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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 III - JURY TRIAL

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

Official Court Reporter: Lori J. Rittwage

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March 7, 2018

THE COURT: Good morning, Ladies and Gentlemen. I appreciate everyone being timely as we continue today.

Mr. Becker, you may call your next witness.

MR. BECKER: Thank you, Your Honor. State would call Officer Chris Mannella of the Niles Police Department.

* * *

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

DIRECT EXAMINATION

BY MR. BECKER:

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

A Sure. It's Chris Mannella.

Q And, Chris, where are you employed at?

A City of Niles Police Department.

Q And how long have you been there?

A 28 years.

Q All right. I want to direct your attention to June 12, 2017. Were you on duty that morning?

A Yes, I was. I was on day shift.

1 Q All right. And what does day shift usually start
2 with?

3 A 6:45 until 3:15 p.m.

4 Q All right. And at some point did the Niles Police
5 Department get information that they needed to be dispatched
6 to the bike trail in Niles?

7 A That's correct.

8 Q Okay. Do you know exactly where that location was?

9 A Yes. The actual trailhead for our bike path is on
10 State and Robbins. It's right next to a retirement home.

11 Q And is there anything else that is at that location
12 such as like a room or facilities there?

13 A Correct. There is a pavilion with restrooms, water.

14 Q All right. Do you know what the reference to the
15 call was, what it was for?

16 A Somebody using the bike path had discovered a white
17 four-door Chevy abandoned on the bike trail.

18 Q And you and other officers went to that location?

19 A Correct. Actually, our whole shift had just broke
20 roll call and we were curious to see how a vehicle got on the
21 bike path.

22 Q And did you actually go to that location?

23 A Yes, I did.

1 Q And what did you observe?

2 A Actually, we ended up going to the trailhead. We
3 walked, it would have been a southeasterly direction from the
4 trailhead maybe 100, 150 yards, and there was a white
5 four-door vehicle abandoned on the bike path.

6 Q And on that bike path there is a bridge a little bit
7 further down. This was not across it -- or was this before or
8 after the bridge?

9 A This was after the bridge.

10 Q Oh, it was after the bridge?

11 A The bridge runs between Robbins Avenue and Park.

12 Q Okay. I was --

13 A And it is wide enough for a vehicle to go over.

14 Q I was under the impression it was before the bridge.
15 It was actually after the bridge?

16 A The bike path bridge, the vehicle was after it,
17 correct.

18 Q Okay. Okay. Well, we had the jury looking at the
19 wrong location then. That was my fault.

20 However, needless to say, you were there and observed
21 the scene; correct?

22 A Yes.

23 Q At approximately what time was this that you were out

1 there?

2 A I want to say between 7:20 and 7:30.

3 Q All right. I'm going to show you what have been
4 marked for purposes of identification as State's Exhibits 43
5 through 46 and ask if you recognize these photographs.

6 A Yes, I do.

7 Q All right. Do those photographs fairly and
8 accurately depict the vehicle you observed on June 12, 2017,
9 on the Niles bike path?

10 A Yes, it is.

11 Q And is that location -- do you know what county that
12 location is in?

13 A Trumbull County.

14 Q Officer, the photographs have a date and time stamp.
15 Would you agree the time stamp is incorrect?

16 A That's correct. The officer that took the
17 photographs let us know that at the time he did not reset it
18 from the time change for daylight savings.

19 Q All right. And so it had not moved the clock ahead
20 an hour?

21 A Correct. One hour.

22 Q All right. And are you aware who that vehicle
23 ultimately was determined to belong to?

1 A At the time, we did run the plate through L.E.A.D.S.
2 through dispatch and a name was given. I can't recall the
3 name at this point.

4 Q All right. But that individual had not been reported
5 missing or anything at that point?

6 A That's correct. At the time that we found the car it
7 was just an abandoned vehicle.

8 Q All right. Do you know if any attempts were made to
9 locate the owner of that vehicle?

10 A Yes. Actually, we called the 911 center to find out
11 where the actual residence was and sent either an officer or
12 had the 911 center make a phone call.

13 Q But you never heard back from anyone?

14 A That's correct.

15 Q Did you look in the area around the vehicle to see --

16 A Yes. We searched in the area, excuse me, just in
17 case the driver became disoriented, either medical reasons,
18 alcohol, drugs, to see if they may have fallen down a hill.
19 Checked the wooded area. No one was found.

20 Q And were you able to at least make a determination,
21 maybe through tracks in the grass or anywhere, how that
22 vehicle got from that trailhead where that parking --

23 A Yes. It would have entered off of East Park, which

1 is -- there's a bike trail exit between Dynasol and Home for
2 Kids, and it would have traveled north on the bike path
3 towards the trailhead.

4 Q Because in the parking lot I know that there were
5 posts?

6 A Yes.

7 Q There's no posts at that other location?

8 A They have been broken off in the past.

9 Q I'm going to publish these for the jury and ask you
10 to identify each and every one of them for the jury by number.
11 I'm going to show you what's been marked for purposes of
12 identification as State's Exhibit Number 46. Do you recognize
13 State's Exhibit 46?

14 A Yes.

15 Q Okay. And that vehicle appears to have basically
16 been lodged between a log or --

17 A Correct. It was wedged between an actual tree and a
18 tree that's been felled.

19 Q That's State's Exhibit 46, State's Exhibit 45?

20 A Yes.

21 Q All right. State's Exhibit 44?

22 A Yes.

23 Q And I'll brighten this up a little bit. We can see

1 this is just basically a different angle of the log we saw
2 from the rear?

3 A Yes.

4 Q And then State's Exhibit 43?

5 A Yes.

6 Q And on the passenger side it appears that you said
7 there were trees that --

8 A Correct.

9 Q That were still alive?

10 A Correct.

11 Q And all these photographs fairly and accurately
12 depict the scene as you observed it on June 12, 2017?

13 A Yes, they do.

14 MR. BECKER: Thank you, Your Honor. I have
15 nothing further.

16 THE COURT: Cross?

17 CROSS EXAMINATION

18 BY MR. OLSON:

19 Q Morning, Officer.

20 A Morning.

21 Q Officer Mannella, you indicated that you reported to
22 work at 6:45?

23 A Correct.

- 1 Q On the 12th; is that correct?
- 2 A Correct.
- 3 Q And you indicated that during the morning roll call
4 was when you were notified that there was a car on the bike
5 path?
- 6 A Correct.
- 7 Q Do you know what time that call came in?
- 8 A I'd have to check a log. It would have had to have
9 been between 7:15 and 7:20.
- 10 Q So it came in after you had already reported to work?
- 11 A Correct.
- 12 Q And the person that reported in to work -- reported
13 in to the station, they didn't indicate that they saw the
14 person dropping off the car; is that correct?
- 15 A Correct. Correct.
- 16 Q You indicated that after morning roll call breaks you
17 head towards the Niles bike path?
- 18 A Correct.
- 19 Q How many officers went?
- 20 A At least four of us.
- 21 Q So there was four officers that attended. Do you
22 know who they were?
- 23 A I'd have to check the log.

- 1 Q All right.
- 2 A Because our shifts change, but the person that took
3 the photographs was Officer Meyers.
- 4 Q Okay.
- 5 A So I know he was there.
- 6 Q But off the top of your head you don't remember the
7 other two or if there were even two others?
- 8 A Well, it would have been a supervisor at the time,
9 that was Captain Miketa. And I believe one other officer was
10 Officer Marhulik.
- 11 Q Okay. So your indication was that the car pulled
12 into the bike path from the end where the Dynasol Plastics --
- 13 A Correct.
- 14 Q -- would be right behind you?
- 15 A Correct.
- 16 Q Did you go to Dynasol Plastics and ask for video
17 there?
- 18 A My supervisor did.
- 19 Q Okay. Did you ever review that video?
- 20 A No. Absolutely not.
- 21 Q Did you discuss this case with your supervisor?
- 22 A Prior to coming here, no.
- 23 Q Okay. Did you learn if anybody ever identified

- 1 anybody bringing that car to the bike path?
- 2 A No.
- 3 Q You obviously were the one that observed this car;
- 4 correct?
- 5 A Correct.
- 6 Q You saw the pictures that were just posted --
- 7 A Correct.
- 8 Q -- for the jury? You would agree with me that you
- 9 didn't see any mud on the tires; correct?
- 10 A I don't -- I don't believe so. I mean, grass.
- 11 Q And you didn't note in any of your reports that there
- 12 was mud on the tires?
- 13 A No.
- 14 Q Mud on the interior?
- 15 A No.
- 16 Q Mud all over the outside of the vehicle? Did you
- 17 identify any fingerprints in this vehicle?
- 18 A I did not.
- 19 Q Did anybody print it?
- 20 A I don't know if the car was processed later or not.
- 21 Q Okay.
- 22 A I don't have -- that's above me.
- 23 Q Okay. Did you tow the vehicle from the scene?

1 A Yes, we did.

2 Q What time did you tow it?

3 A I'd say within 45 minutes the wrecker came. So a
4 little before 8:00.

5 Q Okay. Where did you tow it to?

6 A To our impound lot, city impound.

7 Q Now, you also indicated that when you went to the
8 vehicle you called it in to 911; is that correct?

9 A We called -- our dispatcher --

10 Q Oh, you called --

11 A We have our own dispatch.

12 Q Okay.

13 A The information from that, in order to contact
14 someone that owns it, was out of our jurisdiction. Everybody
15 that uses the 911 center was in that jurisdiction. So the 911
16 center was called by our dispatch to try to make contact.

17 Q Do you know if contact was made?

18 A No, I do not.

19 Q Do you know if somebody was sent out to the home
20 or --

21 A No, I do not.

22 BY MR. OLSON: Your Honor, may I have one
23 moment?

1 BY MR. OLSON:

2 Q Officer Mannella, you indicated that you've been an
3 officer for quite some time; is that correct?

4 A Yes.

5 Q You're familiar with what gunshot residue is?

6 A Yes.

7 Q Did you see any evidence of any gunshot residue in
8 this vehicle or was it tested that you're aware of?

9 A I don't know if it was tested or not. But I --
10 basically the interior of the vehicle was checked for a body
11 and the trunk was checked for a body so that we wouldn't be
12 that department that failed to look.

13 Q Okay. So --

14 A But as far as evidence, gunshot residue, no.

15 Q Okay. When you checked the interior of the vehicle,
16 were you able to just open up the door, or was it locked?

17 A We couldn't do anything until the vehicle was pulled
18 from the two trees. The doors were wedged.

19 Q Okay.

20 A Once the wrecker driver pulled the vehicle, you could
21 look inside at the time that the vehicle was wedged between
22 the trees. And once it was pulled out you could open the
23 doors and open the trunk.

1 Q Okay. So they were unlocked then?

2 A Correct.

3 Q Okay. Did you see any blood in the vehicle?

4 A No.

5 Q Did you see any evidence of any drugs?

6 A No.

7 Q Did you take pictures of the interior of the vehicle?

8 A I did not.

9 Q How about the trunk? Do you know if they were taken?

10 A I do not recall. I don't. I didn't. I'm not the
11 photographer.

12 MR. OLSON: Okay. Nothing further, Your
13 Honor.

14 THE COURT: Redirect.

15 MR. BECKER: Yes.

16 REDIRECT EXAMINATION

17 BY MR. BECKER:

18 Q Were any keys found to that vehicle?

19 A I do not believe they were.

20 Q You were asked on cross examination about any mud.
21 Was this a muddy day? Was this --

22 A No, it was not.

23 Q All right. And that bike path, are you familiar with

1 it? Does it get quite wet in the spring or when it rains?

2 A It usually doesn't because the way it's designed, the
3 runoff, and there's all grass on each side. And it is
4 asphalt.

5 Q But where this vehicle was, it was not on blacktop;
6 right?

7 A Correct. It was off the side into the grassy area,
8 but it did not get that far off of the road because of the two
9 trees.

10 Q And it didn't sink in the ground or anything?

11 A No.

12 Q I'm going to show you what's been marked for
13 purposes -- you were asked about mud. I'm going to show you
14 State's Exhibit 46. Can you see the rear driver's side tire?

15 A Correct.

16 Q In that photograph?

17 A Correct.

18 Q What does that appear to be?

19 A Dirt and mud.

20 Q Mud. Okay. And I'm going to hand you a laser
21 pointer.

22 A Okay.

23 Q And this is the photograph, State's Exhibit 46, we're

1 referring to. I'll keep moving it. Hold on. Okay. So you'd
2 agree there's mud on that tire?

3 A Correct.

4 MR. BECKER: All right. I have nothing
5 further, Your Honor.

6 THE COURT: Recross.

7 MR. OLSON: Nothing further, Your Honor.

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

9 Call your next witness.

10 MR. BECKER: State would call Kenneth
11 Sample.

12 * * *

13 KENNETH SAMPLE,

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

15 DIRECT EXAMINATION

16 BY MR. BECKER:

17 Q All right. Would you please state your name for the
18 record? You can pull that microphone up closer to you.

19 A Kenneth Sample.

20 Q And Kenneth, how old are you?

21 A I'm 50.

22 Q Do you have any children?

23 A Yes.

1 Q What are their names and ages?

2 A Brittany, she is 28. Brandon who is deceased was 22.
3 And my youngest is Haley, 21.

4 Q All right. I want to direct your attention to
5 June 11th and June 12th, 2017. Where was Brandon living at at
6 that time?

7 A At our house.

8 Q And where is your house located at?

9 A 261 Garfield Drive Northeast, Warren, Ohio.

10 Q And do you know what county that's in?

11 A Trumbull.

12 Q All right. Now, Mr. Sample, where is it that you
13 work at?

14 A I work at the Ohio State Penitentiary.

15 Q And how long have you worked there?

16 A I've been employed with the Department of Corrections
17 for 25 years.

18 Q And was there a time when your son got a job with the
19 Department of Corrections?

20 A Department of Youth Services, yes.

21 Q Department of Youth Services, yes. And what is the
22 difference between the Department of Corrections where you
23 work and the Department of Youth Services?

1 A Youth Services is with juvenile offenders.
2 Department of Corrections is with adult offenders.

3 Q So adult offenders go to an institution where you
4 work at, and where Brandon was working at would be youth
5 offenders, it would be under 18?

6 A Yes, generally.

7 Q Some could be over 18 but for the most part they're
8 juveniles?

9 A Depending on when they were placed there, yes.

10 Q Right. Okay. And do you know approximately when
11 Brandon worked there?

12 A Yes. He started September of 2016 and then finished
13 approximately February, mid February of 2017.

14 Q All right. And what facility did he work at?

15 A Indian Rivers.

16 Q Do you know where Indian Rivers is?

17 A Near Massillon in Stark County.

18 Q Would he drive down there every day?

19 A Yes.

20 Q All right. Now, I want to direct your attention back
21 to June 11th and June 12th of 2017. You say Brandon was
22 living with you here in Warren, Ohio?

23 A Yes.

1 Q All right. And at some point -- well, let me ask you
2 this. What type of vehicle did Brandon drive at that time?

3 A It was a 2009 Chevy Malibu, white.

4 Q I'm going to show you State's Exhibits 43, 44, 45 and
5 46 and ask if you recognize that vehicle?

6 A Yes. Brandon's car.

7 Q Mr. Sample, at some point late in the evening of
8 June 11th, 2017, did you have a chance to see Brandon?

9 A Yes.

10 Q How did that come about? Tell the jury what happened
11 and how long he was there or what happened.

12 A He had been gone to his grandmother's cutting the
13 yard most of the day. About 11 o'clock that night on Sunday,
14 the 11th, I was just getting ready to go to bed. I heard
15 somebody out in the kitchen. I went to see. It was him. He
16 was putting some food away, he said. And then he said he was
17 taking Josh back to Akron.

18 Q All right.

19 A Or actually he said he was taking Josh home.

20 Q All right. And you knew Josh to live in Akron at
21 that point or not?

22 A I didn't know Josh lived in Akron at that point.

23 Q All right. Now, you had further contact with -- and

1 that was the last time you saw your son alive; correct?

2 A Yes.

3 Q Now, you had further contact with Brandon into the
4 early morning hours of June 12th; is that correct?

5 A Yes.

6 Q Explain to the jury how that contact came about.

7 A I got up to go to work at 4:30 in the morning on
8 Monday, June 12th. About 4:40, I noticed he wasn't home. I
9 texted him and I got a text back, said, "I'm on my way home,
10 bro."

11 Q All right. At some point, did you try and call that
12 phone after 4:40 a.m?

13 A Yes. When I left to drive to work, it was about
14 4:50. I tried calling. It went straight to voicemail.

15 Q Did you call numerous times?

16 A On the way to work, yes.

17 Q All right. And how long was your shift on June 12th?

18 A I was there until about 3:30 that afternoon.

19 Q And still had not heard from your son?

20 A No. I had a break around 10, 10:15 in the morning.
21 I tried calling his cell phone. It went straight to
22 voicemail. Then I called home and spoke to my wife.

23 Q And what was the reason you called your wife?

1 A I was just concerned. Wanted to make sure that he
2 wasn't -- didn't oversleep or miss work that night.

3 Q Where was he working at at that time?

4 A Kraftmaid.

5 Q Now, you got home later in the evening or afternoon
6 hours of June 12th. Were you aware that Brandon's car had
7 been found in Niles at that point?

8 A No.

9 Q So at some point, then, you became concerned and felt
10 that you needed to contact the Warren Police Department; is
11 that correct?

12 A Yes.

13 Q Tell us approximately when you did that and what you
14 did to contact the Warren Police Department?

15 A He was supposed to meet me at Grace Church at 5:30.

16 Q That's on June 12th?

17 A Yes.

18 Q All right.

19 A When he didn't, between 5:30 and 5:50 I contacted the
20 Warren Police Department, spoke with the dispatch, inquired as
21 to how long somebody needed to be missing. And she asked me
22 to explain what was going on and stuff. And she said she
23 would send an officer over to the house.

1 Q All right. And you then spoke to an officer after
2 6:00, I assume, that night?

3 A My wife did.

4 Q Okay. Now, did you make any efforts to go look or
5 see where he was at?

6 A Yes.

7 Q And what did you do?

8 A While she was at home waiting for the officer to
9 arrive, I drove to Middlefield, checked the parking lot of
10 Kraftmaid, and I waited until his shift was supposed to start
11 at 8:00 to see if he showed up.

12 Q All right. Now, at some point, then, officers
13 contacted you, I believe would have been the next day. This
14 detective, John Greaver, made contact with you and your
15 family?

16 A Yes.

17 Q And you provided him -- you were able somehow to get
18 onto Brandon's cell phone account or it was a joint account?

19 A It was his account. He had given me his password to
20 be able to get on and make payments for him sometimes when he
21 didn't have the money to make the cell phone payment.

22 Q When you were accessing that account, were you able
23 to get call and text details from his account?

1 A Yes. There's a section that provided a list of
2 ingoing, outgoing calls and text numbers that it went to and
3 numbers received.

4 Q All right. I'm going to show you what's been marked
5 for purposes of identification as State's Exhibit 23. I
6 realize you gave a long list of calls. Do you recognize
7 State's Exhibit 23? It's a two-page document.

8 (Whereupon, State's Exhibit No. 23, Phone
9 records, was introduced for identification.)

10 A Yes.

11 Q Okay. What is that?

12 A That's the printout that I sent to Detective Greaver
13 after I had downloaded the information.

14 Q So did you print that out or did you just e-mail it
15 to him?

16 A I saved it as an Excel document and then sent it to
17 him.

18 Q All right. I'm going to show you -- well, first of
19 all, do you see on that first page -- do you see your cell
20 phone number?

21 A Yes.

22 Q What was your cell phone number?

23 A (330) 646-5695.

- 1 Q And do you see Brandon's cell phone number?
- 2 A Yes.
- 3 Q All right. And on the second page there's some call
4 information; is that correct?
- 5 A On the second page?
- 6 Q Yeah.
- 7 A Yes.
- 8 Q All right. So let's start with the first page of
9 State's Exhibit 23. And I'll publish this for the jury so
10 they know what we're talking about. You have a laser pointer
11 in front of you. The yellow button will -- yep, there you go.
- 12 A Okay.
- 13 Q All right. I'm going to put up here State's
14 Exhibit 23. All right. The very last -- or top of this page
15 lists -- on the right side you'll see the type of message.
16 They're all texts; correct?
- 17 A Uh-huh.
- 18 Q Do you see the last text message that you sent and
19 received between you and Brandon?
- 20 A Yes. At 6:40 was the last one that I sent.
- 21 Q 4:40 you mean?
- 22 A I mean 4:40. I apologize.
- 23 Q And that's on June 12th?

1 A Yes.

2 Q All right. And there was a series of text messages.
3 Was that the last text message that came or was received by
4 Brandon's phone that -- when you printed those out?

5 A Yes.

6 Q Okay. Now, I'm also going to show you the second
7 page of that document which is State's Exhibit 23. And these
8 are telephone calls. They were also text messages and
9 telephone calls; correct?

10 A Yes.

11 Q Do you see the call that came in on June 12th, 2017
12 at 1:18 a.m? It says, "Incoming call."

13 A Yes.

14 Q And could you tell the jury what number that is?

15 A (330) 891-7261.

16 Q Are you familiar with whose number that is?

17 A No, I am not.

18 Q All right. But there was definitely a call,
19 according to Brandon's records, that came to his cell phone on
20 June 11th, 2017 from 891-7261; correct? The 1:18 call.

21 A 1:18? On June 12th?

22 Q Yeah.

23 A Yes.

1 Q Okay. State's Exhibit 23 is a fair and accurate copy
2 of the telephone records that you printed off of your son's
3 account that you were able to access June 12th or June 13th?

4 A Yes. Straight from Verizon's website.

5 Q Okay. Thank you.

6 MR. BECKER: I have no further questions.

7 THE COURT: Cross?

8 CROSS EXAMINATION

9 BY MR. OLSON:

10 Q Good morning Mr. Sample.

11 A Morning.

12 Q Mr. Sample, you indicated that your son was working
13 at Indian River from September of '16 through February of '17;
14 is that correct?

15 A Yes.

16 Q At any point in time during that period, did he ever
17 come to you and mention Austin Burke or identify that he had
18 any issues with an Austin Burke?

19 A No. He never mentioned him by name.

20 Q You never heard that name ever?

21 A No.

22 Q Even after he left employment with Indian River, he
23 never came to you and said, "Hey, there's this old inmate that

1 I used to work with and he's been causing me problems or
2 calling me" or anything like that?

3 A No.

4 Q You indicated that on June 11th you saw Brandon at
5 11:00 at night at your residence; is that correct?

6 A Yes.

7 Q I mean, there was some news reports that came out
8 during this period of time when your son went missing; is that
9 correct?

10 A You mean after June 12th?

11 Q Correct.

12 A Some news reports, yes.

13 Q And you met with some news reporters?

14 A Yes.

15 Q And I'm not here to nitpick. It's just -- at any
16 point in time, did you tell them that it might have been
17 12:15, later at night?

18 A No.

19 Q Okay. So if there was any reports or newscasts that
20 indicated it was 12:15, that would have been inaccurate?

21 A Yes.

22 Q Okay. Now, you also went in and said that at 4:30 in
23 the morning when you had not heard or seen Brandon you began

1 sending him text messages; is that correct?

2 A Yes. As soon as I woke up at 4:30.

3 Q Okay. Do you know if Brandon's telephone was
4 password protected where you had to put in a code or something
5 to be able to access to send out text messages?

6 A I do not.

7 Q Okay. So you indicated that you did receive a
8 response back; is that correct?

9 A Yes.

10 Q But anybody that would have had his device, to the
11 best of your knowledge, could have responded; is that correct?

12 A It's possible.

13 Q Right. And you would not have known who was actually
14 sending that response?

15 A The text message that I received was indicative of
16 his usual responses.

17 Q Okay. Also, during that period of time, you
18 indicated that 11:00 he says, "I'm going to bring Josh back to
19 Akron"?

20 A No. He said he was going to take Josh home.

21 Q Okay. And what did you understand that to mean?

22 A He was gonna take Josh home.

23 Q Did you know where Josh lived?

1 A No, I didn't know until after.

2 Q Okay. So he didn't indicate if he was going to go to
3 any other places or anything of that nature; is that correct?

4 A He just stated he was taking Josh home.

5 Q All right. You also indicated that you had made a
6 few phone calls that went straight to voicemail; is that
7 correct?

8 A Yes.

9 Q Those calls were made after the text messages or
10 before?

11 A After.

12 Q Now, you were asked on direct examination about a
13 phone number that was incoming at 1:18 a.m. from a
14 (330) 891-7261 phone number. You indicated that you did not
15 know whose number that was; is that correct?

16 A Correct.

17 Q Did you also see on those exhibits two phone calls
18 that came in subsequent to -- or went out subsequent to that
19 1:18 phone call to a (330) 573-8234 number?

20 A I'm not sure. I was looking at the 1:18 that the
21 prosecutor asked me to focus on.

22 MR. OLSON: May I approach the witness,
23 Your Honor?

1 THE COURT: You may.

2 BY MR. OLSON:

3 Q I'm going to show you what's previously been marked
4 as State's Exhibit 23. If you look above the incoming call at
5 1:18 a.m., do you see two telephone calls that were outgoing
6 at that time?

7 A I see text messages. 12:57 there's a text sent.
8 12:56 there's a text received.

9 Q May I see the exhibit, just to help you out?

10 I'm going to refer you now to the second page of that
11 same document. The very top of that page. Does it indicate
12 that there are two telephone calls outgoing at 2:14 and 2:15
13 a.m. to a destination that is listed as "Akron"?

14 A Yes.

15 Q And it has the same number, (330) 573-8234?

16 A Yes.

17 Q Are you familiar with that number?

18 A No.

19 MR. OLSON: Your Honor may I have one
20 moment?

21 THE COURT: You may.

22 BY MR. OLSON:

23 Q Mr. Sample, you indicated that earlier in the day

1 Brandon had gone to his grandmother's to cut grass; is that
2 correct?

3 A On Sunday the 11th, yes.

4 Q Do you know what time he got there?

5 A Not sure what time he got there. He left our house
6 maybe somewhere between 10:30 and 12.

7 Q In the morning?

8 A Yes.

9 Q Okay. And when he left at 10:30 -- between 10:30 and
10 12, was it his intention to go directly to his grandmother's
11 to cut grass?

12 A As far as I know, yes.

13 Q Okay. At any point in time, do you know if grandma
14 was home?

15 A No, she wasn't.

16 Q Okay. Did he message you or reference to you or
17 confirm with you that, "Yes, I did go up to grandma's and cut
18 her grass"?

19 A I called him later that afternoon, about maybe 4 or
20 5, spoke to him on the phone and ask him if he finished. He
21 said he was still there doing it.

22 MR. OLSON: Thank you. Oh, I'm sorry.

23 Your Honor, I have no further questions.

1 THE COURT: Redirect.

2 MR. BECKER: No, Your Honor.

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

4 Call your next witness.

5 MR. BECKER: Detective Dave Morris.

6 * * *

7 DETECTIVE DAVID MORRIS,

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

9 DIRECT EXAMINATION

10 BY MR. BECKER:

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

13 A David Morris.

14 Q And what is your occupation?

15 A I'm a police officer with the City of Cortland Police
16 Department.

17 Q And how long have you been a police officer with the
18 city of Cortland?

19 A 20 years.

20 Q All right. Is there any specialized training or
21 education that you've had to prepare you for your current
22 position?

23 A Yes.

1 Q And what would that be?

2 A Through the OPOTA, the Ohio Peace Officer Training
3 Academy. I'm a master criminal investigator, also a master
4 evidence technician.

5 Q And what does that mean?

6 A You take a series of courses that certify you in
7 either of those areas, either criminal investigations or
8 evidence collection, scene processing.

9 Q And you have taken both of those courses?

10 A They're a series of courses, yes.

11 Q You have reached a point where they call you a master
12 investigator?

13 A Yes.

14 Q All right. As part of your duties, are you part of
15 the Trumbull County Homicide Task Force?

16 A Yes.

17 Q What is the Homicide County-- I'm sorry -- the
18 Trumbull County Homicide Task Force?

19 A We assist other agencies in investigating homicide,
20 smaller agencies or agencies that need more resources.
21 Homicides take quite a bit of human resources to investigate,
22 and most smaller departments cannot handle them on their own.
23 So we have a team, a task force, and we are the same folks

1 that work on it all the time.

2 Q Okay. Now, I want to direct your attention to on or
3 about June 15 of 2017. On that date, were you called to
4 assist another department? Not in your duties as a Cortland
5 Police Officer but as part of that Trumbull County Homicide
6 Task Force?

7 A I was.

8 Q And do you recall what the nature of the call was and
9 where you went?

10 A It was in North Bloomfield. There was -- in a wooded
11 area there was a body found. And they had called me to assist
12 in the scene -- well, in processing the scene.

13 Q And what were your duties in processing that scene?

14 A It was to photograph the scene.

15 Q Okay. And did you also make a diagram or document
16 the location and where that was?

17 A That was not my role that day.

18 Q Okay.

19 A All I did was photograph that day.

20 Q All right. You just did the photographing?

21 A And I collected one piece of evidence.

22 Q All right. Do you recall the evidence you collected?

23 A It was a shoe.

1 Q All right. Do you recall whether that matched a shoe
2 that was found on the victim?

3 A It was the same brand and color of shoe, yes.

4 Q Okay. Now, the location you went to, do you know
5 what county that was in?

6 A Trumbull County.

7 Q All right. And could you describe the conditions
8 that this body was found at. What was it like that day? What
9 was the temperature? Was it wet? Muddy? Raining? Snowing?

10 A It was very hot that day. I believe it was
11 80 degrees according to my -- I looked at my cell phone at the
12 temperature. I believe it was 80 degrees that day.

13 Q All right. I'm going to show you what has been
14 marked for purposes of identification as State's Exhibits 49,
15 15, 16, 17, and 18. I'm going to ask if you recognize these
16 photographs?

17 MR. OLSON: Chris, can I see those first?

18 MR. BECKER: Oh, I'm sorry.

19 BY MR. BECKER:

20 Q Would you please review those photographs and when
21 you're done reviewing them please refer to the exhibit number?

22 (Whereupon, State's Exhibit Nos. 49, 15-18,
23 Photos, were introduced for identification.)

1 A Okay.

2 Q All right. With respect to State's Exhibit 49, can
3 you tell the jury what State's Exhibit 49 is?

4 A It is a photograph of the logging road, I'll call it,
5 near the wooded area where the body was found.

6 Q And based on the depiction in that photograph, does
7 that appear to be a really muddy area? Is it wet there?

8 A At times, yes. Certain areas were very muddy.
9 Certain areas were --

10 Q But the road actually in the photograph, you don't
11 see any puddles or anything there; right?

12 A No.

13 Q Pretty dried out?

14 A Yes.

15 Q All right. So it's one of those places where you can
16 imagine if it rains or gets wet it could be very muddy, but on
17 that date when you were there it looks fairly dry?

18 A Yes, absolutely.

19 Q Okay. Now I'm going to publish that for the jury.
20 That's State's Exhibit 49. And off of this photograph, do you
21 recall where the body was found or located?

22 A I believe it was -- you'll see like a -- right where
23 my thumb is there.

1 Q All right. And I'll have you use the laser pointer
2 right here with the yellow button when I publish this for the
3 jury.

4 A Okay.

5 Q Okay. We're looking at a photograph which has been
6 marked for purposes of identification as State's Exhibit 49.
7 On that photograph, approximately what area was the body
8 located?

9 A It was right about in this area right here.

10 Q There is like an opening there; is that what you're
11 describing?

12 A Yes. Right there, yes.

13 Q The next photograph you have is -- well, actually,
14 yeah. This one.

15 A This one?

16 Q What exhibit is that?

17 A This is Exhibit 15.

18 Q And what is significant about State's Exhibit 15 or
19 what is that?

20 A This is showing the area leading into that -- this is
21 a more close-up shot of that particular area.

22 Q All right. Allow me to publish this for the jury.
23 And we'll put State's Exhibit 15 up on the board. All right.

1 And this is a close-up of what we're looking at in State's
2 Exhibit 49?

3 A Correct.

4 Q And again, what area on this photograph was the body
5 found?

6 A This is kind of a hill right here. You go up a
7 little hill and then it goes down on the back side of that.
8 So that's the area that we're at right there.

9 Q Okay. You're looking at now State's Exhibit 16?

10 A Yes.

11 Q All right. What is State's Exhibit 16?

12 A We're even a little bit closer. You'll see that tarp
13 right there.

14 Q Right.

15 A To the right of that tarp is where I found the shoe.

16 Q Okay.

17 A That I referenced earlier.

18 Q Right.

19 A And then also it's getting us a little bit closer to
20 where the body was discovered.

21 Q And I'm going to publish this for the jury. This is
22 State's Exhibit 16. And explain to the jury again exactly
23 what we're looking at here?

- 1 A The body would be back in this area.
- 2 Q All right.
- 3 A Over the hill. This is the shoe where the evidence
4 marker number 1 is. That is the shoe that was similar to what
5 was on the body.
- 6 Q And the body only had one shoe, one blue shoe?
- 7 A Correct.
- 8 Q And this blue shoe was found on the other side of
9 that hill?
- 10 A Correct.
- 11 Q Okay. We see the blue tarp to the left?
- 12 A Correct.
- 13 Q All right. The next photograph. Okay. That is
14 State's Exhibit --
- 15 A That would be 17.
- 16 Q -- 17. All right. And in this photograph do you see
17 the other shoe on the victim? I believe it's the left shoe?
- 18 A Yes.
- 19 Q All right. I'm going to publish this photograph for
20 the jury. And this is State's Exhibit -- this is State's
21 Exhibit 17, I think we said?
- 22 A Yes.
- 23 Q And what are we seeing in this photograph?

1 A This is an actual photograph of the body. There --
2 this would be the existing shoe that was on the body.

3 Q All right. And which way -- which direction, down or
4 up, would be the location where the body was -- that other
5 shoe was found?

6 A It would be on the other side. This photograph, I
7 don't have the orientation of it, but it would be on the other
8 side of that hill.

9 Q Okay.

10 A From where that shoe was found.

11 Q Up on the top?

12 A Well, it went up -- you went up a little hill and
13 then down a little. I mean, we're talking a very short little
14 hill here. Just like a pile of dirt basically.

15 Q But it was on the other side of that hill?

16 A It was on the other side of that hill.

17 Q And can you describe the condition of the body as you
18 saw it on June 15th?

19 A I would call it in a state of decomposition.

20 Q All right.

21 A A lot of -- a lot of, yeah, a state of decomposition
22 would be the best way to describe it.

23 Q Were you there and were you able to make a

1 determination as to where most of that decomposition was
2 taking place at?

3 A It appeared to be right there.

4 Q And where on the body was the most decomposed? Or
5 was part of it more decomposed than the other?

6 A It was all pretty decomposed.

7 Q Now, it appears as if -- is there a shirt over the
8 victim's head?

9 A Yes. It was pulled over, pulled over his head, yes.

10 Q All right. Now, you have the last photograph in
11 front of you?

12 A Yes.

13 Q Which is State's Exhibit --

14 A 18.

15 Q -- 18. And this is a close-up showing the
16 infestation of maggots basically; correct?

17 A Yes, correct.

18 Q I'm going to show you State's Exhibit 18. And this
19 is what? What portion of the body are we looking at here?

20 A I believe we're looking at the back right there.

21 Q And off to the bottom left there, that would be the
22 arm and the shoulder?

23 A Correct.

1 Q And the head, we can sort of see that black tee shirt
2 that you're referring to?

3 A Correct.

4 Q All right. These photographs fairly and accurately
5 depict the scene as you photographed them on June 15th, 2017?

6 A They do.

7 Q Now, let me ask you, Detective, when you were in that
8 location and where that body was found, if you were in that
9 first photograph, State's Exhibit 49 where the logging area
10 was, would you be able to see the body?

11 A No.

12 Q All right. And there was quite a bit of overgrowth
13 and plant growth there?

14 A A lot of vegetation, yes, trees.

15 Q Okay. Now, Detective -- now, I want to direct your
16 attention to June 20th of 2017. On that date, you were
17 obviously still employed as an employee of the Cortland Police
18 Department?

19 A Correct.

20 Q And the city of Cortland had a robbery that occurred
21 sometime after 10 p.m. on June 20th, 2017; is that correct?

22 A Correct.

23 Q Were you on duty at that time?

- 1 A No, I was not.
- 2 Q Did you get called out?
- 3 A I did.
- 4 Q And what did you do when you went out on June 20th,
5 2017?
- 6 A I responded to the area of Pizza Joe's which was
7 where the robbery occurred. And also to a location where I
8 was told that there was possibly some evidence connected to
9 the robbery.
- 10 Q And that would be 241C West Main Street in Cortland?
- 11 A Correct.
- 12 Q And again, these locations, Pizza Joe's and 241C West
13 Main Street, do you know what county they're located in?
- 14 A Trumbull County.
- 15 Q All right. Now, you obtained, I believe, written
16 consent from the apartment leaseholder, a Melanie Engle, that
17 night to search the apartment; correct?
- 18 A That's correct.
- 19 Q She wasn't very difficult with you?
- 20 A No, she was very cooperative with us.
- 21 Q And she said, "Fine, search whatever you want to
22 search in the apartment"?
- 23 A Yes.

- 1 Q Did you go into the apartment?
- 2 A I did.
- 3 Q Can you describe the condition of the apartment?
- 4 A It was in quite a bit of disarray.
- 5 Q When you say "disarray," what do you mean?
- 6 A Very cluttered. Lots of clothing and items strewn
7 throughout.
- 8 Q All right. Kind of like how my teenager keeps his
9 bedroom?
- 10 A That would be --
- 11 Q So you then left the scene. There were other
12 officers taking care of it. You did what you felt you had to
13 do. You obtained consent to search her apartment. She freely
14 permitted you to do that. Did you engage in any of the search
15 yourself?
- 16 A Briefly, but not extensively that night.
- 17 Q And other officers were basically in charge of that?
- 18 A Correct.
- 19 Q Now, the next day, on June 21st, 2017, did you get a
20 call or have an occasion to go back to 241C West Main Street?
- 21 A Yes. We had searched -- continued to search the next
22 day.
- 23 Q All right.

1 A Throughout the day.

2 Q And what happened on the -- on the next day, the
3 21st?

4 A Well, the 21st we continued to search the apartment.
5 We were looking for evidence in connection with the robbery
6 that we believed was there. It was just we were not
7 finding it. There were several different officers, including
8 myself, that went through different parts of the apartment. I
9 left and then very shortly after got called back to the
10 apartment.

11 Q And what did you get called back in reference to?

12 A I was told that the gun that we were looking for had
13 been found in a vase by the -- by Melanie Engle's mother. And
14 so we -- I was called back to collect the gun.

15 Q All right. And is that the only piece of evidence
16 you collected at that time?

17 A Yeah. That and the two -- there was two vases that
18 it was in. We collected the two vases at the time. Myself
19 and Officer Orslene worked together.

20 Q All right. And then the other vase, do you recall
21 something else being in the other vase?

22 A There was a small black pouch that contained
23 ammunition.

1 Q All right. Now, I'm going to show you what have been
2 marked for purposes of identification as State's Exhibits 39
3 and 40. I'm going to show you State's Exhibit 39 first. It's
4 actually a page with four photographs on it.

5 A Okay.

6 (Whereupon, State's Exhibit No. 39, Photos,
7 was introduced for identification.)

8 Q All right. I'm going to ask if you recognize that?

9 A Yes.

10 Q How do you recognize that?

11 A That's the -- the first one, 39, Exhibit 39 shows the
12 two vases as they were found with the wooden roses in them.

13 And then the two vases with the roses removed. And
14 you can see the handgun and the black pouch in it.

15 Q All right. And then State's Exhibit 40?

16 (Whereupon, State's Exhibit No. 40, Photos,
17 was introduced for identification.)

18 A State's Exhibit 40 is, again, another picture of the
19 vase with the black pouch and then an actual photograph of the
20 handgun itself.

21 Q Those are -- on both of those pages there's four
22 pictures each; correct?

23 A Correct.

1 Q I'm going to publish those for the jury. And, again,
2 if you could use the laser pointer.

3 And these are the two -- these are the two flowerpots
4 that you were referring to?

5 A Correct.

6 Q And when you lifted these flowerpots out and you
7 found inside there these two photographs?

8 A Correct. Well, the two items.

9 Q The two items?

10 A Yes.

11 Q Yes. And I'm trying to lighten them up a little bit
12 here.

13 And I'm going to show you State's Exhibit 40.
14 Probably a little bit better picture. This is the handgun and
15 the pouch with the ammunition you referred to?

16 A Correct.

17 Q And we see at the bottom there, there are two
18 photographs of a small caliber handgun; is that correct?

19 A Correct.

20 Q Do you recall what caliber of handgun it was?

21 A I believe it was a .22. I can look at my notes and
22 confirm that for you.

23 Q Okay.

1 A But I believe it was a .22.

2 Q Well, let me ask you this. We'll do it this way.
3 I'm going to hand you what's been marked for purposes of
4 identification as State's Exhibit Number 1. It's an evidence
5 box containing -- it's loose because we had to take it out the
6 other day.

7 A Okay.

8 Q Do you recognize the box marked as State's Exhibit 1?

9 A Yes.

10 Q How do you recognize that box?

11 A When I seal the box, I put my initials on it.

12 Q All right. And there's an evidence tag on there with
13 your name?

14 A And I completed that evidence tag, yes.

15 Q And that indicates that you recovered at 241C
16 Cortland on June 21st?

17 A Correct.

18 Q And inside of there, there was a gun. Do you
19 recognize that gun?

20 A Yes.

21 Q All right. And is that the gun you recovered?

22 A Yes.

23 Q And this gun has been cleared and it's got the action

1 open and the magazine has been removed; correct?

2 A Correct.

3 Q But when you found it, the magazine was inside of the
4 handle?

5 A Correct.

6 Q And the magazine is in this box; correct?

7 A Correct.

8 Q This firearm was then turned over to another agency?

9 A Correct.

10 Q What agency was it turned over to?

11 A I believe it was turned over to the Warren Police
12 Department.

13 Q Now, I'm going to hand you -- is this item in the
14 same or substantially the same condition as when you found it
15 on June 21st?

16 A Yes.

17 Q Now I'm going to hand you what's been marked for
18 purposes of identification as State's Exhibit Number 5 and ask
19 if you recognize State's Exhibit Number 5?

20 (Whereupon, State's Exhibit No. 5, Black
21 Pouch, was introduced for identification.)

22 A Yes. That's the evidence bag for the small pouch,
23 the black pouch that was in the other vase.

1 Q Okay. I'm going to, with the Court's permission,
2 open this bag. The contents of State's Exhibit Number 5 is a
3 black pouch; is that correct?

4 A Correct.

5 Q And inside of that black pouch is ammunition?

6 A Correct.

7 Q All right. And this pouch and the ammunition are in
8 the same or substantially the same condition as when you
9 recovered it?

10 A Appear to be, yes.

11 Q And this is the item that was in the photographs that
12 we saw in the bottom of one of those flower vases?

13 A Correct.

14 MR. BECKER: Thank you, Your Honor. I have
15 no further questions.

16 THE COURT: Cross.

17 MR. HARTWIG: Thank you.

18 CROSS EXAMINATION

19 BY MR. HARTWIG:

20 Q Good morning.

21 A Good morning.

22 Q Okay. Let's talk first about your investigation that
23 started on June 15th, okay?

1 A Okay.

2 Q We'll just go in chronological order here. So your
3 only duties that day was as an investigator --

4 A Uh-huh.

5 Q -- master investigator was to take photographs?

6 A Right.

7 Q And you collected the one piece of evidence, the
8 shoe?

9 A Correct.

10 Q What time did you arrive at the scene?

11 A I can look at my notes and tell you.

12 Q Please.

13 A I arrived at 11:03.

14 Q 11:03 a.m. And it was approximately 80 degrees out
15 at that point; correct?

16 A Correct.

17 Q Had you noticed many potholes in the road leading you
18 up to the scene?

19 A It was not a smooth road. Yeah, I don't recall
20 specific potholes, but it was not a smooth road.

21 Q Okay. And despite the conditions on the flat
22 surfaces showing it to be relatively dry, did you observe
23 potholes filled with water or muddy areas?

1 A It could have been, yeah. I don't -- again, apart
2 from looking at my photographs, I don't -- it was pretty dry
3 on parts of the street.

4 Q Okay.

5 A On parts of the road I'll call it. There was some
6 muddier areas.

7 Q You sort of went over probably maybe five, six, seven
8 pictures, correct, today?

9 A Yes.

10 Q How many pictures did you take in total?

11 A Again, I can count them.

12 Q Approximately.

13 A I don't know. I take quite a few photographs.

14 Q All right. So the ones that you saw today that were
15 published to the jury, that's not nearly all of them?

16 A No.

17 Q Okay. You had to have many more photos of the scene,
18 of the body, etcetera?

19 A Correct.

20 Q Okay. Would you agree with me that the clothes on
21 Brandon Sample were soaking wet?

22 A They were -- yeah, I would say they were probably
23 wet.

1 Q I'm sorry?

2 A They were probably wet just because of the nature of
3 a decomposing body. They were probably wet.

4 Q You're assuming that --

5 A I did not touch the body that day, but I would assume
6 that it was wet just by nature of the body decomposing.

7 Q All right. But the shorts, for example, the white
8 shorts that he had on, were soaking wet?

9 A Yeah. I didn't touch them, so I can't tell you.

10 Q Okay. Did you observe them to be wet?

11 A Again, I mean, what you saw in the photographs, they
12 were -- decomposing bodies tend to have wet clothes.

13 Q Okay. Approximately how many feet was Brandon
14 Sample's body in from the roadway?

15 A I didn't do the diagram that day. There's officers
16 that did that can tell you an exact measurement. I cannot
17 tell you the exact measurement.

18 Q Okay. The shoe that you collected?

19 A Uh-huh.

20 Q Would you agree with me that it was facing opposite
21 of the body towards the road?

22 A I believe so, yes. Based on that photograph. We can
23 look at that photograph again and I can confirm that, but I do

1 believe it was facing the toe towards the road.

2 Q Do you have that photo with you?

3 A I have a lot of photos with me.

4 Q So, Detective, I'm going to show you State's
5 Exhibit 16. Okay?

6 A Okay.

7 Q Can you see that?

8 A There you go.

9 Q Is it there?

10 A Yes.

11 Q All right. And so the shoe is facing the roadway;
12 correct?

13 A Correct.

14 Q And it's lodged under a board; correct?

15 A Correct.

16 Q That's how you found it?

17 A That is exactly -- where you see it there is how I
18 found it.

19 Q Do you have any way of knowing how that shoe would
20 have ended up there in that position?

21 A No.

22 Q It would be mere speculation; correct?

23 A That would be mere speculation. I have no idea.

1 Q All right. As part of your duties when you collected
2 that shoe, did you use gloves?

3 A Yes.

4 Q Were any prints, you know, any attempts to take
5 prints off the shoe?

6 A I collected it. I did not process it.

7 Q Okay. All right. Did you observe any tire tracks in
8 the roadway relative to the scene?

9 A There was a lot of vehicles there when I arrived. So
10 I couldn't tell you what -- there was tire tracks, I'm sure,
11 but nothing that stood out because there were so many police
12 vehicles and --

13 Q All right. So no pictures were taken prior to the
14 vehicles coming in close to the scene of the roadway as far as
15 you know?

16 A When I got there, there were police vehicles there.
17 So, therefore, I just took the scene -- photographs of the
18 scene as I found it.

19 Q Did you observe any blood on the roadway approaching
20 the body?

21 A No.

22 Q Any blood on the foliage going in to where the body
23 was?

- 1 A No.
- 2 Q Any pictures of blood on the body?
- 3 A No. In its decomposing state is how I photographed
4 it.
- 5 Q All right. But of the photos that you did take, you
6 didn't zero in on certain blood spatter or anything like that?
- 7 A No, I didn't see anything like that.
- 8 Q All right. And no blood around the body that you
9 observed?
- 10 A No. Again, a lot of decomposition.
- 11 Q Okay. Now, what color was the shirt that was pulled
12 over Brandon's head?
- 13 A I believe it was a dark-colored shirt.
- 14 Q And his body was laying face down; correct?
- 15 A Correct.
- 16 Q So was the shirt pulled up from -- let's say from the
17 back over the front of the head?
- 18 A That would be -- yes, that would be how I would
19 describe it.
- 20 Q Okay. And were you able to observe the shirt as he's
21 laying face down?
- 22 A Just what you see in the photographs.
- 23 Q Okay.

1 A It was -- where the body was was a very difficult
2 spot to get to.

3 Q It wasn't a path?

4 A No, it was not a path. So it was not an easy spot to
5 get to.

6 Q You can't say whether or not he was shot there;
7 correct?

8 A No.

9 Q You can't say whether he was shot, if he was shot,
10 somewhere else and then transported there; correct?

11 A No.

12 Q You can't say when he was shot, if he was shot, and
13 killed there; correct?

14 A No.

15 Q Okay. Did you notice any footprints, any particular
16 footprints leading up into the area where the body was?

17 A The grass and the foliage was knocked down, but I
18 can't say that there was any like identifiable prints that we
19 would -- or footprints or shoe prints -- that we would take
20 photographs of for comparison. It was just that you could
21 tell that the grass had been knocked down or the weeds had
22 been knocked down a little bit.

23 Q Would you agree with me that it's impossible to say

1 how those were knocked down because you had officers going in
2 to observe the body?

3 A Yes.

4 Q Okay. Did you take any particular close-up photos of
5 the shirt around where what appears to be the bullet hole in
6 Brandon's -- the back of his head?

7 A No, I don't believe I ever saw the back of his head.
8 We wouldn't have removed the shirt. We would have -- as the
9 body would have been transported out of there, it would have
10 remained as we found it. And we would not have removed the
11 shirt to try to take photographs of it. We would leave that
12 up to the coroner's office.

13 Q So you wouldn't have been in charge of taking the
14 shirt, processing it, doing gunshot residue on it or analyzing
15 it for blood or holes or anything like that?

16 A No.

17 Q All right. Do you know if the shirt still exists?

18 A I have no idea.

19 Q Okay. Let's turn to June 20th.

20 A Okay.

21 Q So you did arrive at the apartment on that day;
22 correct?

23 A Uh-huh.

1 Q Had a conversation with Miss Engle?

2 A Correct.

3 Q All right. You searched the apartment at that point?

4 A Parts of it. We had multiple officers there that
5 searched different areas.

6 Q Okay. Was evidence collected that day?

7 A Not by myself.

8 Q By other officers?

9 A Other officers, yes.

10 Q Okay. And you would describe the apartment as, let's
11 call it, filthy?

12 A I would say it was definitely in disarray. A lot of
13 clutter.

14 Q Okay. Who was at the apartment at that point besides
15 officers?

16 A I don't know. I was not in charge of keeping track
17 of the scene log of who all was there.

18 Q Were there a lot of people in and out?

19 A There was a lot of people there. They were not just
20 going freely in and out. They were -- we had an officer that
21 was with whoever -- any citizens or civilians that were there.
22 We had an officer that was standing there with them.

23 Q So when you returned the next day, June 21st?

1 A Uh-huh.

2 Q That's when you were told that a gun was found by
3 Melanie Engle; correct?

4 A Well, I had conducted a search. Myself and several
5 other officers had conducted a search of that apartment
6 looking for the gun. We believed that it was in there. And
7 we did not find it after going through a lot of it.

8 When we went to leave, Miss Engle's mother had
9 indicated that they were going to be cleaning up the
10 apartment. We said, "If you come across anything, please call
11 us." And, again, it was very cluttered. So it was very -- it
12 was a very difficult apartment to search.

13 I wasn't gone for I want to say minutes and I got
14 called back to the apartment because as they started to clean,
15 they had discovered the gun and the bullets in the two vases.
16 And so I got called back to collect the gun.

17 Q Were the vases preserved and dusted for prints, do
18 you know?

19 A We collected the vases. I left the gun in place in
20 the vase and I collected it at the scene. I transported it
21 back to the police station. I knew that we would want the gun
22 collected for -- probably processed for touch DNA. And so I
23 wanted to handle the gun very carefully by just leaving it in

1 the vase. I wasn't going to risk putting my own DNA on the
2 gun. And, therefore, I sealed it up, took it back to the
3 station. And that's when we -- I actually spoke to a forensic
4 scientist at BCI to find out exactly how they wanted us to
5 collect it so that it was done in compliance with how the
6 state would want it. And that's the procedure I followed to
7 box the gun up then and remove it from the vase.

8 Q Okay.

9 A And then the vase was packaged separately from the
10 gun.

11 Q Would you agree with me the person that put the gun
12 in the vase would have touched the vase in order to do that?

13 A Not necessarily. They would have had to touch the
14 roses, the wooden rose. They would not necessarily have had
15 to touch the vase.

16 Q Not necessarily, but --

17 A Possibly.

18 Q All right. Did you preserve the vase itself like
19 with gloves and say, "Hey, we're going to examine this for
20 touch DNA also"?

21 A Anything I collect. We switched out gloves between
22 items. Everything is done with a process to ensure that we
23 don't put my own DNA on it, my own fingerprints, or cross

1 contamination from any other item that I would have touched.

2 Q All right.

3 A I switch out gloves frequently when I do the scenes
4 like that.

5 Q All right. So you preserved the gun and sent it off
6 for touch DNA analysis; correct?

7 A I believe our agency turned the gun over to the
8 Warren Police Department. I did not send the gun off.

9 Q Were the vases also sent the same way?

10 A I don't know. Once I entered it into evidence, I'm
11 not sure what happened with the vases after that.

12 Q Okay. You have interviewed, at least by phone, a
13 person named Nick Goett?

14 A I didn't hear you.

15 Q Nicholas Goett, did you interview him by phone?

16 A Yes.

17 Q He was a person that was at the apartment on the day
18 of the robbery; correct?

19 A I believe so, yes.

20 Q All right. And through your interview you found that
21 he left prior to the robbery; correct?

22 A I can refer to my notes if you'd like.

23 Q If you need to.

1 A Yes, he said he left prior to the robbery and claimed
2 he was unaware of anything -- unaware anything was going to
3 happen.

4 Q All right. And so he indicates he just went and got
5 something to eat?

6 A Correct.

7 Q And that was it; correct?

8 A Correct.

9 Q All right. Did you get video from the place he went
10 to go eat?

11 A I requested video from Burger King. They -- they did
12 not turn it over to me at the time. They said they were going
13 to acquire that video and get it to us. I changed assignments
14 shortly after that. The officer that assumed control of the
15 assignment and was actually the officer that was leading the
16 investigation into the robbery, he was told about -- to go get
17 the video. I'm not sure if that was ever done or not.

18 Q All right. Were you aware that Austin Burke's prints
19 were not found on the gun?

20 A I'm not aware of what the results were from the lab.

21 Q So you wouldn't be aware that an unknown male's DNA
22 was found on the magazine of the gun; correct?

23 A I have not seen a copy of the report from BCI on what

1 was found on the gun.

2 Q Would you also agree with me that Nick Goett said,
3 "I'm not going to come in and give a written statement, and
4 I'm not going to come in to be interviewed"?

5 A He did decline to come in and give a written
6 statement to me, yes.

7 Q And so we don't have his prints for comparison;
8 correct?

9 A I do not know.

10 THE COURT: Redirect.

11 MR. BECKER: Yeah.

12 REDIRECT EXAMINATION

13 BY MR. BECKER:

14 Q Detective Morris, you took a whole series of
15 photographs; correct?

16 A Correct.

17 Q Did you put those on a digital disc?

18 A Correct.

19 Q I'm going to show you -- since apparently it's become
20 an issue with all the photographs -- let's go through all of
21 the photographs you took --

22 A Okay.

23 Q -- on June 15th. I'm going to mark this disc as

1 State's Exhibit 52. Detective, we are looking at photographs.
2 Would you agree this is a fair and accurate copy of the
3 photographs you took?

4 (Whereupon, State's Exhibit No. 52, Disk
5 containing Photographs, was introduced for identification.)

6 A Yes.

7 Q All right. And this is a shot a little bit further
8 down the road. Any mud puddles, any water on this road?

9 A No.

10 Q Okay. There's another overview of the photograph --
11 or the photographs you took?

12 A Correct.

13 Q Again, any standing water or mud puddles on this
14 road?

15 A No.

16 Q Here's a view even further back. Again, no mud
17 puddles, no water?

18 A Correct.

19 Q This is the area -- and I believe this is one of our
20 exhibits here -- this is where the body was found under this
21 blue tarp; right?

22 A Correct.

23 Q Again, a large overview here. This is all dry;

1 correct?

2 A Correct.

3 Q I believe we've already seen this. Was there --
4 appear to be some logging activity?

5 A Yes, it appeared to be a logging area.

6 Q There's another overview. It looks like maybe you
7 climbed on top?

8 A I got on top of those logs and took an overview from
9 the top.

10 Q Again, this is pretty dry ground here; right?

11 A Yes.

12 Q Here's an overview looking back towards, I believe
13 this is State Route 45 way back here?

14 A I don't know.

15 Q Okay. The body was found down here; right?

16 A Yeah. The body was in that lower left corner.

17 Q All right.

18 A I don't know where that other road lead to.

19 Q Well, we're going to zoom in here a little bit. Oh,
20 I'm sorry. I'm sorry. This is another road. And, again, we
21 see evidence of logging activity; is that correct?

22 A Correct.

23 Q Any puddles or mud puddles along this road?

- 1 A I don't see any in that photograph, no.
- 2 Q Any standing water, mud puddles?
- 3 A I don't see any.
- 4 Q Little bit of water here past the location; correct?
- 5 A Correct.
- 6 Q So the body -- the other direction you were looking
7 would have been the one direction. Here we see some mud
8 puddles, but this is past where the body was; correct?
- 9 A Correct. I was standing on top of those logs where
10 I'm taking that photograph from.
- 11 Q Okay. There's some more photos of these mud puddles,
12 but they're further down the road. They're going deeper into
13 the woods?
- 14 A Correct.
- 15 Q Again, this is an overview from where you were at?
16 This is the blue tarp; correct?
- 17 A Correct.
- 18 Q And again, this area, no mud puddles or anything?
19 These are all fair and accurate copies of the photographs you
20 took on that date?
- 21 A Yes.
- 22 Q This is the log pile that you climbed up on?
- 23 A Correct. And I'm on that road that you asked me

1 where it lead to that I wasn't aware of. I'm standing there
2 now looking back at the log pile.

3 Q Okay. And these cars here were police officers'
4 cars, other detectives?

5 A Those are law enforcement vehicles.

6 Q And they drove their cars back there. Do you see a
7 lot of mud on those cars?

8 A No.

9 Q This is, again, the blue tarp.
10 And, again, more photos of the body.

11 I believe we've already covered most of those. So
12 with respect to what I have now marked as State's Exhibit 52
13 which is a disc, would you agree that those are all of the
14 photographs that you took on that date?

15 A Whatever is on that disc, yes, would have been put
16 on -- that would have been included on that disc.

17 Q And each and every one of those photographs is a fair
18 and accurate copy of the scene as you observed it on
19 June 15th, 2017?

20 A Correct.

21 MR. BECKER: Okay. I have nothing further.

22 THE COURT: Recross.

23 MR. HARTWIG: Just a few followup

1 questions.

2 THE WITNESS: Yes, sir.

3 RE CROSS EXAMINATION

4 BY MR. HARTWIG:

5 Q Do you know the size of Brandon Sample's body?

6 Height and weight?

7 A I do not.

8 Q Was the tarp collected?

9 A It was not.

10 Q All right. Is there a reason why?

11 A No.

12 Q Did you find any shell casings?

13 A I did not, no.

14 Q If the weapon that was used was a semiautomatic, you
15 would expect a shell casing to be discharged; correct?

16 A A shell casing would be discharged from a
17 semiautomatic weapon; correct.

18 Q All right. But you didn't find one?

19 A No. As a matter of fact, another -- another person
20 from wildlife, I believe, used a metal detector around the
21 area where the body was found.

22 Q Do you have any way of knowing how long Brandon
23 Sample's body had been there?

1 A No.

2 Q Do you have any way of knowing which direction his
3 body would have entered the woods, whether he was alive or
4 deceased?

5 A No.

6 Q So just the fact that you're walking in from the road
7 based on the photograph you took does not mean that's the
8 direction that his body entered; correct?

9 A That's the way his body was found by myself when I
10 processed the scene.

11 Q Okay. Mr. Becker -- Mr. Becker did show you some
12 photographs. Mr. Becker did show you some photographs, at
13 least in part, of a roadway close to the body that had
14 multiple potholes; correct?

15 A Correct.

16 Q And those were filled with water; correct?

17 A Right. If you were to go from the road that I
18 entered into the scene, which is, if you saw that black pickup
19 truck, I came in from what would be behind that black pickup
20 truck. If that black pickup truck would have continued to go
21 forward -- and I know he kind of started to make the bend onto
22 that road, but if he would have gone straight, it would have
23 been past those logs that I stood on up in that area.

1 Q And where does that lead to?

2 A I don't know. I did not walk down.

3 Q Okay.

4 A Other folks did, but I did not.

5 Q Do you know what the weather pattern -- excuse me --
6 the weather pattern was in the day before you were out taking
7 photos two days before, three days before?

8 A No. I simply knew the temperature because I looked
9 it up when I was at the scene.

10 Q All right. So being as hot as it was, the fact that
11 there was still standing water in potholes is indicative of
12 rain in the near past future -- or excuse me -- near past.

13 A Yeah. I don't know.

14 Q Right?

15 A Yeah. I don't know what the weather was prior to me
16 being there.

17 MR. HARTWIG: One moment, Your Honor.

18 BY MR. HARTWIG:

19 Q As far as that normal protocol, do you have like a
20 log that you -- shows when you got there, when you signed in,
21 when you left?

22 A Whoever would be controlling the scene. I was not
23 controlling the scene. I would simply -- I document my times

1 of the things that I do. I don't document what other folks do
2 if I'm not in charge of a crime scene log.

3 Q Okay. When you arrived, was it marked off like with
4 yellow tape?

5 A No. There was no yellow tape that I saw.

6 Q All right. So it was just police officers combing
7 the area?

8 A Correct. The yellow tape is designed to keep
9 bystanders out. We were out in the middle of nowhere
10 basically is the way I would describe it. It wasn't like when
11 we're in a residential area where we're trying to cordon it
12 off from spectators or civilians that are at their homes. We
13 were out in the middle of -- well, you can see from the
14 photographs where we were.

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

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

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: Counsel, approach.

20 (Whereupon, a discussion was held off the
21 record.)

22 THE COURT: Ladies and Gentlemen, we'll
23 take this opportunity for your midmorning break.

1 Do not discuss this case among yourselves, nor with
2 anyone else. Do not form or express an opinion. Report to
3 the petit jury room when you're done with your break.

4 (Whereupon, a recess was had commencing at
5 10:25 a.m. and concluding at 10:44 a.m.)

6 THE COURT: Mr. Becker, you may call your
7 next witness.

8 MR. BECKER: State would call Hayle Roupe.

9 * * *

10 HAYLE ROUPE,
11 having been duly sworn, was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. BECKER:

14 Q Hayle, could you just pull that microphone toward
15 you? Would you state your name for the record?

16 A Hayle Roupe.

17 Q All right. Hayle, how old are you?

18 A I'm 17.

19 Q And when is your birthday?

20 A August 14th, 2000.

21 Q So in June of 2017 you would have been 17 -- I'm
22 sorry -- 16?

23 A Yes.

1 Q All right. Now, I want to direct your attention to
2 some individuals and some things that happened back in June of
3 2017. Back in June of 2017, where were you living at?

4 A With my mother on -- in Niles on 408 Cherry Avenue.

5 Q How far was that location from 713 Mason Street?

6 A About four streets over.

7 Q And at the time, in June of 2017, did you know
8 anybody that lived at 713 Mason Street?

9 A My grandma and my little cousin Rickey lived there.

10 Q Now, at some point -- and I'm going to ask you if you
11 are familiar with some of these people. When you say your
12 little cousin, you're referring to Rickey Roupe?

13 A Uh-huh.

14 Q Do you know Jessica Simms?

15 A Yes.

16 Q How do you know Jessica?

17 A That's my girlfriend.

18 Q Do you know Nathan Moats?

19 A Yes.

20 Q How do you know Nathan Moats?

21 A He is a friend of Rickey.

22 Q In Niles there?

23 A Yes.

- 1 Q Do you know Deidre Keener?
- 2 A I do.
- 3 Q How do you know Deidre?
- 4 A I've been friends with her for about three years.
- 5 Q Now, I want to direct your attention to June 12,
6 2017. Around that time, did you also meet an individual by
7 the name of Austin Taylor Burke?
- 8 A Yes.
- 9 Q And how did you meet Austin Taylor Burke?
- 10 A My cousin Makayla Egbert and Rickey Roupe.
- 11 Q All right. You have a cousin named Makayla Egbert?
- 12 A Yes.
- 13 Q And she had a relationship with Austin Burke?
- 14 A Yes.
- 15 Q And I think we heard some testimony yesterday that in
16 June of 2017 they weren't dating anymore; correct?
- 17 A No.
- 18 Q But Austin was still coming over to the house at 713
19 Mason?
- 20 A Yes. For about three weeks straight.
- 21 Q And you would see him there?
- 22 A Yes.
- 23 Q At any point in June of 2017 did you see Austin

1 Taylor Burke with a handgun?

2 A Yes.

3 Q Can you describe to the jury that handgun?

4 A It's a little silver gun and it has a marble handle
5 on it.

6 Q All right. I'm going to show you what's been marked
7 for purposes of identification as State's Exhibit Number 1 and
8 ask if you recognize State's Exhibit Number 1?

9 A I do.

10 Q All right. What is State's Exhibit Number 1?

11 A The marbled gun.

12 Q This appears to be the gun that he would have?

13 A Yes.

14 Q Okay.

15 A I actually took that report down to Niles Police
16 Station when I had seen the gun and had more information about
17 it.

18 Q Okay. Well, hold on. We're going to get to that
19 point.

20 A Okay.

21 Q So Sunday, June 11th of 2017, there was -- a bunch of
22 you were over at 713 Mason Street; is that correct?

23 A Yes.

1 Q Do you recall who was at 713 Mason Street on Sunday,
2 June 11th?

3 A It was me, my cousin Rickey, my girlfriend, Makayla,
4 and Austin was there.

5 Q Now, do you recall approximately what time it was?

6 A On the 11th?

7 Q Yeah. Sunday. Would it have been close to midnight,
8 after midnight, into the 12th?

9 A He was there from -- he was there basically all day
10 on the 11th, I believe it was. And then I think around 10:00
11 that night we were riding around with Deidre. And I have
12 videos of that also.

13 Q And you had videos on your phone of Austin Burke?

14 A Yes.

15 Q Okay. And we didn't ask you -- you have your phone
16 with you?

17 A No, I don't.

18 Q Okay. We didn't ask you to copy those, but you had
19 confirmed that he was with you?

20 A Yes. I actually e-mailed them to Greaver. I don't
21 know if he received them or not.

22 Q But suffice it to say you didn't know exactly what
23 time it was? You just were with him?

1 A Yeah. I was with him, but I don't remember exactly
2 what time it was.

3 Q Now, you didn't see him later on that night, did you,
4 when he came back to the house?

5 A No. Huh-uh.

6 Q You weren't there though; right?

7 A No, I was not. We had left I think it was around
8 midnight because we were having a bonfire out back.

9 Q Okay.

10 A It was me and Jessica, and we had to take her little
11 sister home because she had school the next day.

12 Q Jessica's little sister?

13 A Yes.

14 Q So you guys left?

15 A Uh-huh.

16 Q Now, the next day or the next couple days you would
17 have seen Austin Burke again; is that correct?

18 A Yes.

19 Q How did that come about that you saw him again?

20 A He just kept continuously coming over. And after so
21 long of knowing what was going on with my statements and stuff
22 like that, we weren't allowing him at the house no more. And
23 he still continued to try to come over and come over. And

1 after I think it was like four days, four or five days, he was
2 no longer allowed over there.

3 Q But before he wasn't allowed over there, he had been
4 over there; correct?

5 A Yes, yes.

6 Q And this would have been after June 11th and
7 June 12th, that Sunday and Monday?

8 A I --

9 Q Well, let's go back to this.

10 A Okay.

11 Q At some point, did Austin tell you about something he
12 did to a guy named Brandon Sample?

13 A Yes.

14 Q Okay. What did Austin Burke tell you he did to
15 Brandon Sample?

16 A Full sentence? Everything?

17 Q Yeah. Tell me what he said.

18 A Okay. We were sitting at my grandma's table and
19 Austin was surrounded -- we were surrounded around the table
20 and --

21 Q Now, who all was there?

22 A It was me, Rickey, Makayla -- no. Makayla wasn't
23 there. It was me, Rickey, Austin and Jessica.

1 Q All right.

2 A He came back to the table and he was like bribing
3 about the situation. That he had shot somebody in the back of
4 the head and he had taken him down Hatchet Man Road and left
5 his body there. He told me that he got him out in the front
6 of the car and he put him on his knees and he told us that
7 Brandon had looked at him and said, "Please don't do this. I
8 have a family. I have -- I have a life in front of me." And
9 he said that he couldn't -- he couldn't just sit there and
10 look at him no more, time was over, he had to do it. So he
11 shot him. And he said that the car -- he took the car from
12 Hatchet Man Road and that it was running out of gas. He had
13 nowhere else to put it. And that's when he had left it on the
14 Niles bike trail. And then he returned back to my grandma's
15 house earlier that morning and he had woken up Rickey, and he
16 had blood on his clothes and he had a pack of cigarettes.

17 Q That's what he's telling you?

18 A Yes. That's what Rickey had told me; Austin had woke
19 him up.

20 Q No, no, no. I don't want to know what Rickey told
21 you. I want to know what Austin told you.

22 A Okay. Well, Austin had finished the story by saying
23 that he put the car on Hatchet Man Road -- or on the Niles

1 bike trail and that he shot him in the back of the head.

2 Q All right.

3 A And immediately after knowing all of that, that's
4 when me and Jessica went down to the Niles police station.

5 Q All right. So he was telling you guys this. Was he
6 upset about it?

7 A No. He was bribing about it. He was not upset about
8 it. There was not one tear coming from his eye. He was
9 bribing about it. He wasn't upset about any of this, anything
10 that happened. He didn't care.

11 Q Now, you and Jessica were there when he told this
12 story; correct?

13 A Yes.

14 Q And you went to the Niles Police Department; is that
15 correct?

16 A Yes, we both did.

17 Q All right. And you -- I'm going to show you a
18 document here. Do you remember what date that was?

19 A I don't remember exactly what date we -- I think it
20 might have been the 15th.

21 Q Okay.

22 A We were down there like 2 in the morning, I think it
23 was. Around that time.

1 Q And this is a report from the Niles Police
2 Department. Do you see the incident date and time there?

3 A Yes.

4 Q Do you see what date that says?

5 A The 15th of June.

6 Q And what time does that say?

7 A 2:30 in the morning.

8 Q And it lists -- whose names are on that report?

9 A Hayle Roupe, Austin Burke and Jessica Simms.

10 Q All right. And would that refresh your memory? Is
11 that when you would have gone to the Niles Police Department
12 on the 15th?

13 A Yes, sir.

14 Q Okay. Now, the individual you know as Austin Taylor
15 Burke and who told you he had killed and shot the guy on
16 Hatchet Man Road and left the car on the Niles bike path, is
17 he here in the courtroom today?

18 A Yes.

19 Q Could you please point him out?

20 A (Witness indicates.)

21 MR. BECKER: Please allow the record to
22 reflect she has identified the defendant.

23 BY MR. BECKER:

1 Q Now, there was a time a little bit later when you had
2 to go to the Warren Police Department and you gave a
3 statement?

4 A Yes.

5 Q All right. And you were able to pick him out of the
6 photo lineup?

7 A Yes.

8 Q All right. I'm going to hand you what's been marked
9 for purpose of identification as State's Exhibit 25. Do you
10 recognize that?

11 (Whereupon, State's Exhibit No. 25, Photo
12 Lineup, was introduced for identification.)

13 A I do.

14 Q Okay. What is State's Exhibit 25?

15 A Austin Burke.

16 Q Okay. You picked him out of six individuals?

17 A Yes.

18 Q And your signature is on there?

19 A Yes, sir. And my address.

20 Q All right. Now, there came a time a couple days
21 later, specifically I believe June 20th, and you were at your
22 grandma's house at 713 Mason Street with Deidre Keener; is
23 that correct?

1 A Yes, sir.

2 Q And Deidre received a phone call at about 10:50 p.m.?

3 A Yes, sir.

4 Q From Austin Burke?

5 A Yes, sir.

6 Q And you recognized the voice on the phone?

7 A Yes. I was standing next to her. I had made her put
8 him on speaker because at that time we didn't know what he was
9 calling for, but we knew that he wasn't allowed over. And
10 then when he had got on the phone is when we heard everything
11 and told that he wasn't allowed over.

12 Q And what did Austin Burke tell you and Deidre at
13 10:50 when he was on the speaker?

14 A He got on the phone and he said hello. And we said
15 hello. At first we didn't know who it was because she didn't
16 have his phone number. Maybe it was on Facebook -- it was on
17 Facebook, yeah. And she was like, "Who is this?" He said,
18 "It's Austin." He said, "I just came upon a bunch of money.
19 Where are you guys at?" And we said, "We're over at
20 grandma's, but you're not allowed over here." And he just
21 said, "Okay" and hung up the phone.

22 Q And the person, you recognized that voice as Austin
23 Taylor Burke?

1 A Yes, sir.

2 Q And he's the same person that you previously
3 identified here?

4 A Yes, sir.

5 Q Okay. Hayle, I'm going to show you what have been
6 marked for purposes of identification as State's Exhibits 11,
7 13, and 13A. Do you recognize State's Exhibit 11?

8 A I do.

9 Q Do you recognize the person in that?

10 A Yes.

11 Q Do you see the gun that you previously identified?

12 A Yes.

13 Q Okay. That's the gun that you had previously seen
14 Austin Burke with?

15 A Yes.

16 Q I'm going to hand you State's Exhibit 13. Do you
17 recognize State's Exhibit 13?

18 A Yes. It's the same gun.

19 Q And State's Exhibit 13A?

20 A It's the same gun.

21 Q Okay. I'm going to publish these to the jury as soon
22 as this fires up here.

23 And in State's Exhibit 11, the person in that

- 1 photograph, do you recognize who that is?
- 2 A Yes.
- 3 Q Who is it?
- 4 A Austin Burke.
- 5 Q And he's the same person you previously identified
- 6 here in court?
- 7 A Yes.
- 8 Q And the firearm -- the firearm you previously
- 9 described and identified, do you see that in this photograph?
- 10 A Yes, sir.
- 11 Q And it's basically laying on his chest?
- 12 A Yeah. It's the one his hand is not touching.
- 13 Q State's Exhibit 13, do you recognize that handgun?
- 14 A Yes, sir.
- 15 Q Do you recognize those tattoos?
- 16 A Yes.
- 17 Q Whose tattoos are those?
- 18 A Austin's. And those are the same shoes that he had
- 19 on when he was hanging out with us as well.
- 20 Q Oh, those shoes?
- 21 A Yes.
- 22 Q You recognize those?
- 23 A Yes.

1 Q They're -- what color are they?

2 A I think they're gray. Gray or white.

3 Q They look kind of grayish?

4 A Yeah. And they were Jordan's, I believe.

5 Q That's Nike?

6 A Yeah. It's a name brand of shoes.

7 Q And this is a close-up. This is State's Exhibit 13A.
8 And, again, these are the same tattoos and the same shoes that
9 you said?

10 A Yes.

11 Q And you'd seen him wear those shoes before?

12 A Yes.

13 MR. BECKER: Your Honor, I have no further
14 questions of this witness.

15 THE COURT: Cross.

16 MR. HARTWIG: Thank you.

17 CROSS EXAMINATION

18 BY MR. HARTWIG:

19 Q Good morning, Hayle.

20 A Good morning.

21 Q So Jessica Simms is your girlfriend?

22 A Yes, sir.

23 Q She was your girlfriend at the time and still is?

- 1 A Yes, sir.
- 2 Q You were interviewed by police on June 18th; do you
3 recall that?
- 4 A Yes.
- 5 Q At that time you told police that prior to June 11th
6 you had never known Austin Burke?
- 7 A No, I did not.
- 8 Q You did not say that to the officer?
- 9 A No, I didn't know like who he was.
- 10 Q Okay.
- 11 A He was just in a relationship with my cousin Makayla
12 and brought him around to the house. I had never met him
13 personally before that.
- 14 Q Okay. So he was really a total stranger --
- 15 A Stranger.
- 16 Q -- to you?
- 17 A Yeah.
- 18 Q All right. And on June 11th your testimony is that
19 he hung out with you guys all day?
- 20 A Uh-huh.
- 21 Q Do you recall what time it started, like 9 in the
22 morning or 10 in the morning?
- 23 A I honestly couldn't recall about a time because he

1 kept leaving and coming back, leaving and coming back. So I
2 mean, like the timing could vary, but it was about all day.
3 But, again, he kept leaving and coming, leaving and coming
4 back.

5 Q By himself or with others?

6 A He would leave and he would have cars like pick him
7 up down the road. Like we weren't allowed to know which cars
8 and who was picking him up. Or he would go around the corner
9 or like people that would pick him up would park at the end of
10 the driveway. Because our door was located in the back of the
11 house. We didn't have a front door. It was a duplex. So the
12 cars would park out front to pick him up. So, no, I don't see
13 anybody picking him up or anything like that.

14 Q At any point were you with Brandon Sample that day?

15 A No.

16 Q Do you know Brandon Sample?

17 A I do not.

18 Q Was there any discussion about Brandon Sample during
19 the time that you were hanging out with Austin?

20 A Not until after he had told us what happened, what he
21 did.

22 Q Okay. So in all of the time that you were hanging
23 out with him on the 11th, that name never came up?

1 A No.

2 Q Okay. What did you guys do when were you hanging out
3 all day?

4 A Like always or just that day?

5 Q On June 11th only.

6 A Okay.

7 Q And during the day, in particular.

8 A I couldn't remember. I mean, honestly, we just sat
9 in my grandma's house, played cards. We went out back, we had
10 the fire that he was not at. I don't know.

11 Q Okay.

12 A We just sat in the house, played cards, listened to
13 music. We would leave. We would go to the Ledges. We'd go
14 down to the park.

15 Q Okay. So you did -- you stayed at the house and you
16 also drove around as a group?

17 A No. We didn't drive around as a group. Because the
18 park was right down the road. So we would either go down to
19 the park or like, I don't know, we just, I don't know, we'd
20 hang out. Never went like anywhere out of Niles with him
21 though. We were always around the area.

22 Q All right. He didn't have a gun with him that day
23 when you were driving around or walking around?

1 A As far as I know, he didn't have like --

2 Q All I want is what you know.

3 A Okay. Yeah, as far as I know he didn't have it as of
4 what I seen, but he did have it on him. Whether it was in his
5 bag, it was in his pants. He had it on him. I know that he
6 had it on him because he told me. But, no, I didn't like see
7 it hanging out of his pocket while he was walking around doing
8 this and that, but he did have it on him.

9 Q Okay. You said you left at midnight?

10 A Yes. We left at midnight. It was around midnight.

11 Q Now, you had indicated to the police in your
12 interview almost initially, you said he had indicated that he
13 put Brandon's car on the bike path?

14 A I'm sorry. You said what?

15 Q You had indicated to the police in your interview
16 that Austin had said he put Brandon's car on the bike path?

17 A Yes, yes.

18 Q And so what you told the police was you didn't put 2
19 and 2 together at that point?

20 A Uh-huh.

21 Q That your girlfriend figured it out?

22 A Yeah. We didn't put 2 and 2 together like thinking
23 exactly what was going on until we went down to the police and

1 I had told them, like, "Listen, he has a gun in the house.
2 That's my grandma's house. My cousin is living there. He's
3 only 14 years old." Like it's a bad influence on a
4 14-year-old? You know what I'm saying? Like, no. And then
5 we didn't put 2 and 2 together. And by that time, once we had
6 talked to the police, they went over there. They said that
7 they couldn't find any gun, or Austin wasn't there. Rickey
8 was sleeping. Stuff like that. That's when we put it
9 together. And I'm like, all right, we've got to go forward
10 with this because it's not fair to anybody at all.

11 Q Okay. It wasn't easy to figure out right away?

12 A No, not at all. Not at all.

13 Q Okay. So what's confusing to me is when you sat down
14 around the table all together and he tells you the entire
15 story --

16 A Right.

17 Q -- that, "I killed him. Here's how I killed him."

18 A Well, he didn't --

19 Q Let me finish the question. I would think at that
20 point it was pretty clear in your mind, you'd say, hey,
21 listen, there's nothing to put together. Something bad took
22 place so I'm going to report it?

23 A Okay. But when we went down to the police, he did

1 not tell us by that time that he had killed to us. He had
2 told us -- I knew that he had a gun in the house. That's what
3 I went down to Niles for. I did not tell Niles that he killed
4 him. I went down to Niles and told him, "Austin has a gun in
5 my grandma's house." They had told us that we had to go to
6 Warren and take it farther from there. That's when that had
7 happened.

8 Q And Rickey had told you that there was blood all over
9 him?

10 A Yes.

11 Q The whole story.

12 A Yeah.

13 Q He had blood all over him which would have come on
14 him after he killed Brandon Sample?

15 A Leaving the car at the bike trail early in the
16 morning and coming back to my grandma's at 10:00 in the
17 morning, yes.

18 Q All right. So if that were true, we would expect to
19 see blood in the vehicle; would you agree?

20 A I mean, yeah.

21 MR. HARTWIG: All right. No further
22 questions. Thank you.

23 THE COURT: Redirect.

REDIRECT EXAMINATION

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BY MR. BECKER:

Q Just to clarify, he told you about killing him at Hatchet Man Road?

A He told me everything. He told me that he shot him in the back of the head. He told me that he put the car on the bike trail. It is not fair to these families out here. We have so many unsolved murders in Warren.

MR. HARTWIG: Objection, Your Honor.

MR. BECKER: Hold on.

THE COURT: Just take a breath and just answer the question.

MR. BECKER: Take a second, Hayle. Let's go back.

BY MR. BECKER:

Q You're 17 years old; right?

A Yeah.

Q Okay. Had anyone ever told you to this point that they had killed somebody?

A Nobody but Austin.

Q But, I mean, you've never had anybody else in your life say, "Hey, I killed someone"?

A No. Nobody is gonna be -- no.

1 Q And Hayle, you have no reason to come in here and be
2 dishonest; correct?

3 A Not at all, no. He was a stranger before I knew him.
4 Why would I -- no.

5 Q There was no reward money that was given for solving
6 this crime?

7 A No. I have no reason to come in here and lie at all.

8 Q Okay. And when these events were happening, when he
9 was hanging out there and you guys were having your bonfire,
10 you're not keeping notes and keeping track of what you're
11 doing that day; right?

12 A No.

13 Q You had no idea at that time that you'd ever even be
14 coming into a courtroom --

15 A Not at all.

16 Q -- nine months later and testifying?

17 A Not at all.

18 Q All right. So you're trying to remember as best you
19 can for a 17-, 18-year old girl?

20 A 16 at the time.

21 Q 16. Right. And you're here, though, to tell the
22 truth; correct?

23 A Nothing but the truth.

1 Q And it's your testimony that this defendant told you
2 he shot this kid in the head on Hatchet Man Road and left the
3 car on the Niles bike path?

4 A Yes, sir.

5 MR. BECKER: Okay. Thank you, Hayle.

6 THE COURT: Recross.

7 REXCROSS EXAMINATION

8 BY MR. HARTWIG:

9 Q Hayle, you had indicated to police that the so-called
10 motive behind this was because Brandon had 6 to 7 pounds of
11 heroin; correct?

12 A You said what?

13 Q The motive, like the reason, the reason Austin
14 presumably did this, he told you, was because Brandon --

15 A Yes.

16 Q Brandon Sample had 6 to 7 pounds of heroin; correct?

17 A No. It would -- never heard about 6 to 7 pounds of
18 heroin.

19 Q All right. What did you tell the detective, then, in
20 your interview?

21 A He -- Austin had told us that he had known Brandon
22 from DYS. Austin was part of the 82s, and Brandon was part of
23 a Heartless Felon. Brandon was a CO officer. And I guess he

1 had snitched on Brandon -- or Austin when he was in DYS or
2 something like that. And Austin had told us that when he was
3 walking down the road he had seen Brandon, asked for a ride.
4 Brandon said he had to go drop somebody off. That he had
5 gotten Austin, and that he wanted to rob him for what he had.
6 And I believe it was only like 4 or 5 pounds of heroin. And
7 that's even if so. I don't know.

8 Q But you did tell the police that that's what your
9 recollection was?

10 A Yes.

11 Q There was a part about drugs?

12 A Yes.

13 Q But he also indicated that he met up with Brandon
14 Sample earlier that day while Brandon was with somebody else;
15 right?

16 A Okay. I don't recall anything like that. I know
17 that he was with somebody else with Brandon, but I don't
18 know -- like I don't know if he got dropped off. I don't --
19 that's --

20 Q Okay. I understand. I just want to be clear.

21 A Okay.

22 Q He did indicate that Brandon Sample was with somebody
23 else and drove by him and stopped and had a conversation?

1 A Yes.

2 Q Right?

3 A Yes.

4 Q And did he indicate whether he gave him a ride at
5 that point?

6 A No. I'm not sure. I just know that he said he
7 needed to drop somebody off, is what he said.

8 Q Did the name Josh White ever come up?

9 A I know the name Josh White, but I don't recall. I
10 don't ever remember Austin saying that his friend's name was
11 Josh. He never told me who his friend was.

12 MR. HARTWIG: Okay. No further questions.
13 Thank you.

14 THE COURT: You may step down now. Thank
15 you.

16 MR. BECKER: Jessica Simms.

17 * * *

18 JESSICA SIMMS,

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

20 DIRECT EXAMINATION

21 BY MR. BECKER:

22 Q Okay. Would you state your name for the record?

23 A Jessica Simms.

- 1 Q All right. Jessica, how old are you?
- 2 A 23.
- 3 Q Jessica, where do you live at?
- 4 A 322 Sheridan, Niles, Ohio.
- 5 Q All right. And Jessica, are you familiar with Hayle
- 6 Roupe?
- 7 A Yes.
- 8 Q Are you familiar with Rickey Roupe?
- 9 A Yes.
- 10 Q How are you familiar with those two?
- 11 A Hayle is my girlfriend. Rickey is her cousin.
- 12 Q You're familiar with Pam Roupe and where she was
- 13 living at?
- 14 A Yes.
- 15 Q And that would have been at 713 Mason Street in
- 16 Niles?
- 17 A Yes, sir.
- 18 Q All right. And are you familiar with Nathan Moats?
- 19 A Yes.
- 20 Q How do you know Nathan?
- 21 A He hung out with Rickey a lot.
- 22 Q And are you familiar with Deidre Keener?
- 23 A Yes.

1 Q How do you know Deidre?

2 A That's Hayle's best friend.

3 Q I want to direct your attention to June 11th which
4 was a Sunday, and June 12th, 2017. Was there a time that you
5 were hanging out at 713 Mason Street?

6 A Yes.

7 Q Was there an individual there by the name of Austin
8 Taylor Burke?

9 A Yes.

10 Q How did you know Austin Taylor Burke?

11 A He was one of Rickey's friends.

12 Q Had you ever met him before, then, or seen him or
13 known of him?

14 A No.

15 Q Did you know of a relationship he may have had with a
16 Makayla Egbert?

17 A Yes.

18 Q And you just knew that he had a relationship with
19 Makayla Egbert, not that he -- you had never met him?

20 A Right. I've talked -- like -- when I was with
21 Rickey, like Rickey would always talk about him. And I seen
22 pictures Makayla would post about him. But when Rickey first
23 brought him around, no, I didn't know him. But we hung out

1 with him a couple months after that, yeah.

2 Q All right. So you actually had seen him before
3 June 11th?

4 A Yes.

5 Q You physically had met him and knew who he was?

6 A Yes.

7 Q You met him through Rickey?

8 A Yes.

9 Q All right. So Makayla Egbert, she is related to
10 Rickey and Makayla?

11 A Hayle? Rickey and Hayle?

12 Q I'm sorry. Hayle?

13 A Yeah. That's their cousin, yes.

14 Q And she had a relationship with Austin Taylor Burke?

15 A Yes.

16 Q And that relationship was over when these events
17 happened?

18 A Yes.

19 Q Okay. So he still was friends with the family and
20 particularly Rickey Roupe?

21 A Yes.

22 Q Now on June 11th, which was a Sunday, you were at 713
23 Mason Street in Niles; is that correct?

1 A Yes, sir.

2 Q And do you recall Austin Burke being around during
3 that day or at some point?

4 A Yes.

5 Q Had you ever seen Austin Burke with a firearm?

6 A Yes, sir.

7 Q Okay. How -- explain how you saw him with a firearm.

8 A Like the gun? Or how we seen him with it?

9 Q Yeah, first the gun.

10 A The gun is silver. It had a little marble -- bluish
11 marble hand like holder to it.

12 Q All right. And that gun, had you ever seen it in his
13 hands before?

14 A Yes.

15 Q And that would have been that day, or when would you
16 have seen it?

17 A Yeah, it was that day.

18 Q June 11th?

19 A Yeah. He was always like playing with it, cleaning
20 it, carrying it with him.

21 Q I'm going to show you what's been marked for purposes
22 of identification as State's Exhibit Number 1. Does this
23 appear to be the gun?

1 A Yes, sir.

2 Q And this is the marble -- blue marble handle? Or
3 sometimes in the light sometimes it changes to a gray or
4 something. But this is the gun?

5 A Yes, sir.

6 Q Okay. Now, after June 11th -- or, I'm sorry, on
7 June 11th, you had to leave because you have a little sister?

8 A Yes.

9 Q And she had to be in school on that Monday?

10 A Yes.

11 Q And who did you leave the house with?

12 A It was me, my two little sisters and Hayle.

13 Q Oh, your two little sisters?

14 A Yes.

15 Q Okay.

16 A We were having a fire and it started to get late and
17 I needed to get 'em home for school so I left.

18 Q All right. Who left with you?

19 A Me, my two little sisters, and Hayle.

20 Q And there came a time over the next couple of days
21 that you had contact with Austin Taylor Burke again; is that
22 correct?

23 A Yes, sir.

1 Q Explain where you met him at or where he was at and
2 where you guys were at.

3 A 713 Mason.

4 Q And who else was present with you when Austin Taylor
5 Burke was there?

6 A Rickey, Nate, Hayle, Deidre, and grandma. That was
7 about it. Which would be Pam.

8 Q Now, your grandma doesn't hear very well; correct?

9 A No. It's not my grandma. It's Hayle's grandma.

10 Q Yeah. Their grandma doesn't hear very well?

11 A Yeah, she has a hearing aid.

12 Q So there was a point where Austin Taylor Burke told
13 you some things about the crimes?

14 A Yes, sir.

15 Q Please tell this jury what Austin Taylor Burke told
16 you about these crimes.

17 A Well, at first he said that he was gonna rob Brandon
18 and kill him.

19 Q Well, when did he say that?

20 A It was the day before June 11th. We were all sitting
21 around the table. And after he had did it, he came back, you
22 know, bragging about it. We thought he was just playing
23 around. You know. And as the article came about his car and

1 as he was missing and stuff, I told Hayle, I'm like, "I have
2 to go to the police. You know. I have to. It's the right
3 thing to do."

4 But he had said that he was riding with him and that
5 he took him to Hatchet Man Road. I'm not exactly sure what
6 they were going to do, but, you know -- Brandon started
7 apologizing to him about an incident that happened while he
8 was in juvey detention. And Austin told him, you know,
9 "There's no need to apologize. Pull over." You know. Austin
10 said he took him out of the car and he told him to be quiet,
11 get on his knees. And he told him, you know, excuse my
12 language, he said, "Fucking look at me," and when he looked at
13 him he had shot him.

14 Q Okay. Did he say where he shot him at?

15 A At first he said he only shot him once and then he
16 said twice. But he said right here and in the head.

17 Q So one time he told you it was once and then another
18 time he told you twice?

19 A Yes, sir.

20 Q All right. And had you ever been to this Hatchet Man
21 Road?

22 A No, sir.

23 Q Do you know where Hatchet Man Road is?

1 A No.

2 Q And what did he tell you about Brandon's car?

3 A He -- he said he didn't know what to do with it. He
4 was running out of gas. So he had just left it on the bike
5 trail.

6 Q And the bike trail is not too far from 713 Mason
7 Street?

8 A No, sir. Less than a mile.

9 Q All right. Now, at some point you went to the police
10 and they asked you to pick out the individual through a
11 photographic lineup; is that correct?

12 A Yes.

13 Q I'm going to hand you what's been marked for purpose
14 of identification as State's Exhibit Number 26 and ask if you
15 recognize that?

16 (Whereupon, State's Exhibit No. 26, Photo
17 Lineup, was introduced for identification.)

18 A Yes, sir.

19 Q Is your signature on that?

20 A Yes, sir.

21 Q And you hand wrote in some things there?

22 A Yeah.

23 Q Okay. I'm going to show this to the -- this is a

1 fair and accurate copy of the photo lineup you looked at?

2 A Yeah.

3 Q And who did you pick out?

4 A Number four.

5 Q All right. So we're going to show this to the jury
6 here. You picked out State's Exhibit Number 4; correct?

7 A Yes.

8 Q That was you that circled that?

9 A Yes, sir.

10 Q And Jessica, do you see your signature on there?

11 A Yes, sir.

12 Q And you would have signed that form?

13 A Yes.

14 Q What date did you do that on?

15 A The 18th.

16 Q And you wrote in as the subject who what?

17 A Killed Brandon.

18 Q All right. Jessica, did -- wait a minute. Strike
19 that.

20 I'm going to show you what's been marked for purposes
21 of identification as State's Exhibit 11 and ask if you
22 recognize State's Exhibit 11?

23 A Yes, sir.

1 Q Do you recognize the person in that photograph?

2 A Yes, sir.

3 Q And do you recognize either one of those guns?

4 A The one on his chest.

5 Q Okay. I'm going to publish this to the jury.

6 State's Exhibit Number 11. Okay. The individual depicted in
7 that photograph, do you recognize him?

8 A Yes, sir.

9 Q Who is that individual?

10 A Austin Burke.

11 Q And the gun that's on his chest, is that the same gun
12 that you had previously seen Austin Taylor Burke with?

13 A Yes, sir.

14 Q It's the same one I showed you here as State's
15 Exhibit 1?

16 A Yes.

17 Q Okay. The person that you've talked to, who told you
18 that he killed Brandon and made him get on his knees because
19 of an incident at DYS that he had with him?

20 A Yes.

21 Q And who told you that he left the car on the bike
22 path and who is depicted in that picture, do you see him here
23 in the courtroom today?

1 A Yes, sir.

2 Q Could you please point to him?

3 A (Witness indicates.)

4 MR. BECKER: Okay. Please allow the record
5 to reflect she has identified the defendant.

6 I have no further questions, Your Honor.

7 THE COURT: Cross.

8 MR. OLSON: Thank you, Your Honor.

9 CROSS EXAMINATION

10 BY MR. OLSON:

11 Q Good morning, Miss Simms.

12 A Good morning.

13 Q Miss Simms, you indicated that you are dating Hayle
14 Roupe?

15 A Yes.

16 Q Is that correct?

17 A Yes, sir.

18 Q And that is Rickey Roupe's cousin?

19 A Yes, sir.

20 Q And Pam Roupe's granddaughter?

21 A Yeah.

22 Q Okay. When did you begin dating Hayle?

23 A Two years ago.

1 Q So in 2016?

2 A Yes.

3 Q And it was at that time that you began going over Pam
4 Roupe's house; is that correct?

5 A Yes.

6 Q And when you'd go to Pam Roupe's house, you wouldn't
7 go alone? You'd always go with Hayle?

8 A Yes, sir.

9 Q And the people that were at Pam Roupe's house, you
10 had also -- Hayle would have met the same people you did; is
11 that correct?

12 A Yes.

13 Q And now you indicated here today that you became
14 familiar with Austin Burke a couple months before June 11th;
15 is that correct?

16 A Yes, sir.

17 Q So you're telling us today that you met him
18 approximately April of 2017?

19 A Somewhere around there, yeah.

20 Q Okay. And he would come over regularly?

21 A Yeah. He was staying with Rickey for awhile.

22 Q Okay. And again, when you would go over, Hayle would
23 be with you?

1 A Yes.

2 Q So she would have met Austin as well back in April of
3 2017?

4 A Not exactly sure if it was April. But it was a
5 little before June, yes.

6 Q A little before June?

7 A Yes.

8 Q So to say that you met Austin on June 11th, that
9 would be inaccurate? It would be false?

10 A No. I didn't just meet him on June 11th. I knew him
11 prior to then.

12 Q And Hayle saying that she met him on August 11th,
13 that would be false as well?

14 A You say August 11th?

15 Q Or excuse me. June 11th. That would be false?

16 A No. Yeah, we knew him prior to June 11th.

17 Q All right. Now, do you recall meeting with Detective
18 Greaver on June 18th of 2017; is that correct?

19 A Yes.

20 Q And when you went there, did you tell Detective
21 Greaver that you were hanging out at Pam Roupe's house at
22 approximately 10:00 on Sunday morning?

23 A Yes, sir.

1 Q Okay. Now, today you came in here and you told this
2 jury that Austin was there on Saturday, June 9th, and began
3 talking about how he was going to rob Brandon Sample; is that
4 correct?

5 A Yes.

6 Q Okay. But when you went and met with Detective
7 Greaver you actually stated that he told you that morning that
8 he was going to rob Brandon Sample; is that correct?

9 A No, I didn't.

10 Q You didn't tell him that?

11 A No.

12 Q Okay. So when we go back and we ask Detective
13 Greaver about your interview and question him about that
14 interview, he's going to say that that conversation never
15 happened?

16 A No. When I went to him, I went to him -- I went to
17 the police station, actually. And then after the police
18 station is when he had called and we had met with him to give
19 statements with him. Austin was talking about it -- he said
20 he had seen him and he was planning to do it. And when --
21 after he did it is when he came back -- well, actually, the
22 night before he went and did it is when he said he was gonna
23 go rob him.

1 Q So it's the night before now, not the day?

2 A Well, night. Day. Before.

3 Q Okay. And again, your indication when you talked to
4 Detective Greaver was you told him that you learned through
5 Hayle and Jess that Austin saw him when he was leaving Willow
6 Lake and he got picked up?

7 A That's what we were told.

8 Q Okay. And so you're saying that happened on
9 June 10th?

10 A No.

11 Q So it happened on June 11th?

12 A Whatever day he was at Willow. His mom swears he was
13 at Willow, but I was told he was picked up from Willow Lake.
14 I don't know the actual truth of how they came in contact with
15 each other. I just know that he had met up with him.

16 Q Okay. Did -- was Austin at Pam Roupe's house on
17 June 11th?

18 A Yes. That I recall.

19 Q What time was he there?

20 A He was there -- it was nighttime.

21 Q Do you recall what time?

22 A No, I don't.

23 Q But it was before he had left then? So obviously you

1 saw Austin?

2 A Yes.

3 Q Was he there with anybody?

4 A He -- before he met with Brandon or after?

5 Q At any -- was Brandon there?

6 A Yes. He had pulled in the driveway with Brandon in
7 the car, yes.

8 Q So you saw Brandon Sample that day?

9 A In the car, yes.

10 Q Now, you indicated that you had a bonfire that night;
11 is that correct?

12 A It was just a little fire.

13 Q A little fire in the backyard?

14 A Yes.

15 Q So anybody that said that there was no fire, that you
16 were all hanging out in the kitchen, that would be false?

17 A (Witness shakes head.)

18 Q No, it wouldn't be false?

19 A No. We would go from the fire to the kitchen.
20 That's just what we did when we were over there. We always
21 had fires and we'd hang out in the kitchen and we'd play
22 cards.

23 Q Prior to meeting with the police, did you talk to

1 Haley's cousin Makayla?

2 A Yes, sir.

3 Q And isn't it true that you told Makayla that Austin
4 had come back to Pam Roupe's house covered in blood admitting
5 that he shot Brandon Sample in the head?

6 A No, I did not tell Makayla that.

7 Q And did you tell Makayla that you personally
8 witnessed Austin being back at the house covered in this
9 blood?

10 A I never mentioned anything to Makayla about blood. I
11 guess I had spoken with Makayla about it, but never mentioned
12 blood to Makayla, no.

13 Q Okay. So if Makayla told that to police officers,
14 that you told her that, she would have been lying?

15 A Yes. Because I never physically seen him covered in
16 blood.

17 Q Now, you're also indicating that on June 11th when
18 you were hanging out at Pam Roupe's house you saw that firearm
19 that continues to be put up on the screen; is that correct?

20 A Yes.

21 Q And when you saw this, everybody else was around;
22 correct? Hayle was there, Nate was there, Rickey was there?

23 A Yes.

1 Q So they would have all seen it too?

2 A Yes.

3 Q Now, on Monday, June 12th, you indicated to the
4 police again that you had met back at Pam Roupe's house and
5 you, Rickey, Deidre, Hayle, and Austin were there; is that
6 correct?

7 A Yes.

8 Q And you indicated that Austin began talking about
9 things, about dropping the car off?

10 A Yes.

11 Q On the Niles bike path; is that correct?

12 A Yes, sir.

13 Q But you told police that initially you didn't put 2
14 and 2 together until you began reading reports; is that
15 correct?

16 A Yes.

17 Q So you began piecing all of this together and coming
18 up with your story after you read the reports that were being
19 published by the media; is that correct?

20 A No, sir. When he had came back and he was talking
21 about it, I didn't realize who it was at the time. When the
22 article had come out and it said Brandon's name in the car,
23 that is when I realized 2 and 2 and went to the police.

1 Q And you went to the police at 2:00 in the morning on
2 the 15th of June?

3 A Yes.

4 Q So three days after he supposedly told you that he
5 shot Brandon Sample --

6 A He didn't --

7 Q -- and dropped his car off at the Niles bike path?

8 A He did not say a name, no.

9 Q When did you learn that the car was dropped off at
10 the Niles bike path?

11 A I think it was the morning after he had came back.

12 Q So that Monday morning?

13 A Yes.

14 Q So now you're telling us that on Monday morning you
15 were at Pam Roupe's house again and Austin was there and
16 that's when he admitted to dropping the car off at the bike
17 path?

18 A Whatever day they found the car, it was the night
19 before. Because that is when we went to the police. And then
20 the police found the car the day after, the morning after.

21 Q So you went to the police and told them Austin's
22 story and then the police found the car?

23 A Yes. They found it the next morning.

1 Q So you're going to tell us that the police found the
2 car on June 16th because you went to them on the 15th; is that
3 correct?

4 A I'm pretty sure.

5 Q Did you tell the police that you spoke with Rickey
6 and Deidre and they informed you that on June 11th Austin came
7 back to the house, woke Rickey up and was covered in blood?

8 A Yes.

9 Q Now, again, your testimony here today was that Austin
10 took Brandon out to Hatchet Man Road, forced him out of the
11 car?

12 A Yes.

13 Q Is that correct?

14 A Yes.

15 Q Made him get on his knees; is that correct?

16 A Yes.

17 Q Put a gun to the front of his head?

18 A I'm not exactly sure where. He said two different
19 places.

20 Q Well -- so your initial statement was he looked at
21 him and said, "Fucking look at me"?

22 A Yes.

23 Q Is that correct?

1 A Yes.

2 Q So he had to look up at Austin while he was on his
3 knees; is that correct?

4 A Yes.

5 Q With a gun to his head?

6 A Yes.

7 Q And he shot him? And you said the first time he told
8 you he shot him one time behind the ear?

9 A Yes.

10 Q And then the other time he said he shot him in the
11 middle of the forehead --

12 A Yes.

13 Q -- and behind the ear. There was never a mention
14 about being shot in the back of the head; would you agree?

15 A Right here would be close to the back of the head,
16 yes.

17 Q How about in the middle of the back of the head?

18 A No.

19 MR. OLSON: May I have a moment, Your
20 Honor?

21 BY MR. OLSON:

22 Q Miss Simms, you indicated that on June 11th you saw
23 Brandon Sample in a car; is that correct?

- 1 A Yes.
- 2 Q What time was that?
- 3 A I couldn't -- I couldn't remember.
- 4 Q Was it daylight?
- 5 A No.
- 6 Q Was it night?
- 7 A It was night.
- 8 Q It was at night?
- 9 A Yes.
- 10 Q You left at midnight; correct? That's your testimony
11 here today, that you left --
- 12 A Yeah. I left.
- 13 Q -- Pam Roupe's house at midnight? So we know it was
14 before midnight. And you're indicating to us that he pulled
15 up?
- 16 A Yes.
- 17 Q In his white car?
- 18 A Yes.
- 19 Q How did you know it was Brandon?
- 20 A Because after the story had come out, it was his car.
21 He said he dropped the car off. It was the same day. I mean,
22 it's common sense.
- 23 Q Okay.

1 A Same white Malibu. Same kid. Glasses.

2 Q Did you -- are you able to approximate a time for us?
3 Was it shortly before you left?

4 A It was right about the time I was leaving because I
5 was getting into the car to leave.

6 Q So it was close to midnight?

7 A Yes.

8 Q Was there anybody else with him?

9 A With Austin?

10 Q With Brandon.

11 A Yeah. Austin.

12 Q Just those two?

13 A Yes.

14 MR. OLSON: No further questions.

15 THE COURT: Redirect.

16 MR. BECKER: Yeah.

17 REDIRECT EXAMINATION

18 BY MR. BECKER:

19 Q Jessica, you could be off on your times; correct?

20 A Yes. It's been so long.

21 Q When these events were happening, you weren't writing
22 them down and saying, "Well, I better write this down that I
23 saw Austin Burke in a car at 12 midnight"?

1 A Right.

2 Q And, "Well, I'm leaving to take my sisters home.
3 It's 12 midnight." It could have been later? Could have been
4 1:00?

5 A Right.

6 Q It could have been anytime that night? You don't
7 recall?

8 A No. I just knew it was getting late and I had to
9 take them home.

10 Q Now, I know we talked a lot about dates and we may
11 have confused you with dates.

12 A Right.

13 Q The date that you saw Austin Burke and he was sort of
14 at the house all day at Niles?

15 A Uh-huh.

16 Q And I want to specifically ask you about that date.
17 But you had seen him occasionally before that?

18 A Yes.

19 Q Okay. You wouldn't say you were friends with him?

20 A No. Just --

21 Q You knew he had a relationship with --

22 A Makayla Egbert.

23 Q -- Makayla Egbert?

- 1 A Right.
- 2 Q And that's really all you kind of knew about him?
- 3 A Yes.
- 4 Q Now, the day the car was found was right after that?
- 5 Actually, the next morning. So you didn't go to the police
- 6 about the car until a couple days later; right?
- 7 A Yes.
- 8 Q All right. So you didn't lead the police to the car.
- 9 You knew the car had been found at that point?
- 10 A Yes.
- 11 Q So you were a little confused?
- 12 A Yeah.
- 13 Q You didn't go to the police and say, "Hey, he just
- 14 told us the car was on the bike path"? Because it had already
- 15 been found at that point?
- 16 A Yeah.
- 17 Q All right. So you're getting a little confused?
- 18 A Yeah.
- 19 Q But you did say after the car was found this
- 20 defendant told you he left it on the bike path; right?
- 21 A Yes.
- 22 Q And this defendant told you he killed Brandon Sample?
- 23 A Yes, sir.

1 Q And this defendant --

2 MR. HARTWIG: Objection, Your Honor.

3 Leading.

4 THE COURT: Sustained.

5 MR. BECKER: All right.

6 BY MR. BECKER:

7 Q After the car was found and before you went to the
8 police, what did this defendant tell you he did to Brandon
9 Sample?

10 MR. OLSON: Objection. Asked and answered.

11 THE COURT: Asked and answered.

12 MR. BECKER: Well, it's redirect.

13 THE COURT: Let's go on. Go to something
14 else.

15 MR. BECKER: Well, I'm trying to clarify
16 the time.

17 Can we approach?

18 (At sidebar:)

19 THE COURT: You asked her that exact
20 question on direct.

21 MR. BECKER: Yeah. Right. And he's got
22 her --

23 THE COURT: No.

1 MR. BECKER: Okay. Withdraw.

2 (End of sidebar.)

3 BY MR. BECKER:

4 Q Jessica, have you ever testified in court before?

5 A No, sir.

6 Q All right. You didn't keep a notebook of the events
7 that happened during this timeframe?

8 A No.

9 Q And you're trying to remember as best you can, nine
10 months later?

11 A Yes.

12 Q Suffice it to say, you're not lying?

13 A No, sir.

14 Q There was no reward money given to you?

15 A No, sir.

16 Q You didn't benefit in any way by going to the police?

17 A No, sir.

18 Q You didn't get citizen of Niles of the year or
19 anything like that?

20 A No, sir.

21 Q You got no benefit out of anything you said?

22 A No.

23 MR. BECKER: Thank you.

1 THE COURT: Recross.

2 MR. OLSON: Thank you, Your Honor.

3 REXCROSS EXAMINATION

4 BY MR. OLSON:

5 Q Miss Simms, you would agree with me that this is
6 several months later from when you went and made the
7 statement; is that correct?

8 A Yes.

9 Q So when you made the statements to the police, it
10 would have been freshest in your mind at that point in time?

11 A Yes.

12 Q And so if you would have told the police at that
13 point in time that you left at midnight because you had to get
14 your sisters home, that would be pretty accurate because it
15 was fresh in your mind then; is that correct?

16 A Yes.

17 Q I mean, you were able to look back a couple days and
18 see in your mind what time you had to get your sisters home,
19 get them into bed and everything else; is that correct?

20 A Yes.

21 Q And plus, you know, Hayle left with you too; is that
22 correct?

23 A Yes.

1 Q So she would have known and confirmed what time that
2 you left; is that correct?

3 A Yes.

4 Q You would agree with me that you never told the
5 police that you saw Brandon Sample that night; is that
6 correct?

7 THE COURT: What night?

8 MR. OLSON: I'm sorry, Your Honor. Thank
9 you.

10 BY MR. OLSON:

11 Q On the night -- on your interview, on June 18th, you
12 never told them that you saw Brandon on June 11th?

13 A I don't remember if I did or not. It's been so long.

14 MR. OLSON: Okay. No further questions.

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

16 Call your next witness.

17 MR. BECKER: Joann Gibb.

18 * * *

19 JOANN GIBB,

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

21 DIRECT EXAMINATION

22 BY MR. BECKER:

23 Q Joann, would you introduce yourself to the jury,

1 please?

2 A I am Joann Gibb. I'm a computer forensic specialist
3 with the Ohio Attorney General's Bureau of Criminal
4 Investigations.

5 Q And what are your duties at the Attorney General
6 Bureau of Criminal -- Bureau of Criminal Investigation?

7 A I perform forensic analysis on digital media. That
8 can be anything from cell phones to computers to cameras.
9 Anything that can contain digital memory.

10 Q And have you received any specialized training or
11 schooling to prepare you for the position that you work in?

12 A Yes. I have a degree of -- with information
13 technology with a minor in computer -- a minor in criminal
14 justice through Youngstown State University. And I have over
15 1,100 hours of training of computer and cell phone forensics.

16 Q And do you make it a part of your duties to analyze
17 cell phones?

18 A Yes, I do.

19 Q And have you previously testified as an expert
20 witness in any courtrooms here in the state of Ohio?

21 A Yes, I have.

22 Q And specifically, you have previously testified as an
23 expert here in Trumbull County; correct?

1 A Yes. Yes, I have.

2 MR. BECKER: All right. Your Honor, I'd
3 move at this point for admission of Miss Gibb as an expert in
4 the analysis of cell phones.

5 THE COURT: Any questions?

6 MR. OLSON: No objection.

7 MR. HARTWIG: No objection.

8 THE COURT: You will be considered an
9 expert. Proceed.

10 MR. BECKER: Thank you.

11 BY MR. BECKER:

12 Q I want to direct your attention to a case and a cell
13 phone that was presented to you by the Warren Police
14 Department back on July 26th of 2017 or roughly in that date.

15 Did you have a chance to be given a Samsung Galaxy
16 phone from the Warren Police Department?

17 A Yes.

18 Q All right. I'm going to hand you what's been marked
19 for purposes of identification as State's Exhibit Number 3 and
20 ask if you recognize State's Exhibit Number 3?

21 (Whereupon, State's Exhibit No. 3, Samsung
22 Phone, was introduced for identification.)

23 A Yes, I do. This was the second item submitted on

1 that case.

2 Q All right. And I'm going to have you open that up,
3 if you could. I'll give you a pair of scissors there.

4 A (Witness complies.)

5 Q Do you recognize that item?

6 A Yes, I do.

7 Q How do you recognize it?

8 A This was the phone that was submitted as item 2.
9 It's a Samsung Galaxy express phone. And it's model number
10 SM-J320A.

11 Q All right. And did you perform any analysis on that
12 phone?

13 A Yes, I did.

14 Q What exactly did you do with that phone?

15 A Initially I tried to acquire the device's memory
16 through a software called Cellebrite. Cellebrite would not
17 recognize this phone. So I ended up performing what's called
18 an in-system programming read where I actually solder wires on
19 the board of the phone and use specialized software in a
20 device to pull the memory and place the memory into a file.

21 Q Now, I'm going to take that item from you. And we'll
22 put this over here.

23 All right. So when you do that, what are some of the

1 things that you're doing when you examine that phone?

2 A I loaded the image file that came from this procedure
3 into Cellebrite's physical analyzer. Cellebrite's physical
4 analyzer software was able to produce text messages, call
5 history, it rebuilt the file system of the phone, and I was
6 able to pull off the artifacts that were found on that image.

7 Q And that's kind of what you do for a living?

8 A Yes.

9 Q All right. So with respect to that, first of all,
10 cell phones -- and even that cell phone -- have a tremendous
11 amount of data and information on them; correct?

12 A Correct.

13 Q Some of the items on those cell phones are just the
14 regular programming and the regular things that a cell phone
15 needs to do to operate, to call people, to text people, to do
16 those kind of things?

17 A Correct.

18 Q And then I assume that phone like other phones, the
19 person who owns that or controls it can download applications
20 or put other things on that phone?

21 A Correct.

22 Q And, again, those take up a tremendous amount of
23 memory?

1 A Correct.

2 Q So one of the things, though, that Cellebrite and
3 that program you use can do is extract -- we can look for,
4 say, certain times for text messages or phone calls; correct?

5 A Correct. We can sort by dates and times.

6 Q All right. I'm going to hand you what has been
7 marked for purpose of identification as State's Exhibit 47.
8 It's a one-page document. And do you recognize State's
9 Exhibit 47?

10 (Whereupon, State's Exhibit No. 47,
11 Extraction Report, was introduced for identification.)

12 A Yes. This is some data that was derived from the
13 memory of the device that I examined.

14 Q And this printout is a result of that program, that
15 Cellebrite program that you use to extract that from the
16 phone?

17 A Correct.

18 Q All right. First of all, can you tell us what's that
19 showing? Is that showing some phone calls and also -- or at
20 least one phone call and some text messages?

21 A Correct. These are phone calls and text messages,
22 SMS messages.

23 Q What is SMS?

1 A SMS stands for short message services. They're text
2 messages. They usually don't include media.

3 Q All right.

4 A Like pictures or audio or anything like that.

5 Q Okay. So those items on that page that are depicted
6 there, they indicate the phone number that they were sent from
7 or received from; correct?

8 A Correct. Sent to or received from.

9 Q All right. They also -- if the person who had that
10 phone put in, say, "Chris Becker" as the person receiving or
11 sending the message to, that would show up there; correct?

12 A The contact information, Cellebrite will match the
13 contact information to the phone number on here.

14 Q All right. And in this particular case, is there a
15 number matched to an individual that has a name?

16 A Yes.

17 Q And what is the name on that?

18 A The name appears to be "B Samps."

19 Q All right. "B Samps." Now, also, if you look on the
20 column down, I believe it's the right-hand side? Yeah, the
21 right-hand side, there's a box that says "deleted"?

22 A Correct.

23 Q And there are a whole bunch of -- is it Xs?

1 A The word "yes."

2 Q There's the word "yes"? Tell us how that comes
3 about.

4 A Cellebrite was able to recover -- these were deleted
5 text messages. And Cellebrite was able to recover these
6 deleted text messages.

7 Q So the fact that I have a cell phone and I were to
8 text Detective Greaver here and say, "John, meet me for lunch
9 at 12:00 today" and then later on I deleted it, there's the
10 possibility it's still on my phone; correct?

11 A Correct.

12 Q How does that work?

13 A It's a deleted algorithm within the program in your
14 phone. It may not have been written to the database yet. It
15 may be removed from the database but within the hex of the
16 database itself. There's multiple ways we can recover deleted
17 text messages.

18 Q All right. And that's what that program does;
19 correct?

20 A Correct.

21 Q And then there are some other messages that were not
22 deleted?

23 A Correct.

1 Q And I believe on that extraction report that you
2 have, there is one phone call; correct?

3 A Correct.

4 Q And is that an outgoing or incoming call?

5 A That's an outgoing phone call.

6 Q Does it say who it was made to or what number?

7 A It was to a person by the name of B Samps. Do you
8 want me to read the number?

9 Q Yeah.

10 A The phone number that it was made to was
11 1-330-770-3515.

12 Q And that means that Cellebrite has determined that
13 B Samps was called on that particular incident?

14 A Yes. This was on the call log of the phone.

15 Q And does it tell you what time and what date that
16 call was made?

17 A The date was 6-12 of 2017 at 1:18 a.m.

18 Q All right. Now, that is a fair and accurate copy of
19 the extraction report that you ran after you analyzed State's
20 Exhibit Number 3; correct?

21 A Yes. It's part of the extraction report.

22 Q That's part of it. You have many, many pages?

23 A Absolutely.

1 Q But we asked you specifically to find any contacts on
2 June 11th and June 12th between Brandon Sample, and we gave
3 you that phone number, and Austin Burke which is his phone.
4 That's where you got that from?

5 A Okay. Uh-huh.

6 Q Then there was some text messages that began again on
7 June 13th, I believe; correct?

8 A Correct.

9 Q Were those text messages deleted?

10 A No.

11 Q And that is indicated in that extraction report;
12 correct?

13 A Correct.

14 Q All right. So I'm going to publish this to the jury.
15 This is a fair and accurate copy of what you pulled out or
16 what the extraction report looks like?

17 A Yes.

18 Q Okay. I don't know if -- you might have to get off
19 the witness stand. I know these are kind of small. I don't
20 know if you can see this clearly or not.

21 So what you're saying is -- and if it's your
22 testimony, that from line 1 to line 13, these were all text
23 messages or what we call SMS messages?

1 A Yes.

2 Q There were some incoming and outgoing. So the person
3 who called or texted, this would be their number. And they
4 were incoming back and forth? And this is listed as "B Samps"
5 right here, the number; correct?

6 A Correct.

7 Q And this will tell us the date and time? These are
8 on June 11th. We're going to use sort of military time here.
9 This is like 10:00 at night which would be 22 whatever, 22
10 whatever, 22 whatever; correct?

11 A Correct.

12 Q And you actually are able to pull off Cellebrite the
13 actual conversation, the actual words; correct?

14 A Correct.

15 Q And these text messages went all the way down to line
16 11 which was on June 11th at about 10:23 p.m.; is that
17 correct?

18 A Correct.

19 Q And that was a message, outgoing, from that phone you
20 analyzed to B Samps?

21 A Correct.

22 Q All right. And all of these text messages on June
23 11th were deleted?

1 A Uh-huh.

2 Q But you were able to recover them even though they
3 were deleted?

4 A Correct.

5 Q And then on -- there's a call log. There was an
6 outgoing call from that phone, State's Exhibit 3, to B Samps;
7 is that correct?

8 A Yes.

9 Q And then there's no other conversation until
10 June 13th when there was an outgoing message from that phone,
11 State's Exhibit 3, to B Samps, and it said, "Yo, is you
12 straight nigga? You're all over Facebook. WTF. HMU."
13 Correct?

14 A Correct.

15 Q All right. And then there's another text message on
16 June 13th at about 12:35 where the person is asking him
17 basically have you overdosed? Has he died? Quit screwing
18 around. That kind of stuff. Those text messages, though,
19 weren't deleted; correct?

20 A Correct.

21 Q All right. Now, we also had you look for some other
22 phone messages for an individual named Brittani Merten. And I
23 believe you punched in her number. And I'm going to hand you

1 State's Exhibit 48 and see if you recognize State's Exhibit
2 48?

3 (Whereupon, State's Exhibit No. 48,
4 Extraction Report, was introduced for identification.)

5 A Yes, I do.

6 Q What is State's Exhibit 48?

7 A This is a report of the data recovered on item 2 with
8 conversations back and forth from Brittani.

9 Q And that's how it's listed and the contact is listed
10 in the phone, State's Exhibit 3, that you examined?

11 A Correct.

12 Q All right. And with particular attention to -- let
13 me make sure I have the right -- okay. Particularly on items
14 31 and I believe it's 37, do you see the text messages and
15 what was said?

16 A Item 31 was an outgoing text message stating, "See if
17 my clip for the 9MM is out there, bae." B-a-e-e.

18 Q And do you know what time -- I keep saying time, but
19 what date and time that text message was sent?

20 A Item 31 was an outgoing text sent on 6-12 of 2017 at
21 12:20 a.m.

22 Q All right. And that was from State's Exhibit 3, the
23 phone you analyzed, that information?

- 1 A Correct.
- 2 Q Okay. Then on the next page there is a line, I
3 believe it's line 37?
- 4 A Okay.
- 5 Q And what is line 37 saying?
- 6 A Line 37 is on outgoing SMS message that says, "Out in
7 N-i-l-e-w."
- 8 Q All right. And when I pull up the keyboard on my
9 cell phone, the "S" and the "W" are right above each other?
- 10 A The "S" and the "W"?
- 11 Q When I have my keyboard out.
- 12 A Oh, yes.
- 13 Q Okay. They're -- I think the "S" is above or below
14 the "W"?
- 15 A The "S" is below the "W".
- 16 Q The "S" is below the "W". Okay. Common typing
17 mistake or typo?
- 18 A Yes.
- 19 Q All right. And what time and what date -- what date
20 and what time was that text message sent?
- 21 A That text message was sent on 6-12 of 2017 at 2:08
22 a.m.
- 23 Q So at 2:08 a.m., whoever had State's Exhibit Number 3

1 texted to that Brittani that they were out in Nilew,
2 N-i-l-e-w?

3 A Correct.

4 Q All right. And that's a fair and accurate copy of
5 the extraction report from that; correct?

6 A Yes, sir.

7 Q Now, we also had you look at some photographs that
8 were recovered from that phone. And I'm going to hand you
9 what have been marked for purpose of identification as State's
10 Exhibits 11 and 13 and ask if you recognize those two items?

11 A Yes, I do.

12 Q How do you recognize State's Exhibits 11 and 13?

13 A These were two pictures found on the item two
14 submission. These were found within the extraction.

15 Q Okay. You refer to them as item two, but that's
16 BCI's item. For purposes here, we marked it as State's
17 Exhibit 3.

18 A Okay. State's Exhibit 3.

19 Q I don't want any confusion. But for your purposes,
20 it's item two?

21 A Correct.

22 Q And is there a numeric thing or something that you
23 can tell that those were taken off the phone and you've

1 compared them to?

2 A The file names are unique file names. And at the
3 bottom of the picture is the file path of where these pictures
4 existed on the device.

5 Q And you've confirmed that those, in fact, did come
6 off that phone? In fact, you created a flash drive or
7 created -- or copied a flash drive with that information and
8 provided it to us?

9 A Correct.

10 Q Okay. So let me publish these for the jury. I'm
11 going to show you what's been marked for purposes of
12 identification as State's Exhibit 11. And State's Exhibit
13 11 -- I'm trying to get to a point where we can see here.

14 You were talking about file numbers or file -- maybe
15 I'm not smart enough to figure out, but what were you
16 referring to?

17 A The file name at the top.

18 Q That's up here?

19 A Correct, the 497303 number.

20 Q Okay.

21 A That is the file name.

22 Q All right. And that file and this picture that we
23 printed out came from State's Exhibit Number 3?

1 A Correct.

2 Q Okay. And that's a fair and accurate copy of the
3 actual image that was on that phone?

4 A Correct.

5 Q All right. I'm going to show you what's been marked
6 for purposes of identification as State's Exhibit 13 and ask
7 if you recognize State's Exhibit Number 13? And, again, there
8 is a file number up here; is that correct?

9 A Correct.

10 Q And that number corresponds to a file in that phone?

11 A Correct.

12 Q And that is a fair and accurate picture of an image
13 that was saved on that phone?

14 A Correct.

15 MR. BECKER: Your Honor, I have no further
16 questions.

17 THE COURT: Cross.

18 MR. OLSON: Thank you, Your Honor.

19 CROSS EXAMINATION

20 BY MR. OLSON:

21 Q Good morning, Miss Gibb.

22 A Good morning.

23 Q Miss Gibb, I just want to go over a few things with

1 you.

2 Initially, you indicated that there was only one
3 phone call on the extraction report between the phone that you
4 checked and the number (330) 770-3515; is that correct?

5 A What was on that report, yes.

6 Q Okay. I'm going to show you what I've marked as
7 Defendant's Exhibit A. Miss Gibb, I'm going to show you
8 what's been marked as Defendant's Exhibit A. Is that a
9 document you're familiar with as you look at it?

10 A Yes. These are more artifacts from the Cellebrite
11 extraction report.

12 (Whereupon, Defendant's Exhibit A,
13 Extraction Report, was introduced for identification.)

14 Q And that's the extraction report that you completed;
15 is that correct?

16 A Correct.

17 Q Okay. I want you to go to the very last page of the
18 documents I just gave you.

19 A Yes, sir. I'm sorry. One more page.

20 Q Okay.

21 A Yes, sir.

22 Q Okay. And does that show phone calls?

23 A That shows an outgoing phone call, yes.

1 Q And, again, that's under a different time zone?
2 Because what time does that show?

3 A That shows UTC plus zero which is a different time
4 zone from what we are in now.

5 Q Do you know what the difference is?

6 A Yes.

7 Q It's four hours?

8 A Four hours.

9 Q Okay. So you have a phone -- outgoing phone call; is
10 that correct?

11 A Yes.

12 Q And that is to the B Samps number that was previously
13 identified?

14 A Yes.

15 Q Is there also a telephone call that's been
16 highlighted?

17 A Yes.

18 Q Okay. And where was that phone call? Was it
19 incoming or outgoing?

20 A That was incoming.

21 Q From what number?

22 A That was (330) 770-3515.

23 Q So the same number?

- 1 A Yes.
- 2 Q So we actually have two phone calls?
- 3 A Yes.
- 4 Q Okay. So the phone number that's identified as
5 B Samps actually made an incoming call to Austin Burke's
6 telephone at what time?
- 7 A That was at 12:26:17 a.m. UTC.
- 8 Q Which would be what our time?
- 9 A 8:26:17 a.m.
- 10 Q And what was the length of that call?
- 11 A Two seconds.
- 12 Q And in your experience, what is a two-second call?
13 Would that be consistent with, "Hey, send me your number."
14 Somebody calls and hangs up just so you have it?
- 15 A It's a quick call, yeah.
- 16 Q Two-second conversation?
- 17 A It's nothing.
- 18 Q You really aren't gonna exchange much.
19 We also heard about some of the messages that were
20 deleted between Mr. Burke and the name identified as B Samps;
21 is that correct?
- 22 A Yes.
- 23 Q Were any of those phone calls deleted?

- 1 A No.
- 2 Q So those remain there. Was the contact deleted?
- 3 A No.
- 4 Q So the contact remained on the phone?
- 5 A Yes.
- 6 Q You also identified some exchanges that went between
7 that phone and an individual by the name of Brittani; is that
8 correct?
- 9 A Yes.
- 10 Q And it asks about a clip for a 9MM on there?
- 11 A Yes.
- 12 Q Was that deleted?
- 13 A No.
- 14 Q We also looked at Exhibit 11 which showed pictures
15 with two guns on the guy's chest; is that correct?
- 16 A Yes.
- 17 Q Do you know when that was created?
- 18 A I really don't know.
- 19 Q Okay.
- 20 A I'd have to look it up.
- 21 Q You would agree with me that in this picture it's
22 showing two guns sitting on his chest with his left hand; is
23 that correct?

1 A Yes.

2 Q You would agree with me that there's no tattoos on
3 that hand?

4 A None that I can see.

5 Q Okay. And the later photograph, you're not sure when
6 that was created either?

7 A No, sir.

8 Q You do see tattoos --

9 A Yes.

10 Q -- on the left hand on this one?

11 A Yes, I do.

12 Q So it's safe to assume that the first picture,
13 Exhibit 11, was created much earlier in time than Exhibit 13?

14 A It appears to be, yes.

15 MR. OLSON: May I have one moment, Your
16 Honor?

17 THE COURT: You may.

18 BY MR. OLSON:

19 Q Just for clarity, again, on the incoming telephone
20 call to -- from the B Samp's number into the cell extraction?

21 A On this one?

22 Q Correct.

23 A Okay.

1 Q For us, can you clarify what date that was made?
2 That call.

3 A That was -- the date in the report is showing UTC
4 6-12-2017 at 12:26 a.m. Or I'm sorry, 12:26 -- yes, 12:26
5 a.m. So that would be the day before. Yes. That would be
6 the day before, 6-11-2017, at 8:26:17 a.m.

7 Q A.m. or p.m.?

8 A I'm sorry. P.m. Thank you.

9 Q Okay. And also in that extraction report, are you
10 able to identify whether B Samps was a contact before that
11 phone call?

12 A I don't understand the question, sir.

13 Q So when I have a phone and let's say that the
14 two-second phone call was to allow me to input that number,
15 I'd create a contact; is that correct?

16 A Uh-huh.

17 Q In my phone. Are you able to tell with that
18 extraction report when the contact was generated?

19 A Not from this one.

20 Q May I see this?

21 A Yes, sir.

22 MR. OLSON: May I approach the witness,
23 Your Honor?

1 THE COURT: You may.

2 BY MR. OLSON:

3 Q I want you to go to line number 13 on that report.

4 A (Witness complies.) On the timeline report?

5 Q Correct.

6 A Yes, sir.

7 Q What does that line 13 read?

8 A That shows a contact.

9 Q And what does that -- is that when the contact is
10 created?

11 A It appears to be.

12 Q Okay. And what time does that show?

13 A 6-12-17 at 5:19:46 a.m. UTC.

14 Q So right after the 1:00 telephone call, the 1:18
15 phone call that came in?

16 A Correct.

17 Q And again, that contact was generated after a phone
18 call comes in and was not deleted from the phone?

19 A Correct.

20 Q And the telephone call made at 1:18 a.m. was not
21 deleted from the phone?

22 A Correct.

23 MR. OLSON: No further questions.

1 THE COURT: Redirect.

2 REDIRECT EXAMINATION

3 BY MR. BECKER:

4 Q Well, let me ask you this. There was contact --
5 there was contact between that phone much prior to that
6 according to that report; correct?

7 A Correct.

8 Q Yeah. So there was text messages that were sent,
9 whether or not the contact was created or not, the name
10 "B Samps," there was contact between that 770 number and the
11 phone you analyzed much earlier than 1:18 on June 12th?

12 A Correct.

13 Q In fact, they were the deleted text messages that
14 were sent back and forth on June 11th?

15 A Correct.

16 Q And the fact that it was -- it says "B Samps" and you
17 say that was when it was created, he could have had it under a
18 different name then; correct? Possibly?

19 A Yeah. I don't know. I'd have to look at the
20 contacts to see what number.

21 Q But definitely someone who was texting that number
22 had the number beforehand?

23 A Correct.

1 Q And one of those text messages on State's
2 Exhibit 47 -- is that 47?

3 A Yes.

4 Q 47, one of those that was deleted says, "What's up
5 G"; right?

6 A It says, "W-a-s-s-g-u-u-d, Wassguud?"

7 Q All right. The text?

8 A Correct.

9 Q And that was to the outgoing phone which, regardless
10 of when it was determined to be "B Samps," that number was
11 already being used by that phone; correct?

12 A Correct.

13 Q And the response was what?

14 A Incoming, two minutes later, it reads -- do you want
15 me to read the message?

16 Q Yes.

17 A "Shit, just at this chick's house swimmin. I'm gonna
18 have to take J White back to Akron in a bit but do you still
19 want to link up when I get back?"

20 Q And was there a response to that text message?

21 A There was another incoming message and then an
22 outgoing message at 22:06 saying, "Hell yeah. LMK bro. I
23 never sleep. LOL."

1 Q And then there's another message?

2 A An incoming message right after that. "Ha ha man.
3 If I don't sleep I legit hallucinate. Literally just happened
4 last weekend but word bro it'll probably be like 12:30 or
5 something. You said you'd be at your dad's?"

6 Q And then there's another response?

7 A Outgoing. "Damn. Ha ha. That's crazy. I'll be in
8 Warren on the west side." S-i-d-s.

9 Q And what time was that?

10 A That was at 22:03.

11 Q And regardless of whether it was connected to a
12 contact or not, those conversations occurred long before he
13 talked to you about that contact being created?

14 A It was prior to that.

15 Q Yeah.

16 A To the report, correct.

17 Q Those conversations are prior to that?

18 A Correct.

19 Q All right. And those conversations were the ones
20 that were deleted?

21 A Correct.

22 Q All right. And some others as well; correct?

23 A Correct.

1 MR. BECKER: All right. Thank you.

2 THE COURT: Recross.

3 MR. OLSON: Thank you, Your Honor.

4 RECROSS EXAMINATION

5 BY MR. OLSON:

6 Q Going back to Exhibit A.

7 A I don't know where I'm at now.

8 Q Okay.

9 A Sorry.

10 Q That's okay.

11 A Okay.

12 Q This is Exhibit A.

13 A Thank you.

14 Q Okay. So we just went over numerous text messages
15 that were sent between phones; is that correct?

16 A Correct.

17 Q And that would be identified as line number one on
18 those reports; is that correct?

19 A Line number one?

20 Q Is there -- open up the -- go to I believe the third
21 page.

22 A (Witness complies.) Yes.

23 Q Okay. So line number one starts text messages; is

1 that correct?

2 A Yes, sir.

3 Q And that's that "What's good? What's happening?
4 What's up G"?

5 A Correct.

6 Q What time was that text message sent?

7 A On this report it's showing 6-12-17 at 2:01:40 a.m.
8 UTC.

9 Q Which would be what our time?

10 A That would be -- well, this one is, "What up
11 gangster?" This one is -- that would be 10:01 a.m.

12 Q Okay. So the first text message that comes in from
13 that phone number that's identified as "B Samps" later on is
14 at 10:01 p.m.?

15 A Correct.

16 Q The phone call that was two seconds long came in at
17 what time?

18 A Phone call, two seconds long --

19 Q That was the very last page.

20 A The last page.

21 Q Yes.

22 A Okay. Thank you. The two-second-long incoming phone
23 call was at -- on 6-12-2017 at 12:26 a.m. UTC, which would be

1 10:26 a.m.

2 Q 10:26 or 8:26?

3 A I'm sorry. 8:26.

4 Q So at 8:26 we have a two-second phone call?

5 A Yes, sir.

6 Q Two hours later is the first text message that you
7 uncover between those two numbers in this entire extraction
8 report; is that correct?

9 A I'd have to look at the entire extraction report to
10 state on that. This is on this -- this is like an individual.

11 Q Okay. The one that the prosecutor gave you, which
12 was identified as Prosecutor's Exhibit 48; correct? Does that
13 have messages as well?

14 A No. This is the Brittani messages. This is the one.

15 Q Oh, okay. I'm sorry. And that is 47?

16 A Yes.

17 Q And that one that they gave you that shows messages
18 between the number identified as B Samp's and the phone that
19 you did the extraction report on, again, that was the same
20 time, 10:01?

21 A Correct.

22 Q So we know, based upon what they're presenting you,
23 the two-second phone call occurred prior in time to the text

1 messages being sent?

2 A Correct.

3 Q Two hours earlier?

4 A Correct.

5 MR. OLSON: Thank you. No further
6 questions.

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

8 Ladies and Gentlemen, we're to the luncheon break.
9 We'll take one hour. We'll come back at about five after 1.
10 Do not discuss this case among yourselves, nor with anyone
11 else. Do not form or express an opinion. See you a little
12 after 1.

13 (Whereupon, a recess was had commencing at
14 12:10 p.m. and concluding at 1:15 p.m.)

15 THE COURT: Mr. Becker, you may call your
16 next witness.

17 MR. BECKER: Thank you, Your Honor.

18 The state would call Tim Cook.

19 * * *

20 TIMOTHY COOK,

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

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BY MR. BECKER:

MR. BECKER: Your Honor, this witness would prefer not to be photographed.

THE COURT: All right.

BY MR. BECKER:

Q All right. Would you please state your name for the record?

A Timothy Cook.

Q And how old are you?

A 33.

Q All right. You have been in trouble with the law; correct?

A Uh-huh.

Q Okay. What have you been in trouble with?

A Numerous things.

Q You've been to prison?

A Uh-huh.

Q Mr. Cook, you were in jail in June and July of 2017; is that correct?

A Yes, sir.

Q And you were here in the Trumbull County Jail across the street?

1 A Yes, sir.

2 Q While you were in jail, were you in jail with an
3 individual that you knew as Austin Taylor Burke?

4 A Yes, sir.

5 Q And was there a time when you overheard Austin Taylor
6 Burke talking about his case with other inmates?

7 A Yes, sir.

8 Q And were you able to overhear what Austin Taylor
9 Burke said about his case?

10 A Yes. He said, you know, he shot him, it didn't seem
11 real because there wasn't that much blood. But he said he did
12 it. Just kind of a messed up thing to hear.

13 Q All right. And at some point after that, did you
14 contact the Warren Police with that information?

15 A Uh-huh.

16 Q And you gave a statement to this detective as to what
17 you heard?

18 A Yes, sir.

19 Q And did you get any benefit from giving that
20 statement?

21 A No, sir.

22 Q Did you want to get a benefit?

23 A Definitely did.

1 Q All right. And you didn't get any charges dropped;
2 you weren't released from jail, you got no reduced sentence or
3 anything; right?

4 A No, sir.

5 Q The individual who you overheard saying he shot
6 somebody in the head -- is that where he said he shot him at?

7 A Uh-huh.

8 Q Is he here in the courtroom today?

9 A Yes, sir.

10 Q Can you please point to him?

11 A (Witness indicates.)

12 MR. BECKER: Let the record reflect he's
13 identified Austin Taylor Burke.

14 Thank you.

15 THE COURT: Cross?

16 MR. HARTWIG: Thank you, Your Honor.

17 CROSS EXAMINATION

18 BY MR. HARTWIG:

19 Q Mr. Cook, you've got convictions for breaking and
20 entering; correct?

21 A Yes, sir.

22 Q Aggravated possession of drugs; correct?

23 A Yes, sir.

1 Q Felonies that lead you to the penitentiary?

2 A Uh-huh.

3 Q Yes?

4 A Yes.

5 Q And at the time that you were in the Trumbull County
6 Jail on this, you were in for a pending felony; correct?

7 A Yes, sir.

8 Q All right. And isn't it true that that pending
9 felony was for stealing from your grandmother?

10 A No.

11 Q No. What was the charge?

12 A It was a breaking and entering charge on my own
13 house. It got dismissed.

14 Q All right. And you just happened to be around
15 Mr. Burke?

16 A Yes, sir. I was laying in the stack of bunks. I was
17 dope sick because I'm a recovering drug addict and overheard
18 it.

19 Q All right. So you just thought, hey, maybe I can get
20 some benefit out of this?

21 A Right. Yes, sir.

22 Q They call you a snitch when you do that kind of
23 thing; right? Isn't that kind of the common term?

1 A Yeah.

2 Q Snitching?

3 A Yeah.

4 Q And if you snitch, whether you make something up or
5 you say you heard something, you try to get a benefit? That's
6 what you tried to do; correct?

7 A Yes, sir.

8 Q All right. And when they didn't give it to you, you
9 just had such a good conscious --

10 A No, sir. I was forced to come here today.

11 MR. HARTWIG: Okay. No further questions.

12 THE COURT: All right. Redirect.

13 MR. BECKER: No, Your Honor.

14 THE COURT: All right. You're excused.

15 Call your next witness.

16 MR. BECKER: State would call William
17 Moskal.

18 * * *

19 WILLIAM MOSKAL,

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

21 DIRECT EXAMINATION

22 BY MR. BECKER:

23 Q All right. Would you state your name for the record?

- 1 A Yes. William Moskal.
- 2 Q Where are you employed at?
- 3 A Ohio Attorney General's Office.
- 4 Q And what is your occupation there?
- 5 A Criminal intelligence analyst.
- 6 Q Mr. Moskal, what are the duties that you perform at
7 BCI in that capacity?
- 8 A It's a wide range of things. We conduct financial
9 analysis, phone analysis, we locate suspects, victims,
10 witnesses of crimes. They typically call it subject workups.
11 And along with quite a few other things. So I'd be here all
12 day telling you every little bit that we do.
- 13 Q Okay. So you do a lot of that?
- 14 A Yes, sir.
- 15 Q Okay. I might have you just pull that microphone a
16 little bit closer to you.
- 17 So Mr. Moskal, how long have you been employed there?
- 18 A Since 2012.
- 19 Q And you, as part of your duties, conduct what's
20 called cell site mapping?
- 21 A Yes, sir.
- 22 Q What is cell site mapping?
- 23 A It's taking information from cellular companies and

1 mapping the towers that are associated with phone calls and
2 texts.

3 Q And how are you able to do that?

4 A Several ways. You can manually put the latitude and
5 longitude in, or you could use software that we have, it's
6 called Pen-Link, that automatically locates those cell phone
7 towers for you.

8 Q All right. And so if we were to get records from
9 someone's phone -- and we have to subpoena that? It's not
10 something that's normally on your bill; right?

11 A Correct.

12 Q So we have to subpoena the phone company and that
13 phone company will give us information showing cell tower
14 usage. We're not talking about the actual phone itself.
15 We're talking about the cell phone towers that were used by
16 that number?

17 A That's correct, yes.

18 Q And then you take that information and you basically
19 just put it on a map?

20 A Correct, yes.

21 Q Okay. And you can give us a general idea of cell
22 phone tower usage for a particular phone at a particular time
23 based upon the cell phone company's records that we've given

1 you?

2 A Yes.

3 Q Okay. Were you required to do that or asked to do
4 that here in a case here in Warren, Ohio?

5 A Yes, I was asked to do that.

6 Q For Detective John Greaver of the Warren Police
7 Department?

8 A Yes, sir.

9 Q And you have generated a report -- and actually it's
10 two reports, I guess, for purposes of this case. I'm going to
11 hand you what has been marked for purposes of identification
12 as State's Exhibit 50 and State's Exhibit 51 and ask if you
13 recognize State's Exhibit 50 and 51?

14 (Whereupon, State's Exhibits 50-51, Phone Call Analysis
15 Reports, were introduced for identification.)

16 A Yes, I do.

17 Q All right. What are State's Exhibits 50 and 51?

18 A These are phone call analysis reports that we do at
19 BCI.

20 Q All right. And they were done specifically in this
21 case with information that Detective Greaver provided you;
22 correct?

23 A Yes, sir.

1 Q All right. I'm going to hand you what has been
2 marked for purposes of identification as State's Exhibit 22.
3 And if you could, I would look at State's Exhibit 22.

4 (Whereupon, State's Exhibit 22, Cell Phone Records, was
5 introduced for identification.)

6 A Yes. These look like cell phone records from AT&T to
7 me.

8 Q All right. And those are the cell phone records that
9 you used to compile your data in State's Exhibits 50 and 51?

10 A Yes, sir.

11 Q All right. And we asked you to narrow down the
12 timeframe. We didn't ask you put in -- we didn't ask you to
13 put in all of those records onto a map; we narrowed it down to
14 timeframe; correct?

15 A Yes, sir.

16 Q So explain to the jury, then, what State's
17 Exhibits 50 and 51 are. What is the difference between the
18 data or the mapping used to make those two items?

19 A Okay. Exhibit Number 50 is an AT&T -- it's called a
20 NELOS report. And what AT&T does, they gather information on
21 your phone, whether you're using it or not, of locations of
22 where you've been for their network distribution such as more
23 towers if they want to put more towers in certain locations.

1 It has nothing to do with phone calls. It has just data
2 records that they like to keep.

3 Q Okay. And what is State's Exhibit 51 then?

4 A 51 are actually phone calls that have been recorded
5 and -- which would give you the date and time, location, the
6 tower that was used, how long the call was, who they called,
7 along with the location of the towers and just a few other
8 bits of information for their network capabilities.

9 Q And would that include text messages as well?

10 A Yes, sir.

11 Q All right. So to clarify or to summarize, State's
12 Exhibit 50 is just where the phone would be pinging? And
13 that's sort of randomly; sometimes it pings more than once or
14 twice a minute, sometimes it doesn't ping for 5, 10 minutes,
15 20 minutes at a time?

16 A That all depends on the company itself when they do
17 it. But, yes, it's random.

18 Q Okay. So it's just sort of random information just
19 so they know what usage and where they might be?

20 A Uh-huh.

21 Q The other one, State's Exhibit 51, is actually usage
22 and what towers were being using during those times; correct?

23 A Yes, sir.

1 Q Okay. So with respect to State's Exhibit 51 -- I'm
2 sorry, 50 -- I have put a tab in there starting at a time and
3 just tell me, do you recognize those pages and what you did?

4 A Yes, I do recognize these. These are geolocation
5 historical data collected by the cell phone company.

6 Q And you basically took the information that was
7 collected from that State's Exhibit 22, I believe, the phone
8 records, and just put it on a map?

9 A That's right.

10 Q And we gave you locations of where certain things
11 were important to this case such as on your map you have 713
12 Mason Street in Niles, Ohio; correct?

13 A Correct.

14 Q You also have a location on a bike path in Niles
15 where a vehicle was located?

16 A Yes.

17 Q You also have the location of where a body was found?

18 A Yes, sir.

19 Q And you have the location of where Austin Taylor
20 Burke lived?

21 A Yes, sir.

22 Q All right. So you basically have four locations.
23 You just sort of drop a pin on there and then you created

1 these maps using the information the phone company provided us
2 and you just put it on a map?

3 A Yes, sir.

4 Q All right. So let's start with that first page. And
5 you put a box every time -- now this is the -- this is the
6 exhibit that is keeping track of what we call the pings?

7 A Correct.

8 Q Okay. And you basically put these on a map, showed
9 the tower and then you have a green circle. What's the
10 significance of the green circle?

11 A That is the radius that the cell phone company would
12 give you.

13 Q Okay.

14 A And determining roughly -- it's an estimate of where
15 that phone may be in that area.

16 Q All right. Did you also then superimpose a box onto
17 the map showing the usage, the time, the date and that type of
18 information?

19 A It has some information, yes.

20 Q Okay. And you know the phone number that we were
21 using; correct?

22 A Yes.

23 Q You looked at it. What was the phone number that was

1 used for your data?

2 A (330) 891-7261.

3 Q All right. And I'm going to ask you to look again at
4 State's Exhibit 22 and tell me if that is the subscriber or is
5 that the information for the phone number you just read?

6 A Yes, sir, it is.

7 Q And that was obtained from AT&T?

8 A Yes, sir.

9 Q And does it say who the subscriber of that phone
10 number you just gave -- what was it, (330) 891 --

11 A -- 7261, yes.

12 Q Does it say who the subscriber is?

13 A Yes. The name is Austin Burke.

14 Q All right. So I'm going to show you -- and I hope
15 you can see this on the board. If I could have State's
16 Exhibit 50. So let's start with State's Exhibit 51. I'm
17 going to show you -- these are the pings for 891 --
18 (330) 891-7261. And this is at about 5:33 a.m. on June 12th.
19 And can you -- let me see if I can brighten this up. All
20 right. So can you see the information that we asked you to
21 provide on that phone?

22 A I see a target number.

23 Q Hold on. Is that a little bit better? If you have

1 to step off the witness stand --

2 A I can see it now, thanks.

3 Q Okay. All right. So the green area that you've
4 determined, what's the significance of that green circle?

5 A In the center of it would be where the tower is
6 located.

7 Q All right.

8 A And then going out from there is the radius that the
9 cell phone company provides to you, the possibility of the
10 handset being --

11 Q And we have the date, the time. Now there's no
12 number dialed because these are what we call the pings?

13 A That's correct.

14 Q All right. And this location shows us -- I know
15 you're not familiar with Trumbull County, but this looks like
16 the bottom of Mosquito Lake, it's in Cortland, on the right
17 here, Champion Heights?

18 A Yes.

19 Q And you dropped the pins down at the bottom where it
20 says "victim's car and 713 Mason Street"?

21 A Correct, yes.

22 Q All right. And there's another pin to the north of
23 there that is the address that we gave you showing where the

1 defendant lived?

2 A Yes.

3 Q And I'm going to pull this down a little bit. And
4 then there's a -- there's a location that says "body
5 location"?

6 A Yes.

7 Q We gave you that information and the coordinates
8 where that was?

9 A Yes, sir.

10 Q Okay. So there's a series of pings that you took
11 from that phone. I'll try and get the color back. So now
12 we're looking at another ping. Can you tell us when that ping
13 occurred and where the location is?

14 A The --

15 Q The date and time. If you can't see it, by all
16 means --

17 A Yeah. No, the date and time is going to be 6-12-17
18 at 3:35 a.m.

19 Q All right.

20 A And then it gives the beginning location, which is
21 the lat and long of the tower.

22 Q All right. And the lat and long is what you're
23 referring to as latitude and longitude?

1 A Yes, sir. Yes.

2 Q Okay. I believe these pings are in chronological
3 order. Here is another one with a very, very, very small
4 circle on that; correct?

5 A Yes.

6 Q Can you point that out where the small circle was for
7 this tower?

8 A Yeah. It's right here.

9 Q And I believe that's just a little bit south of
10 Route 82 and State Route 5?

11 A Yes.

12 Q According to that map?

13 A Yes.

14 Q I'll put another page on there. And what date and
15 time was that located at?

16 A 5-12-17 at 5:41 a.m.

17 Q A.m.?

18 A Yes.

19 Q That's June 12th again?

20 A Yes.

21 Q And now I'll put the next page up. And can you see
22 where that location is?

23 A Yes. It's right here.

1 Q And on that map, or I'm sorry, on that longitude and
2 latitude information, what time and date -- what date and time
3 was that ping recorded?

4 A 6-12-17 at 5:44 a.m.

5 Q All right. The next page, do you see that?

6 A Yes, sir.

7 Q All right. And what is the date and time on that
8 ping?

9 A 6-12-17, 5:45 a.m.

10 Q And you would agree with me that these last few pings
11 have been moving from a northerly to a southerly direction if
12 north is at the top of the page?

13 A Yes.

14 Q All right. The next ping?

15 A 6-12-17 at 9:57 a.m.

16 Q And is that ping, at that time, on June 12th at --
17 what time is that?

18 A 9:57.

19 Q 9:57 in the morning. Is that relatively close to
20 where you have marked the victim's car?

21 A Yes.

22 Q And is it within -- and within that circle, is there
23 a street called 713 Mason Street?

1 A It appears to be, yes.

2 Q Okay. Now there's another photograph. And can you
3 tell me the date and time of that ping?

4 A 6-12-17 at 10:57 a.m.

5 Q And, again, located within that cell phone tower
6 usage that was provided by AT&T, using their longitude and
7 latitude and the information they provided, located within
8 that circle, do you see where the victim's car was located?

9 A Yes, sir.

10 Q And do you see the pin where 713 Mason Street is
11 located?

12 A Yes, sir.

13 Q All right. And 713 Mason, when you put it into
14 Google Earth, it just tells you where it is; right?

15 A Correct.

16 Q Do all of those photographs fairly and accurately
17 depict the map that you created based on AT&T's latitude and
18 longitude records that were subpoenaed and given to you in
19 State's Exhibit 22?

20 A Yes.

21 Q All right. Now I'm going to show you State's
22 Exhibit 51. And just to refresh the jury, State's Exhibit 51
23 is mapping you did in reference to calls or text messages that

1 were made; correct?

2 A Correct.

3 Q And that's the -- what we call the AU report?

4 A That's what AT&T refers to them.

5 Q AT&T refers to it. I'm sorry. I'm going to start,
6 first of all, with the time. All right. And is there a way
7 to tell whether this was a call or a dialed number or you just
8 know it was dialed you can't tell whether it was a text or
9 phone call?

10 A Not by this, no, I don't.

11 Q So we just know there was a text or a call made and
12 we have the number that was used; correct?

13 A Correct.

14 Q And these are from the official records at AT&T?

15 This, again, came from AT&T, Exhibit 22?

16 A Correct. Yes.

17 Q What time -- what date and time was the tower used in
18 this phone call -- or I mean in this action?

19 A 6-12-17 at 2:08 a.m.

20 Q And is that tower being used there? Can you see what
21 city that's in?

22 A That looks like it's near Niles.

23 Q And is it within the radius or usage of where 713

1 Mason Street would be?

2 A Appears to be, yes.

3 Q And where the vehicle was found?

4 A Yes.

5 Q All right. I will put on the next photograph or the
6 next usage which was either a text or a phone call. Again,
7 can you see the date and the time?

8 A Yes, I can.

9 Q And what was the date and time that AT&T provided to
10 you to create this map?

11 A 6-12-17 at 2:08 a.m.

12 Q And there is the number that was dialed?

13 A Yes. The number and the number dialed also.

14 Q And, again, do you see the usage, the cell phone
15 tower usage is 713 Mason Street, Niles, Ohio included within
16 that cell phone tower usage area?

17 A Yes.

18 Q And by the way, these are all from these phone
19 records which you've described as (330) 891-7261?

20 A Yes.

21 Q Yes. And that was the phone that you previously
22 testified was assigned to Austin Burke?

23 A Yes.

1 Q Was the subscriber?

2 A Yes.

3 Q What date and time are we looking at here?

4 A 6-12-17, 2:09 a.m.

5 Q And, again, is that cell phone tower usage, is 713
6 Mason street, Niles, Ohio included in that area?

7 A Yes.

8 Q All right. I'm going to show you this page of
9 Exhibit -- State's Exhibit 51. Do you see the date and the
10 time?

11 A Yes.

12 Q Okay. And what is the date and time for this usage?

13 A 6-12-17, 2:29 a.m.

14 Q Okay. And let me ask you. The pings had circles on
15 them, that report; is that correct?

16 A Yes.

17 Q These have sort of pie-shaped pieces. Why is that?

18 A The NELOS report, the historical ping locations, just
19 gives you a radius. So it's an encompassed circle of
20 somewhere within that circle.

21 This is actually a tower and a sector that's given by
22 AT&T. So a tower is broken down typically into three sides,
23 and this is what side AT&T is saying was used on that tower.

- 1 Q According to their own records?
- 2 A Yes.
- 3 Q Okay. So you have a cell phone tower -- the first
4 document I showed you just short of showed all three of those
5 sides?
- 6 A Yes.
- 7 Q The phone or text messages which we're looking at now
8 just show you that one-third pie shape?
- 9 A Yes, sir.
- 10 Q All right. Now I'm going to show you another page
11 from your report, State's Exhibit 51; do you see that?
- 12 A Yes.
- 13 Q And can you tell us the date and time on that?
- 14 A 6-12-17, 3:07 a.m.
- 15 Q And, again, is 713 Mason Street, Niles, Ohio within
16 that coverage area?
- 17 A It appears to be, yes.
- 18 Q Can you tell us this location -- or I'm sorry -- the
19 date and time on this location?
- 20 A 6-12-17, 3:07 a.m.
- 21 Q And, again, is 713 Mason Street within that coverage
22 area?
- 23 A Yes.

1 Q Now I'm going to have you look at this location. Now
2 do you see usage from that phone in a different location?

3 A Yes.

4 Q And what date and time are we talking about here?

5 A 6-12-13 at 3:46 a.m.

6 Q And the location now is not Mason Street, and it's
7 also not where the location of the car was?

8 A Correct.

9 Q All right. Now the next usage we have, can you tell
10 me the date and time of that usage?

11 A 6-12-17 at 5:14 a.m.

12 Q And although we are not in the location of where the
13 body was found, you would agree that that's a lot closer than
14 where we were with the cell phone towers at 713 Mason Street?

15 A Correct.

16 Q All right. And from that point on, there were a
17 number of calls. And I'm not going to publish them all to the
18 jury, but there were a number of calls continued to be made in
19 that area?

20 A Yes.

21 Q And we know eventually, though, because you've
22 previously testified as to the pings, that that handset was
23 then pinging at, you said I think about 9:50 in the morning

1 back in the Niles area?

2 A I believe so. I'd have to look again.

3 Q If I -- if I had you review that, State's
4 Exhibit 51 -- or I'm sorry, State's Exhibit 50. Yeah. These
5 two right here. That one and the next one.

6 A Okay.

7 Q So you would agree that the ping for that same phone
8 number was made at what time?

9 A 9:57 and 10:57 I'm looking at.

10 Q And that would have been back down in the area where
11 713 Niles was?

12 A Correct, yes.

13 Q Okay. All right. Do these records fairly and
14 actually depict the information that you posted into the
15 mapping program?

16 A Yes.

17 Q And the originals are in your file and you have
18 those?

19 A Yes.

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

22 THE COURT: Cross.

23 MR. OLSON: Thank you, Your Honor.

CROSS EXAMINATION

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BY MR. OLSON:

Q Good afternoon, sir.

A Hello.

Q Is it Detective Moskal, Mr. Moskal?

A Bill is fine with me.

Q Bill. Okay, Bill. We just went over your analysis that you performed. When did you get this analysis to -- or the assignment?

A Few months ago. I don't remember the exact date.

Q Okay. It wasn't back in June? It was later on?

A Yes.

Q Like closer to today?

A Yeah, a few months ago.

Q Okay. And that was on the request of Detective Greaver?

A Yes, sir.

Q Had there been any other requests prior to that to do this and you were just too busy or weren't able to get around to it?

A No.

Q Okay. And you would agree with me that the only phone number that you did this for was the one that we are now

1 looking at -- right now, the (330) 891-7261; is that correct?

2 A Yes.

3 Q They could have submitted multiple people and you
4 could have done the same type of analysis; is that correct?

5 A Yes.

6 Q Okay. And I just want to go over -- okay. So we
7 have the ping and we have the almost -- is it called
8 triangulation? Is that --

9 A No. That would be a way to find a tower. These are
10 just cell phone towers that the handset used to connect with.

11 Q Okay.

12 A So it's just -- Report AU is what AT&T calls it.

13 Q So when you issued your report, you had a cover page;
14 is that correct?

15 A Yes.

16 Q And there is one section that says, "Disclaimer for
17 cell site analysis"; is that correct?

18 A Uh-huh.

19 Q And this reads, "This analysis is based solely on
20 cell site locations provided by AT&T"; correct?

21 A Yes.

22 Q It further states, "These locations are the cell
23 sites that the handset phone number connected to, not the

1 location of the handset phone number itself"?

2 A Correct.

3 Q Can you explain to us what that means?

4 A Sure. So in the AU report -- that's the one with the
5 pie sections -- the phone would have hit off that tower in
6 that sector. And it connected to that tower. It can't
7 give -- I can't give a location, neither can that report, of
8 where exactly that phone was at on 123 Main Street, an
9 example. I can't find that information out. It's just
10 connected with that cell phone tower.

11 Q Okay. And also on page 2 of your cover page it would
12 read, "This analyst providing this mapping cannot testify in
13 court to the following: Actual range, signal strength, or
14 coverage area of the cell site"; correct?

15 A Uh-huh.

16 Q "Network traffic, activity on a cell site during a
17 specific date and time"?

18 A Yes.

19 Q "Maintenance performed on a cell site during a
20 specific date and time"?

21 A Correct.

22 Q "Or weather and geographic variables affecting a cell
23 sites's operation"?

1 A Correct.

2 Q And then it says, "It is recommended that the phone
3 carrier be contacted for this type of testimony"; is that
4 correct?

5 A That's -- yes.

6 Q And why do you put that disclaimer in here?

7 A That was given to me by my supervisor because those
8 are things that we cannot testify to.

9 Q But why -- why would it matter if there was
10 maintenance on a cell site or geographic or weather variable?

11 A I'm not sure.

12 Q Is it possible that if I'm in a specific area and I
13 am behind a wall using my cell phone I may not connect to the
14 closest tower because I'm being -- my signal is being blocked
15 by it? Is that possible?

16 A It's possible.

17 Q Okay. And same with weather? If there's weather in
18 an area, isn't it possible that signals can be impacted and go
19 in different directions? Possible?

20 A Possible.

21 Q If there's maintenance on a tower that makes a tower
22 down in a certain location, your cell would then go out to a
23 different tower or search for a different tower; correct?

1 A Possible, yes.

2 Q Okay. And also, when we look at records that are
3 issued by phone companies such as AT&T, we have records that
4 are classified as mobility and -- have you worked with AT&T in
5 the past and talked with their analysts?

6 A AT&T's analysts?

7 Q Correct.

8 A I've worked with their records before, not with their
9 analysts.

10 Q Okay. So you've been familiarized with the term on
11 records mobility; correct?

12 A I've heard it before, yes.

13 Q Okay. And mobility identifies the cell towers which
14 your phone is hitting?

15 A Okay.

16 Q Correct? We also have a record that states,
17 "Historical precision location information." Have you ever
18 seen those records?

19 A Yes.

20 Q The historical precision location information tells
21 you where your actual device is based upon the signals and GPS
22 on your phone?

23 A Yes.

1 Q Did you look at the historical precision location
2 information when you were doing your analysis?

3 A That's the NELOS report.

4 Q Okay. That's the NELOS report that is these pie
5 shapes?

6 A No, the circles.

7 Q The circles. Okay. So at any point in time as you
8 went through your analysis and you did these maps, there was
9 nothing that covered the spot where it showed body location;
10 is that correct?

11 A I'd have to review it.

12 Q Well, you have the reports with you right now?

13 A No.

14 Q Oh. Starting with Exhibit 51 -- and, again, we'll go
15 back to the timeframe that was previously reviewed by the
16 prosecution of 2:00 a.m. to 9:00 a.m. on June 12th of 2017.
17 Are there any of those pie shapes that cover the area that the
18 body location is on?

19 A You'll have to give me a second to go through all of
20 'em.

21 Q Sure.

22 A What was the timeframe again?

23 Q From 2 a.m. until 9:00 a.m. Or actually I believe it

1 was later. 9:57 a.m. I believe.

2 A Okay. No.

3 Q Not one covers that area; is that correct?

4 A It's near there, but --

5 Q But it's also near Mr. Burke's residence; is that
6 correct?

7 A Correct. Yes.

8 Q And the ones that show -- again, we went over it and
9 you said it shows the side of the tower that is being
10 contacted; is that correct?

11 A Yes. The sector, right.

12 Q And when you look at the cell phone reports that you
13 have in front of you, when Mr. Burke is in the Bristolville
14 area, his home is on the same side that the phone is
15 communicating with the tower; is that correct?

16 A I can't say whether or not -- there's multiple --
17 let's see. His residence falls within a tower and a sector.

18 Q Okay. So you would expect that if he made a phone
19 call from his residence that it would fall within that sector
20 as you're displaying on your report?

21 A Yes.

22 Q Now, did you go into the earlier parts of the day,
23 such as from 2 p.m. on the 11th until 11:00 p.m. that night?

1 A No, I did not. This was -- I started at midnight on
2 the 12th.

3 Q Okay. And you would be capable of identifying that
4 information and putting it on a chart and a graph just like
5 you did on all this other information?

6 A Yes.

7 Q And if you did that, you would have been able to
8 identify whether Mr. Burke was in the area of somewhere like
9 Willow Lake which is in the Bristol area; correct?

10 A No, I can't say he was there. I could say the
11 handset --

12 Q Correct.

13 A -- was in the area.

14 Q You would be able to identify if he was in the range,
15 if Willow Lake would fall in that range; is that correct?

16 A The handset, yes.

17 Q And you didn't do that? You weren't asked to do
18 that?

19 A I don't remember Willow Lake, no.

20 Q Okay. And you weren't asked about, again, any other
21 phones to analyze?

22 A No.

23 MR. OLSON: One moment, Your Honor.

1 BY MR. OLSON:

2 Q I'm sorry. I didn't ask. On the ones with the
3 pings, with the circles, if we would go same timeframe,
4 between 2 a.m. and 10:00 a.m. on the 12th, is there any of
5 those circles that encompassed the body location?

6 A I need to review that also. This is --

7 Q I believe it was behind. Oh. I'm sorry. I set it
8 on this table.

9 A Yeah. Here we go.

10 Q And that, for the record, is Exhibit 50? 50?

11 A I don't see one.

12 Q So as you sit here today -- and that's your full
13 report; is that correct?

14 A Yes, sir.

15 Q And as you sit here today, you can say based upon
16 reviewing your report that there was no ping or communication
17 that would encompass the body location?

18 A I don't see one, no.

19 MR. OLSON: Thank you. No further
20 questions.

21 THE COURT: Redirect.

22 MR. BECKER: Yeah. Very briefly.

23 REDIRECT EXAMINATION

1 BY MR. BECKER:

2 Q First of all, with respect to the pie shapes, which I
3 believe is the AU report, that -- in order to generate the
4 record with my cell phone carrier, in this case AT&T, I have
5 to either call somebody or text somebody; right?

6 A Yes.

7 Q And you've previously testified that those pings are
8 just sort of random times; right?

9 A Yes, sir.

10 Q For the NELOS -- how do you pronounce it?

11 A NELOS.

12 Q NELOS report?

13 A Yes.

14 Q And sometimes those pings can be many, many minutes
15 or maybe even an hour or two long without a ping; correct?

16 A I've noticed that, yes.

17 Q Yes. So even on AT&T's records, I could physically
18 be somewhere, not use my phone for an hour or two, and not
19 have my phone ping for an hour or two; correct?

20 A It's possible, yes.

21 Q And therefore, there would be no record of that;
22 right?

23 A Yes.

1 Q So it's totally possible to be somewhere where you
2 wouldn't be on that map because you didn't use your phone,
3 either by text or phone call, and the phone company didn't
4 ping my phone?

5 A It's possible, yes.

6 MR. BECKER: All right.

7 THE COURT: Recross?

8 MR. OLSON: I have nothing further, Your
9 Honor.

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

11 THE WITNESS: Okay.

12 THE COURT: Mr. Becker, you still need a
13 couple minutes?

14 MR. BECKER: Can I have just like five
15 minutes, just a quick break to make sure?

16 THE COURT: We're going to excuse the jury.
17 We have a problem with the technology getting the next
18 presentation for you. It will just take a short period of
19 time. We'll just take a ten-minute break.

20 Again, report down to the petit jury room. Do not
21 discuss this case among yourselves, nor with anyone else. Do
22 not form or express an opinion.

23 (Whereupon, a recess was had commencing at

1 1:58 p.m. and concluding at 2:12 p.m.)

2 THE COURT: Mr. Becker, you may call your
3 next witness.

4 MR. BECKER: Thank you, Your Honor. The
5 state would call Mike Roberts.

6 * * *

7 MICHAEL A. ROBERTS,
8 having been duly sworn, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. BECKER:

11 Q Would you please introduce yourself to the jury?

12 A I'm Michael Roberts, R-o-b-e-r-t-s. I work at the
13 Bureau of Criminal Investigation, or as it's more commonly
14 referred to as Ohio BCI. I work in the crime lab division,
15 assigned to the firearms department. My classification is a
16 forensic scientist, which I analyze firearms and
17 firearms-related evidence.

18 Q And you make analyses of firearms, including things
19 such as determining operability of firearms; correct?

20 A That's correct. Yes, sir.

21 Q And you also attempt to make identifications of both
22 shell casings and bullets that have been fired from a
23 particular weapon?

1 A That's correct. Yes, sir.

2 Q And we won't get into it today, but there are certain
3 ways you can do that both for a casing from a gun and for the
4 actual bullet that comes out of the barrel of a gun; correct?

5 A Absolutely, yes, sir.

6 Q All right. Now, I want to direct your attention to
7 your BCI lab number 17-38207. You have been subpoenaed here
8 today in that case. I believe at one point you were given a
9 firearm to test and what was at the time believed to be a
10 fragment; is that correct?

11 A Yes, sir.

12 Q Okay. What did you do when you received those items?

13 A Well, I examined the fragment itself to determine if
14 I could see and determine if it was actually from a bullet.
15 And after that, I also examined the firearm for operability as
16 well.

17 Q All right. Well, let's talk about two things here.
18 I'm going to show you what has been marked for purposes of
19 identification State's Exhibit 1 and State's Exhibit 2. We
20 have marked these for purposes in this courtroom as State's
21 Exhibit 1 or 2 -- 1 and 2. However, BCI uses different
22 analysis; correct? A different numbering system?

23 (Whereupon, State's Exhibit 2, Projectile, was introduced

1 for identification.)

2 A Yes. It's a BCI tracking number or case number
3 that's assigned to each case that's brought into our agency.

4 Q All right. So with respect to -- and it just so
5 happens in this case we reversed the numbers. Your lab number
6 is our State's Exhibit 2, and I think that's your lab number
7 1; is that correct?

8 A Correct.

9 Q And our State's Exhibit 2 is actually your lab number
10 1?

11 A Correct.

12 Q Okay. How do you recognize State's Exhibits 1 and 2?

13 A I can recognize the envelope by the -- my initials
14 over the sealed tape, along with the BCI case number and item
15 number. And the same reason for the box here.

16 Q We've actually removed that firearm from its
17 safekeeping, but is that the firearm you examined?

18 A Yes, sir. I recognize it as well because my initials
19 are on the side of the firearm.

20 Q Okay. Now, Mr. Roberts, with respect to those, first
21 of all, State's Exhibit Number 2, were you able to determine
22 whether or not that actual item was from a bullet fragment?

23 A During my analysis, I was unable to see any rifling.

1 And it was a nonmetallic fragment. So -- which is
2 inconsistent with being a bullet fragment.

3 Q Okay. So if that item were obtained from the autopsy
4 by the Trumbull County Coroner and he felt that might be a
5 bullet fragment, he would be incorrect?

6 A Yes. I would say it's not. It's inconsistent.
7 There's nothing on there to tell me that it's a bullet
8 fragment.

9 Q Okay.

10 A Actually there's what looks to be -- appears to be
11 hair on it.

12 Q All right. So additionally, then, you were presented
13 that firearm which can you describe that firearm for me which
14 is State's Exhibit Number 1?

15 A Sure. It's a .22 long rifle caliber which is a small
16 caliber semiautomatic pistol. And how you would load the
17 pistol is one of two ways. You could raise up the barrel here
18 and put a cartridge here and then lower it. Or you could put
19 cartridges in what's called a magazine. Some people call it a
20 clip. Technically it's called a magazine. You would load
21 them in here and there's a spring that causes tension for
22 the -- and it pushes the cartridges upward. You would put the
23 ammunition in here and load it this way and then put it into

1 the hand grip area up until you hear it click. And then you
2 would pull the slide back and then release it and it would
3 load the first cartridge into the chamber of the semiautomatic
4 pistol and be ready to fire at that point.

5 Q And you could shoot that gun without ever having to
6 reload it until you ran out of bullets in that magazine or
7 that clip?

8 A That's correct. That's the way it's designed, yes.

9 Q And are you familiar or were you aware of how many
10 bullets that magazine would hold?

11 A I did not measure this. I wasn't asked to measure
12 how many the maximum capacity of the magazine is.

13 Q More than one?

14 A Yes.

15 Q More than two?

16 A Yes.

17 Q Maybe about six or seven?

18 A I would say -- I would say about nine.

19 Q About nine in there?

20 A Yeah, I would think so.

21 Q All right. Now, that clip and that magazine that you
22 just showed, once that gun is loaded, I could carry it around
23 for a year without taking that magazine out to put any bullets

1 in it; correct?

2 A Correct. You can carry it around as long as you
3 wanted to.

4 Q And, in fact, someone else could have loaded that
5 gun, given it to me, and I could walk around for a year or two
6 with that handgun without ever touching that magazine?

7 A Correct.

8 Q All right. Now, with respect to State's Exhibit 1,
9 did you determine whether it was operable?

10 A Yes.

11 Q And what did you do to determine its operability?

12 A I loaded the magazine up, put it into the firearm
13 like I described earlier and went into our shooting room and
14 fired off two cartridges into the water tank and recovered the
15 bullets from the tank and the cartridge cases from the outside
16 of the tank.

17 Q So you have an expert opinion as to whether or not
18 State's Exhibit 1 is actually a working firearm?

19 A Yes.

20 Q And it is?

21 A Yes.

22 Q Okay. And you created a two-page report which I will
23 present to you as State's Exhibit Number 41. I'm going to ask

1 you to look at this two-page report and tell me, is that a
2 fair and accurate copy of your original report?

3 (Whereupon, State's Exhibit 41, BCI Report, was
4 introduced for identification.)

5 A Yes, it is.

6 Q And your signature is on that report?

7 A Yes, sir. It's on the second page.

8 Q Now with respect to that type of caliber gun, even
9 though you weren't presented to determine -- what was later
10 determined not to be a fragment by the Trumbull County
11 Coroner, you have examined calibers such as .22 handguns such
12 as this before; correct?

13 A Correct. Many times, yes.

14 Q And you have, in the course of your career which
15 spans almost, what, 20, 25 years now?

16 A Since 1992.

17 Q All right. That you've been with BCI?

18 A Yeah. Doing the same job.

19 Q And there are many, many times when a .22 bullet is
20 fired into a person's body, whether it be their head or their
21 body, and there's nothing but fragments and you still can't
22 make a comparison; is that correct?

23 A That's correct. Yes.

1 Q That's because the .22-caliber is quite small?

2 A Yes. It has a smaller surface, yes.

3 Q And that's what you really need in terms of making an
4 identification is you need those lands and grooves and the
5 things that leave the markings on a bullet or a shell casing
6 to make those?

7 A That's correct. We look at markings that are
8 imparted from the firearm onto the bullet and the cartridge
9 case as well to identify the projectile or cartridge cases
10 back to a particular firearm.

11 Q And you were not presented with a cartridge casing in
12 this case?

13 A Correct.

14 MR. BECKER: All right. I have nothing
15 further, Your Honor.

16 THE COURT: Cross.

17 MR. HARTWIG: Thank you, Your Honor.

18 CROSS EXAMINATION

19 BY MR. HARTWIG:

20 Q Good afternoon, Mr. Roberts.

21 A Good afternoon.

22 Q Just -- really just a few questions.

23 A Okay.

1 Q Okay. Would you agree with me that all types of
2 handguns that can fire a .22-caliber would result in the same
3 finding? Meaning many different types of guns can shoot a
4 .22-caliber bullet; correct?

5 A Yes. .22 -- are you talking .22-caliber pistols
6 and --

7 Q Yes. Pistols.

8 A Yes. They can fire -- there's different types of
9 pistols, yes.

10 Q So -- but if I fire five different pistols and they
11 all have .22-caliber bullets, the ending result, whether it's
12 into a body or a target, is going to be the same; it's a
13 .22-caliber; correct?

14 A Yes. The bullet is going to be a .22-caliber bullet,
15 but they're going to have different rifling marks or tooling
16 marks from the barrel as the bullet travels through it. And
17 that's how we can distinguish between one firearm and another.

18 Q Okay. In this particular case, the detective did not
19 submit additional ammunition to compare to the ones that were
20 in the cartridge; correct?

21 A Correct. What I was submitted was a pistol, a
22 magazine, nine cartridges, and that fragment.

23 Q All right. And so you were not submitted a separate

1 baggie of additional .22-caliber bullets for comparison?

2 A I was not, no. To answer your question, no.

3 Q All right. Okay. Your conclusion in your report is
4 still that item one was examined and found to contain one
5 nonmetallic off-white colored fragment. So you still referred
6 to it as a fragment. Were you able to determine what it was?

7 A No.

8 Q No?

9 A No.

10 Q How about the size of it?

11 A Very small.

12 Q Okay. And I saw a picture of it. It appears to have
13 hair on it; right?

14 A Correct.

15 Q All right. All you know is that it's nonmetallic and
16 in your opinion it was inconsistent with a bullet?

17 A That's correct.

18 MR. HARTWIG: Okay. No further questions.

19 THE COURT: Redirect.

20 MR. BECKER: No, Your Honor.

21 THE COURT: All right. You're excused.

22 Thank you.

23 THE WITNESS: Thank you, Judge.

1 MR. BECKER: Thank you.

2 State would call Lynda Eveleth.

3 * * *

4 LYNDA EVELETH,

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 jury, please?

9 A Lynda Eveleth.

10 Q Where are you employed?

11 A The Ohio Bureau of Criminal Investigations located in
12 Richfield, Ohio. It's commonly referred to as BCI.

13 Q And what are your current -- or what is your current
14 job title?

15 A Forensic scientist.

16 Q And how long have you been employed there?

17 A A little over 20 years and 11 months.

18 Q What are your current primary duties there?

19 A My duties include DNA testing in which I will compare
20 DNA profiles from evidence samples to DNA profiles from known
21 samples which are called standards.

22 Q And can you tell this jury what your educational
23 background is?

1 A I have a bachelor of science and I have a master of
2 science in biology. Both are from the University of Akron.

3 Q And have you received any specialized training in the
4 area of forensic DNA analysis?

5 A I've completed approximately a year and a half DNA
6 training through BCI which included lectures, lab exercises,
7 practicals, and written exams.

8 Q And approximately how many times have you performed
9 DNA analyses?

10 A Thousands.

11 Q And have you testified as an expert in any courts in
12 the state of Ohio?

13 A Yes.

14 Q And I believe you've been qualified as an expert here
15 in the courts of Trumbull County as well; correct?

16 A Yes.

17 MR. BECKER: Your Honor, I would move to
18 have Miss Eveleth qualified as an expert in the area of DNA.

19 THE COURT: Any questions?

20 MR. OLSON: No objection, Your Honor.

21 THE COURT: She will be considered an
22 expert. Proceed.

23 BY MR. BECKER:

1 Q Lynda, what is DNA?

2 A DNA stands for deoxyribonucleic acid. It's a long
3 string-like molecule that's found in our cells throughout our
4 body. We receive half of our DNA from our mother and half
5 from our father. It makes us who we are. It will determine
6 if we are a plant or a human.

7 Q And what makes DNA useful for forensic comparisons
8 here in the courtroom?

9 A It is useful in forensics because no two people, with
10 the exception of identical twins, will have the same DNA. So
11 when we're performing our DNA testing, we're able to tell one
12 person from another.

13 It's also useful in forensics because the DNA is the
14 same throughout the body. If we receive evidence from a crime
15 scene in the form of blood, we can compare that DNA profile to
16 a known sample which would be a swabbing from a mouth.

17 Q All right. And Lynda -- or Miss Eveleth I should
18 say -- did you conduct any DNA testing on samples that were
19 submitted to you from the Warren Police Department in Case
20 Number 17-38207?

21 A Do you have a copy of my report?

22 Q I do. I will approach you and hand you what has been
23 marked for purposes of identification as State's Exhibit 42.

1 (Whereupon, State's Exhibit 42, BCI Report, was
2 introduced for identification.)

3 A I'm able to identify this as the BCI report that was
4 written for the DNA results for this particular case. It will
5 have the BCI lab number at the top with my initials and my
6 signature.

7 Q All right. And that's a fair and accurate copy of
8 your DNA results?

9 A Yes.

10 Q Okay. And in this particular case, you were asked to
11 examine -- make a comparison between a known swab of DNA from
12 an individual named Austin Taylor Burke?

13 A Correct.

14 Q Okay. And you attempted -- and I'm going to hand you
15 State's Exhibit Number 1. Be careful because it's loose in
16 there. But you were able to take swabbings from State's
17 Exhibit Number 1; is that correct?

18 A I'm able to identify this by the BCI label that will
19 list the BCI lab number and item number. This is a firearm
20 which samples were collected and DNA testing was performed.

21 Q All right. Now, with respect to your DNA testing,
22 you were unable to match Austin Taylor Burke's DNA to any
23 place on that firearm; correct?

1 A Correct.

2 Q All right. You also got an unknown male suspect --
3 subject -- on the magazine; is that correct?

4 A Yes.

5 Q All right. So you don't know who that is, do you?

6 A No.

7 Q You just know that the DNA profile is different?

8 A Yes.

9 Q All right. So, Miss Eveleth, let me ask you this.
10 And those findings are depicted in your report; correct?

11 A Yes.

12 Q When we're talking about trying to obtain DNA from a
13 firearm, what kind of -- what kind of DNA -- or I'm sorry --
14 what generally is left on there? I guess, what's on there?

15 A When someone is handling a firearm, we're collecting
16 swabs from locations on the firearm to detect DNA. So if
17 someone is handling an item, we are testing that item to see
18 if someone has handled it.

19 Q All right. And has it been your experience in 20
20 plus years at BCI that sometimes people can handle items and
21 not leave any DNA on it?

22 A Yes. That is possible.

23 Q All right. If someone were to wipe that off with a

1 rag -- because all we're talking about basically is just skin
2 cells that may have fallen off on that item, if it's not
3 blood; right?

4 A If DNA is wiped off of an item then they will not
5 detect DNA.

6 Q All right. And if there's simply not enough DNA to
7 gather, you won't detect it either?

8 A If there isn't enough DNA then my report will state
9 that data was not suitable for comparison, which means there
10 isn't enough DNA present to detect a DNA profile to make a
11 comparison.

12 Q Does that mean there's no DNA there? Or it just
13 means there is not enough?

14 A It doesn't mean that DNA is not there. DNA was
15 detected, but there isn't enough DNA to make a comparison.

16 Q And what did you find in this particular case
17 regarding the swabbed areas that came -- that were not
18 identified as a third person?

19 A There was a swab of the trigger, item 2.1. That data
20 was not suitable for comparison.

21 There was a swab of the handle areas, which is item
22 2.2, and data was not suitable for comparison.

23 There was a swab from the magazine, item 2.3, which

1 was a mixture. A mixture means it's consistent with more than
2 one person contributing to the DNA. On this particular
3 sample, an unknown male DNA profile was detected. And there
4 was additional data that was not sufficient for comparison.

5 Q All right. Go ahead.

6 A And there was a swabbing of the rounds, which was
7 item 2.4, and the data was not suitable for comparison.

8 Q All right. So you have -- I just want to be clear on
9 what we're talking about here. If I could take a look at your
10 report very briefly here. You have not -- data not suitable
11 for comparison from the trigger, the handled areas, and the
12 rounds. And you have a mixture where it's an unknown male.
13 And we don't know who that is. But when you say "data is not
14 suitable for comparison," does that mean there was something
15 there and you just didn't have enough DNA? Or there was
16 nothing there?

17 A It means DNA was detected but there isn't enough DNA
18 to make a comparison.

19 Q All right. So it's possible anyone could -- there's
20 somebody's DNA on there. We just didn't have enough,
21 basically?

22 A Yes.

23 Q For your purposes of your testing?

1 A Correct.

2 Q Okay. And the results you've put into that form
3 which you've already testified to as a fair and accurate copy?

4 A Yes.

5 MR. BECKER: May I have one moment?

6 Q And finally, Miss Eveleth, basically what you're
7 testifying here today is that sometimes you don't always get
8 enough DNA to test; correct?

9 A Correct.

10 Q And that was the case in this particular instance?

11 A Yes.

12 MR. BECKER: Thank you.

13 THE COURT: Cross.

14 MR. OLSON: Thank you, Your Honor.

15 CROSS EXAMINATION

16 BY MR. OLSON:

17 Q Good afternoon, Miss Eveleth.

18 A Good afternoon.

19 Q Just real quickly going over your report of August
20 10th of 2017. Again, you tested the DNA of Austin Burke and
21 compared it to the swabs of the trigger, handle areas,
22 magazine, and rounds; is that correct?

23 A The DNA testing that was performed on those samples

1 from the firearm, those DNA profiles were compared to the
2 standard from Austin Burke.

3 Q Okay. And you did not receive any additional DNA
4 samples from any other individuals such as a Nicholas Goett or
5 anybody like that?

6 A No.

7 Q And, again, when we look at area 2.3, swab of
8 magazine, it indicates a mixture on your DNA conclusions,
9 unknown male, sufficient for comparison, major, Austin Burke
10 excluded, major. So can you explain to me each line. So
11 "mixture," what do we mean there?

12 A A mixture means it's consistent with more than one
13 person contributing to the DNA profile.

14 Q Okay. And skipping down to "Austin Burke, excluded
15 major," that means when you test that -- and even though there
16 is a mixture of more than one person contributing, he was not
17 one of those people contributing; is that correct?

18 A A mixture can be a DNA profile that's consistent with
19 two contributors in about the same amount of DNA, or there can
20 be a mixture where there's more DNA from one contributor from
21 another.

22 If there is a mixture with more DNA from one
23 contributor, that's called the major contributor. The portion

1 of the DNA that's present in a lesser amount is the minor
2 contributor.

3 So for this particular sample, the swab of the
4 magazine, Austin Burke is excluded as the major contributor
5 for the sample. There was additional data that was detected,
6 but there isn't enough to make a comparison to the additional
7 data.

8 Q So what you're saying, though, is you cannot identify
9 Austin Burke as the minor or major contributor or say that he
10 ever handled the swab [sic] of the magazine based upon your
11 analysis; correct?

12 A There wasn't a DNA profile that was present to make
13 a -- that was compared to Austin Burke that was consistent
14 with Austin Burke.

15 Q Okay. And then that's the same for the swab of the
16 trigger, handle areas, and rounds?

17 A Correct.

18 Q So when you received this firearm, based upon your
19 analysis, you can make no conclusion that Austin Burke had
20 handled that firearm?

21 A I don't know if he handled the firearm.

22 Q But you do know somebody handled the swab of
23 magazines, but we do not know who because you did not receive

1 that DNA profile; correct?

2 A Correct.

3 Q And when we look at the DNA suitable for comparison,
4 you're saying, well, there's some DNA there, it's just not
5 enough to test against, that could be the DNA from this
6 unknown male; is that correct?

7 A I don't know who contributed the DNA to those
8 samples.

9 Q So I'm just saying it could be? Could be him? Could
10 be anybody; correct?

11 A It's DNA from a person. I don't know who that person
12 is.

13 MR. OLSON: Thank you. No further
14 questions.

15 THE COURT: Redirect.

16 MR. BECKER: No, Your Honor.

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

18 Thank you.

19 Call your next witness.

20 MR. BECKER: State would call Dan Lester.

21 * * *

22 DAN LESTER, JR.,

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

DIRECT EXAMINATION

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BY MR. BECKER:

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

A My name is Dan Lester --

Q Go ahead.

A -- Jr., I was going to say.

Q And where are you employed at?

A Trumbull County Sheriff.

Q What is your title there?

A I'm a lieutenant with the Sheriff's Office in the jail division.

Q And what are your duties as a lieutenant in the jail division?

A I'm the security officer, as well as the administrator of the GTL phone system.

Q And what is the GTL phone system?

A That is the inmate phone call recording system.

Q All right. Now, how long have you been with the Trumbull County Sheriff's Department?

A 29 years.

Q So as the administrator of the GTL phone system, can you please tell this jury how that phone system works?

A An inmate will pick up the phone and enter a six

1 digit PIN and enter a secure 4 digit PIN and call out.

2 Q Inmates can't receive calls coming in to them;
3 correct?

4 A No, sir.

5 Q So when an inmate is booked into the jail, he's given
6 these PIN numbers and they're unique to each and every inmate?

7 A That's correct.

8 Q So when an inmate wants to call someone, he has to
9 use that PIN system to call out?

10 A Correct.

11 Q To whatever number they want to?

12 A Right.

13 Q And just for purposes of clarification, the
14 attorney jail-- calls made to attorneys are not recorded;
15 correct?

16 A That's true.

17 Q All right. And there's a different way that they go
18 about when they want to speak to their attorney?

19 A Yes.

20 Q Okay. Now, all of the calls other than the ones to
21 their attorneys are recorded; is that correct?

22 A Yes.

23 Q And they are digitally stored in the -- in an area or

1 location where you have access to them; correct?

2 A Correct.

3 Q And you are able to record those digitally recorded
4 phone calls?

5 A Yes, I am.

6 Q All right. I asked you to record a phone call made
7 on June 27, 2017, at around 12:25 p.m. from inmate Austin
8 Burke; is that correct?

9 A Yes, it is.

10 Q And you have done that and you've brought a
11 digital -- or a flash drive that I have inserted into this
12 laptop here; correct?

13 A Right.

14 Q All right. As part of your duties, you have also
15 listened to other jail phone calls of Austin Taylor Burke?

16 A Yes, I have.

17 Q And you're familiar with his voice?

18 A Yes, I am.

19 Q All right. I'm not going to touch this. If I could
20 have you step down. I'll probably mess it up.

21 MR. BECKER: Your Honor, could we take --
22 and I hate to indulge the Court, but can I take a
23 five-minute -- we may attempt to use the court's laptop

1 player.

2 THE COURT: Ladies and Gentlemen, we have a
3 technology problem. We will take another ten minutes. Do not
4 discuss this case among yourselves, nor with anyone else. Do
5 not form or express an opinion.

6 (Whereupon, a recess was had commencing at
7 2:42 p.m. and concluding at 3:00 p.m.)

8 THE COURT: Return to the stand, please.
9 You remain under oath.

10 I think we have the glitches worked out now,
11 Mr. Becker.

12 MR. BECKER: Thank you, Your Honor.

13 THE COURT: Let's try it one more time.

14 MR. BECKER: Thank you, Your Honor. I
15 apologize both to the Court and to the jury. I'm not an
16 expert in high technology. I probably spend too much time
17 fishing and swimming than computers.

18 Q All right. Officer Lester, when I left you, you were
19 talking about recorded phone calls. I'm going to play you
20 what has been marked now for purposes of identification as
21 State's Exhibit Number 29 and ask you to listen to State's
22 Exhibit 29.

23 (Whereupon, State's Exhibit 29, Recorded Jail Phone

1 Calls, was introduced for identification.)

2 (Whereupon, State's Exhibit 29 was played
3 for the jury commencing at 3:01 p.m.)

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

5 THE COURT: You may. Approach.

6 (At sidebar:)

7 MR. OLSON: I just question what relevance
8 this has at this point.

9 MR. BECKER: He's almost to the point where
10 he says -- she asked him if the gun is registered and he says,
11 "No, I don't think so."

12 MR. HARTWIG: That's already been said.

13 MR. BECKER: Oh, did he say that?

14 MR. HARTWIG: Now they're just talking.

15 MR. BECKER: Oh.

16 MR. HARTWIG: Yeah.

17 MR. BECKER: I'm sorry. Yeah, I'll stop it
18 here. But I don't want it to -- I don't want -- if they want
19 me to stop it, that's fine. I just don't want it to seem as
20 if I'm hiding anything.

21 THE COURT: I'll tell the jury.

22 MR. BECKER: Okay. Tell the jury.

23 (End of sidebar.)

1 THE COURT: By agreement of the parties,
2 we're going to stop it at that time. There's not anything
3 more relevant to this case in the rest of that phone call.

4 MR. BECKER: Right.

5 THE COURT: All right. Let's proceed,
6 Mr. Becker.

7 MR. BECKER: Okay. Thank you, Your Honor.

8 BY MR. BECKER:

9 Q Corrections Officer -- or Lieutenant Lester rather,
10 the voice that you've heard on there, you've confirmed through
11 the recording system that that is the call of Austin Burke?

12 A Correct.

13 Q And that's a fair and accurate copy of that telephone
14 call on June 27th, 2017 at about 12:25 p.m?

15 A Yes, it is.

16 Q And the voice that you recognize as the inmate, is
17 that individual named Austin Taylor Burke?

18 A Yes, it is.

19 Q And is he here in the courtroom today?

20 A Yes, he is.

21 Q Could you please identify him?

22 A Light blue shirt, blue tie.

23 MR. BECKER: Thank you, Your Honor. I have

1 nothing further.

2 THE COURT: Cross.

3 MR. OLSON: No questions, Your Honor.

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

5 Thank you.

6 THE WITNESS: Thank you.

7 THE COURT: Call your next witness.

8 MR. BECKER: State would call Detective

9 John Greaver.

10 * * *

11 DETECTIVE JOHN GREAVER,

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

13 DIRECT EXAMINATION

14 BY MR. BECKER:

15 Q Okay. Would you state your name for the record,
16 please?

17 A John Greaver.

18 Q Where are you employed?

19 A The Warren City Police Department.

20 Q What are your duties there?

21 A I'm in the investigations division of the police
22 department.

23 Q And how long have you been with the Warren Police

1 Department?

2 A 16 years now.

3 Q How long have you been in the detective division?

4 A This is my seventh year in the detective division.

5 Q All right. Did you become assigned to the case of
6 Brandon Sample?

7 A I did.

8 Q All right. Please tell this jury how you became
9 involved, and particularly what date, and then what you
10 started to do when you discovered that?

11 A I was originally assigned this case on June 13th. It
12 was a missing persons case. After I was assigned the case, I
13 started calling hospitals to see if the missing person,
14 Brandon, was in the hospital. And I also then called his
15 mother and spoke with her.

16 I then called Niles Police Department. We had
17 learned that Brandon's car had been recovered on that -- on
18 the 13th, the day I was assigned the case, the car was
19 recovered in Niles.

20 Q It was recovered before that; correct?

21 A Correct. That's when I learned that it was
22 recovered. I apologize.

23 Q Yeah.

1 A That's when I learned that it was recovered.

2 Q And when you were assigned the case, what did you
3 know about it other than Brandon Sample had not been heard
4 from since Sunday -- or I'm sorry -- early morning hours of
5 Monday, June 12th?

6 A When I had talked to Stephanie Sample, Brandon's
7 mother, she had told me that --

8 MR. HARTWIG: Objection.

9 MR. BECKER: It's not -- can we approach?

10 THE COURT: Approach.

11 (At sidebar:)

12 THE COURT: What's the hearsay exception?

13 MR. BECKER: Yeah. It's offered for the --
14 not for the truth of the matter, but for why he acted and what
15 he did.

16 THE COURT: Any other objection?

17 MR. OLSON: I do, Your Honor. He has his
18 report with him. I mean, unless he's not able to recollect, I
19 don't see why he can read from his report. He has to base his
20 testimony on his recollection.

21 THE COURT: He can use it to refresh it.
22 You can take it away from him if you want to, but then you can
23 hand it back to him to refresh his recollection.

1 MR. OLSON: That's fine.

2 THE COURT: I am going to overrule your
3 objection. Let's go.

4 MR. BECKER: Thank you, Your Honor.

5 (End of sidebar.)

6 BY MR. BECKER:

7 Q Okay. So were you telling us you made contact with
8 Brandon's mother at some point?

9 A I did.

10 Q And what did you do in response to what she told you?

11 A Well, she had told me that he was with a friend named
12 Josh on Sunday and that him and Josh were going to mow his
13 grandmother's grass. She also thinks that he was hanging out
14 with a male named Austin Burke whom he met at DYS when Brandon
15 was a corrections officer and Austin was an inmate.

16 Q And from that point on, what did you do? You, I
17 think, called the 911 center; is that correct?

18 A I did. I called the 911 center, explained to them
19 the situation that we had and Brandon -- the case of this
20 Brandon's missing person case qualified for us to ping his
21 phone to find out where his phone was or the area that it was.

22 Q And what was the last known date and time where
23 Brandon's phone was known to be?

1 A The last time was Bristol on Monday morning at 4:38
2 in the morning. That's what the 911 center advised me.

3 Q And throughout this investigation, we have attempted
4 to subpoena the historical cell phone -- cell tower records
5 for that telephone; is that correct?

6 A I did.

7 Q And we have not received any response --

8 A We have not.

9 Q -- from his carrier?

10 A We have not.

11 Q All right. At some point on the 13th after you had
12 spoken to Brandon's mother, you then began to do some other
13 things relating to this?

14 A I did. I was familiar with Austin's name from
15 previous cases. I went to his house, knocked on the door. We
16 did not get an answer at the door. I left a card, my business
17 card, on the door for him to call me back.

18 I then received a call from Detective Ronnie Wright
19 from the Niles Police Department. He advised us that a female
20 had contacted him with information on Brandon. We then --
21 later that day we met with the Niles City detectives, and
22 there we met with Makayla Egbert.

23 Makayla introduced herself to us as Austin's

1 ex-girlfriend. She went on to tell us things that she had
2 heard secondhand from other people. She had told us that
3 Austin had killed Brandon on Hatchet Man Road. Well, I
4 apologize. No, she did not tell me Hatchet Man Road at that
5 point. That was later on in the evening. She told us that
6 she received information from Jessica Simms that Austin killed
7 Brandon.

8 Q And later on you were able to determine a location
9 that you were getting through this Makayla Egbert that it was
10 Hatchet Man Road?

11 A She called me later that evening and told me that she
12 had heard that Austin had dumped his body on Hatchet Man Road.

13 Q All right. And this would have still been on
14 June 13th?

15 A Yes, sir, the evening of June 13th.

16 Q And what did you do from that point?

17 A I had not heard of Hatchet Man Road. I'm not from
18 that area. So I called a few deputies that I know, and they
19 were not sure. So I then called a retired deputy and he did
20 some research and he thought it was the dead-end of Hyde
21 Oakfield Road which is also in that area, just a little bit
22 farther south than Peck Leach.

23 So the next morning we went up to Hyde Oakfield, my

1 partner and I. We walked around. There's supposed to be a
2 house on stilts back there and this Hatchet Man house. But we
3 couldn't find it. So we left.

4 I called the Ohio Department of Natural Resources.
5 They knew exactly what Hatchet Man was and exactly where it
6 was. They knew the story behind Hatchet Man. So we agreed to
7 meet them the following day and then they would take us back
8 there.

9 Q That was June 15th?

10 A Yes, sir.

11 Q Okay. And this was all based upon information that
12 you were getting from Makayla Egbert who indicated to you that
13 she was talking to Hayle Roupe?

14 A Hayle Roupe's girlfriend Jess Simms.

15 Q And Jess Simms?

16 A Yes.

17 Q And then what happened?

18 A I had spoke with Shawn Andrews from the Department of
19 Youth Services. He was Brandon's direct supervisor. I did
20 confirm with Mr. Andrews that Brandon was working there while
21 Austin was an inmate there.

22 Q And they confirmed that?

23 A They did confirm that, that's correct.

1 Q Now, at some point did you speak to Austin Burke
2 himself?

3 A I did.

4 Q Please tell the jury how that came about.

5 A I was given a phone number for him and I had called
6 it and left him a message. Or wasn't able to leave him a
7 message. He had then called me right back on my office phone.
8 He agreed to meet me at his mother's house on Miller South
9 Road in Bristol.

10 So my partner and I, we drove to Bristol and spoke
11 with Austin at his house. When we spoke to Austin at the
12 house, I asked him what was going on with Brandon. And he
13 said, "Brandon picked me up on the way home from Willow Lake.
14 I was walking home. He stopped and gave me a ride home."

15 He told me that he had another guy in the car with
16 him. He couldn't remember his name. He thought maybe it was
17 either Josh or Tyler. And then drove him home to Miller South
18 Road in Bristol where Austin stayed there the rest of the
19 night. He did not leave.

20 Q And at that point, did you and your fellow detective
21 leave his home?

22 A We did.

23 Q All right. He wasn't under arrest. He was never

1 placed in custody?

2 A He was not.

3 Q Never Mirandized him because he was not in custody?

4 A That's correct.

5 Q And you then proceeded with your investigation;
6 correct?

7 A Correct.

8 Q And what did you do then?

9 A After, we met the ODNR personnel at Route 45 and 88
10 and they took us to Peck Leach all the way to that dead-end
11 road where we all ended there at the jury view.

12 Now, the house on stilts with the Hatchet Man house
13 is about 500 yards past that location where that opening was,
14 where the bus and car were. We stopped there. So we walked
15 through those roads back to the Hatchet Man house. We checked
16 that area. We were not able to locate any signs or any
17 evidence of Brandon or that anybody had even been there.

18 It was at that point we had walked out back to where
19 we parked our cars where that opening was when we started to
20 smell something decaying. And it was that point we checked up
21 over a small hill, the small hill in the pictures, and we
22 found Brandon lying there.

23 Q And you were able to see the photographs that were

1 testified to here earlier by Detective Morris. All of those
2 photographs fairly and accurately depicted the scene?

3 A That's correct, sir.

4 Q Including the photographs that I -- all of the
5 photographs that were on the disc which I believe we marked
6 State's Exhibit 52. They all fairly and accurately depicted
7 the view that day?

8 A That's correct.

9 Q Even though there were some mud puddles out there,
10 there was a lot of very dry ground there?

11 A It was very dry.

12 Q Very different than when we went there Monday?

13 A Very much so, yes.

14 Q Obviously the overgrowth. There was a lot of plants
15 there?

16 A Yes.

17 Q Could you tell if there was any activity going on
18 back there?

19 A There was a current logging site. We could hear them
20 logging in the distance. The ODNR staff told us that there is
21 big logging trucks coming in and out of that road a lot. We
22 didn't see any while we were there. There wasn't anybody
23 else -- we didn't see any other people there while we were

1 doing our business there.

2 Q And once the body was discovered, it was in the
3 position that we saw earlier?

4 A That's correct.

5 Q Did you then at some point notice the shoe?

6 A I did.

7 Q And the shoe would indicate to you that perhaps the
8 body was moved from a location and drug over that hill?

9 A That's correct.

10 Q Now, then the various members of other law
11 enforcement agencies were called, including Detective Morris,
12 to process and photograph that scene; correct?

13 A That's correct.

14 Q Were any shell casings found?

15 A No, sir.

16 Q Were there any shell casings that were -- or an
17 attempt to look for shell casings?

18 A There were several attempts to look for shell
19 casings.

20 Q And how was that done?

21 A Well, the day we were there we looked. The day we
22 found Brandon. And then a few days later, I don't remember
23 the exact date, we went back to the scene and looked again for

1 shell casings. And we just were not able to find any.

2 Q All right. And -- now at this point now we're on
3 to -- this would have been June -- June 15, 2017; is that
4 correct?

5 A That's correct, yes.

6 Q And you said you contacted -- and at some point you
7 were able to determine that Austin Burke had been to the
8 Department of Youth Services?

9 A Correct.

10 Q All right. I'm going to hand you what's been marked
11 for purposes of identification as State's Exhibit 21. It is a
12 certified copy of his adjudication. It's a one-page document.
13 I'm going to hand you State's Exhibit 21. Do you recognize
14 that item?

15 (Whereupon, State's Exhibit 21, Adjudication, was
16 introduced for identification.)

17 A I do.

18 Q What is State's Exhibit 21?

19 A It is appearance of proceeding from juvenile court.
20 It shows Austin Burke was adjudicated. Violation of
21 probation, aggravated burglary, unruly curfew, violation of
22 probation, protection order, and aggravated burglary.

23 Q But aggravated burglary was the only one that he was

1 adjudicated on; correct?

2 A Yes, that's correct.

3 Q Does it have his parent's name on there, who his
4 mother would be?

5 A It does.

6 Q And what's the name?

7 A It says, "Parent, Jamie Sell."

8 Q She was present during those proceedings?

9 A It would appear so, yes.

10 Q According to that document?

11 A According to this document, yes.

12 Q And that document is certified? It has a signature
13 from the Clerk of Courts and it's got like a raised seal on
14 it?

15 A It does, yes, sir.

16 Q All right. So let's continue with your investigation
17 when we start talking about after your discovery of the body.
18 What did you do then?

19 A After we discovered the body, based on the
20 information we were given, we had went and spoke with the
21 Sample family and informed them that we had found a body. And
22 I had told them based on the information that we had that we
23 were pretty certain that it was Brandon. I also informed them

1 that the coroner would have to make the final identification
2 because of the state of decomposition.

3 Q And that was done at a later date by Trumbull County
4 Coroner, Humphrey Germaniuk?

5 A That's correct.

6 Q And we'll have him tomorrow testify as to how that
7 was done?

8 A That's correct.

9 Q Okay. So then you began to interview some of these
10 witnesses that you were getting information through Makayla
11 Egbert from; correct?

12 A That's correct.

13 Q Including Makayla Egbert?

14 A That's correct.

15 Q And there were some of these witnesses, and we've
16 heard extensive cross examination on some of them, that were
17 not truthful with you initially; correct?

18 A That's correct.

19 Q One would be Rickey Roupe?

20 A Correct.

21 Q Nathan Moats?

22 A Correct.

23 Q And they eventually, though, came back to you a

1 second time and indicated to you that they had been untruthful
2 with you the first time?

3 A That's correct.

4 Q All right. As far as Jessica Simms and Hayle Roupe,
5 they never really wavered from their statement, did they?

6 A No.

7 Q You attempted -- or you actually spoke to Brittani
8 Merten; is that correct?

9 A I did.

10 Q She indicated that pretty much she didn't have any
11 contact with him, but she testified earlier as to her phone
12 calls; correct?

13 A Brittani had told me that she had never asked Austin
14 about Brandon. But when Rickey and Brandon were -- Rickey and
15 Austin were talking about Brandon she would leave the room so
16 she didn't know what they were saying.

17 Q Okay. Now, the location -- and I believe Detective
18 Morris testified to this -- but the location where the body
19 was found on Hatchet Man Road, do you know what county that
20 was in?

21 A That's in Trumbull County.

22 Q Okay. Now, when you were at the location there, you
23 then -- or I'm sorry -- after the location, you went and spoke

1 to a number of the witnesses. You tried to track down some of
2 these witnesses, including Josh White; correct?

3 A That's correct.

4 Q Just tell us what you did over the course of the next
5 few days then?

6 A I actually interviewed Josh White on the 15th, the
7 day that we located Brandon's body. That was later that
8 afternoon. We had set up an appointment for him to come in.
9 So that was on the 15th at about 4:40 p.m. I interviewed
10 Josh. He gave me his story. That he was at another friend's
11 house in Niles and he had got in touch with Brandon and
12 Brandon had went and picked him up. They had then went from
13 this friend in Niles to his grandmother's house in
14 Bristolville and proceeded to mow her grass. They then mowed
15 the grass. Josh contacted a friend of his named Billie
16 Holness. And they went from Josh's -- or I'm sorry -- from
17 Brandon's grandmother's house to Howland to Billie Holness'
18 house to swim.

19 Q And you confirmed that with Billie Holness?

20 A I did.

21 Q Now, did either Billie Holness or Josh tell you that
22 they were with Austin Taylor Burke?

23 A They did not.

1 Q And eventually, then, you obtained information on
2 June -- well, is there anything else you did between then and
3 June 20th?

4 A Plenty.

5 Q Okay. Lots of other followup. Yeah, yeah. What are
6 some of the things you did? And without telling me what
7 anybody told you, what are some of the things you did?

8 A I interviewed several other witnesses. I apologize.
9 I'm going back over my notes.

10 Q Okay.

11 A More witnesses. We filed the murder warrant for
12 Austin based on some of the information that we learned to
13 that point before the 20th.

14 Q Okay. So there was actually a warrant for him before
15 the 20th?

16 A Yes, sir.

17 Q Based upon the information that you had obtained from
18 some of these witnesses, including the Hayle Roupe, Jessica
19 Simms, Rickey Roupe, Nathan Moats and some of those
20 individuals?

21 A Deidre Keener, yes.

22 Q Deidre Keener. I'm sorry. I keep leaving out Deidre
23 Keener.

1 A And I apologize. A warrant was actually filed on
2 June 20th.

3 Q So that day?

4 A Yes.

5 Q Later in the day on June 20th, much later, did you
6 get information that Austin Taylor Burke was arrested?

7 A I did.

8 Q And how did that information come to you?

9 A We had been pinging Austin's phone throughout the day
10 after we had filed the warrant to try to locate him. We
11 always seemed to be one step behind him. We couldn't catch up
12 with him.

13 Q So he would have the phone pinged by the 911 center?

14 A That's correct.

15 Q And if he was in a location you'd go out and try to
16 find him?

17 A Correct. But we were always several steps behind him
18 because it's a historical think, the pinging.

19 Q All right.

20 A So we had stopped looking for him that afternoon.
21 And I had went home. And later that evening I received a call
22 from our dispatch, the Trumbull County 911 center, that the
23 phone was pinging across from the Pizza Joe's in Cortland and

1 that the Pizza Joe's had just been robbed. The Cortland
2 Police Department was there at the apartment across from Pizza
3 Joe's and they had sent the dispatch a picture of Austin that
4 was there because they were saying that the person there gave
5 them the wrong name. The picture I received from the 911
6 dispatcher was definitely a picture of Austin Burke. And I
7 was able to ID him at that point.

8 Q And they had dispatch contact the Cortland Police to
9 tell them --

10 A That's correct.

11 Q -- that individual was not who he was saying he was?

12 A That's correct.

13 Q And he was arrested?

14 A That's correct.

15 Q At some point you take a statement from Austin Taylor
16 Burke; is that correct?

17 A I did, the next day.

18 Q Okay. And tell us how and where that came about?

19 A That was at the Trumbull County Jail the next morning
20 at about 8:39 in the morning. My partner and I, Detective
21 Mackey, went to the jail. We brought Austin into a room at
22 the jail. I read Austin his Miranda rights. And he did
23 acknowledge to me that he understood them and signed the

1 waiver form.

2 Q Now, before you go any further, you had spoken to him
3 back on the 14th, I believe. Just explain to the jury why you
4 did not read him his Miranda rights on the 14th?

5 A On the 14th I did not read his Miranda rights because
6 he was not in custody. You need --

7 Q That's what triggers --

8 A Correct. Custody and interrogation then triggers
9 Miranda warnings.

10 Q He was not in custody at the time you spoke to him on
11 the 14th so there is no requirement that you Mirandize him?

12 A That's correct.

13 Q I am going to hold you up here for one second. I'm
14 going to hand you what has been marked for purposes of
15 identification as State's Exhibit 27. I'm going to ask if you
16 recognize State's Exhibit 27?

17 A I do.

18 (Whereupon, State's Exhibit 27, Constitutional Rights
19 Form, was introduced for identification.)

20 Q What is State's Exhibit 27?

21 A It's our Warren Police Department constitutional
22 rights and waiver of rights form.

23 Q Okay. And we're going to listen to the conversation

1 that you had that was recorded in the Trumbull County Jail.
2 But when we listen to that, we can hear you discuss those
3 rights with him and the waiver of those rights?

4 A Correct.

5 Q And he initialed and signed those rights and
6 indicated he would speak to you at that point?

7 A He did.

8 Q Okay. And that's a fair and accurate copy of the
9 original that you have in your file?

10 A Yes, sir.

11 Q So from that point, continue. I'm sorry.

12 A So after he had informed me that he understood his
13 rights and he -- and signed the waiver form, I had proceeded
14 to ask him again about Brandon. And he repeated the same
15 story he had told me at his house. He said that Brandon had
16 picked him up about 7:30 while he was walking home from Willow
17 Lake. He said that Brandon had another kid in the car with
18 him and they drove him to his house on Bristol Townline Road,
19 I think it was, where -- Austin's address -- and then Brandon
20 dropped him off and he stayed there.

21 Q Now, at this point in your investigation, you had had
22 the cell phone of Austin Taylor Burke because the police in
23 Cortland had arrested him with it?

1 A That's correct.

2 Q But that cell phone had not been sent to Joann Gibb
3 for analysis yet?

4 A No, it had not.

5 Q At that point, did you have the historical cell phone
6 data from AT&T?

7 A I believe that I had it by then.

8 Q No, I'm talking about from Austin's phone.

9 A Correct.

10 Q You had the cell phone tower records?

11 A I don't remember if I had it by then or not. I know
12 that I had gotten -- received it, but I don't remember the
13 exact date. I apologize.

14 Q Hold on here. Let me show you State's Exhibit 22
15 which is the historical cell phone data records.

16 A Okay.

17 Q You see the date on there?

18 A July 1st, yes, sir.

19 Q So you would not have had those?

20 A I did not, no, sir.

21 Q So you did not have this, and you did not -- even
22 though you had his phone, which is State's Exhibit Number 3,
23 you did not have the analysis that was conducted by Joann

1 Gibb?

2 A That's correct.

3 Q All right. So go ahead. Austin then gave you a
4 statement in the jail?

5 A He had pretty much said the same thing he told me
6 when I was at his house. Like I said, Josh -- or Brandon was
7 driving down the road, picked him up in front of Willow Lake
8 and took him home. And that happened around 7:30. He also
9 told me that day that he thought they both had drugs in the
10 car and he thought that he was taking his friend back to Akron
11 after he dropped him off.

12 Q Okay. Now, I'm going to play for you what has been
13 marked for purposes of identification as State's Exhibit 28.

14 (Whereupon, State's Exhibit 28, Defendant's Statement,
15 was introduced for identification.)

16 (Whereupon, State's Exhibit 28 was played
17 for the jury commencing at 3:32 p.m. and concluding at 3:38
18 p.m.)

19 BY MR. BECKER:

20 Q We have just listened to State's Exhibit 28. Do you
21 recognize the voices on State's Exhibit 28?

22 A I do.

23 Q One of those -- there's actually three voices on

1 there; correct?

2 A Correct.

3 Q Please identify the three voices you heard on State's
4 Exhibit 28.

5 A Myself, my partner Detective Wayne Mackey, and Austin
6 Burke.

7 Q And that's a fair and accurate copy of your
8 conversation with him on June 21, 2017, at the Trumbull County
9 Jail?

10 A That's correct.

11 Q All right. Now, after that, you began to do some
12 other things. You obtained some search warrants; correct?

13 A I did.

14 Q Including the search warrants for his mouth and to
15 get DNA swabs?

16 A I did.

17 Q We searched that duffle bag?

18 A We did.

19 Q There was also the request made to the phone
20 companies which only Mr. Burke's phone company AT&T responded
21 to; correct?

22 A Correct.

23 Q We located and you have spoken to other witnesses

1 since that date; correct?

2 A Correct.

3 Q All right. The individual that you identified as
4 Austin Taylor Burke and who is depicted in State's Exhibit 29,
5 is he here in the courtroom today?

6 A He is.

7 Q Can you please identify him?

8 A Sitting here with the light blue shirt and dark blue
9 tie.

10 MR. BECKER: May I have one moment, Your
11 Honor?

12 BY MR. BECKER:

13 Q Now, at some point you were contacted by the
14 defendant's -- well, you had spoken at one point to a girl
15 named Meredith -- I'm drawing a blank.

16 A Loges.

17 Q Loges, yes. And she had provided you some
18 information; correct?

19 A She did.

20 Q At some point, though, then you were contacted again
21 by Meredith Loges's mother; correct?

22 A Correct.

23 Q She indicated that she had information with Austin

1 with a firearm; correct?

2 A Correct.

3 Q And that was the basis -- and we've seen it here.
4 It's already been marked State's Exhibit Number 12. That is
5 the video of him shooting the gun that Meredith testified to
6 herself; correct?

7 A That's correct.

8 Q That was actually from Meredith's phone, but it was
9 provided by Meredith's mother?

10 A That's correct.

11 Q You then made contact with the Cortland Police and
12 obtained State's Exhibit Number 3 from them which was the
13 Samsung Galaxy phone?

14 A I did.

15 Q And also you obtained some other physical evidence
16 from the city of Cortland that was supplied to BCI?

17 A Correct.

18 MR. BECKER: Your Honor, I have nothing
19 further of this witness.

20 THE COURT: Cross.

21 MR. OLSON: Thank you, Your Honor.

22

23

CROSS EXAMINATION

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BY MR. OLSON:

Q Good afternoon.

A Good afternoon, sir.

Q Okay. Detective Greaver, based upon your direct examination and your report, you agree that you were assigned to this case on June 13th?

A That's correct.

Q And at that point in time Brandon had already been missing for over 24 hours, roughly?

A Yes.

Q 30 hours since the last known communication, somewhere in that area?

A Since the 11th.

Q Right. 12th. 12th, morning?

A Correct, yes.

Q Okay. Just so we're on the same page.

A Yes. Yes.

Q I just want to make sure. And again, when you're assigned at this point, it's a missing persons? This isn't a homicide investigation that you're engaging on June 13th; correct?

A Correct.

1 Q And at the initial stages, you are working with
2 Brandon's mother, Stephanie Sample; is that correct?

3 A I had spoken with her.

4 Q Right. And that was approximately 10:36 in the
5 morning?

6 A Yes.

7 Q I mean, obviously you're making these reports --

8 A I try my best.

9 Q -- pretty contemporaneous, but obviously there may be
10 some delay?

11 A Correct, yes.

12 Q And during this initial stage, you're speaking with
13 her at 10:36, she said that -- she gave you some background
14 information about Brandon?

15 A She did.

16 Q She indicated that he had some addiction issues?

17 A She did.

18 Q She indicated that he also had some possible
19 disabilities, but he was highly functional?

20 A Correct.

21 Q Okay. She indicated that on Sunday, which would have
22 been the 11th, he went to his grandmother's house and mowed
23 the grass?

1 A Okay.

2 Q And that he was hanging out with a friend named Josh;
3 correct?

4 A Correct.

5 Q Now, the way you wrote it in your report, it says,
6 "Brandon mowed his grandmother's grass on Sunday and then was
7 hanging out with his -- with a friend, Josh"; is that correct?

8 A That's what it says, correct.

9 Q So it indicates that Brandon went and cut the grass
10 and then went to pick up Josh?

11 A That's what it says.

12 Q And we heard from Mr. Sample today, and he indicated
13 that Brandon had left the house around 11:00, 12:00, on the
14 11th, went up to cut the grass?

15 A Correct.

16 Q Okay. Now, it also reports that she thinks he was
17 also hanging out with a male named Austin Burke?

18 A Correct.

19 Q Did you gain from her how -- how she came to that
20 conclusion or why she believed that her son was hanging out
21 with an individual named Austin Burke?

22 A I did not.

23 Q Okay. Did you inquire of her of whether she knew who

1 Austin Burke was?

2 A I don't believe so.

3 Q And, again, the last text that was received was
4 roughly 4:40 in the morning?

5 A I have 4:38 in my --

6 Q Correct.

7 A -- in my notes.

8 Q I'm just rounding up.

9 A Yes, sir.

10 Q We know it was that timeframe?

11 A Yes, sir. Yes, sir.

12 Q Okay. So when you initially get assigned to this
13 case, too, Brandon has been missing for right around 30 hours.
14 There had already been reports that were issued. And when I
15 say "reports," missing person's reports; is that correct?

16 A We had -- our agency had taken a missing persons
17 report, yes.

18 Q Okay. And then Ms. Sample had also called the
19 Trumbull County 911 center?

20 A I don't know.

21 MR. OLSON: May I approach the witness,
22 Your Honor?

23 THE COURT: Is this B?

1 MR. OLSON: B, Your Honor, yes.

2 BY MR. OLSON:

3 Q Detective, I'm going to show you what's been marked
4 as Exhibit B.

5 (Whereupon, Defendant's Exhibit B, Missing
6 Persons Entry, was introduced for identification.)

7 A Okay.

8 Q Are you familiar with that document?

9 A I am.

10 Q Okay. And can you explain to the jury what that
11 document is?

12 A What this is is a missing person's entry through the
13 Ohio state L.E.A.D.S. system. L.E.A.D.S. is a state-wide
14 computer system law enforcement uses.

15 Q And what was the date that that report was generated?

16 A June 12th.

17 Q Okay. And does it have a time that it was generated?

18 A 20:35 hours, which is 8:35 p.m.

19 Q Okay. So we know you got the assignment at 10:20 on
20 the 13th?

21 A Correct.

22 Q So almost 12 hours, little over 12 hours had elapsed
23 since she contacted the 911 center; is that correct?

1 A She did not contact. We would have contacted the 911
2 center.

3 Q Okay.

4 A She filed the report with us, with our agency, and
5 then we had him entered into the 911 system.

6 Q I understand. Okay. So before you get assigned,
7 though, the missing report came in roughly 12 hours, 14 hours
8 before?

9 A Yes. That's fair, yes.

10 Q And, again, that report indicates that Brandon was
11 last seen at 1900 hours. I mean, it's kind of scribbled on
12 there. I don't think that was your writing, but --

13 A Yes. Yes. It does say that. I don't know if it's
14 my writing or not.

15 Q Okay. And is there other things written on there?

16 A Stephanie Sample's phone number. "Josh said Brandon
17 texted Austin Taylor Sunday night. Going to hang out with
18 Josh."

19 Q So who said -- who said that Brandon texted Austin
20 Sunday night?

21 A This is very well -- could be my handwriting.

22 Q Okay.

23 A I'm not sure, but it says on here, "Last seen Sunday

1 1900 hours, which is 7:00 p.m." And it says, "Going to hang
2 out with Josh. Josh says Brandon texted Austin Taylor Sunday
3 night."

4 Q Okay. So Josh was providing information through
5 Stephanie at that point?

6 A Correct.

7 Q Okay. Do you know if there was also posts going on
8 social media such as Facebook and things of that nature?

9 A I don't know if I had noticed it starting at that
10 point or not.

11 Q Okay. Did you go to the family and ask to gather
12 some of these posts so you can compare them when maybe some
13 statements were coming in to determine whether it was accurate
14 or whether you could say that's a bunch of BS?

15 A I did not.

16 Q Okay. Do you know if there was local news agencies
17 reporting before you got assigned?

18 A I don't know if there was or not.

19 Q Okay. So later on, at 12:10, you get a second phone
20 call from Stephanie Sample; is that correct?

21 A Yes.

22 Q And at this point in time, she's advising you that
23 she heard through her daughter -- did you identify who her

1 daughter was?

2 A I don't think so. At that point I did not.

3 Q Okay. She heard through her daughter that Josh White
4 had contacted her and said to check the woods behind the
5 grandmother's house; is that correct?

6 A That is correct.

7 Q Okay. You personally did not speak to Josh then?

8 A Not at that point, no.

9 Q Is there a reason that you didn't call him to ask
10 him, "Hey, why are you telling us to check the woods?"

11 A I did not. Not at that point, no.

12 Q Did you have a phone number for him?

13 A I don't know if I had his phone number at that point
14 or not.

15 Q All right.

16 A I don't remember.

17 Q Now, again, it was referred to the grandmother's
18 house. Did you identify who the grandmother was?

19 A I did speak with her. I don't remember if I
20 identified her or not, but we did go to her house and speak
21 with her.

22 Q Okay. Can you tell us where the grandmother lived?

23 A 5040 State Route 45 in Bristolville.

- 1 Q Bristolville?
- 2 A Yes.
- 3 Q And is this the same location that Josh White was
4 indicating he went with Brandon to help cut the grass?
- 5 A Correct.
- 6 Q Did you, in fact, go into the woods --
- 7 A Did not.
- 8 Q -- that day?
- 9 A Did not.
- 10 Q You did not. Was there a search and rescue team that
11 was dispatched to there?
- 12 A I remember hearing something about it, but I don't
13 know if they were dispatched or not. I was not a part of that
14 so I don't know.
- 15 Q Okay. So you didn't speak with the Mecca Township
16 Volunteer Fire Department K-9 Search and Rescue?
- 17 A I don't remember speaking with them.
- 18 Q You did not have or instruct anybody to bring a
19 canine unit?
- 20 A I did not.
- 21 Q To go to the woods to check for the scent?
- 22 A I did not.
- 23 Q So as you sit here today, you cannot say that he was

1 or was not in the woods behind grandmother's house?

2 A I did not check those woods.

3 Q Now, when you later interviewed Mr. White on
4 June 15th, you brought up the location of where Brandon
5 Sample's body was found; is that correct?

6 A I don't have it in my notes that I did, but when I
7 put things from interviews, I just put what I think is
8 important. So it's not in my notes. It's very possible that
9 I could have.

10 Q So coming in here today, you did not review any of
11 these interviews to refresh your recollection?

12 A I tried. But there was a lot of them.

13 Q Okay. I understand.

14 A I tried.

15 Q But during that interview, do you recall if Josh
16 really did not limit it to just behind grandma's house; he
17 said, "I told -- I had that feeling that you should have
18 checked the woods in Bristol"?

19 A It's possible, sir.

20 Q Now, also during this very early stage of this
21 investigation you receive a telephone call from the Niles
22 Police Department that the car that was owned by Brandon
23 Sample was located; is that correct?

1 A That's correct, sir.

2 Q And the dispatch summary indicated that it was
3 located by a third -- a third person on the bike trail in
4 Niles?

5 A That's correct.

6 Q And we heard from the Niles police officer today that
7 said around 7:15, 7:30 is when the call came in?

8 A Correct.

9 Q By the time you received this report, the car had
10 already been towed out of that location?

11 A That's correct.

12 Q Is that correct?

13 A Yes, sir.

14 Q And you would agree with me that there was no
15 evidence that was recovered from that vehicle?

16 A That's correct.

17 Q Do you know the level of the experience of the
18 officers that performed the inspection of that vehicle?

19 A I do not.

20 Q Do you know what protective measures they took to
21 avoid contamination of evidence or spoliation of evidence or
22 anything like that?

23 A I do not, sir.

1 Q And you would agree with me that things such as
2 fingerprints or gunshot residue or fibers or things like that,
3 it's very delicate evidence, and if you do not properly handle
4 it, it can be lost forever?

5 A That's correct.

6 Q Was there an inventory of the items that were found
7 in the vehicle taken?

8 A I don't recall, sir.

9 Q Do you have an inventory here today?

10 A I could check and see. I may have or may not. I
11 don't know.

12 Q Did you do the inventory or did Niles do it?

13 A I did not do an inventory. So if there was one done,
14 it would have been done by Niles.

15 Q Okay. And, again, when we say there was a lack of
16 evidence, there was no cell phone located in the vehicle; is
17 that correct?

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

19 Q There was no blood splatter or blood stains in the
20 vehicle?

21 A That's correct.

22 Q There were no weapons, bullets, or gunshot residue
23 that you ever recovered?

- 1 A That's correct.
- 2 Q There were no drugs or drug residue?
- 3 A That's correct.
- 4 Q No fibers?
- 5 A Not that I know of.
- 6 Q No cigarette butts?
- 7 A Not that I know, sir.
- 8 Q No bottles, cans, food packages, anything like that?
- 9 A Not that I'm aware.
- 10 Q Any additional footprints or fingerprints or tire
11 markings maybe of a different vehicle that drove in the same
12 location as the -- as Brandon Sample's car, was that looked
13 for?
- 14 A Where at?
- 15 Q On the bike trail. So maybe somebody followed
16 whoever dropped the car off, picked them up, and took them
17 away. Did you look to see if there were any tire prints that
18 could have been left?
- 19 A I did not.
- 20 Q Now, once you received this report that the vehicle
21 had been located, you immediately went to the impound lot and
22 inspected the vehicle; is that correct?
- 23 A I don't know if it was immediate, but we did go check

- 1 the -- check the car.
- 2 Q Same day, I think?
- 3 A It may have been.
- 4 Q Did you test for evidence yourself?
- 5 A I did not.
- 6 Q Did you take any photographs?
- 7 A Took photographs.
- 8 Q Okay. And you took photographs of what?
- 9 A The car.
- 10 Q Just the outside or?
- 11 A Yes.
- 12 Q Did you take any photographs of the inside?
- 13 A I don't think I did, sir.
- 14 Q Did you go into the trunk?
- 15 A We did look in the trunk.
- 16 Q Okay. Any photographs of in the trunk?
- 17 A I don't think so.
- 18 Q But no attempts to recover evidence through like
- 19 tapes or things like that?
- 20 A No, sir.
- 21 Q No special lighting used like to see latent prints
- 22 or --
- 23 A No, sir.

1 Q -- anything like that? Did not note any footprints
2 or any mud prints in the interior of the vehicle?

3 A Did not.

4 Q So you would agree with me that there was nothing,
5 based upon your inspection of this vehicle, that would
6 indicate Austin Burke was in there when the vehicle was left
7 in the Niles bike path?

8 A No, sir.

9 Q Now, Makayla Egbert, you indicated, reported to the
10 Niles police station on June 13th; is that correct?

11 A That's correct.

12 Q At about 14:37, which would be 2:37 p.m.; is that
13 correct?

14 A That's when I was called. She was going to meet us
15 there. She had not been there yet. So shortly after that, at
16 15:00 hours.

17 Q You went and met her there?

18 A Yes. Yes, sir.

19 Q Okay. And you performed this initial interview with
20 her?

21 A I did.

22 Q And at the initial interview she indicated that she
23 received her information from Jess?

- 1 A Correct.
- 2 Q When I say "Jess," I'm talking about Jessica Simms.
- 3 A Correct.
- 4 Q And she said that Austin Burke came back to the
5 residence of Pamela Roupe on the night of the 12th covered in
6 blood; is that correct?
- 7 A That's what my notes say, correct.
- 8 Q Okay. And she said, "Jessica told me she was there";
9 correct?
- 10 A It says, "Jess stated that Austin killed someone last
11 night. She then started checking, found the posts about
12 Brandon being missing on Facebook. She stated that she also
13 told -- she was also told that Austin came to her
14 grandmother's that night covered in blood and told her cousin
15 Rickey that he had just set some dude's head on fire."
- 16 Q Okay. Do you recall Makayla telling you Jessica says
17 she was there?
- 18 A I do not, sir.
- 19 Q So if we would play the video right now, you
20 cannot -- whatever it says it says?
- 21 A Correct. Oh, yeah. Yes, sir.
- 22 Q Okay. And we'll get back to that.
- 23 A Okay.

1 Q You would agree with me that you did not follow up
2 with Jessica immediately; is that correct?

3 A That's correct.

4 Q You would agree with me that at the initial interview
5 Makayla makes no reference to a vehicle being left on the bike
6 path?

7 A No, she did not.

8 Q You would agree with me that she makes no reference
9 to a phone?

10 A No, sir.

11 Q No reference to wallet or anything like that?

12 A Not that I can remember, no, sir.

13 Q No reference to Hatchet Man Road?

14 A Not at that point, no, sir.

15 Q No reference to any clothing?

16 A No, sir.

17 Q Okay. She also makes it clear that she was going
18 through Facebook posts and looking at this information?

19 A She did. I believe she did tell me that, yes.

20 Q Okay. She talks to you about her relationship with
21 Austin; is that correct?

22 A I think she just told me she used to date him.

23 Q Right. And then she indicated to you that she didn't

1 talk to him for a long period of time?

2 A I remember that, yes.

3 Q Did you -- you got this entire extraction of Austin
4 Burke's telephone; is that correct?

5 A That's correct.

6 Q And it had all of his text messages for however long
7 he was using that phone; is that correct?

8 A I believe so.

9 Q Did you go and see text messages that were exchanged
10 between Makayla and Austin Burke just prior to her making
11 these reports somewhere around June 2nd, June 3rd, where she
12 was very upset with Austin, saying that he was playing games
13 with her regarding dating?

14 A I don't remember that, sir.

15 Q Do you remember looking at the e-mail -- or text
16 message exchanges between them?

17 A No.

18 Q Okay. Brandon Sample's phone records, you received
19 the cell phone history of calls and texts from Brandon's
20 father; is that correct?

21 A That's correct.

22 Q Now, do you recall when you received those?

23 A Give me one second. Let me just check my notes.

1 That would have been on the 13th at 16:35 hours, which is 4:35
2 p.m. I received that e-mail.

3 Q Okay. And through your previous notes and your
4 previous testimony you indicated that you knew that the phone
5 last pinged at 4:38 in the morning in Bristolville; is that
6 correct?

7 A That's what I was told by the 911 center, correct.

8 Q Okay. Did you check or did you receive any
9 additional ping information at any point in time?

10 A No. No, sir.

11 Q And you would agree with me to this date you have
12 still not received any cell site information data for Brandon
13 Sample's phone?

14 A That's correct.

15 Q You would agree with me that that's very important
16 information?

17 A Yes.

18 Q That would show us where he was at?

19 A Correct.

20 Q Because you cannot sit here and testify today that
21 Brandon Sample ever left the Warren area?

22 A I can.

23 Q You can?

- 1 A When we -- well, we found him in Bristolville.
- 2 Q But -- okay. The Trumbull County area?
- 3 A Correct.
- 4 Q You cannot confirm that he actually traveled to Akron
5 at any point in time?
- 6 A Just through testimony of witness statements.
- 7 Q And that's Josh White? That's the only one?
- 8 A That's correct.
- 9 Q Correct? You did not speak with anybody else in
10 Akron --
- 11 A I did not.
- 12 Q -- that positively identified Brandon as being there?
- 13 A No, I did not.
- 14 Q And would you agree with me that the report that you
15 received was kind of generic? It just gave the length of the
16 calls and the number?
- 17 A The date and the time.
- 18 Q Right.
- 19 A Yes, sir.
- 20 Q And, again, it did not provide the cell site data
21 information that we have for Austin Burke on it?
- 22 A It did not.
- 23 Q And, again, the request was made. Do you know -- do

1 you remember who the carrier is for Brandon?

2 A I do not, sir. I apologize.

3 Q Do you know when you made the request?

4 A I believe it was December, maybe in December,
5 beginning of January. I do not remember the exact time, sir.

6 Q And when was the last time you followed up on this
7 information?

8 A I check my e-mail daily. That's how it comes.

9 Q Did you reach out to the cell carrier and say, "Hey,
10 we got our trial starting"?

11 A No, sir.

12 Q "I really need this information"?

13 A No, sir. I would get an automated system and talk to
14 a computer for ten minutes. So no -- when they get it, they
15 e-mail it to me.

16 Q You would agree with me that when a man is sitting on
17 trial for murder, ten minutes, it's not really that long of a
18 time --

19 A It may be.

20 Q -- to wait for some important information?

21 A It may be. But like I said, we get those through
22 e-mail. That's how they come. That's how I was looking for
23 it.

1 Q Now, again, on June 13th at approximately 18:46,
2 which would be 6:46 p.m., you get a call from Makayla; is that
3 correct?

4 A That's correct.

5 Q Now we're getting the report that she heard through a
6 friend that Austin dumped the body at Hatchet Man Road; is
7 that correct?

8 A That's correct.

9 Q Did you identify who this friend was?

10 A Did not.

11 Q Did you ask?

12 A I don't recall if I did or not, sir.

13 Q So there was no followup on how she's getting her
14 information?

15 A No.

16 Q It's, hey, whatever she tells me I'm gonna note this
17 and I'm not gonna follow up?

18 A I'm going to note it and I'm going to follow up on
19 the tip that I received.

20 Q So -- and you would agree with me that during the
21 conversation she didn't really know what the real name of
22 Hatchet Man Road was?

23 A She did not, correct.

1 Q She did not personally reveal the name of the friend
2 that she got the information from?

3 A She did not.

4 Q You would agree with me that this report of Hatchet
5 Man Road and the body being dumped there comes to you after
6 reports came to you that Josh White told you to check the
7 woods in Bristol?

8 A That was after, that's correct.

9 Q And you would agree with me that at the time that you
10 were interviewing Makayla she lived in Bristolville?

11 A I believe so, yes.

12 Q And through your investigation, and even at this
13 early part of your investigation, you learned that some of
14 these kids that came in here and testified were in contact
15 with a woman by the name of Jill Davis who is a family friend
16 of the Samples?

17 A I believe so, yes.

18 Q Did you find out during -- through your investigation
19 if Jill Davis learned through the family that Josh White was
20 saying, "Hey, check the woods in Bristolville"?

21 A I think the only thing I remember about Josh White
22 was that first day when I had heard from Brandon's mother to
23 check the woods in Bristol -- behind Brandon's grandmother's

1 house.

2 Q And again, you would agree with me that you did not
3 go on social media and see if any of this type of information
4 was being posted at that point?

5 A I did not at that point, no, sir. I don't recall
6 doing that anyhow.

7 Q Now, on the 13th at around 2:37 p.m., you interviewed
8 Pamela Roupe; is that correct?

9 A No. On the 13th at 2:37 p.m?

10 Q Yes.

11 A No.

12 Q 3:37. I'm sorry.

13 A That's correct. Yep. I gotcha.

14 Q My military time is a little bit off. You would
15 agree with me that that video is not recorded or videoed.

16 A No, sir. That is not recorded.

17 Q Okay. And that just indicates that Pam Roupe told
18 you Austin was there on Sunday, he stayed the night and left
19 Monday morning?

20 A Correct.

21 Q All right. Now, again, continuing into your
22 investigation, on June 14th you meet up with Austin Burke; is
23 that correct?

- 1 A Yes.
- 2 Q You attempted to contact him on the 13th. He wasn't
3 home; correct?
- 4 A Correct.
- 5 Q June 14th you call him on his cell phone. He doesn't
6 answer. You leave a message?
- 7 A Did not leave a message.
- 8 Q Did not --
- 9 A Was not able to. The voicemail was not set up.
- 10 Q Okay. He immediately calls you back?
- 11 A Yes, within a minute.
- 12 Q He did?
- 13 A Yes, within a minute he called me back.
- 14 Q He agreed to meet with you?
- 15 A He did.
- 16 Q Okay. So he wasn't trying to avoid you at any point
17 in time?
- 18 A No, sir. Not at that point.
- 19 Q At 10:30, you did meet with Austin at his mom's
20 house; correct?
- 21 A I did.
- 22 Q You would agree with me that he confirmed he knew
23 Brandon Sample?

- 1 A He did.
- 2 Q He admitted that he was with him on June 11th?
- 3 A He did.
- 4 Q He said that he was picked up by Brandon at
5 approximately 7:30 p.m?
- 6 A That's correct.
- 7 Q And he was picked up as he was walking home from
8 Willow Lake?
- 9 A That's correct.
- 10 Q Do you know the location of Willow Lake?
- 11 A I do.
- 12 Q It's State Route 45; is that correct?
- 13 A Yes, sir.
- 14 Q Do you know how far that is from Austin Burke's home?
- 15 A I don't know the exact distance, but it's pretty
16 close.
- 17 Q Pretty close?
- 18 A Yeah.
- 19 Q Within walking distance?
- 20 A I believe so, yeah.
- 21 Q Okay. Did you go to Willow Lake and see if they had
22 a video that would confirm that Austin was there that evening
23 -- or that day?

1 A I did not.

2 Q Okay. Did you ask Austin for an identification of
3 people that would be able to go and identify him being there?

4 A I did not.

5 Q Did you go to his mom and ask her, "Hey, was Austin
6 at Willow Lake at any certain time on the 11th?"

7 A I did speak to his mother, but I did not ask her
8 that.

9 Q Okay. You did, again, through your investigation
10 confirm that Brandon's grandmother, at that time, lived on
11 State Route 45?

12 A Correct.

13 Q And that's the same route as Willow Lake?

14 A That's correct.

15 Q And it's close in proximity as well; is that fair?

16 A Fairly close, yes, sir.

17 Q And what Austin indicated to you is that Brandon
18 drove by him as he was walking; correct?

19 A Yes.

20 Q Turns around because he indicated Brandon must have
21 recognized him, pulled up behind him, and asked him if he
22 needed a ride home?

23 A He just -- I just have in my notes that Brandon drove

1 by and picked him up in front of Willow Lake.

2 Q Was Austin's initial interview recorded?

3 A It was not, sir.

4 Q Your notes do indicate that Austin said, "Hey, there
5 was another guy in the car"?

6 A Correct.

7 Q And he said, "I can't remember his name; I think it
8 was Tyler or Josh"?

9 A That's correct.

10 Q All right. He identified that Josh had a beard?

11 A He did.

12 Q He said that they gave him a ride to his house and
13 dropped him off; is that correct?

14 A Yes.

15 Q He said that it appeared that they were doing drugs?

16 A Yes. He thought that they both had heroin.

17 Q Okay. And, again, going back to the initial reports
18 and initial discussions that you were having with Ms. Sample,
19 you confirmed through her that, hey, maybe Brandon had some
20 type of drug problem?

21 A Yes.

22 Q So that's not outlandish statements there; would you
23 agree?

1 A No. No, it is not.

2 Q Austin tells you, "After he dropped me off, I never
3 saw him again"?

4 A Correct.

5 Q Now, in your investigation, after you get this
6 information from Austin Burke, do you go out and try to meet
7 up with Josh White, confirm that he has a beard or anything of
8 that nature?

9 A I did not.

10 Q Through your investigation, did you learn that Josh
11 White did, in fact, have a beard?

12 A I did see him on Facebook, that he did have a beard.

13 Q Through your investigation, did you confirm that his
14 appearance was pretty -- the representations that Austin gave
15 of his appearance were pretty accurate?

16 A When Josh came in for his interview, he did not have
17 a full beard.

18 Q Okay. But, again, based upon your observation of
19 looking at him on Facebook and comparing those images to what
20 Austin was describing, pretty accurate?

21 A Correct. Josh did have a beard, yes. Yes, sir.

22 Q Now, through this trial we've heard several witnesses
23 come in and we know that Austin has had his troubles in the

1 past. Got in trouble with that agg. burglary, was
2 adjudicated. And do you know if that adjudication was based
3 on an admission?

4 A I do not, sir.

5 Q Did you ever question him on it?

6 A That was not my case, sir.

7 Q Okay.

8 A No, I do not know anything about the case.

9 Q And, again, you confirmed that Brandon Sample was
10 working at the DYS facility that Austin was housed in during
11 the period of time?

12 A They were there at the same time, correct.

13 Q Correct?

14 A Yes.

15 Q You also contain in your report that you spoke with a
16 Shawn Andrews?

17 A Yes.

18 Q And he was -- he did a records search and found that
19 there were no problems ever identified between Austin Burke
20 and Brandon Sample?

21 A That's correct. He was not able to confirm any
22 problems between the two during Brandon's employment.

23 Q You'd also agree with me that when you received the

1 phone records for both Austin Burke and those generic records
2 for Brandon Sample that it was Brandon that initiated the call
3 with Austin?

4 A I'd have to see the records, but it's possible.

5 Q I'm going to show you what's previously been marked
6 Exhibit A. May I approach the witness Your Honor?

7 THE COURT: You may.

8 BY MR. OLSON:

9 Q And again, I'll refer you to the final page of this
10 report. And it'll show -- and there's a highlight of a call?

11 A Correct.

12 Q Two seconds long?

13 A Yes.

14 Q And it shows that it was an incoming call; is that
15 correct?

16 A That's correct.

17 Q And you would agree with me that the documents that
18 you have in your hand are an extraction report from Austin
19 Burke's phone?

20 A That's correct.

21 Q Okay. So based upon all of your investigation, all
22 the records you've received on Brandon Sample's phone and
23 Austin Burke's phone, that was the first contact that you can

1 identify?

2 A Yes, sir.

3 Q Okay. And you'd also agree with me that even after
4 that phone call, the very first text message that was sent out
5 was Brandon Sample reaching out to Austin Burke?

6 A I believe that's correct.

7 Q I think if you go to page 3.

8 A Yes, that is correct. Yes.

9 Q Okay. So that would not be consistent with claims
10 that Brandon had difficulty with Austin in DYS?

11 A I don't know that.

12 Q He's reaching out to him?

13 A I don't know that.

14 Q We do know that he's reaching out to him; correct?

15 A He is reaching out, but I don't know of any claims of
16 the problems at DYS.

17 Q Well, we are also able to go to DYS and say, "Hey,
18 there's no record of this"?

19 A He was also not able to confirm any problems,
20 correct.

21 Q Did you learn at any point why Brandon was no longer
22 employed at DYS?

23 A I know his father told me, but I don't remember why.

1 Q Okay. It had nothing to do with Austin Burke?

2 A No, it did not.

3 Q All right. On June 15th -- because now you're
4 following up on leads, you go out to what is identified as
5 Hatchet Man Road; is that correct?

6 A Correct.

7 Q At approximately 9:00 in the morning, you find
8 Brandon Sample's body in a wooded area of Peck Leach Road?

9 A Correct.

10 Q You find this body over a small embankment?

11 A That's correct.

12 Q How far off the roadway would you say it was?

13 A Well, the roadway goes back and kind of comes into an
14 opening. So the opening that was there where that woodpile
15 was, and then that little shack that was built there, it was
16 probably, I would guess 15 feet from the clearing there.

17 Q So it wasn't miles into the --

18 A It was not. No, sir.

19 Q And throughout your investigation, some of the
20 interviews that you had, some people indicated that Austin
21 came in and told us that he dragged his body for miles into
22 the woods and -- and buried it?

23 A I don't remember that.

- 1 Q Okay. If it's on the videos then --
- 2 A If it's there, it's there, but I don't remember that.
- 3 Q So now you find yourself in the middle of a crime
4 scene?
- 5 A Yes, sir.
- 6 Q We have a body. Based upon your investigation, your
7 experience, your training, you now are -- have converted this
8 from a missing person's investigation into a homicide
9 investigation?
- 10 A Correct.
- 11 Q So you have training in the treatment of a crime
12 scene; is that correct?
- 13 A That's correct.
- 14 Q You follow the FBI 12-step process?
- 15 A I do not know what that is, sir.
- 16 Q Okay. You've got to protect the scene though?
- 17 A Correct, you've got to protect the scene.
- 18 Q We've got to prepare the scene? We've got to protect
19 the scene?
- 20 A Correct.
- 21 Q So do you do an initial survey of the scene to
22 determine how big of a crime scene you're going to identify?
- 23 A Sir, once we found the body -- I'm a Warren Police

1 detective, but I'm also assigned to the Trumbull County
2 Homicide Task Force. So once we had found Brandon, I had to
3 call the sheriff and let him know. And so I was informing the
4 sheriff and my bosses at the city. So I was not doing
5 anything with the crime scene. Once we had gotten the sheriff
6 notified and I had spoken with my boss with the Warren City
7 Police Department and they agreed that I would just continue
8 the investigation for the task force, that's when we started
9 calling out the other people to help us with the crime scene.

10 Q Who was in control of that crime scene? Who was in
11 charge of it?

12 A At that point, Detective Mackey and I were there.

13 Q Okay. So you, at this point, whether you're part of
14 the team or not, you're the only two there. The burden falls
15 to you that I've got to preserve this crime scene, protect any
16 evidence from being destroyed?

17 A Correct. That's correct.

18 Q Or anything like that?

19 A Yes.

20 Q So you have to do an initial survey of just
21 determining how big of a crime scene I'm gonna make this?

22 A We looked around the initial area, sure.

23 Q Okay. And did you cordon it off? Did you rope it

1 off?

2 A We did not.

3 Q Did you have a crime scene log?

4 A I did not. No, sir.

5 Q So you did not know who was coming and entering and
6 exiting the crime scene?

7 A There was nobody there but myself, Detective Mackey,
8 and the three agents from Ohio Department of Natural
9 Resources. Nobody else was coming and going from that area.

10 Q Okay. How did you protect it to establish a pathway
11 so maybe you're not trampling over the person that committed
12 the crime's steps or --

13 A We were already informed from ODNR that it was an
14 active logging road and there were trucks coming in and out of
15 there throughout the day. So trying to find any tracks from a
16 vehicle other than the logging trucks would have been
17 difficult.

18 Q What about footprints going into the --

19 A Same thing. It was very dry. And with the trucks
20 coming in and out, it would have been very difficult to have
21 any footprints coming out of there.

22 Q Did you try?

23 A Did not.

1 Q Could have?

2 A Could have, sure.

3 Q You also still have to avoid contamination of
4 evidence that may be on the body; is that correct?

5 A That's correct.

6 Q What did you do to protect that?

7 A We did not touch the body until Dave Morris got there
8 to process the crime scene.

9 Q And who is Dave Morris?

10 A He is the detective from Cortland Police Department,
11 also assigned to the Trumbull County Task Force.

12 Q He is the one that was here today that provided
13 testimony?

14 A That's correct, sir.

15 Q Now, his testimony was he was only responsible for
16 taking pictures?

17 A Correct.

18 Q So who was responsible for removal of the body?

19 A Once we got ahold of the coroner, the coroner made a
20 decision that it was okay to go ahead and move the body. And
21 from there I don't know because I was not at the scene when
22 the body was removed.

23 Q Before removing the body, you did take some

- 1 photographs; correct?
- 2 A Me?
- 3 Q Well, your team?
- 4 A Yes. Yes, sir. Yes, sir.
- 5 Q Did you take any photographs to see if there was
6 blood pooling in the body that showed movement of the body?
- 7 A No, sir.
- 8 Q Okay. Did you take -- did you call out any
9 entomologists or anybody to go in and see, hey, how long --
10 how big are these bugs, what are the bug cycles, things of
11 that nature?
- 12 A No, sir.
- 13 Q In your training, you've learned that insects have a
14 very unique and very distinct cycle of life?
- 15 A Correct.
- 16 Q And it could help you determine time periods and
17 whether there's been disruption of the body and a bunch of
18 things like that; is that correct?
- 19 A That's not what I do, sir. So I don't know.
- 20 Q So you don't agree with that?
- 21 A I don't know. That's not what I do.
- 22 Q Okay.
- 23 A I'm not a crime scene technician.

1 Q So you would agree that you didn't bring out anybody
2 that is an expert in that to see if there had been movement of
3 the body or how long this body had been there?

4 A No, sir.

5 Q Or how long this body had been dead?

6 A No, sir.

7 Q Okay. So do you recall who removed the body?

8 A No, sir. I do not.

9 Q And it's not noted anywhere; correct?

10 A Not in my case notes it is not.

11 Q Do you stay there until the body is removed?

12 A I was not there when the body was removed.

13 Q Okay. So you went to meet with Brandon Sample's
14 parents?

15 A That's correct.

16 Q Before that body was taken away?

17 A That's correct.

18 Q And as you testified, you went in and told them you
19 found a body, we are not really -- we don't know who it is at
20 this point. The coroner will identify?

21 A I told them based on the information that we received
22 we believed it to be Brandon, but the coroner would have to
23 make the final identification.

1 Q And then after you leave the parents, that's when you
2 go back to the Warren Police Department and at this point in
3 time you have -- you have an appointment to interview Josh
4 White?

5 A That's correct.

6 Q And that occurred at about 4:40 p.m?

7 A Correct.

8 Q And he appeared at the Warren Police station
9 accompanied by family members; is that correct?

10 A That's correct.

11 Q His mother, his father, and his brother?

12 A That's correct.

13 Q And based on your -- his statements, he would have
14 had contact with each one of these family members on the night
15 of the 11th into the 12th; is that correct?

16 A That's correct, yes.

17 Q But you did not interview one of them?

18 A I did not.

19 Q Now, Josh White tells you that he was picked up by
20 Brandon at approximately 5:30 on June 11th; is that correct?

21 A Yes.

22 Q That he was picked up at a friend's house?

23 A Yes.

1 Q What was the friend's name?

2 A I did not get the name on my report, on my notes.

3 Q Did you go interview the friend?

4 A I did not.

5 Q Okay. Prior to being picked up, Josh White tells you
6 that he went canoeing at Mosquito Lake; is that correct?

7 A That's correct.

8 Q Do you find out the names of the people that he was
9 with, who he went canoeing with?

10 A I did not.

11 Q Did you go out and confirm that in any manner?

12 A I did not.

13 Q He says when Brandon picks him up they leave this
14 unknown friend's house and they are heading towards
15 Bristolville; is that correct?

16 A He gave me the address of the friends's house, but I
17 don't have the name on here.

18 Q Okay.

19 A The address was 1621 Morris Place in Niles. And they
20 picked him up, yes, at approximately 5:30 and drove to his
21 grandmother's.

22 Q But before they get to grandmother's, he indicates to
23 you --

- 1 A He runs out of gas.
- 2 Q -- Brandon runs out of gas?
- 3 A Yes.
- 4 Q And he had to push the car from the middle of some
5 street into a gas station?
- 6 A Correct.
- 7 Q Is that correct?
- 8 A Yes, sir.
- 9 Q Josh says "I put \$2 worth of gas in because Brandon
10 has no money on him"?
- 11 A Okay.
- 12 Q Correct?
- 13 A Yes, yes.
- 14 Q Did you go to the gas station and ask for video to
15 confirm that they were there?
- 16 A I do not.
- 17 Q He then says that they drive to the Warren Speedway;
18 is that correct?
- 19 A Yes.
- 20 Q Brandon fills up there; is that correct?
- 21 A Correct.
- 22 Q He tells you that Brandon had a Speedway card?
- 23 A Correct.

1 Q He also told you what was in Brandon's wallet; his
2 ID, he had a Speedway member card?

3 A He had a Speedway Speedy Reward card, yeah.

4 Q So he's telling you what's in his buddy's wallet. Do
5 you find that strange?

6 A I did not at the time.

7 Q Okay. Do you find that strange now?

8 A I do not.

9 Q You've been sitting with Mr. Becker for four days of
10 this trial. Do you know what's in his wallet?

11 A I do not hang out with Mr. Becker on a daily basis,
12 so I would not see his wallet on a daily basis.

13 Q How about your partner, do you know what's in his
14 wallet?

15 A I have a pretty good idea, actually, yes, sir.

16 Q Okay. But the reason that Josh tells you he knows
17 what's in the wallet is because three weeks prior Brandon lost
18 his wallet in Warren and somebody turned it in?

19 A He did tell me that, correct.

20 Q Okay. Did you go to where it was turned in and
21 confirm that?

22 A I did not.

23 Q So based upon the statements that were being made by

1 Josh, we can assume that Brandon had a wallet on him that
2 night?

3 A Correct.

4 Q Did he have a wallet when the body was found?

5 A I don't recall there being a wallet in his private
6 property, in his personal property.

7 Q Is there a wallet in evidence?

8 A There is not.

9 Q So safe to assume that it's missing at this point?

10 A Safe to assume.

11 Q Okay. They say that he gets -- or Josh says that
12 they get to his grandmother's house at about 6 p.m.; is that
13 correct?

14 A Yes, between 5:30 and 6. Yes.

15 Q So he's picked up at 5:30 based upon his statement;
16 is that correct?

17 A Correct, yes.

18 Q How far of a drive is it from Niles to Bristolville?

19 A I don't know miles, but that's probably a 25-minute
20 drive.

21 Q 25-minute drive?

22 A Yeah.

23 Q And in this time period we have a car that breaks

1 down, runs out of gas, has to be pushed to the gas station?

2 A Correct.

3 Q Then it leaves that gas station and goes to the
4 Warren Speedway gas station?

5 A Correct.

6 Q So did you determine how far or how long it would
7 take to go from this gas station that it broke down at to the
8 Warren gas station?

9 A I did not.

10 Q How far would it be to go from that Warren gas
11 station to Bristolville?

12 A Probably about a 20-minute drive I would guess.

13 Q Timeframe doesn't sound like it's adding up?

14 A No, the timeframe does not sound like it's adding up,
15 sir.

16 Q Now, do you learn if Josh's grandma was present -- or
17 excuse me -- Brandon's grandma was present when Josh and
18 Brandon arrive there?

19 A I don't remember if I asked her that or not. I
20 remember speaking with her, but I don't remember if I asked
21 her that.

22 Q And you don't ask Josh in his interview; is that
23 correct?

1 A I don't believe I did.

2 Q And you would agree with me that there is no
3 questioning of Josh's grandmother -- or Brandon's grandmother
4 on the -- on any video or audio?

5 A There is not. There is not.

6 Q Josh tells you that they cut the grass from 6:00 to
7 8:00; is that correct?

8 A That's correct.

9 Q He says that it was impossible for them to have
10 picked up Austin on Route 45 because they were cutting grass
11 and it took awhile?

12 A I don't remember him telling me that it was
13 impossible. He just -- I just remember him telling me that
14 they didn't do it, that they didn't pick Austin up.

15 Q And, again, we heard the testimony today from
16 Brandon's father indicating that the grass was cut earlier in
17 the day. Did you follow up during your investigation to find
18 out what time the grass was cut?

19 A I did not.

20 Q So they complete cutting the grass and they go to
21 Billie Holness' house; is that correct?

22 A According to their statement, yes.

23 Q Okay. And that was about 21:15, 9:15 p.m.; correct?

- 1 A That sounds about right.
- 2 Q They arrive at --
- 3 A 20:30 hours. They mowed until 20:30 hours and then
4 they drove to 3732 Birch to swim.
- 5 Q And Billie Holness tells you they got there about
6 21:15, which would be about 9:15?
- 7 A That's correct.
- 8 Q Billie tells you that they swam until about 23:00, or
9 11:00?
- 10 A Let me see my notes.
- 11 Q That's July 3rd of 2017.
- 12 A Thank you. Josh got there at 21:15. He texted her
13 and told her he was in her driveway.
- 14 Q And based upon her statements to you, they swam until
15 about 11:00 p.m?
- 16 A Yes.
- 17 Q Okay. Josh tells you that they then leave Billie's
18 house and they go to Josh's grandmother's house; is that
19 correct?
- 20 A Correct, yes.
- 21 Q And he tells you that they arrive there at 23:07,
22 11:07 p.m? Very specific time?
- 23 A I don't have that time in my notes that I can see,

1 but that's possible.

2 Q Okay. And, again, you don't go out after you get
3 this information from Josh and confirm this with Josh's
4 grandmother or Josh's father; correct?

5 A I did not confirm what, sir?

6 Q That they went there.

7 A No, I did not. No.

8 Q He says that he gets changed from his clothes and
9 they leave?

10 A Yes.

11 Q Says that he forgets his money and he has to turn
12 around and go back to the grandmother's house; is that
13 correct?

14 A That's correct.

15 Q He says that he calls his father and says, "Hey, I
16 forgot my money. Run it out to me"?

17 A Correct.

18 Q And father meets them at 11:15 to give him back the
19 money?

20 A I don't have that in my notes, but if it's on the
21 video, it's on the video, yes.

22 Q Okay. Again, don't talk to dad to confirm this?

23 A Josh's dad?

- 1 Q Right.
- 2 A No, I did not.
- 3 Q And you don't look at Josh's phone records to confirm
4 this?
- 5 A Did not.
- 6 Q He says then they go from Josh's grandmother's house
7 directly to Akron?
- 8 A Correct.
- 9 Q Don't stop anywhere else?
- 10 A Correct.
- 11 Q Correct?
- 12 A Yes.
- 13 Q Today we heard from Mr. Sample that they went to his
14 house?
- 15 A Yes, we did.
- 16 Q He never tells you that; right?
- 17 A Not that I can remember, no, sir.
- 18 Q And if he goes to the Sample house right after they
19 leave swimming there's gonna be some time, then, to go to
20 Josh's grandma's house? Times that aren't accounted for;
21 correct?
- 22 A I believe so, yeah. I'll agree with that.
- 23 Q Then he says that at about 12:15 a.m. he has to call

1 his brother to unlock the latch to his house because he
2 doesn't have a key?

3 A That's correct.

4 Q Did you talk to his brother to confirm that?

5 A I did not.

6 Q Did you speak with his brother or mother to confirm
7 what time he got home?

8 A I talked to his mother and his brother in the lobby
9 of the police station about him getting there, but I do not
10 have a recorded statement of that.

11 Q And you don't recall off the top of your head today
12 what time he was there?

13 A No. No, sir.

14 Q During this interview, you specifically note and
15 identify that Josh had some bruising to his hand; is that
16 correct?

17 A That's correct.

18 Q He gives you the explanation that he punched a
19 bedpost?

20 A Yeah. He had two wounds on his hand. One he told me
21 he punched a bedpost, and the other he had injured himself
22 working with sheet metal, I believe he said.

23 Q The bruise from punching the bedpost, did you take

1 photos of that?

2 A I did not.

3 Q Were you able to confirm that through anybody else?

4 A That he punched the bedpost?

5 Q Right.

6 A No, sir.

7 Q Given the condition of Brandon Sample's body, I'm
8 assuming that there was nobody inspecting that body for
9 additional bruises?

10 A No, sir.

11 Q Just the gunshot wound. So you don't know if there
12 was a --

13 A You'll have to ask the coroner that, sir.

14 Q I'm saying on your personal knowledge, you have no
15 idea if there was a struggle, if there was a fight, if there
16 was anything like that?

17 A I do not, sir.

18 Q And, again, you identified that there was also
19 another scratch on his hand; correct?

20 A That's what he told me, yes.

21 Q He told you that he cut his hand working with sheet
22 metal approximately a month before that date?

23 A I don't remember him saying a month, but if it's on

1 the video, it's on the video.

2 Q Okay. Again, no photographs of that?

3 A No, sir.

4 Q And like we covered briefly, during this interview,
5 he again raises his suspicion that Brandon would have been
6 found in the woods?

7 A He did say that, yes, sir.

8 Q At the time that he made his initial statement to
9 the -- well, not his initial statement, but the statement that
10 came through Stephanie Sample, the police did not release any
11 information concerning the phone ping; is that correct?

12 A I did not release any information, sir.

13 Q And you have no information in your case file, being
14 the lead detective, that you identified that somebody released
15 phone pinging in Bristolville --

16 A No, sir.

17 Q -- before June 13th?

18 A No, sir.

19 Q Okay. No statements had yet been made about the body
20 being dumped in Bristol?

21 A No, sir. Not to my knowledge, sir.

22 Q And, again, when he made that initial statement, it
23 was being investigated as a missing person, not as a homicide?

1 A That's correct.

2 Q In fact, during the investigation, there were reports
3 coming in that were saying Brandon was being held hostage?

4 A I remember something like that.

5 Q For drug debts?

6 A I remember something like that.

7 Q In fact, on the 13th, based on some false accusation
8 that was being made, there was somebody that responded to
9 Austin Burke's house to look and see if Brandon Sample was
10 there; do you recall that?

11 A No, sir.

12 Q Are you familiar with Brian Galida?

13 A I know the name, sir.

14 Q And do you know what agency he works for?

15 A I believe he works for the Sheriff's Office, Trumbull
16 County Sheriff's office.

17 Q Okay.

18 A I think.

19 Q So you do not remember reviewing his narrative
20 statement that says that a family member had called and said
21 that they received information saying Brandon was being held
22 by Austin Burke for a drug debt?

23 A I don't remember that.

1 Q I'm going to show --

2 MR. OLSON: May I approach the witness,
3 Your Honor?

4 THE COURT: You may.

5 BY MR. OLSON:

6 Q I'm going to show what's been marked Exhibit C. Can
7 you review that document and see if you recall it?

8 (Whereupon, Defendant's Exhibit C,
9 Narrative Supplement, was introduced for identification.)

10 MR. OLSON: Your Honor, may we approach
11 while he's reviewing that?

12 THE COURT: You may.

13 (At sidebar:)

14 MR. OLSON: I just -- I didn't know how
15 long the Court wanted to go.

16 THE COURT: Well, I wanted to be done by
17 now. But how long are you going to be?

18 MR. OLSON: It can be very extensive with
19 this witness.

20 THE COURT: Well, I guess if we stop
21 here then -- we're not too worried about breaking here. I'd
22 rather break here than break after he was done.

23 MR. BECKER: Whenever you want to break.

1 MR. OLSON: That's why I wanted to let the
2 Court know.

3 THE COURT: Let's go ahead and do that. I
4 don't want to keep them here until 5:30. I'm sure you'll have
5 some redirect.

6 MR. BECKER: I'm going to be very brief.

7 MR. OLSON: Thank you, Your Honor.

8 (End of sidebar.)

9 THE COURT: All right. Just to finish up
10 here now, do you recognize that document? Does it refresh
11 your memory?

12 THE WITNESS: A little bit. Yes, sir.
13 Yes, sir.

14 THE COURT: I just spoke with counsel.
15 This is the time we usually like to stop. Defense counsel
16 have indicated they've got a little bit more time to get into
17 that and then we have redirect and recross. We don't want to
18 be too late tonight. So we're going to take this
19 opportunity -- I'm going to ask counsel to mark where
20 they are -- and we're going to close for this evening. We'll
21 start up tomorrow at 9:00 and we'll bring Detective Greaver
22 back on tomorrow.

23 Do not discuss this case among yourselves, nor with

1 anyone else. Do not form or express an opinion. Avoid any
2 media regarding this case. Have a pleasant evening. We'll
3 see you tomorrow morning.

4 (At 4:37 p.m., court was adjourned to
5 Thursday, March 8, 2018.)

6 (Note: For further proceedings, please
7 refer to Volume IV.)

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