15 Q And again, how do you recognize it? What's
16 distinctive about those tattoos?

17 A They're Austin's.

18 Q Okay. You've seen them, being his girlfriend?

19 A Yes.

20 Q And you can identify them as Austin Burke?

21 I'm going to show you what's been marked for purposes
22 of identification as State's Exhibit 14 and ask if you
23 recognize State's Exhibit --

1 BAILIFF, JODI CAMUSO: Chris, do you want
2 me to turn down the lights?

3 MR. BECKER: No, no. I can lighten it up.

4 BY MR. BECKER:

5 Q Do you recognize the individual in State's
6 Exhibit 14?

7 A Yeah.

8 Q Who is that?

9 A Austin.

10 Q All right. Do you recognize the girl beside him?

11 A Yeah.

12 Q Who is that?

13 A Her name is Melanie.

14 Q Do you know her last name?

15 A Engle, I think.

16 Q Had you ever met her before?

17 A Once.

18 Q How did you meet her?

19 A Through a mutual friend.

20 Q Had you ever been to her apartment?

21 A No.

22 Q Do you recognize the individual in the -- the other
23 male in the picture?

- 1 A Yes.
- 2 Q Who is that?
- 3 A Donavon.
- 4 Q Do you know his last name?
- 5 A No. I can't remember.
- 6 Q Had you ever met him?
- 7 A Yes.
- 8 Q Okay. How did you meet him?
- 9 A Through another mutual friend.
- 10 Q Who would the mutual friend be?
- 11 A Justin Borawiec.
- 12 Q And do you recognize the woman at the end there?
- 13 A I believe that might be Leah.
- 14 Q All right. Do you know Leah's last name?
- 15 A Smith, maybe.
- 16 Q And how do you know Leah?
- 17 A Through Austin. I never met her.
- 18 Q Okay. So you know her through Austin. Is it fair to
19 say these were Austin's friends and not your friends?
- 20 A They're not my friends, correct.
- 21 Q Melanie, I'm going to show you a video that has been
22 marked for purposes of identification as State's Exhibit
23 Number 12.

1 MR. OLSON: Your Honor, I would note an
2 objection.

3 THE COURT: Approach.

4 (At sidebar:)

5 THE COURT: I'm not aware of what's in the
6 video so I don't know what's being objected to.

7 MR. OLSON: I'm assuming this is the video
8 that will show him shooting this firearm. Again, I don't know
9 what the date of this video is. I'm objecting on the grounds
10 of relevance. There's no relevance to this testimony at this
11 juncture. Unless it's the date of these incidents, I don't
12 know what the relevance of him possessing a gun prior to.

13 MR. BECKER: Well, yeah, Your Honor, first
14 of all, the Court will recall there was a motion to suppress
15 the photograph -- I'm sorry, the video that was taken from her
16 phone. The Court overruled that previously. This is
17 certainly circumstantial evidence. I'm going to show it to
18 her. It was recorded by her on her phone of him shooting what
19 appears to be the .22 gun in this case.

20 The Court obviously is aware that this was June 8th.
21 It's circumstantial evidence that he had possession of a
22 gun --

23 THE COURT: The date was June 8th?

1 MR. BECKER: Yeah.

2 MR. OLSON: And just for the record, again,
3 the Court overruled the motion to suppress and held that it
4 would be reconsidered at the time of trial.

5 THE COURT: Overruled again.

6 MR. BECKER: Thank you, Your Honor.

7 MR. OLSON: I would ask for a sequestration
8 of the witnesses and separation of witnesses.

9 MR. BECKER: Oh, yeah.

10 MR. OLSON: I'm sorry I didn't --

11 THE COURT: I assumed you already took care
12 of that.

13 MR. BECKER: For the record, we have. I
14 don't think at this point anybody has been in here. And I've
15 told all of my witnesses.

16 THE COURT: Do you need the lights off,
17 Mr. Becker?

18 MR. BECKER: Your Honor, let me see. I
19 thing I might be able to play this.

20 (End of sidebar.)

21 BY MR. BECKER:

22 Q I'm going to show you what's been marked for purposes
23 of identification as State's Exhibit Number 30. I'm sorry.

1 Not State's Exhibit 30. State's Exhibit 12. I'm sorry.

2 (Whereupon, State's Exhibit 12, Video, was introduced for
3 identification.)

4 (State's Exhibit 12 played for the Jury.)

5 Q And were you able to see that video?

6 A Yes.

7 Q Okay. Who made that video?

8 A I did.

9 Q And do you recall when you made that video?

10 A Early June.

11 Q Do you remember the exact date in June?

12 A I don't remember, no.

13 Q It would have been before you went on your trip,
14 though, to Jamaica; correct?

15 A I believe.

16 Q All right. How did you take that video?

17 A My phone.

18 Q And who was shooting the gun in that video?

19 A Austin.

20 Q And do you recall what that gun looked like?

21 A It was silver with a marbled handle.

22 Q It had a marbled handle?

23 A Uh-huh.

1 Q The individual that was shooting that gun and who
2 you've identified in those pictures and you've said you've
3 previously seen him with a gun; correct?

4 A Correct.

5 Q Is he here in the courtroom?

6 A Yes.

7 Q Can you please identify him?

8 A Austin Burke.

9 Q Can you point at him?

10 A (Witness indicates.)

11 Q He's the defendant in this case?

12 A (Witness nods head.)

13 Q And he's your boyfriend?

14 A Correct.

15 MR. BECKER: I have nothing further, Your
16 Honor.

17 THE COURT: Mr. Olson.

18 MR. OLSON: Thank you, Your Honor.

19 CROSS EXAMINATION

20 BY MR. OLSON:

21 Q Good afternoon, Meredith.

22 A Good afternoon.

23 Q Meredith, you indicated that you met Austin

1 approximately four years ago; is that correct?

2 A Correct.

3 Q And you met him at church?

4 A Yes.

5 Q What church was that?

6 A Believer's Church.

7 Q And is that a church that you continue to attend?

8 A No, not anymore.

9 Q Okay. Do you know if Austin continues to attend that
10 church?

11 A I'm not sure.

12 Q Now, you indicated that you didn't start dating him
13 until 2017; is that correct?

14 A That's correct.

15 Q But you knew him since 2014?

16 A Yeah, on and off.

17 Q How often would you interact with Austin between 2014
18 and 2017 before you started dating?

19 A I didn't talk to him for about three years.

20 Q Okay.

21 A After I first met him.

22 Q And so at some point in time after you didn't see him
23 at church anymore and you didn't really interact with him,

1 there came a time that you met up with Austin again; is that
2 correct?

3 A Correct.

4 Q And when was that?

5 A That was May 2017.

6 Q Okay. And how did you meet up with him again?

7 A We had a mutual friend.

8 Q Okay. And what's that friend's name?

9 A Clinton Ewing.

10 Q And do you recall where you met up with him at?

11 A First time, I think it was at Howland Park.

12 Q Okay. And from there did you start interacting with
13 Austin more often?

14 A Uh-huh, yes.

15 Q Okay. And during that period of time, did you see
16 Austin carrying around a gun on a regular occasion?

17 A Not very many times.

18 Q Okay. We saw a video of Austin holding a gun out in
19 the middle of the woods; is that correct?

20 A (Witness nods head.)

21 Q That one you just identified?

22 A Correct.

23 Q And you don't remember when that was?

- 1 A No, not the exact date.
- 2 Q Do you remember if it was before or after June 11th?
- 3 A It was -- I don't remember. I believe it was before.
- 4 Q You believe it was before June 11th?
- 5 A (Witness nods head.)
- 6 Q So if we assume that that is correct, do you recall
7 seeing that gun anytime after that video was taken?
- 8 A I don't remember. I don't think so.
- 9 Q Okay. Now, there was also a picture that we looked
10 at where Austin was sitting on a couch with some other
11 individuals you identified as Melanie Engle, Donavon and Leah
12 Smith?
- 13 A Correct.
- 14 Q And you indicated that those are Austin's friends; is
15 that correct?
- 16 A Yes, sir.
- 17 Q Do you know how long Austin would have known Melanie,
18 Donavon and Leah?
- 19 A I know he knew Donavon for awhile, but I don't know
20 about the other two.
- 21 Q Okay. Do you know when that picture was taken that
22 was put up there on the board?
- 23 A Not the exact date, no.

1 Q Okay. And you weren't in that picture; is that
2 correct?

3 A Correct.

4 Q Were you there when that picture was taken?

5 A No.

6 Q We heard some testimony about one day you were at
7 Nelson Ledges with Austin and Rickey and Austin said, "Hey,
8 you want to see a scary place," that ended up being what was
9 called Hatchet Man Road. What do you know about Hatchet Man
10 Road?

11 A I don't know much. I know it's been abandoned for
12 awhile. That's all I know.

13 Q Is there a background story to that place, like an
14 old legend of what was going on?

15 A Yeah. I think a man killed some people there with a
16 hatchet.

17 Q And is this like a popular thing for people to go out
18 there up in the Bristol area and -- like a scary night?

19 A Yeah, I believe so.

20 Q Is Austin the one that told you about the background
21 of what was going on there?

22 A Yes.

23 Q Now, after -- what was the dates that you went to --

1 on your cruise?

2 A It was either June 8th or 9th to the 14th.

3 Q Okay. So from June 8th or 9th to the 14th, during
4 that period of time, did you have any contact or communication
5 with Austin?

6 A Very little.

7 Q And how were you communicating with him?

8 A Through Messenger on Facebook.

9 Q Okay. At any point in time, did Austin mention about
10 anything of having a bad interaction with a person or talking
11 about shooting a person or anything like that?

12 A No.

13 Q Now, you had been dating him for a few weeks then?

14 A Not quite at that point, I don't think.

15 Q Not at that point?

16 A Can you repeat the question?

17 Q Did Austin ever mention to you the name Brandon
18 Sample before you went on a -- your cruise?

19 A No.

20 Q Did you ever meet Brandon Sample?

21 A No.

22 Q When you got back from your cruise, did Austin
23 mention anything about hanging out with a Brandon Sample?

1 MR. BECKER: I'm going to object. That's
2 hearsay.

3 THE COURT: I'm going to overrule that. Go
4 ahead.

5 A He sent me an article that -- and he said that he was
6 with Brandon Sample at one point. But that's it.

7 Q Did he say where he was with Brandon at?

8 A No.

9 Q Okay. Now, again, the question previously was did
10 Austin ever send you any text message or indicate in any way
11 through Messenger systems whether he had any bad interactions
12 with Brandon. Did he ever tell you in person that, "Hey, I
13 shot this kid"?

14 A No, sir.

15 MR. BECKER: I'm going to object to that.

16 THE COURT: Asked and answered. Let's go
17 on.

18 MR. OLSON: I have no further questions.

19 THE COURT: Redirect.

20 MR. BECKER: No, Your Honor.

21 THE COURT: You may step down.

22 Ladies and Gentlemen of the Jury, we'll take this
23 opportunity for our mid-afternoon break. We'll take

1 15 minutes. Again, when you're done with your break, go down
2 to the petit jury room.

3 Do not discuss this case among yourselves, nor with
4 anyone else. Do not form or express an opinion. I'll see you
5 in 15 minutes.

6 (Whereupon, a recess was had commencing at
7 2:40 p.m. and concluding at 2:58 p.m.)

8 THE COURT: Mr. Becker, you may call your
9 next witness.

10 MR. BECKER: Thank you, Your Honor. State
11 would call Brittani Merten.

12 * * *

13 BRITTANI MERTEN,
14 having been duly sworn, was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. BECKER:

17 Q Will you tell us your name, please?

18 A Brittani Merten.

19 Q And Brittani, where do you live at?

20 A On Leslie Drive.

21 Q Where is that located at?

22 A In Champion now.

23 Q Okay.

- 1 A But --
- 2 Q Go ahead.
- 3 A -- I lived in Newton Falls. I don't know like if
4 you're asking that or --
- 5 Q Okay. Just where you live now.
- 6 A Okay. Yeah.
- 7 Q And how old are you?
- 8 A 18.
- 9 Q When is your birthday?
- 10 A December 30th.
- 11 Q So you were 17 in June of last year?
- 12 A Yeah.
- 13 Q All right. Now, do you have a brother? Or a half
14 brother?
- 15 A Yes.
- 16 Q What's his name?
- 17 A Nathan Moats. And I have a older one.
- 18 Q Okay. Now, are you familiar with -- I'm going to ask
19 you some individuals, and I'm going to ask you if you're
20 familiar with them and if you are how you are familiar with
21 them. Are you familiar with Rickey Roupe?
- 22 A Yes. That's my brother's best friend.
- 23 Q I'm sorry. Say that again.

- 1 A It's my brother's best friend.
- 2 Q All right. Are you familiar with Jessica Simms?
- 3 A I know of her. I've never talked to her. I seen her
4 out there, but --
- 5 Q You're not friends with her, don't socialize with
6 her?
- 7 A No.
- 8 Q Are you familiar with Hayle Roupe?
- 9 A Yeah.
- 10 Q How are you familiar with Hayle?
- 11 A Through Rickey.
- 12 Q All right. They're cousins, I believe?
- 13 A Yeah.
- 14 Q And are you familiar with a Deidre Keener?
- 15 A Yes.
- 16 Q How are you familiar with Deidre?
- 17 A Through Rickey.
- 18 Q Okay. Now, I want to direct your attention back to
19 June of 2017. Was there a time that you knew an individual by
20 the name of Austin Taylor Burke?
- 21 A Yes.
- 22 Q How did you know Austin Taylor Burke?
- 23 A Through Rickey.

- 1 Q And was it fair to say that that was his friend?
- 2 A Yeah.
- 3 Q You weren't friends with Austin Taylor Burke?
- 4 A No. I met him through Rickey and little Nate.
- 5 Q Did there come a time when you saw Austin Taylor
6 Burke with a firearm?
- 7 A Yes.
- 8 Q Can you describe the kind of firearm he had?
- 9 A I say it's blue like marble. I don't know.
- 10 Q Okay.
- 11 A It's little.
- 12 Q Was it big one, was it small?
- 13 A Little.
- 14 Q All right. I'm going to hand you what's been marked
15 for purposes of identification as State's Exhibit Number 1 and
16 ask if you recognize State's Exhibit Number 1?
- 17 A Yeah.
- 18 Q Okay. This would be the same or similar type of gun
19 you saw him with?
- 20 A Yes.
- 21 Q Okay. And tell us how and where you saw him with
22 this gun.
- 23 A At my apartment in Newton Falls.

- 1 Q At your place?
- 2 A Uh-huh.
- 3 Q Okay. So how is it that he was at your place in
4 Newton Falls?
- 5 A Rickey brought him over one day. Like Rickey came
6 with him. So that's the night that I met him too.
- 7 Q All right. Do you recall what time of year this was,
8 what month it was?
- 9 A It was June.
- 10 Q June of 2017?
- 11 A Yeah.
- 12 Q All right. And Newton Falls, do you know what county
13 that is in?
- 14 A Trumbull. Should be.
- 15 Q All right. And that's where you saw the gun?
- 16 A Yeah.
- 17 Q Now, there came a time when you sort of became closer
18 or more friendly to Austin Burke; is that correct?
- 19 A Yeah.
- 20 Q All right. How did that come about?
- 21 A I didn't have sex with him. Like --
- 22 Q No. I'm not asking --
- 23 A I know you guys keep asking me that.

1 Q There was some point where you had a relationship
2 with him or were trying to get a relationship?

3 A Yeah. We got drunk and then we kissed, but that's
4 it.

5 Q Okay. And there was some text message talking about
6 that; correct?

7 A Yeah.

8 Q All right. Do you recall what your cell phone number
9 was back then?

10 A (330) 937-1376.

11 Q And do you recall Austin Burke's cell phone?

12 A No.

13 Q Okay. But you're certain you had talked to him;
14 correct?

15 A Yeah.

16 Q All right. And at one point in June of 2017 you were
17 talking to him by text message; is that correct?

18 A Yeah.

19 Q Now I'm going to hand you what's been marked for
20 purpose of identification as State's Exhibit Number 48. It's
21 a two-page document. And I'm going to hand you this. I'm
22 going to have you look at those phone records. Those are text
23 messages that were taken from the defendant's cell phone

1 records. And I'm going to ask you if you see your number on
2 those cell phone records?

3 A Yeah.

4 Q All right. I'm going to ask you to look down at line
5 31 of that document.

6 A Uh-huh.

7 Q And was there a text message that you received from
8 Austin Burke on June 11, 2017 late in the evening? Or maybe
9 it was June 12th.

10 A It says June 12th.

11 Q It was just after midnight then; right?

12 A I don't see a time on here.

13 Q Well, we'll look at it. But it's June 12th?

14 A Yeah. It says June 12th.

15 Q And what did Austin Burke text you?

16 A "See if my clip for the 9-millimeter is there."

17 Q And where were you at?

18 A I was at Nick's.

19 Q And who is Nick?

20 A Just my friend.

21 Q All right. And --

22 A That's the night that we went there. We got drunk.

23 Q All right. And was Austin Burke there earlier that

1 night?

2 A It wasn't this exact night that we went there.

3 Q He had been there some other night?

4 A Yeah. We all went there.

5 Q And he had a 9-millimeter clip?

6 A Yeah. Rickey was playing with it. It was Rickey or
7 little Nate. I don't know. We were all drunk. One of 'em
8 was playing with it and they lost the clip to it.

9 Q They had a gun too?

10 A Yeah. It was Austin's, but they lost the clip.

11 Q Okay.

12 A So I don't know whatever happened to it.

13 Q What did that gun look like?

14 A It was a little bigger than the other one. It was
15 silver.

16 Q Okay. Now, if you go down to the next page up at the
17 top --

18 A Uh-huh.

19 Q -- there's a text message at about 2 a.m., 2:08 a.m.
20 on June 12th; do you see that? It should be line 33, I think.

21 A No, 37.

22 Q I'm sorry. 37. Yes.

23 A Uh-huh.

- 1 Q And what was that text message sent to you?
- 2 A "Out in Niles." Oh, what day? 6-12. It says at
3 2:08, but I don't know if that's the time.
- 4 Q Okay. Well, it says 2:08; right?
- 5 A Uh-huh.
- 6 Q Okay. It says June 12th?
- 7 A Yeah.
- 8 Q And it's a text message from who?
- 9 A It's outgoing from his -- it don't say.
- 10 Q Okay.
- 11 A It's just outgoing into my phone.
- 12 Q Into your phone; right?
- 13 A Yeah.
- 14 Q And it says, "I'm out at Nile" with a "W"?
- 15 A Yeah. It says, "Out in Nile."
- 16 Q Okay. Do you recall receiving those text messages
17 from Austin Burke?
- 18 A Yes.
- 19 Q All right. I'm going to show you what has been
20 marked for purposes of identification as State's Exhibit 11
21 and ask if you recognize State's Exhibit 11?
- 22 A Yeah. You want me to hold it?
- 23 Q Yeah. You can hold it. Okay. What is State's

1 Exhibit 11?

2 A It's just a picture of him holding guns.

3 Q All right. Do those look like the two guns that you
4 had seen him with?

5 A Yeah.

6 Q And when you say "he," who are you referring to?

7 A Austin.

8 Q All right. Does the one gun look like the
9 marble-handled gun you described?

10 A Yeah.

11 Q And does the other one look like the 9-millimeter
12 gun?

13 A Uh-huh.

14 Q They were playing around with the clip on -- and he
15 asked you about where the clip was?

16 A Yeah. They lost it at the farmhouse.

17 Q I'm going to publish for the jury just so we know
18 what we're talking about here on the text messages.

19 Brittani, you testified to line thirty --

20 A One.

21 Q -- one. Right. Can you read that? Is that big
22 enough for you or can you see that? If you have to step down
23 to see.

1 A I can see it. "See if my clip for the 9-millimeter
2 is out there."

3 Q And did you respond to that?

4 A Yeah. I said, "I don't see it anywhere."

5 Q All right. You say that you see the dates here.

6 These were on June 12, 2017, and --

7 A It just says "41."

8 Q Can you read the time there?

9 A It just says "41."

10 Q Yeah. So 041 would be -- if we started the day at --
11 12, that would be like 12:41 in the morning; right?

12 A Okay.

13 Q Okay. And you recall having those text conversations
14 with the defendant; correct?

15 A Yeah.

16 Q And then you testified on line 37, which is right
17 here, at June 12, 2017 at 2:08 a.m., did he tell -- did he say
18 where he was?

19 A Out in Niles.

20 Q Niles. Okay. And, again, those are text messages
21 that you recall receiving from him?

22 A Yeah.

23 Q Now the individual -- and there's also the last text

1 message here. It has this little picture here, it's a little
2 like a thumbnail picture. Do you recall sending a picture to
3 him the next -- later in the morning on June 12th?

4 A Yeah.

5 Q Okay. What did you send him a picture of?

6 A It's just like a bathing suit. I was going swimming
7 at the farmhouse.

8 Q Okay. So you would have sent that picture to Austin
9 Taylor Burke?

10 A Yeah.

11 Q Okay. Now, Brittani, the individual that you saw
12 with those guns and who you identified in the photograph, is
13 he here in the courtroom today?

14 A Yes.

15 Q Would you please identify him?

16 A He's right there.

17 Q And that's the individual you know as Austin Taylor
18 Burke?

19 A Yes.

20 Q And he's the individual that you saw with those two
21 firearms?

22 A Yes.

23 Q He's the individual that asked you where his

1 9-millimeter clip was?

2 A Yes.

3 Q All right. And he's the individual who told you he
4 was at Niles on June 12th at 2:08 a.m.?

5 A Yes.

6 MR. BECKER: I have nothing further, Your
7 Honor.

8 THE COURT: Cross?

9 CROSS EXAMINATION

10 BY MR. OLSON:

11 Q Good afternoon, Brittani.

12 A Hi.

13 Q You indicated you're 18 years old; is that correct?

14 A Yes.

15 Q And you stated that you met Rick -- Austin through
16 Rickey?

17 A Yes.

18 Q Do you recall when that was?

19 A No. It was in June.

20 Q June of 2017?

21 A Yes.

22 Q So you've known him approximately nine months?

23 A We counted it. It was like 19 days before he went to

1 jail.

2 Q Okay.

3 A Yeah.

4 Q You indicated that during one of the interactions
5 that you had with Rickey -- excuse me, with Austin -- you saw
6 him in possession of a gun with a marble type handle; is that
7 correct?

8 A Yes.

9 Q Do you recall when that was?

10 A It was the same night I met him.

11 Q And that was early in June?

12 A Yeah.

13 Q That was before June 11th?

14 A Yes.

15 Q And June 12th obviously.

16 A Yeah.

17 Q Now, we went over some messages that were exchanged
18 between you and Austin on June 11th into the 12th; is that
19 correct?

20 A Yeah.

21 Q And the one indicated that he was looking for a clip
22 to a 9-millimeter?

23 A Yes.

1 Q Now that 9-millimeter, you indicated you saw him with
2 it that night that you were at Nick's house drinking; is that
3 correct?

4 A Yes. But I saw it the same night like I met him.

5 Q Okay. And, again, that's before June 11th and
6 June 12th?

7 A Yes.

8 Q You told him that the clip wasn't at the location
9 where you were; is that correct?

10 A No. We couldn't find it. We looked in the pond and
11 it wasn't in there.

12 Q Okay. And you would agree with me that there was no
13 message that Austin ever sent back to you that said, "Hey, I
14 found the clip"?

15 A Yes. There was no message. He never found it.

16 Q Did Austin ever come out to the place or location
17 where you were?

18 A No. Not looking for it or anything. We just
19 couldn't find it. We gave up.

20 Q On June 11th or June 12th, did you see Austin at all?

21 A No.

22 Q Now, there was also a message that came up at
23 approximately 2:00 in the morning, is that correct, that

1 said --

2 A The 2:08 one?

3 Q Yeah, 2:08. Out in Nile with a "W"?

4 A A "W," uh-huh.

5 Q Obviously he was indicating out in Niles; is that
6 correct?

7 A Yes.

8 Q During any period of time did Austin tell you that he
9 was with your brother Nate?

10 A No.

11 Q At any point in time did Austin tell you that he was
12 with Rickey Roupe?

13 A No.

14 Q At any point in time did Austin tell you that he was
15 with Deidre Keener?

16 A No.

17 Q At any point in time did Austin tell you that he was
18 with Hayle Roupe?

19 A No.

20 Q At any point in time did Austin tell you that he was
21 with Jessica Simms?

22 A No.

23 Q At any point in time did Austin tell you that he was

1 with Brandon Sample?

2 A No.

3 Q Did he ever mention Brandon Sample to you?

4 A No. I never met him or heard about him.

5 MR. OLSON: I have no further questions.

6 THE COURT: Redirect?

7 MR. BECKER: Nothing further, Your Honor.

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

9 Call your next witness.

10 MR. BECKER: State would call Nathan Moats.

11 * * *

12 NATHAN MOATS,

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

14 DIRECT EXAMINATION

15 BY MR. BECKER:

16 Q Please state your name for the record.

17 A Nathan Moats.

18 Q All right. Nathan, how old are you?

19 A 16 years old.

20 Q When is your birthday?

21 A 6-19-01.

22 Q Okay. You don't have to hold it.

23 A Oh, just talk like this? Okay.

1 Q So you would have been 15 back around June 11th and
2 12th of last year; correct?

3 A Correct.

4 Q All right. Now, I'm going to ask you some questions
5 here. Where were you living at back in June of 2017?

6 A Newton Falls.

7 Q All right. And were you familiar with an individual
8 by the name of Austin Taylor Burke?

9 A Yes.

10 Q How did you know Austin Taylor Burke?

11 A From one of my buddies.

12 Q All right. And had you known him for a long time in
13 June?

14 A No.

15 Q All right. Now, was there a time when you saw Austin
16 Taylor Burke with a gun?

17 A Yes.

18 Q Did you see him with more than one gun?

19 A Yes.

20 Q Okay. Can you describe the guns you saw him with?

21 A One was, had like a marble type of grip to it. It
22 was like plastic almost. And then the other one was just
23 black.

1 Q Okay. Now, I want to direct your attention to
2 State's Exhibit Number 1. I'm going to have you look at
3 State's Exhibit Number 1 and ask if you recognize this item.
4 Do you recognize State's Exhibit Number 1?

5 A Yes, I do.

6 Q What is State's Exhibit Number 1?

7 A It's the gun that I seen.

8 Q That you saw Austin Burke with?

9 A Yes, I saw Austin Burke with.

10 Q Okay. Now, I want to direct your attention to
11 Sunday, June 11th of 2017, and into the morning, early morning
12 hours of Monday, June 12th, 2017. Are you familiar with
13 Rickey Roupe?

14 A Yes, I am.

15 Q How are you familiar with Rickey Roupe?

16 A Everybody from -- I went to school with him awhile.
17 Grew up.

18 Q Were you familiar with Jessica Simms?

19 A Yes.

20 Q How did you know Jessica?

21 A Through Rickey.

22 Q And did you know Deidre Keener?

23 A Yes.

1 Q How long did you know Deidre Keener?

2 A I didn't know her for too long until I started
3 hanging out in Niles is when I met Deidre.

4 Q And were you familiar with a Hayle Roupe?

5 A Yes. That's Rickey's cousin.

6 Q All right. Now, on June 11th and June 12th of 2017,
7 did you know where Rickey Roupe lived at?

8 A Yes.

9 Q Where did he live at?

10 A It was in Niles. I can't think of the street name.
11 Mason.

12 Q All right. Mason Street?

13 A Mason Street.

14 Q All right. And were you over there that evening when
15 Austin Taylor Burke came over?

16 A Yes, I was.

17 Q Tell us what happened when Austin Taylor Burke showed
18 up at that street on Mason Street.

19 A He showed up for a little while and then he left a
20 little while after that.

21 Q Okay. And that would have been -- would it have been
22 dark out?

23 A Evening time.

- 1 Q Okay.
- 2 A Getting close. Later.
- 3 Q Later?
- 4 A Yeah.
- 5 Q All right. You don't know the exact time?
- 6 A Not the exact time. But if I had to say a time, it
7 would be around 2:00 -- or about 1, 2:00. In there.
- 8 Q And was he with anybody at around 2:00, 1:00? You're
9 talking about in the morning, like early morning?
- 10 A Yes.
- 11 Q Okay. So it would be dark out?
- 12 A Yeah.
- 13 Q All right. And was he with anybody when he came
14 over?
- 15 A Yes.
- 16 Q Do you remember who that individual was?
- 17 A It was Brandon.
- 18 Q Brandon, did you know his last name?
- 19 A I didn't know his last name.
- 20 Q Had you ever met Brandon before?
- 21 A No.
- 22 Q Did you see the car that they came in that day?
- 23 A No.

- 1 Q You didn't see the car?
- 2 A (Witness shakes head.)
- 3 Q Okay. Did they come into the house for awhile?
- 4 A Not awhile. It was -- Brandon didn't really come in.
- 5 Q He did not come in?
- 6 A Not -- like he stepped in the doorway. It wasn't --
- 7 Q And at some point did Austin say something that he
- 8 was going to do?
- 9 A Not that night.
- 10 Q Okay. He didn't say anything that night?
- 11 A No.
- 12 Q And did he and this Brandon individual leave at
- 13 around 2 in the morning?
- 14 A Yes.
- 15 Q Now, a couple days later -- or maybe later that
- 16 day -- at some point you saw Austin Burke again; correct?
- 17 A Correct.
- 18 Q All right. Tell us how you saw him and where you saw
- 19 him at.
- 20 A He was at Rickey Roupe's house and I woke up and he
- 21 was there. I'm not sure how he got there or when.
- 22 Q That would have been like later --
- 23 A Early morning. You know.

- 1 Q Was the sun out then when he came back?
- 2 A Yes.
- 3 Q All right. You don't remember the time, though?
- 4 A No.
- 5 Q And what happened when he came back in the morning,
6 and what did he say?
- 7 A He just told us that he -- I don't know what to say.
8 Like --
- 9 Q Well, tell us what he said.
- 10 A He didn't really say much. Just that, you know, he
11 started -- he was telling everybody that he killed Brandon
12 Sample.
- 13 Q And did he tell you details about where and how he
14 did that?
- 15 A No.
- 16 Q Well, did he tell you something about where he shot
17 Brandon or how he killed him?
- 18 A He said he shot him in the head.
- 19 Q All right. And did he tell you what he did before he
20 shot him?
- 21 A No.
- 22 Q Okay. Did he tell you where he shot him at?
- 23 A Yes.

- 1 Q And where did he say he shot him at?
- 2 A In the head.
- 3 Q No. I mean where location-wise?
- 4 A Hatchet Man Road.
- 5 Q All right. Are you familiar with Hatchet Man Road?
- 6 A No. I'm not too familiar with it.
- 7 Q Had you ever been there?
- 8 A I'm sure I've been there.
- 9 Q All right. And do you know roughly where it is?
- 10 A I know it's a natural resource park thing.
- 11 Q Who had you been there with? When you went there,
12 who had you gone there with?
- 13 A My buddies from Leavittsburg.
- 14 Q Okay. Now -- and do you remember, then, anything
15 else that Austin told you about shooting Brandon Sample?
- 16 A (Witness shakes head.)
- 17 Q No?
- 18 A (No response.)
- 19 Q Do you remember anything else he told you?
- 20 A Just that he shot him and he left him there. That's
21 all.
- 22 Q And it was at Hatchet Man Road?
- 23 A Yes, yes.

1 Q Okay. Now, the person that told you this and who you
2 saw with Brandon Sample and told you he shot him, is he here
3 in the courtroom today?

4 A Yes.

5 Q Can you please point to him?

6 A (Indicating.)

7 Q And you're pointing at the defendant in this case,
8 Austin Taylor Burke; correct?

9 A Correct.

10 Q Okay. Nathan, these gentlemen are going to ask you
11 some questions now, but I'm done asking you questions. Okay?
12 Thank you.

13 CROSS EXAMINATION

14 BY MR. HARTWIG:

15 Q Hi, Nathan.

16 A Hello.

17 Q I just want to clear a few things up. Okay?

18 A Okay.

19 Q All right. So on June 11th or 12th, you went over to
20 Rickey Roupe's house; correct?

21 A Yes.

22 Q All right. Did you go alone?

23 A Yes.

- 1 Q All right. Do you drive?
- 2 A No.
- 3 Q All right. How did you get there?
- 4 A I got dropped off by my mother.
- 5 Q Okay. And about what time did you get dropped off at
6 that house?
- 7 A I'm not sure around what time it was.
- 8 Q Okay. Was it light out?
- 9 A I don't recall if it was or wasn't.
- 10 Q So whether it was dark or light, you can't recall
11 that?
- 12 A No. It was that day though.
- 13 Q Which day?
- 14 A It was the 11th.
- 15 Q It was on the 11th? You just don't recall?
- 16 A I don't know, like, you know.
- 17 Q I'm sorry. Speak up a little bit.
- 18 A I'm not sure when I got there because --
- 19 Q Okay. When you got there, who was there?
- 20 A Rickey was.
- 21 Q Just Rickey?
- 22 A It was just Rickey and Deidre.
- 23 Q So Rickey and Deidre were there when you arrived?

- 1 A Yes.
- 2 Q Okay. Now, were you guys doing any drugs there at
3 the house at any point?
- 4 A No.
- 5 Q Okay. All right. Now, you were interviewed two
6 times by police in this case; correct?
- 7 A Correct.
- 8 Q All right. Do you recall being interviewed on
9 June 27th for the first time?
- 10 A Yes.
- 11 Q All right. And at that point you gave what they
12 wanted you to give which was truthful testimony; correct?
- 13 A Correct.
- 14 Q All right. And then one month later, about one
15 month, on July 17th, they interviewed you again; correct?
- 16 A Correct.
- 17 Q All right. And you gave a lot more information at
18 that point; would you agree with me?
- 19 A I agree.
- 20 Q Okay. In your first interview, would you agree that
21 you said you just met Austin Burke through Rickey Roupe?
22 That's how you eventually met him; correct?
- 23 A Yes, correct.

1 Q You indicated that Austin arrived at Rickey Roupe's
2 house, which would be on June 12th at around 1 or 2:00 in the
3 morning; do you recall that?

4 A I recall.

5 Q All right. What were you doing at 1 or 2:00 in the
6 morning at that point?

7 A Just hanging out with Rickey and Deidre.

8 Q All right. They were still awake?

9 A They were there, yeah.

10 Q They were up at that point?

11 A (Witness nods head.)

12 Q All right. And you had indicated in your first
13 interview that Brandon Sample was with Austin; do you recall
14 that?

15 A I recall.

16 Q All right. You had indicated you observed Brandon
17 Sample snorting heroin or fentanyl; correct?

18 A Correct.

19 Q All right. And you had indicated to the detective
20 that you believed that he got that from a friend that he had
21 from Akron?

22 A Well, he -- that's what Brandon Sample had said. He
23 said that his buddy left it in the car.

- 1 Q All right. Indicating his buddy also does drugs?
- 2 A That's -- that's what I would say.
- 3 Q All right. Did you also get the impression that his
- 4 buddy does drugs?
- 5 A Yes.
- 6 Q Did he indicate that his buddy was Josh White?
- 7 A No.
- 8 Q All right. Didn't give a name?
- 9 A No.
- 10 Q All right. Was he indicating a friend from Akron
- 11 from that same day that he had been with?
- 12 A I don't recall.
- 13 Q Okay. Now, you had indicated to the detective that
- 14 Brandon and Austin left the house around 3:30 or 4 in the
- 15 morning; correct?
- 16 A Correct.
- 17 Q So that would indicate maybe on the long side they
- 18 were there from 1 to 4, approximately three hours; does that
- 19 seem right?
- 20 A Yeah.
- 21 Q Okay. So when you had testified that they stayed a
- 22 little while, three hours is a little while?
- 23 A I mean, yeah. It's --

1 Q Okay. And as far as your observations of Brandon
2 Sample doing heroin or fentanyl, how much did you see him do?

3 A I don't know how much they would have been -- I
4 don't --

5 Q Okay. How frequently did you see him do it?

6 A I only seen him snort a little bit of the powder.
7 That was all.

8 Q Okay. Now, you had indicated to the detective that
9 when they left both Rickey and Nate were awake. So you and
10 Rickey were awake?

11 A Rickey was sleeping when they left.

12 Q Okay. But you told detectives in your first
13 interview that Rickey was awake; do you recall that?

14 A Well, Rickey and Deidre were laying in Rickey's bed
15 -- Rickey's grandma's bed.

16 Q Okay.

17 A They weren't, you know, fully asleep but pretty much
18 sleeping.

19 Q Okay. Pretty much, but awake?

20 A Yeah, but --

21 Q All right. Now, you then -- you had said, though --
22 you had said further in that interview Deidre had left before
23 Austin and Brandon left; do you recall that?

1 A I don't recall. I recall.

2 Q I'm sorry?

3 A I do recall.

4 Q Okay. So you're indicating today, as you did in your
5 first interview, that Deidre left before Austin and Brandon
6 left the house; correct?

7 A Correct.

8 Q So when she's gone, it's now Rickey, you, Brandon and
9 Austin; correct?

10 A Correct.

11 Q All right. And for how long did Brandon -- well,
12 strike that. Let me rephrase that. Okay? Little confusing.
13 How long was Deidre gone? How long was Deidre gone
14 before Austin and Brandon supposedly left?

15 A How long was she gone?

16 Q Yeah. How long was she out of the house, gone,
17 before they left?

18 A I don't --

19 Q Okay. You don't recall?

20 A No, I don't recall.

21 Q All right. Now, you indicated in your first
22 interview that Austin came back to Rickey's house around
23 6:00 in the morning; correct?

- 1 A Early morning, yes.
- 2 Q Well, you had indicated in the interview about 6; is
3 that your testimony?
- 4 A If I had to say a time.
- 5 Q Okay. Were you awake at that point?
- 6 A I was just waking -- I was sleeping and then I woke
7 up. I'm not sure what time it was, but it was early morning.
- 8 Q Was everybody else sleeping?
- 9 A Yeah. Not Rickey. Rickey was up.
- 10 Q Rickey was up. You were up. And Austin comes in?
- 11 A Yes.
- 12 Q All right. And did you go back to sleep?
- 13 A Yes.
- 14 Q Did you have a conversation with Austin before you
15 went back to sleep?
- 16 A Yes.
- 17 Q Okay. You had testified just earlier that when he
18 came back he told everybody --
- 19 A Yes.
- 20 Q -- what had happened?
- 21 A What he had did, yes.
- 22 Q When you say "everybody," you and Rickey?
- 23 A Me and Rickey, yes.

1 Q Nobody else was up?

2 A No. Just me and Rickey.

3 Q Okay. Now, in your second interview on July 17th,
4 you then indicated -- well, let me go back. In your first
5 interview, would you agree with me you didn't tell the police
6 anything about what Austin supposedly told you?

7 A I did. But I did it in a -- not like I should have.
8 I was scared to say that Austin had told me. At the first
9 interview, I was scared to say that Austin had told me what he
10 told me. And then my second interview is when I let
11 Mr. Greaver know that that's what he said.

12 Q Okay. And much of the news stories had been out in
13 the month between your first interview and second interview;
14 correct?

15 A Correct.

16 Q And would you also agree with me, you and your
17 friends all had discussion about this case?

18 A Yes.

19 Q During that period of time; correct?

20 A Correct.

21 Q You had indicated some details like Austin buried the
22 body; correct?

23 A Rickey did. As far as I know. I don't know --

1 Q You're saying he told you that?

2 A Austin -- as far as I know, Austin had said that he
3 buried the body, along with the gun.

4 Q You don't indicate -- well, I take it back. You
5 indicate to the detectives that when Austin came back he
6 didn't have any bloody clothes; correct?

7 A No.

8 Q Right. He didn't have a gun at that point; correct?

9 A No.

10 Q Right. He just showed back up at the house and told
11 you a story; correct?

12 A Correct.

13 Q And Rickey was in the house the whole time; correct?

14 A Correct.

15 Q Right?

16 A Correct.

17 Q And you're sure that Deidre had left the house prior
18 to Austin and Brandon leaving; correct?

19 A Yes.

20 MR. HARTWIG: Just one moment, Your Honor.

21 Just a couple questions, Your Honor.

22 BY MR. HARTWIG:

23 Q You had indicated in your first interview that at

1 some point, I believe it was Deidre was in the bedroom
2 listening to rap music? Or somebody was listening to rap
3 music outside? Do you recall saying that?

4 A Yeah. I was listening to music.

5 Q Who was listening to music, and who was in the
6 bedroom? Who was where during that period of time?

7 A It was me, Deidre and Rickey who was listening to
8 music.

9 Q In the kitchen?

10 A Yeah. We were sitting at the dining room table.

11 Q Okay. And that was during the period that you guys
12 were just hanging out?

13 A Yes.

14 Q Before Austin and Brandon came?

15 A Yes.

16 MR. HARTWIG: No further questions. Thank
17 you.

18 THE COURT: Redirect?

19 MR. BECKER: No, Your Honor.

20 THE COURT: All right. You may step down.

21 Thank you.

22 THE WITNESS: Thank you.

23 THE COURT: Call your next witness.

1 MR. BECKER: Call Rickey Roupe.

2 * * *

3 RICKEY JOHN THOMAS ROUPE,
4 having been duly sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BECKER:

7 Q Would you tell your name to the jury, please?

8 A My name is Rickey Roupe.

9 Q All right. Rickey, how old are you?

10 A 15, sir.

11 Q All right. When did you turn 15? When is your
12 birthday?

13 A September 7, 2002.

14 Q So back in June of 2017, you would have been 14?

15 A Yes, sir.

16 Q All right. I want to direct your attention back to
17 June of 2017. Where were you living at in June of 2017?

18 A 713 Mason Street, Niles, Ohio.

19 Q All right. Do you happen to know what county that's
20 in?

21 A Trumbull County.

22 Q All right. Now, were you familiar with an individual
23 by the name of Austin Taylor Burke?

1 A Yes, sir.

2 Q How did you know Austin Taylor Burke?

3 A I grew up with him. He was a friend of the family.
4 And him and my cousin Makayla, they used to be like -- they
5 used to be like boyfriend and girlfriend.

6 Q All right. And did you know Jessica Simms?

7 A Yes, sir.

8 Q How do you know Jessica Simms?

9 A That's my cousin Hayle Roupe's girlfriend.

10 Q All right. How do you know Hayle Roupe?

11 A She is my cousin.

12 Q All right. And do you know a Nathan Moats?

13 A Yes, sir.

14 Q How do you know Nathan Moats?

15 A I grew up with him and he is my second cousin.

16 Q All right. And are you familiar with a Deidre
17 Keener?

18 A Yes, sir.

19 Q How do you know Deidre?

20 A I met Deidre through my cousin Hayle.

21 Q I want to direct your attention to June 11th, which
22 was a Sunday, and June 12th, 2017 when you were at that Mason
23 Street address. First of all, before that date, had you ever

- 1 gone to a place called Hatchet Man Road?
- 2 A Yes, sir.
- 3 Q Who took you to Hatchet Man Road?
- 4 A Meredith and Austin Burke.
- 5 Q All right. And who is Meredith?
- 6 A I'm not sure what her last name is, but I just know
7 that her and Austin were like talking.
- 8 Q All right. And this would have been before the night
9 of the events we're going to talk about?
- 10 A Yes, sir.
- 11 Q All right. And did you know how to get there?
- 12 A I don't know how to get there personally, sir.
- 13 Q Did Meredith know how to get there?
- 14 A I'm not sure. I just know that she was driving.
- 15 Q All right.
- 16 A So I'm assuming.
- 17 Q Did Austin give directions to her on where to turn?
- 18 A Yes, sir.
- 19 Q All right. And when you went there, what kind of day
20 was it? Or what was it day? Night? What was it?
- 21 A It was night.
- 22 Q All right.
- 23 A Well, it was like the evening.

1 Q And why did you guys go there?

2 A We was just walking around. We heard the road was
3 haunted and we was just wanting something to do.

4 Q All right. So now I want to go back to June 11th and
5 June 12th of 2017. Was there a time when you were at your
6 house at 713 Mason and some people were over there?

7 A Yes, sir.

8 Q Okay. Can you tell this jury who was at your house?

9 A Hayle Roupe, Jess Simms, Austin Burke, Jess Simms'
10 little sister -- I forget her name, sir -- Nathan Moats and
11 me.

12 Q All right. And at some point you went to bed; is
13 that correct?

14 A Yes, sir.

15 Q Do you recall approximately what time you went to
16 bed?

17 A It was around 11:00, midnight, sir.

18 Q All right. And at that point you slept the whole
19 night through until the morning?

20 A Yes, sir.

21 Q All right.

22 A I slept until Austin woke me up at 9 to get his
23 clothes and stuff.

1 Q All right. So that would have been the next morning,
2 which would have been June 12th?

3 A Yes, sir.

4 Q And when he woke you up, did he tell you anything?

5 A No, sir.

6 Q All right.

7 A He just told me that he needed his clothes and he was
8 going home.

9 Q All right. And that was around, you think, around
10 9:00 on the 12th?

11 A Yeah. Somewhere early in the morning, like 9.

12 Q All right. Now, as the days went past, or later on
13 even that day, did you hear Austin Taylor Burke tell you
14 something about something he did?

15 A Yes, sir.

16 Q All right. How did that come about? First of all,
17 tell me where it happened and, if you recall, when it
18 happened?

19 A Well, I seen everything on Facebook about Brandon
20 Sample's murder and then I seen that Austin -- that he was
21 getting blamed for it. So I asked him if it was true and he
22 told me yes. And then he told me how he did it and
23 everything.

1 Q All right. So let's talk about that. How did he
2 tell you he did it?

3 A He told me that they went to Hatchet Man Road. He
4 told him to get out of the car and get on his knees and Austin
5 pulled the trigger.

6 Q Did he tell you where he shot Brandon Sample at?

7 A He told me he shot him here and then he shot him here
8 (indicating).

9 Q And did he tell you how he then left Hatchet Man
10 Road?

11 A He did not speak how he left.

12 Q Did he ever tell you about a car that was on the bike
13 trail?

14 A Yes.

15 Q All right. What did he tell you about the car that
16 was on the bike trail?

17 A Well, like I knew it was Brandon's car at the time
18 so, like, when he, like -- I know -- like we both knew it was
19 Brandon's car.

20 Q All right. He never told you he left it there?

21 A No.

22 Q How did you know that was Brandon's car?

23 A Because it was on the news and stuff and I seen it.

1 Q All right. Now, had you ever seen Austin Taylor
2 Burke with a gun before?

3 A Yes, sir.

4 Q Can you describe for the jury what that gun looked
5 like?

6 A It was a .22 gun. It was like this big. It had like
7 a marble casing on the handle.

8 Q All right. I'm going to show you what's been marked
9 for purpose of identification as State's Exhibit 1. Do you
10 recognize this item?

11 A Yes, sir.

12 Q Okay. And what is State's Exhibit 1?

13 A I'm sorry?

14 Q What is it?

15 A This is -- it's a .25 -- it's a 25/22 is what I was
16 told.

17 Q Okay. And is this the gun you would have seen Austin
18 Taylor Burke with?

19 A Yes, sir.

20 Q All right. Now, I'm going to show you what's been
21 marked for purpose of identification as State's Exhibit 13 and
22 13A and 11.

23 I'm going to show you State's Exhibit 11. Do you

1 recognize State's Exhibit 11?

2 A Yes, sir.

3 Q What is State's Exhibit 11?

4 A That is Austin Burke holding two pistols.

5 Q Did you ever see Austin Burke with -- well, first of
6 all, the one pistol in there, is that similar to the one you
7 described?

8 A Yes, sir. The one that he's not holding that's just
9 sitting there is the pistol you just showed me, sir.

10 Q Did you ever see him with any other guns?

11 A No, sir.

12 Q You just saw him with the one gun?

13 A Yes, sir.

14 Q I'm going to show you what's been marked for purposes
15 of identification as State's Exhibit 13. Do you recognize
16 that?

17 A Yes, sir.

18 Q What is State's Exhibit 13?

19 A I recognize the tattoos and the gun.

20 (Whereupon, State's Exhibit 13, Photo, was introduced for
21 identification.)

22 Q All right. So you recognize both the gun and the
23 tattoos?

1 A Yes, sir.

2 Q And then the detail of those tattoos, do you know
3 what kind of tattoos Austin has on his, I guess it would be on
4 his left hand between his thumb and forefinger?

5 A I don't -- like I don't know every tattoo that he
6 got, sir, but I know there's three tear drops there and then
7 the stars that's right there.

8 Q All right. So I'm going to show you what's been
9 marked for purpose of identification as State's Exhibit 13A.
10 Do you recognize the left hand of that individual?

11 A Yes, sir.

12 Q And whose left hand is that?

13 A Austin Burke, sir.

14 Q All right. So just for the record here, you
15 identified State's Exhibit 13 and you identified that
16 marble-handled gun and the left hand of Austin Taylor Burke?

17 A Yes, sir.

18 Q All right. You identified State's Exhibit 11 as,
19 again, that -- that individual in that picture, you recognize
20 who that is?

21 A Yes, sir.

22 Q Okay. And you recognize the firearm that's in
23 State's Exhibit 1 that I previously showed you?

1 A Yes, sir. The one that's sitting on his chest, not
2 the one that he's holding, sir.

3 Q You never saw the other one?

4 A No, sir.

5 Q And State's Exhibit 13A, you recognize some of the
6 tattoos on the left hand of that individual; is that correct?

7 A Yes, sir. I recognize the stars. But like --

8 Q What do you recognize in that photo?

9 A Yes, sir. I recognize these stars, and then like
10 somewhere right in here I know he has three tear drops.

11 Q Okay. And you know those to be the tattoos of who?

12 A Austin Burke.

13 Q All right. Now, the individual you know as Austin
14 Taylor Burke and who you've identified in these photographs,
15 is he here in this courtroom today?

16 A Yes, sir.

17 Q And could you please show -- point him out to the
18 jury?

19 A Right there, sir. (Witness indicates.)

20 Q And he's the individual who told you that he had shot
21 Brandon Sample on Hatchet Man Road?

22 A Yes, sir.

23 MR. BECKER: I have nothing further, Your

1 Honor.

2 THE COURT: Cross.

3 MR. HARTWIG: Thank you, Your Honor.

4 CROSS EXAMINATION

5 BY MR. HARTWIG:

6 Q How you doing, Nathan?

7 A I'm sorry. Did you say Nathan?

8 Q Oh, I'm sorry. Rickey.

9 A I'm good. How you doing?

10 Q Good. I just heard from your second cousin before
11 you came in.

12 A Yes.

13 Q Were you aware of that?

14 A Yes.

15 Q So your cousin came in, sat there, under oath, told
16 us everything he recalls?

17 A Yes, sir.

18 Q From June 11th to June 12th. Okay. So let me ask
19 you some questions. As a result of all of this, this
20 investigation, you were called in by the detective to give an
21 interview; correct?

22 A Yes, sir.

23 Q All right. Your first interview was on June 16th; do

1 you recall that?

2 A Yes, sir.

3 Q All right. Your second interview was a week later,
4 on June 23rd?

5 A Yes, sir.

6 Q Is that right? Okay. So when you came in for your
7 first interview they said, "Hey, tell us the truth"; right?
8 This is a serious investigation into a missing person;
9 correct?

10 A Yes, sir.

11 Q A murder case; correct?

12 A Yes, sir.

13 Q All right. And you understood that; right?

14 A Yes, sir.

15 Q This wasn't about a theft at Wal-Mart, for example;
16 right?

17 A Yes, sir.

18 Q All right. So you went in alone and lied to the
19 police; correct?

20 A Yes, sir.

21 Q All right. I just wanted to make that clear; that
22 you went in and did not tell them what you're telling today.

23 A Yes, sir.

1 Q What you did tell them is that Austin came to your
2 grandmother's house at around 3 p.m. that day; correct?

3 A Yes.

4 Q By himself?

5 A Yes, sir.

6 Q All right. He didn't have a gun; correct? That's
7 what you told the police?

8 A Yes.

9 Q That you went to bed at 11:00 p.m?

10 A Yes, sir.

11 Q You said that Austin was at your house the entire
12 night?

13 A Yes, sir.

14 Q You said Austin woke you up in the morning, left at
15 around 8 or 9 a.m.; correct?

16 A Yes, sir.

17 Q Wasn't 6:00 in the morning; correct?

18 A No, sir.

19 Q At least that's what you told police. He wasn't with
20 Nate at that point; correct?

21 A Well, yes, sir, we were.

22 Q Okay.

23 A I fell asleep in my grandma's bed in the living room

1 and then -- because that's just where I fell asleep. Like I
2 dozed off. I thought Nate and Austin left. I guess Nate fell
3 asleep in my bedroom. I thought he left. That was my
4 mistake, sir.

5 Q Oh, because you said you told -- I mean, you did tell
6 the police --

7 A Yeah.

8 Q -- Nate and Austin left?

9 A Yes.

10 Q All right. You never gave anything about a story
11 that Austin told you at 8 or 9:00 in the morning; correct?

12 A I'm sorry?

13 Q You didn't tell the police that Austin told you
14 anything?

15 A Oh, no, sir. Not the first time.

16 Q Not the first time. All right. The detective
17 thought you were lying; correct?

18 A Yes, sir.

19 Q And you were on probation at the time; correct?

20 A Yes, sir.

21 Q What were you on probation for?

22 A I was on probation for felonious assault.

23 Q All right. And why would you be worried that you

1 would be in trouble? Why would that --

2 A I wasn't worried about being in trouble. I was
3 worried for my life.

4 Q Okay. So you also texted Austin Burke on the 16th;
5 do you recall that?

6 A Most likely, sir. I don't remember exactly our
7 conversation that day, but I'm sure we talked.

8 Q Do you recall asking him about what happened?

9 A Yes, sir.

10 Q And him denying it, saying "I didn't do that"?

11 A Oh, he told me he did, sir.

12 Q Well, I know you're saying he told you that in
13 person; correct?

14 A Yes, sir.

15 Q But I'm saying on the text when you asked him, he
16 said, if you recall, "I ain't do shit, bro. These niggas
17 lame"?

18 A Yes, sir.

19 Q All right. So he denied when you first -- is that
20 the first contact you had with him, those texts?

21 A Yes. We texted and then he came over later that day,
22 sir.

23 Q All right. So, second interview, you said Austin

1 came to the house between 6 p.m. and 8 p.m.; correct?

2 A Yes, sir.

3 Q You said you fell asleep between 11:30 and 12;
4 correct?

5 A Yes, sir.

6 Q All right. Then you say -- this is in the second
7 interview. You say Austin and Nate leave your house after you
8 go to sleep between 12 and 1?

9 A Yes, sir. I got confused because I thought Nate left
10 with Austin, but he was sleeping in my bedroom. I was
11 sleeping on my grandma's bed because she wasn't there. Like I
12 was laying there watching TV and I fell asleep. It was my
13 mistake that I said Nate left. I wasn't sure.

14 Q Okay. This was -- this interview was after the grand
15 jury; correct?

16 A Yes, sir.

17 Q All right. And you had testified at the grand jury?

18 A Yes, sir.

19 Q After meeting with police, but before your second
20 interview?

21 A I know when we went -- when I talked to the jury,
22 sir, that's when I went in and fixed my story and I told them
23 everything. Nothing but the truth.

1 Q And you indicate in your second interview that Austin
2 gave you details of how it happened; correct?

3 A Yes, sir.

4 Q All right. Like that he shot Brandon in the
5 forehead; correct?

6 A Yes, sir.

7 Q Are you aware that that did not happen?

8 A Well, from the sounds of it, I believe that he did
9 commit this.

10 Q I'm not asking what you believe he did. I'm saying
11 he told you, according to your story, that he shot him in the
12 forehead?

13 A Yes, sir.

14 Q And I'm asking you now, are you aware that that did
15 not happen?

16 A No. I -- he told me that day. That's just -- that's
17 when I found out.

18 Q All right. Did he also indicate to you, based on
19 your second interview and your story, that he burned the body?

20 A Yeah. No, sir. No, sir.

21 Q Based on our reading of your interview, it indicates
22 after he shoots him he burns the body and buries it; do you
23 recall saying that?

1 A I don't recall him being burned. I remember he told
2 me that he buried him after he shot him. I don't remember him
3 telling me he burned him, sir.

4 Q If that is contained in your interview, that you said
5 that, that would surprise you?

6 A Yes, sir. Repeat, please. I didn't hear it.

7 Q If you told the police that's what Austin told you,
8 would that be a lie or a mistake or what?

9 A A mistake, sir, because I didn't say that he
10 burned -- I mean, Austin didn't burn him. I never said that.

11 Q Do you have a Facebook page?

12 A Yes, sir.

13 Q Do you recall conversation with Makayla Stone?

14 A Makayla who?

15 Q Is it Makayla Stone?

16 A I don't know no Makayla Stone.

17 Q How about a Billie Morrow?

18 A I know Billie Morrow by just -- I don't, like, know
19 him personally, but I've heard of him.

20 Q Do you recall text messages going back and forth
21 between you and Billie Morrow regarding this case?

22 A No, sir. I've never talked to Billie in my life. I
23 just know of him.

1 Q Okay. Do you recall ever posting on your Facebook
2 page, "I felt better when Brandon got his head blew back"?

3 A Yes, sir, I did. But that was because of the story
4 that I heard. To me, my -- I felt that he deserved it, but
5 that was -- I feel wrong for thinking that. I'm sorry about
6 that.

7 Q And Brandon Sample, you've never met?

8 A No, sir.

9 Q And you're saying he never was at your house?

10 A No, sir.

11 Q And he wasn't at your house snorting heroin?

12 A No. I've never seen him, sir.

13 Q Or doing fentanyl?

14 A No.

15 Q For three, four hours?

16 A No, sir.

17 Q On June -- the night of June 11th going into
18 June 12th?

19 A No, sir.

20 MR. HARTWIG: Just one moment, Your Honor.

21 BY MR. HARTWIG:

22 Q So Rickey, according to your story in your second
23 interview, you had indicated that Austin told you that he

1 shoots him in the forehead and that because he shot right
2 square in the forehead he was twitching and that's why he shot
3 him a second time; correct?

4 A Yes, sir. I'm sorry. I didn't remember that until
5 you said it and it came back to me. This was awhile ago, sir.
6 I'm sorry.

7 MR. HARTWIG: Nothing further, Your Honor.

8 THE COURT: Redirect.

9 MR. BECKER: Yes.

10 REDIRECT EXAMINATION

11 BY MR. BECKER:

12 Q Rickey, you said under cross examination that the
13 reason you didn't tell the truth the first time when you spoke
14 to this detective was you were "worried for your life"?

15 A Yes, sir.

16 Q Can you explain that.

17 A Well, I know Austin is in the gangs and stuff. He
18 told me he was in the 38 Boys when he was in DYS. And from
19 the looks -- he's got tear drops and stuff -- I believed it.
20 I didn't want to put mine and my grandma's life in danger.

21 Q You're 14 years old?

22 A Yes, sir. I was 14 years old at the time.

23 Q All right. And you said something -- he asked you

1 about some kind of post that you put Austin, or I'm sorry,
2 Brandon deserved it?

3 A Yes, sir.

4 Q Okay. And you said from what you knew. Did somebody
5 tell you something that they said Austin did?

6 MR. HARTWIG: Objection.

7 THE COURT: Sustained.

8 BY MR. BECKER:

9 Q Did the defendant tell you why he shot --

10 A Yes, sir.

11 Q -- Brandon Sample?

12 A Yes, sir.

13 Q Okay. Why did the defendant tell you he shot Brandon
14 Sample?

15 A He told me that Brandon Sample raped a little boy. I
16 can't remember if he said it was his cousin or his friend's
17 cousin. I'm not fully sure. My memory is a little bad, but
18 that is what he said, sir.

19 Q So your Facebook post, or whatever this was about he
20 deserved it, was because the defendant told you he had
21 molested some little kid and you felt, well, he's a child
22 molester, he deserved it?

23 A Well, I don't wish death upon anybody. From what I

1 heard, I feel that no little boy should have to go through
2 something like that and then somebody still be walking free.

3 Q You don't know whether that's true or not?

4 A No, sir. But I believed it at the time because me
5 and Austin has been close growing up. And then after we got
6 through this I realized that none of this is worth it anymore.

7 Q So you'd agree as a 14-year-old boy you made some bad
8 decisions?

9 A Yes, sir. Initially, sir.

10 Q Now, you were also asked if Brandon Sample had been
11 at your house; right?

12 A Yes, sir.

13 Q But you were asleep from 11 or so until 8, 9, 7,
14 whatever, the next morning?

15 A Yes, 9:00, sir.

16 Q So if Brandon Sample came to your house when you were
17 asleep, you would not have seen him?

18 A No, sir. So I wouldn't have known if he was there
19 while I was sleeping. When I was up, I did not see Brandon
20 Sample.

21 Q So fair answer, you don't know what happens when
22 you're sleeping; right?

23 A Yes, sir.

1 MR. BECKER: I have nothing further, Your
2 Honor.

3 THE COURT: Recross?

4 MR. HARTWIG: Thank you, Your Honor.

5 RECROSS EXAMINATION

6 BY MR. HARTWIG:

7 Q When did you come to the revelation that you just
8 didn't want to do this anymore with him?

9 A Well, when the detectives talked to me and stuff,
10 they -- I believed them that I was safe, that they said they
11 was gonna protect me and make sure that nothing would happen
12 to me. And I figured -- I did it. I didn't want to have to
13 be here anymore worrying about this stuff.

14 Q Right. You weren't scared of him before?

15 A Well, no, I wasn't scared of him because I wasn't
16 trying to put him in prison for something that he did. I grew
17 up --

18 Q I'm saying before June 11th you were hanging out with
19 him all the time?

20 A Yes, sir, because we grew up --

21 Q You weren't scared of him for any reason, is my
22 point?

23 A No, sir.

1 Q But after the allegations you became scared and said,
2 "I'm not going to do this anymore. I lied for him, but I'm
3 not going to do this anymore"?

4 A Yes, sir. I was scared for my life because if he's
5 in gangs and stuff and he murdered somebody I'm aware,
6 somebody snitching on somebody, they don't like that.

7 Q So your first interview was on June 16th, and that's
8 when you said, "That's it for me"; right?

9 A Yes, sir.

10 Q Except you continued to text him after that; right?

11 A Yes, sir.

12 Q Because you're so scared you want to -- you want to
13 distance yourself from him?

14 A Well, I grew up with Austin my whole life. No matter
15 what, I'm gonna have love for him. He was like a brother to
16 me. But what he did wrong, yes, sir. I know that.

17 Q You just continued your relationship with him by
18 text, though; correct?

19 A Well, I didn't talk -- like, I didn't see him or
20 nothing, but I talked to him, yes, sir.

21 MR. HARTWIG: Okay. Thank you.

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

23 Call your next witness.

1 MR. BECKER: Thank you, Your Honor. State
2 would call Deidre Keener.

3 * * *

4 DEIDRE KEENER,
5 having been duly sworn, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. BECKER:

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

9 A Deidre Keener.

10 Q All right. Deidre, how old are you?

11 A I'm 19.

12 Q All right. And when is your birthday?

13 A June 18th, 1998.

14 Q All right. Deidre, I want to direct your attention
15 to June of 2017. In June of 2017, were you familiar with an
16 individual by the name of Austin Taylor Burke?

17 A Yes.

18 Q How did you know him?

19 A My best friend -- it's my best friend's cousin's
20 ex-boyfriend.

21 Q Would you give us names and explain how that works?

22 A My best friend Hayle Roupe.

23 Q Okay.

- 1 A It's her cousin Makayla Egbert's ex-boyfriend.
- 2 Q All right. So at one point Austin Taylor Burke and
- 3 Makayla Egbert were dating?
- 4 A Yeah, but I think it was a while ago.
- 5 Q All right.
- 6 A I think they were exes, like, when this happened
- 7 still.
- 8 Q Okay.
- 9 A Like they weren't together.
- 10 Q And her cousin, Makayla Egbert, is Jessica Simms --
- 11 or I'm sorry -- is Hayle Roupe; right?
- 12 A Wait. Repeat that.
- 13 Q Who is -- I'm sorry. Wait a minute. You got me
- 14 confused. Or I got myself confused.
- 15 Makayla Egbert used to date Austin --
- 16 A Yes.
- 17 Q -- Taylor Burke?
- 18 A Yeah.
- 19 Q And you're friends with?
- 20 A Hayle and Jess.
- 21 Q Hayle Roupe?
- 22 A Yes.
- 23 Q Who is related to Makayla Egbert?

1 A Yes.

2 Q Okay. So that's kind of how you got to know Austin
3 Taylor Burke?

4 A Uh-huh.

5 Q And they had been broken up for awhile before any of
6 this happened?

7 A Yeah.

8 Q All right. So I want to direct your attention to
9 June 12th and June 11th of 2017. It would have been a Sunday
10 and Monday. And there's a house located at 713 Mason Street.
11 Who was living in 713 Mason Street, Niles, Trumbull County,
12 Ohio back in June?

13 A That would have been Hayle's grandma.

14 Q All right.

15 A It was her house.

16 Q And did anybody else live there with Hayle's
17 grandmother?

18 A Rickey lived there.

19 Q All right. And Rickey is Rickey Roupe?

20 A Yes.

21 Q Okay. So I want to direct your attention to sometime
22 in the evening hours. Do you recall seeing Austin Burke
23 take -- Austin Taylor Burke there?

1 A Yes.

2 Q All right. How did that come about and where did you
3 see him at?

4 A I've seen him at Hayle's grandma's a couple times.

5 Q All right. And then this particular night when he
6 came over with another individual that you had never seen
7 before?

8 A Yeah.

9 Q All right. What time approximately was it that you
10 had seen him? If you remember.

11 A Like three a.m.-ish.

12 Q Three a.m.-ish?

13 A 4 a.m. Yeah.

14 Q Okay. Now, had you seen him earlier?

15 A In the day, yeah.

16 Q You had seen him earlier that Sunday?

17 A Yeah.

18 Q Where did you see him earlier in the day at?

19 A We were all at Hayle's grandma's hanging out.

20 Q At 713 Mason?

21 A Yes.

22 Q Okay. Now when he came to the house around 3:00 in
23 the morning, was he with anybody?

1 A Yes.

2 Q Do you know who he was with?

3 A Brandon.

4 Q All right. Did you know Brandon at the time?

5 A No, I didn't know of him.

6 Q And were you able to see the vehicle that they
7 arrived in?

8 A Yeah. The --

9 Q I'm going to show you what's been marked for purposes
10 of identification as State's Exhibits, I believe it's 43
11 through 46, and ask if you recognize that vehicle. You can
12 just go ahead and look at those.

13 A Yeah. That's the vehicle.

14 Q Okay. That's the vehicle you saw. Do you know who
15 was driving that vehicle?

16 A He was. Brandon was.

17 Q Brandon was?

18 A Yeah.

19 Q Okay. And when they came to the house at 713 Mason
20 Street, was there any discussion that you heard Austin Taylor
21 Burke talk about?

22 A He said he was gonna rob somebody, but that was
23 before they came back to the house.

- 1 Q Okay. You can put those pictures up on the rail
2 there. Oh, I'm sorry. You already did.
- 3 A Okay.
- 4 Q So Austin Taylor Burke told you he was going to rob
5 somebody?
- 6 A Yes.
- 7 Q Did he say who?
- 8 A No, he didn't give me any names.
- 9 Q Did he say where he was gonna go do it at?
- 10 A No.
- 11 Q Now, had you ever seen Austin Taylor Burke with a
12 firearm?
- 13 A Yes.
- 14 Q Can you describe that firearm?
- 15 A It was kind of small and it had like marble on the
16 side.
- 17 Q All right. When and how did you come to see that
18 firearm?
- 19 A He had it on him at Hayle's grandma's.
- 20 Q The very night you were there that night?
- 21 A I think that was a couple days before.
- 22 Q Couple days before June 11th?
- 23 A Yes.

1 Q Okay. I'm going to show you State's Exhibit Number 1
2 and ask you, does this look like the gun he had?

3 A Yeah.

4 Q Okay. And you saw it in his hands?

5 A Yes.

6 Q Okay. Now, had you ever seen any photographs of him
7 with any guns?

8 A I think on Facebook, yeah. Like on his Facebook.

9 Q All right. And sometime after the morning on
10 June 12th, after you saw him at 3 in the morning, did you see
11 Austin Taylor Burke again?

12 A Yeah. He was over at Hayle's grandma's the next day.

13 Q All right. Do you recall approximately what time it
14 was?

15 A I had work that next morning. I left at -- Hayle's
16 grandma's at like 7 and I got off at 4, so it would have had
17 to have been after that, but I don't remember the time.

18 Q So it would have been in the afternoon of the day
19 that you saw him in the morning?

20 A Yeah.

21 Q Later in the afternoon?

22 A Yeah.

23 Q All right. And you saw him at 713 Mason?

1 A Yes.

2 Q And did he start talking about anything or did you
3 hear him say anything?

4 A Yeah.

5 Q What did he talk about?

6 A He had mentioned putting the car on a bike trail.
7 And I had seen it on Facebook, so I kind of put 2 and 2
8 together.

9 Q Okay. Did he say what car it was?

10 A No, he didn't say the car, like what it was.

11 Q And did he start talking about what happened to
12 Brandon?

13 A Yeah, a little bit.

14 Q What did he start saying about Brandon?

15 A I don't recall actually. I don't recall all of it.

16 Q Okay. Later on, did he say more?

17 A Yeah. The next day. I'm pretty sure.

18 Q Next day, then, what did he tell you about Brandon?

19 A I had brought my friend Makayla over who had never
20 met him. And he was kind of just openly talking about, "Oh,
21 wonder who killed that guy." And just like sarcasm. And she
22 kind of looked at me funny like, you know, like putting 2 and
23 2 together.

1 Q And did he tell you some more?

2 A Other than that, I think that's about it.

3 Q Okay. Did he ever tell you where he had shot him at?

4 A On Hatchet Man Road.

5 Q Okay. Are you familiar with Hatchet Man Road?

6 A No. I'm not from there.

7 Q Had you ever been to Hatchet Man Road?

8 A I've never even been to Bristol.

9 Q All right. And did you know or did he tell you
10 anything about where he physically shot him at in his body?

11 A No.

12 Q Okay. But eventually the police came to you and you
13 gave a statement and they asked you to fill out what we call a
14 photographic lineup; is that correct?

15 A Uh-huh.

16 Q All right. I'm going to show you what's been marked
17 for purpose of identification as State's Exhibit 24. Do you
18 recognize State's Exhibit 24?

19 A You want me to --

20 (Whereupon, State's Exhibit 24, Photos, was introduced
21 for identification.)

22 Q I just want you to tell me if you recognize it?

23 A Yeah.

- 1 Q Is your signature on there?
- 2 A Yes.
- 3 Q And your handwriting?
- 4 A Yes.
- 5 Q Okay. And it's basically six photographs?
- 6 A Uh-huh.
- 7 Q And one of them is circled?
- 8 A Yes.
- 9 Q And you identified that person -- you hand wrote
10 something at the bottom there. What did you hand write?
- 11 A Like on this part?
- 12 Q Yeah. What did you write? What did you say about --
13 you circled, I think, number four?
- 14 A Yeah.
- 15 Q And what did you say about that person?
- 16 A You want me to read off like down here?
- 17 Q Yeah. What did you hand write in there? You hand
18 wrote something in there; correct?
- 19 A Yeah. It says to be -- "The subject who said he was
20 going to rob Brandon."
- 21 Q All right. So when you wrote that --
- 22 A Uh-huh.
- 23 Q -- you had told the police that the person you

- 1 circled as number four --
- 2 A Yeah.
- 3 Q -- was the person who said he was gonna rob Brandon?
- 4 A Yes.
- 5 Q So did the person say they were going to rob Brandon?
- 6 A They didn't give a name.
- 7 Q Okay. But why did you write "Brandon" in there?
- 8 A Because I knew who it was.
- 9 Q At that point you knew?
- 10 A At that point, yes.
- 11 Q So you heard that he was going to rob somebody. Did
- 12 he say what he was going to rob him for or what he had to rob
- 13 him for?
- 14 A He said he was going to rob him for heroin.
- 15 Q Heroin?
- 16 A Yeah.
- 17 Q Now, I'm going to put this -- publish this for the
- 18 jury. This is State's Exhibit 24. The individual that you
- 19 circled, is he here in the courtroom today?
- 20 A Yes.
- 21 Q Okay. And this is your signature on here. Your
- 22 signature, "Deidre Keener," is there; is that correct?
- 23 A Yes.

1 Q And that's on June 18th at about 12:30? And you've
2 got your address there. You were living in McDonald at the
3 time?

4 A Yes.

5 Q And you wrote, "Said he was going to rob Brandon"?

6 A Uh-huh.

7 Q When you filled that out, you knew the individual's
8 name was Brandon. At the time when you heard him say it, he
9 didn't say who it was going to be?

10 A Yes.

11 Q All right. And this is a fair and accurate copy of
12 the one you signed?

13 A Yes.

14 Q Okay. Now, Deidre, the person who you saw with the
15 gun --

16 A Uh-huh.

17 Q -- and told you he was gonna rob somebody, is he here
18 in the courtroom today?

19 A Yes, he is.

20 Q Okay. Could you please point him out?

21 A (Witness indicates.)

22 MR. BECKER: And allow the record to
23 reflect that the witness is identifying the defendant in this

1 case.

2 Q Deidre, I want to direct your attention, then, to, I
3 believe, June 20th of 2017. You had maintained contact with
4 Austin Taylor Burke; is that correct?

5 A A little bit, yeah.

6 Q You had texted him some things and he had texted and
7 called and stuff; right?

8 A Yeah.

9 Q Now on June 20, 2017, you got a Facebook message from
10 him that he was trying to get ahold of you or call?

11 A Yeah. I had a missed call and then I called him
12 back.

13 Q All right. You had a missed call from Austin Taylor
14 Burke and then you called him back?

15 A Yeah.

16 Q Okay. What did Austin Taylor Burke tell you in that
17 phone call when you called him back?

18 A I had him on speaker and he said that he came up on a
19 bunch of money.

20 Q He said he came up on a bunch of money?

21 A Yeah. He asked if he could come over to Hayle's
22 grandma's, but she said no.

23 Q All right. Who was with you on the phone call when

1 you had the call on speaker?

2 A Hayle Roupe.

3 Q Hayle Roupe was?

4 A Yes.

5 Q And you guys were at 713 Mason again?

6 A Yes.

7 Q And -- he wanted to come there?

8 A Yes.

9 Q And you guys said, "No, you probably shouldn't"?

10 A Yeah.

11 Q Because at that point this information was out there?

12 A Yeah.

13 Q All right. Deidre, I'm going to show you what we're
14 going to mark as State's Exhibit 52.

15 I'm going to hand you what's been marked as State's
16 Exhibit 52. And do you recognize State's Exhibit 52?

17 (Whereupon, State's Exhibit No. 52,
18 Screenshot, was introduced for identification.)

19 A Yes.

20 Q What's State's Exhibit 52?

21 A This is where I missed the phone call. I asked him
22 if he meant to call. He said yeah, and that's when I called
23 him back.

- 1 Q Does it say what date that happened?
- 2 A 6-20-2017 at 10:50 p.m.
- 3 Q At 10 what time?
- 4 A 10:50 p.m. The call lasted exactly one minute.
- 5 Q All right. And that picture, that State's
- 6 Exhibit 52, is that what we call a screenshot? You just sort
- 7 of take a picture on your phone and then you send it to
- 8 somebody?
- 9 A Yes.
- 10 Q Okay. I'm going to publish that for the jury. How
- 11 do you know that's Austin Burke?
- 12 A It's his Facebook.
- 13 Q Okay. And that's how he contacted you? He went by
- 14 Austin Taylor?
- 15 A Yeah.
- 16 Q All right. So this is State's Exhibit 52. You
- 17 missed a call from Austin on June 20th at 10:47 p.m.?
- 18 A Uh-huh.
- 19 Q And then it says "call back" and it says you called
- 20 Austin for one minute at June 20th, 2017, at 10:50 p.m.;
- 21 correct?
- 22 A Yes.
- 23 Q Okay. And this little picture here, do you know who

1 that is?

2 A Yes.

3 Q And who is that?

4 A That's Austin.

5 Q That's the same individual you identified earlier in
6 the courtroom; correct?

7 A Yes.

8 MR. BECKER: All right. Your Honor, I have
9 nothing further of this witness.

10 THE COURT: Cross.

11 MR. OLSON: Thank you, Your Honor.

12 CROSS EXAMINATION

13 BY MR. OLSON:

14 Q Good afternoon, Deidre.

15 A Good afternoon.

16 Q Deidre, we're going to go back to June 18th of 2017.

17 Do you recall meeting with the police officer, Detective
18 Greaver, that day?

19 A Yes.

20 Q Okay. And this is when you gave your statement
21 regarding the investigation into Brandon Sample; is that
22 correct?

23 A Yes.

1 Q All right. On June 18th of 2017, you told Detective
2 Greaver that around 6:00 p.m. --

3 A Uh-huh.

4 Q -- you, Rickey, Pamela who is Rickey's grandmother,
5 Austin, Nate, Hayle and Jess were all hanging out at the Roupe
6 house; is that correct?

7 A Yes. And Jess's little sister.

8 Q And Jess's little sister?

9 A Yes.

10 Q You agree that you told them Brandon Sample was not
11 present?

12 A Yes.

13 Q Okay. You were all hanging out in the kitchen; is
14 that correct?

15 A Yeah. We were outside and in the kitchen. It's kind
16 of like -- we were all in and out.

17 Q And at that point in time you agree that you did not
18 see Austin in the possession of any firearms?

19 A At that point, no.

20 Q Okay. You indicated that your knowledge of Austin
21 was very limited. You only had met him about six times; is
22 that correct?

23 A Yeah.

1 Q At some point in time you tell the detective Austin
2 left; correct?

3 A Yes.

4 Q You didn't know how he left?

5 A No.

6 Q You did not know who he left with?

7 A No.

8 Q Do you recall what time it was that he left?

9 A I don't recall.

10 Q Okay. Was it still daylight out? Was it dark?

11 A I think it was getting dark, yeah.

12 Q Getting dark. So maybe 9:00?

13 A Yeah. Somewhere around there.

14 Q Did he say where he was going?

15 A No.

16 Q And he didn't say who he was going with?

17 A No.

18 Q Never mentioned anything about Brandon Sample at that
19 point in time; you would agree?

20 A Not Brandon, no.

21 Q Okay. Around midnight you indicated that Jess and
22 Hayle left with Jess's little sister; is that correct?

23 A Yes.

1 Q So you further informed the detective that at that
2 point in time the only people left at the house was you --

3 A Uh-huh.

4 Q -- Rickey and Pam; is that correct?

5 A Nate was there.

6 Q You didn't tell the detective that Nate was there; is
7 that correct?

8 A I don't recall.

9 Q Okay. Do you recall that you told Detective Greaver
10 that at 3:00 in the morning when Austin supposedly came back
11 to the house and you heard knocking on the door that you were
12 the only one up in the house and Pam and Rickey were sleeping?

13 A Yes. Pam wasn't there. At that point, she wasn't
14 there.

15 Q Okay. So you're now saying Pam wasn't sleeping at
16 that point in time. It was just you and Rickey in the house?

17 A I never said she was there at that point. She had
18 left earlier than that.

19 Q What time did Pam leave?

20 A Couldn't tell you.

21 Q Did she leave before or after Austin?

22 A Before.

23 Q Okay. So your testimony today is that you and Rickey

1 were sleeping in the house. You couldn't sleep, Rickey was
2 asleep; is that correct?

3 A Yes.

4 Q You were playing on your phone?

5 A Yes.

6 Q And at approximately 3 or 4:00 in the morning you
7 hear a knock on the door?

8 A Yes.

9 Q Okay. You go to the door and it's Austin; is that
10 correct?

11 A Yes.

12 Q You indicate the way that the house is set up that
13 there is a window that you can see into the driveway; is that
14 correct?

15 A Yes. The driveway comes up this way and there's the
16 kitchen window right here. So if you walk right here, that's
17 the back door.

18 Q Okay. You indicate that you look out that window and
19 you see a white car?

20 A Yes.

21 Q And you were 95 percent sure that it was Brandon
22 Sample in the driver's seat?

23 A At the time I did not know who it was. And then

1 after that, after I saw his pictures on Facebook, I could
2 identify him.

3 Q Okay. But, again, on June 18th of 2017 when you met
4 with Detective Greaver --

5 A Yes.

6 Q -- you had already seen Brandon's face on Facebook;
7 is that correct?

8 A Yes.

9 Q You already saw all the publications on the news and
10 all that other stuff with Brandon Sample's face?

11 A Yes. But I could recognize the face.

12 Q Okay. So -- but when you met on June 18th of 2017,
13 you told Detective Greaver then you were about 95 percent
14 sure?

15 A Yeah.

16 Q Okay. And you would agree with me that at the time
17 that Brandon is sitting in this car in the driveway you had
18 never met Brandon Sample before?

19 A No.

20 Q It's dark outside?

21 A Yeah. There's a light that shines down though.

22 Q Were the headlights on the vehicle on?

23 A Yes.

1 Q So the headlights on the vehicle were on and there's
2 an overhead light shining down on the car?

3 A Yes.

4 Q And it's your testimony today that you were able to
5 look out a window in a house at 4:00 in the morning with a
6 headlight shining forward towards the door; is that correct?

7 A It would have been like towards the garage.

8 Q Towards the garage. You're looking at an angle?

9 A I'm looking directly from the side.

10 Q Okay. And you were able to positively identify a
11 person that you've never met in your life? That's what you're
12 telling this jury?

13 A At the time I didn't know who he was, but after I saw
14 his face, I seen his face that night. So, yeah, I could
15 identify him after I seen that.

16 Q Again, the question was, at 4:00 in the morning with
17 lights shining, dark outside, an overhead light shining down
18 on top of a car, you were able to look out a window and
19 100 percent -- 95 percent -- identify who the driver of that
20 vehicle was?

21 A Yeah.

22 Q Did you tell Detective Greaver at the time of your
23 interview the type of vehicle that was being driven?

- 1 A Yes.
- 2 Q You did? You identified that car?
- 3 A Yes.
- 4 Q Okay. Now, again, this person that you met maybe six
5 times --
- 6 A Uh-huh.
- 7 Q -- comes to the door and says, "I need to talk with
8 Rickey"; is that correct?
- 9 A Yes.
- 10 Q And you say, "You can't. He's sleeping"?
- 11 A Yes.
- 12 Q So he says, "I need to talk to you then"?
- 13 A No.
- 14 Q He doesn't say that?
- 15 A No.
- 16 Q So he doesn't come to you and say, "Hey, I got a guy
17 in the car, got a lot of heroin in the trunk, and I'm gonna
18 rob him"?
- 19 A That was before that.
- 20 Q That was before when?
- 21 A I don't know. I don't know what you mean.
- 22 Q Did you have an interview with Detective Greaver?
- 23 A Yes.

1 Q Did you tell Detective Greaver that on the night
2 around 3 or 4:00 in the morning that Austin Burke came into
3 the house and told you that he was going to bring Brandon to
4 Hatchet Man Road and rob him for heroin that was in the trunk
5 of the car?

6 A He didn't give a name, but all the rest, yes.

7 Q So he did tell you, "Hey, I got a guy in the car"?

8 A Yeah, he said he was gonna rob somebody.

9 Q "I'm gonna take him to Hatchet Man Road"?

10 A At that point, he did not say anything about Hatchet
11 Man Road. He told me about that after.

12 Q So this person that you've met six times tells you
13 that he's gonna commit this crime, he's gonna rob somebody,
14 and what did you do?

15 A Was I supposed to believe him?

16 Q Did you go back and lay back down?

17 A Yeah.

18 Q Okay. Did you call an adult?

19 A No.

20 Q Did you wake Rickey up and say, "Hey, your buddy
21 stopped here, said he's gonna rob some guy for heroin"?

22 A No. Because how am I supposed to stop that?

23 Q Did you call the police?

1 A No.

2 Q Did you say, "Hey, I saw a car in the driveway and
3 this guy came to the house and said he was gonna rob him"?

4 A Well, when something like that happens, it might
5 scare someone and they wouldn't want to tell the police at
6 first.

7 Q Okay. So you further tell Detective Greaver that you
8 woke up around 7:00 in the morning on Monday morning and you
9 leave; is that correct?

10 A Yes. I had work.

11 Q Right. You said you told Rickey, "I really couldn't
12 sleep, I got work, I'm gonna go"?

13 A Yeah.

14 Q And you informed him that at that point in time
15 Austin wasn't there?

16 A No.

17 Q Austin was not at the house at 6:00 in the morning;
18 is that correct?

19 A No.

20 Q Austin was not at that house at 7 a.m. when you left?

21 A No.

22 Q Now, you indicated that on the next day, on -- I
23 would assume still the 12th, Monday -- you went back to the

1 Roupe household?

2 A Yes.

3 Q And you indicated that you were in the kitchen
4 talking. And who was there?

5 A Me, Hayle, Austin, Jess, Rickey. I'm pretty sure
6 that's it.

7 Q Nate wasn't there?

8 A No.

9 Q Okay. So you, Hayle, Jess and Rickey were sitting
10 around. Was Austin there?

11 A Yes.

12 Q And he, you indicate, starts dropping hints that he
13 dropped a car off on the bike trail; is that correct?

14 A Yeah. He was like making jokes about it.

15 Q He was making jokes about it?

16 A Yeah. Like sarcastically.

17 Q But your initial statement to Detective Greaver was
18 he was dropping hints and then later on you saw the news and
19 saw that there was a car dropped off and you started putting 2
20 and 2 together; is that correct?

21 A Yes.

22 Q But then as the interview went on, then you said he
23 was making jokes about it? He was bragging about it?

- 1 A Yeah. He was dropping hints, jokes.
- 2 Q Oh, hints or jokes?
- 3 A I mean, it's the same thing. He was dropping hints
4 but being sarcastic about it.
- 5 Q Now this person that came to the house at 3 or 4 in
6 the morning and tells you that he's gonna rob a guy for
7 heroin, later on you find out that Brandon Sample is dead; is
8 that correct?
- 9 A Yeah.
- 10 Q When did you find out that Brandon was no longer
11 living?
- 12 A A couple days later.
- 13 Q So, 14th?
- 14 A I don't recall.
- 15 Q Okay. Was it before or after your interview with
16 Detective Greaver?
- 17 A After.
- 18 Q So after you meet with Detective Greaver, you find
19 out that Brandon Sample is no longer living?
- 20 A Well, no. That would have been before.
- 21 Q So before?
- 22 A Yeah.
- 23 Q And you met with him on the 18th. So somewhere

1 between the 12th and the 18th you learned that Brandon Sample
2 was no longer living?

3 A Yes.

4 Q But you continued to have regular contact with Austin
5 Burke; isn't that correct?

6 A It was not regular.

7 Q You would agree with me that you had at least 62
8 conversations either by telephone or text message between June
9 12th and June 21st?

10 A I don't know how many messages there were, but there
11 were some messages.

12 Q And you would agree with me that on a number of these
13 messages between you and Austin Burke you were asking him to
14 buy you marijuana?

15 A I didn't ask him to buy it off of him.

16 Q You were asking him to get it for you?

17 A I asked if he knew anyone that had it, yeah.

18 Q Okay. And actually that message that we saw get
19 posted up on the board earlier, after that phone conversation,
20 you actually sent some messages to Austin; isn't that correct?

21 A I do not recall.

22 Q Told him that you wanted to go to Willow the next
23 day?

1 A Yeah. I didn't go though.

2 Q And Willow is Willow Lake?

3 A Yes.

4 Q Is that a place that you knew Austin to frequent
5 often?

6 A I haven't been there in years.

7 Q What about Austin? Did he go there on occasion that
8 you knew of?

9 A I don't know.

10 MR. OLSON: May I have one moment, Your
11 Honor?

12 BY MR. OLSON:

13 Q So on June 12th, it's your testimony that only Austin
14 came into the Roupe house; is that correct?

15 A He didn't come into it. He was just at the door.

16 Q Oh, okay. So he just stayed at the door. He never
17 came in?

18 A No.

19 Q Didn't talk to anybody inside the residence?

20 A No.

21 Q Brandon Sample never got out of the car?

22 A No.

23 Q So you never saw Brandon use any drugs or doing

1 anything like that?

2 A No.

3 Q On the 20th when you received a phone call from
4 Austin, you would agree with me that there was no text
5 messages between the two of you saying, "Hey, I came into a
6 lot of cash"? It was all by phone?

7 A No, it was on a call.

8 Q It was on a call? That's what I mean. All by
9 telephone, regular conversation?

10 A Yeah.

11 Q He didn't tell you how much cash?

12 A No.

13 Q He didn't tell you where he got it from?

14 A No.

15 Q And the only person -- the only people that heard
16 this were you and Hayle?

17 A Yes.

18 Q Okay. And you were at the Roupe house?

19 A Yes.

20 Q Rickey wasn't there?

21 A No. He was in the other room.

22 Q Okay. Nate wasn't there?

23 A No.

1 Q What about Jess?

2 A Yeah, but she was in the other room too.

3 Q Okay. So none of them heard this conversation?

4 A I don't believe so, no.

5 Q At any point in time, did Austin ever make mention of
6 the name Brandon Sample to you before June 12th?

7 A No.

8 MR. OLSON: I have no further questions.

9 THE COURT: Redirect?

10 MR. BECKER: Nothing further, Your Honor.

11 THE COURT: All right. You may step down.

12 Thank you.

13 Counsel, approach.

14 (At sidebar:)

15 THE COURT: I'm assuming you don't have any
16 other witnesses?

17 MR. BECKER: I do not.

18 THE COURT: All right.

19 (End of sidebar.)

20 THE COURT: Ladies and Gentlemen, we have
21 gotten right to about closing time which is 4:30 so we are
22 going to conclude for this afternoon. We'll start up tomorrow
23 at 9:00. Again, report down to the petit jury room early.

1 We've been very timely so far and we're moving right along in
2 pretty good shape here right now.

3 Again, avoid reading the news, avoid reading a paper
4 or Facebook or anything relative to this case. Do not discuss
5 this case among yourselves, nor with anyone else. Do not form
6 or express an opinion. I'll see you tomorrow at 9.

7 (At 4:30 p.m., court was adjourned to
8 Wednesday, March 7, 2018.)

9 (Note: For further proceedings in this
10 matter, please refer to Volume III.)

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