

1 STATE OF INDIANA)
2)SS:
3 COUNTY OF CIRCUIT)

IN THE CARROLL CIRCUIT COURT
CAUSE NO.: 08C01-2210-MR-1

4 STATE OF INDIANA,)
5 Plaintiff,)

6 VS.)

7 RICHARD ALLEN,)
8 Defendant.)

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11 **RECORD OF PROCEEDINGS AT HEARING ON**
12 **MOTION TO DISMISS HELD MARCH 18, 2024**
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1 APPEARANCES

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3 For State of Indiana: Nicholas C. McLeland/Stacey Diener/
4 James Luttrell
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23 THE HONORABLE FRANCES C. GULL JUDGE
24 JODIE L. WILLIAMS REPORTER
25

1 **PROCEEDINGS**

2 THE COURT: Before we get started – and, Ms. Diener, I understand
3 you'll be easy handling the State's argument on the motion to dismiss?

4 ATTORNEY STACEY DIENER: Yes, I will.

5 THE COURT: Okay. I just wanted to advise counsel that when I
6 granted the Defense request for speedy trial and set the trial as scheduled, I
7 caused the jury office to begin the process to get the jury questionnaires out to
8 everybody, and on March 14th, the questionnaire packets went out in the mail.
9 That was the questionnaire that you all looked at before and submitted with the
10 letter from the Court dated March 11th of 2024, to accompany the questionnaire,
11 and I established the same timeline that we had before. So as soon as the
12 questionnaires come back, I will provide those to counsel on a flash drive. And
13 then I know, before we part company here after the motion to dismiss, there are
14 several motions filed by both sides that we'll need to address before we go off the
15 record. So –

16 ATTORNEY BRADLEY ROZZI: May I?

17 THE COURT: Yes.

18 MR. ROZZI: Judge, with regard to the questionnaires, did the Court
19 include the proposals from both sides or –

20 THE COURT: Yes.

21 MR. ROZZI: -- either side? I just didn't understand exactly.

22 THE COURT: Yes.

23 MR. ROZZI: You did?

24 THE COURT: Whatever questionnaire you all approved and
25 submitted back to the Court is the questionnaire –

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1 MR. ROZZI: Okay.

2 THE COURT: -- that went out.

3 MR. ROZZI: All right. Very good. Thank you.

4 THE COURT: I think the only thing that I didn't have from counsel
5 was a list of witnesses, but if you could provide that on the first day of jury – voir
6 dire, we can play that downstairs for them. All right. Mr. Baldwin, you may
7 proceed on your motion to dismiss for destroying exculpatory evidence.

8 ATTORNEY ANDREW BALDWIN: Thank you. We'd call Todd Click.

9 (Witness sworn.)

10 THE COURT: You may proceed.

11 MR. BALDWIN: Thank you, Judge.

12 **DIRECT EXAMINATION OF TODD CLICK**

13 QUESTIONS BY MR. BALDWIN.

14 Q State your name for the record.

15 A My name is Todd Click.

16 Q Spell your name, if you would.

17 A C-L-I-C-K, first name is Todd, T-O-D-D.

18 Q What do you do for a living?

19 A I am currently a parole agent with the State of Indiana.

20 Q What did you do prior to that?

21 A I was a police officer with the Rushville Police Department.

22 Q How long did you do that?

23 A A little more than 20 years, from February 6th of 2001, and then I retired
24 December 31st of 2021.

25 Q To get to the heart of this, have you worked on the Delphi case?

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1 A Yes, I have.

2 Q Can you tell the Judge what kind of work you did on the case.

3 A I provided investigative assistance to two other detectives, Detective Greg
4 Ferency, who was a Terre Haute police officer with the – and he was also an FBI
5 Joint Terrorism Task Force member, and Detective Kevin Murphy, who was
6 Indiana State Police detective, who was also a FBI Joint Terrorism Task Force
7 member.

8 Q And what kind of things were you doing in terms of investigative support?

9 A Conducting interviews and trying to gather evidence.

10 Q Over the course of how long did you do that?

11 A Roughly three years. I began providing assistance approximately June of
12 2018, and ceased when Detective Ferency was shot and killed in the line of duty
13 July 7th of 2021.

14 Q All right. Can you just give a very general understanding, a little bit more
15 detail than you did, but still general of what kind of things you did.

16 A Well, in June of 2018, Detective Ferency and Detective Murphy came to
17 Rushville to conduct a interview with a gentleman by the name of Elvis Fields.
18 They asked to use our interview room at the Rushville Police Department. They
19 asked me if I would be willing to operate the equipment for them. They asked
20 me if I was familiar with Elvis Fields, to which I was. They asked if I would kind
21 of watch the interview and kind of give a – my opinion on what –

22 Q Kind of the hometown opinion of –

23 A Yeah, yes.

24 Q Okay. Keep going.

25 A Okay. So after that, Detective Murphy and Detective Ferency told me that

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1 they were looking at a couple of individuals from the Delphi area.

2 Q Who were they?

3 A They were Brad Holder and Patrick Westfall.

4 Q Okay. Keep going.

5 A They asked me if I could help maybe try and find a tie between Elvis Fields
6 and Mr. Holder and Mr. Westfall.

7 Q Okay. So that was one of your kind of things that you did in this course
8 of this investigation?

9 A That is correct.

10 Q Were you able to find any ties between Elvis Fields and Brad Holder and
11 Patrick Westfall?

12 A Yes, I was.

13 Q What ties did you find?

14 A While reviewing some photographs on Brad Holder's Facebook page, I
15 located a photograph with the approximately five individuals, they were all
16 wearing Vinlander T-shirts.

17 Q For those who don't know, what is Vinlander?

18 A Vinlander is a group that practices Norse and paganism religion, kind of
19 along the Viking culture.

20 Q Okay. Keep going.

21 A So in the photos, I identified Brad Holder and Patrick Westfall, and there
22 was a gentleman standing in between the two of them that I immediately
23 recognized to be Johnny Messer.

24 Q Okay. How do you know Johnny Messer?

25 A Johnny Messer is from Rushville, he'd been arrested numerous times from

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1 the Rushville Police Department, so I was very familiar with Johnny.

2 Q Okay. What else, if anything, did you do following the recognition that
3 Johnny Messer from Rushville was hanging out with these two guys from Delphi
4 named Brad Holder and Patrick Westfall?

5 A Okay. So I knew from previous incidents that Johnny Messer's uncle, Billy
6 Messer, used to live with Elvis Fields.

7 Q Okay. So that's another connection?

8 A That is correct.

9 Q Keep going.

10 A So I contacted Detective Ferency and Detective Murphy and told them
11 specifically to look at that photo and that the individual standing in between
12 Brad Holder and Patrick Westfall was Johnny Messer, who was an individual
13 from Rushville.

14 Q Okay. Was there any other - what did you do after that?

15 A Okay. So after that, I know that Detective Ferency and Detective Murphy
16 came down to Rushville and we had conducted an interview with Johnny Messer.

17 Q Okay. And then what happened?

18 A After conducting that interview, we also conducted an interview with
19 Taylor Hornaday, who was an ex-girlfriend of Johnny Messer's.

20 Q And did she provide any information that was useful in the investigation?

21 A Yes, she did.

22 Q Okay. Keep going. What next?

23 A She was able to provide photographs of Johnny Messer, Patrick Westfall,
24 Brad Holder, several other individuals, that the photographs were taken during
25 club meetings or outings that the Vinlander group conducted.

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1 Q Okay. What did you do then?

2 A We conducted several other interviews. I had specifically asked Johnny if
3 he had tried to recruit anyone else from the Rushville area to be a part of this
4 Vinlander group. He denied that he did -

5 MS. DIENER: Judge, I'm gonna object to him reporting on what
6 Johnny Messer may have told him.

7 THE COURT: Sustained.

8 MS. DIENER: Johnny Messer is not here to testify.

9 Q After your interview with Johnny Messer, what then did you do?

10 A I conducted several interviews of people that I knew were connected to
11 Johnny Messer, and those individuals told me that Johnny had tried to recruit
12 them into the Vinlander group.

13 Q Okay. So after you learn that Johnny Messer is recruiting people, then
14 what do you do?

15 A We had also - during our interview with Taylor Hornaday, she had given
16 us a cell phone of hers - well, she had indicated that there was a cell phone of
17 hers that contained recordings of a kidnapping that Johnny was involved in, so
18 we obtained a search warrant to go into that cell phone and conduct a forensic
19 exam to retrieve those recordings.

20 Q Okay. Was that fruitful?

21 A There were recordings of Johnny Messer and another individual
22 kidnapping an individual at gunpoint in the Indianapolis area.

23 Q What did you then do?

24 A At that point, we tried to identify who the victim of that kidnapping was,
25 but we were unsuccessful.

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1 Q Okay. Keep going. What was kind of the next big thing that you did on
2 this case?

3 A All right. We conducted some other interviews. We had spoken with Joyce
4 Moffitt, who is Elvis Fields's sister. During that interview, she confirmed that
5 she had heard Elvis make comments about things associated with the crime
6 scene, the murder crime scene of Abby Williams and Liberty German.

7 Q Okay. What did you do with that information or what did you do next?

8 A That information was given – of course, myself, Detective Murphy, and
9 Detective Ferency were aware of that information, and I was told by Detective
10 Ferency and Detective Murphy that they were going to try to contact Unified
11 Command to try and obtain a search warrant for the residence of Elvis Fields.

12 Q Okay. What happened with that?

13 A We never heard anything.

14 Q Unified Command never called and said, "Yep, tell us what information
15 and we'll try to get that"?

16 A Yeah. I – Detective Murphy and Detective Ferency were unable to give me
17 an answer as to whether or not we were authorized to get a search warrant.

18 Q So Joyce Moffitt, Elvis's sister, says basically he's somehow involved in the
19 crime and you weren't able to secure a search warrant of any type?

20 A That is correct.

21 Q Okay. What happened next?

22 A We conducted several other interviews throughout that timeframe.

23 Q Okay. Was there any other connection between Elvis Fields and Brad
24 Holder that you know of?

25 A We were able to connect Elvis Fields to a gentleman by the name of Josh

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1 Crisman. Josh Crisman was originally part of a group called the American
2 Guard. There was a Make America Great Again rally that was held in
3 Indianapolis approximately 2016 I believe, where the American Guard and
4 Vinlanders were together, and after that rally, they had a house party at a
5 gentleman's house by the name of Mickey McGilley.

6 Q Mickey McGinley?

7 A McGinley, yes, thank you. He was also - Mr. McGinley was also a
8 Vinlander. He was also friends with a gentleman by the name of Brian James,
9 who was the - I guess the head of the American Guard.

10 Q Okay.

11 A So we were able to connect Josh Crisman, we knew that he was a semi
12 truck driver that conducted deliveries for a company called Flynn Livestock that
13 would transport hogs to different facilities. I know that Wiechman's Pig Farm in
14 Delphi and then the Tyson plant in Logansport that they would make deliveries
15 to. Elvis Fields kind of worked under the table at Flynn Livestock and he would
16 get paid by the drivers to load and unload the semis and he would periodically
17 ride with the drivers to make the deliveries.

18 Q So Johnny Messer knew - what's this this guy's name? The new guy that
19 you were just talking about?

20 A Josh Crisman.

21 Q Josh Crisman. And Josh Crisman knew Elvis Fields?

22 A Yes, that is correct.

23 Q Okay. So that's another connection. Were there any other connections to
24 Brad Holder, between Elvis Fields and Brad Holder?

25 A Between Josh Crisman and Johnny Messer, I don't recall any others.

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1 Q Okay. Do you recall if there were any Facebook photos that you had looked
2 at where Brad Holder was following Elvis Fields or vice versa?

3 A There were some pictures on Elvis Field's Facebook page and Brad Holder's
4 Facebook page that were very similar in nature.

5 Q What do you mean by that?

6 A There was pictures of sticks that were placed in different arrangements. I
7 know that there was a – like a picture of a folding pocket knife that they each
8 had. They each has similar pictures of trees. It was just – the similarities were
9 very odd.

10 Q Okay. So that could be another connection between Brad Holder and Elvis
11 Fields?

12 A We believe so, yes.

13 Q Did Elvis Fields ever admit to anybody else or say anything else that was
14 suspicious or would show that he might have been involved in these murders?

15 MS. DIENER: Judge, I'm going to object. Their motion is about a
16 missing audio recording of a Brad Holder interview, and I'm not sure what the
17 connection with Elvis Fields or how this is helpful to us with regard to their
18 motion.

19 THE COURT: How is this relevant to your motion?

20 MR. BALDWIN: Judge, Mr. McLeland, in his response to our
21 motion, said that – two things: Number one, that the – it's – this – the missing
22 document, the missing video is not either exculpatory or materially useful to the
23 Defense. What I am doing right now is laying down the foundation that, at the
24 end of the road, you will see, yeah, this is actually – it actually would be
25 materially useful to the Defense based upon his investigation, number one.

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1 Number two, you will be finding, in a moment, that – well, Mr. McLeland argued
2 bad faith, you have to prove bad faith. Well, that's difficult to do, and part of
3 what is happening here is you're going to learn that Mr. Click – that the law
4 enforcement working on this case operated in bad faith in that they refused to
5 investigate – they tried to – in conjunction with other evidence that I will be
6 talking about –

7 THE COURT: Okay. So we're gonna get to this evidence, then?

8 MR. BALDWIN: Yes.

9 THE COURT: Is that what you're telling me?

10 MR. BALDWIN: Yes.

11 THE COURT: Then, let's get to that evidence –

12 MR. BALDWIN: Yes.

13 THE COURT: -- shall we?

14 MR BALDWIN: I mean, it may not be through this witness, it may
15 be through others.

16 THE COURT: Well, let's get to it then, sir.

17 MR. BALDWIN: Okay.

18 Q Did Elvis Fields make any admissions that you know of about being
19 involved in the crime?

20 MS. DIENER: Objection. I would ask that those be admissions
21 made to him.

22 THE COURT: Sustained.

23 MR. BALDWIN: Judge, hearsay – there's a hearsay exception
24 against interest, and that's – if somebody says that, "I was involved in a crime,"
25 that would be against their interest.

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1 THE COURT: To whom?

2 MR. BALDWIN: It'd be against their own interest. "I killed
3 somebody," that would be - that's not hearsay, that's an exception to the
4 hearsay.

5 THE COURT: The objection was that it wasn't to this gentleman
6 here.

7 MR. BALDWIN: Oh.

8 THE COURT: That's what I sustained.

9 Q Did - did Elvis - did you ever hear Elvis Fields say anything where he was
10 involved in this crime, as part of your investigation?

11 A Elvis did not say anything to me directly, no.

12 Q Did he say anything to Kevin Murphy?

13 A There was - back in February of 2018, I believe Jerry Holeman and Kevin
14 Murphy interviewed Elvis Fields at the Rushville Police Department, and when
15 Detective Murphy took Elvis back to his trailer, Elvis approached Detective
16 Murphy and said, "Hey, if my spit is found on those girls and I've got a reason
17 for why it's there, I'll be okay; correct?"

18 Q Okay. After that type of information, do you know if that was relayed -
19 was that part of what information, if you know, was relayed to the United -
20 Unified Command here to try to see if they'd be willing to get a search warrant
21 for Elvis Fields's house?

22 A Yes. And that was - if I recall, that was part of the - well, there were some
23 statements that Elvis had made to his sister that initially prompted the
24 investigation into Elvis Fields.

25 Q Okay. And was that Joyce Moffitt or somebody else?

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1 A That was a different sister.

2 Q Okay. What did that part of your investigation reveal?

3 A Elvis had made some statements to his sister Mary Abrams, I don't recall
4 exactly all of the words that he used, but he had told Mary that he was gonna go
5 away for a while, he had done something bad to some girls, he was on a high
6 bridge, that they had placed sticks in one of the girl's hair to represent antlers,
7 that he had - he was in a gang and that he had a brother now.

8 Q He had a what now?

9 MS. DIENER: Judge, I'd like to renew the objection. It's not
10 bringing us back to Brad Holder.

11 THE COURT: We're kind of wandering far afield here. You said
12 you'd get to the evidence, let's get there.

13 Q Okay. After Richard - well, just - let's just - how much stuff was out there,
14 in your opinion, that would cause a good investigator to think Elvis Fields and
15 Brad Holder were somehow connected to these murders?

16 A It was the belief of Detective Murphy, Detective Ferency, and I that there
17 was a strong likelihood that there was - that Brad Holder, Patrick Westfall, and
18 Elvis Fields had a strong involvement in the murders of the girls.

19 Q Okay. So how did this investigation on your end wind down?

20 A The - my investigation came to an end when Detective Ferency was shot
21 and killed in the line of duty.

22 Q And then, what happened after that? What do you do then, if anything,
23 on the Delphi case?

24 A I did absolutely -

25 MS. DIENER: Judge, may I object again and be more specific in my

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1 objection. We're talking about a recording of Brad Holder in – on February 17th
2 of 2017. All of this is years later. And they have to show how we would know
3 that this evidence is exculpatory in 2017, when the recording goes missing, in
4 order to meet the threshold for materially exculpatory. We're not getting there,
5 and it doesn't seem to be going that direction, and it's irrelevant to what was
6 known in 2017, when the recording went missing.

7 MR. BALDWIN: Again, Judge, Mr. McLeland responded to my
8 motion, citing case law that says, number one, you have to show that it – as Ms.
9 Diener just said, that it's either exculpatory or the other word was “materially
10 useful to the Defense”. This is all foundational for what now I’m about to get
11 into, which is what happened after he was done, what was done or what wasn't
12 done. Bad faith, very difficult to prove, and that's what we're – we're gonna be
13 venturing into that territory; but also, it's going to show that what could have
14 been or would have been on those missing videos would have been certainly,
15 certainly useful to the Defense, materially useful, and/or exculpatory, and that's
16 for the Court to decide.

17 THE COURT: I'd have to sustain the objection.

18 Q Did you have a chance – well, next, what did you then – what was the next
19 time you did anything on the Delphi case?

20 A I did nothing further after Detective Ferency was shot and killed.

21 Q After Richard Allen was arrested, what, if anything, did you do?

22 A I eventually contacted a friend of mine, who was a former prosecutor, and
23 was a criminal defense attorney.

24 Q Why did you do that?

25 A After Richard Allen was arrested, I was initially kind of shocked and

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1 confused. I read the affidavit, the probable cause affidavit for the arrest, and I
2 felt like the investigative information that Detective Ferency, Detective Murphy,
3 and I had compiled was more compelling than what was contained within the
4 probable cause affidavit for Richard Allen's arrest.

5 Q So what did you do based upon that thought?

6 A Well, I wasn't sure exactly what to do, so I reached out to a friend of mine,
7 who is a former prosecutor and was a defense attorney for advice on what I
8 should do.

9 Q And what did you do after talking with him?

10 A We decided that we would draft a letter to Mr. McLeland's office and that's
11 what we did.

12 Q Okay. I'm handing you what's been marked now as Defendant's Exhibit
13 A; if I could get you to review that for me and, when you're done, let me know.

14 A Yes. This is part of the letter that was submitted to Mr. McLeland's office.

15 Q Okay. And that was sent by certified mail?

16 A Yes, sir, it was.

17 Q What date?

18 A It would have been sent in the mail on April 28th of 2023.

19 Q Who did you send it to?

20 A Mr. McLeland's office.

21 Q What was your reasoning for writing this letter?

22 A Just to make sure that he was aware of the investigative work that
23 Detective Murphy and Detective Ferency and I had conducted.

24 Q Would you also say you're -

25 MR. BALDWIN: Well, I'll move to admit Defendant's Exhibit A.

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DEFENDANT'S EXHIBIT A OFFERED

1
2 MS. DIENER: Judge, this letter refers to his report and it is a letter
3 from 2023, and he indicated that he began his participation in June of 2018,
4 and the rules regarding - the case law regarding a motion to dismiss for
5 destruction of exculpatory evidence, or even, in the alternative, if it's potentially
6 useful, determining whether the State acted in bad faith has to do with what was
7 known at the time of the particular item of evidence being missing, lost, or
8 destroyed. This is far beyond that time period and our argument is that it's not
9 relevant for purposes of this hearing.

10 THE COURT: Any response?

11 MR. BALDWIN: If you're hiding evidence back in 2017, it might be
12 something that you would do in 2023, and that's where this is headed, so -

13 MS. DIENER: There's been no testimony of hidden evidence, Judge.

14 MR. BALDWIN: Well, we're about to get into that.

15 THE COURT: You keep telling me we're about to get into that, sir,
16 and -

17 MR. BALDWIN: It takes time, Judge, I'm sorry. I will -

18 THE COURT: I'll show Defendant's A admitted over objection. I
19 think the objection goes to the weight I will give this particular exhibit, rather
20 than its admissibility.

DEFENDANT'S EXHIBIT A ADMITTED

22 MR. BALDWIN: Thank you, Judge.

23 Q In this document, you say, "I want to write to ensure you've been provided
24 all of the information associated with the investigative efforts for your use in this
25 case and for disclosure to opposing counsel, as provided by law"; is that right?

1 A That is correct.

2 Q Why'd you do that?

3 A Per the advice of my attorney, any information that was presented to the
4 Prosecutor's Office should also be discoverable to any defense counsel.

5 Q Okay. Is that all that you provided in the letter, the certified mailing, that
6 you sent to Nick McLeland?

7 A There was also a brief summary of our investigative product.

8 Q I'm gonna hand you what's now being marked as Defendant's Exhibit B
9 and ask you to review that. Tell me when you're ready.

10 A Yes. This is the investigative summary that was included with the letter
11 to Mr. McLeland's office.

12 Q Pretty much much or, if not all, of what you have already previously
13 testified to is contained in Exhibit B?

14 A For the most part, yes.

15 MR. BALDWIN: Okay. Move to admit Exhibit B.

16 **DEFENDANT'S EXHIBIT B OFFERED**

17 MS. DIENER: State objects for the same reason: It's outside the
18 scope of what's relevant to the evaluation of a missing recording from February
19 17 - 2017, discovered missing that same year.

20 THE COURT: I'll show B is admitted over objection. Again, it's the
21 weight, rather than admissibility.

22 **DEFENDANT'S EXHIBIT B ADMITTED**

23 Q So that was April the 29th that you sent this document, detailing much of
24 what your investigation involving Brad Holder, Patrick Westfall, and Elvis Fields;
25 is that correct?

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1 A That is correct.

2 Q So did you hear from Nick McLeland on – at any time during May of 2023?

3 A No, I did not.

4 Q What about June of 2023? Did you hear from Nick McLeland at any time?

5 A No, I did not.

6 Q What about July of 2023? Did you hear from Mr. McLeland then?

7 A No, I did not.

8 Q What about August of 2023? Did you hear from Mr. McLeland then?

9 A I was contacted by Mr. Mullins of Mr. McLeland's office and it was mid-
10 August, I believe, of 2023.

11 Q Tell me about that.

12 A He wanted to set up a meeting with me and Detective Holeman and asked
13 that I provide all of my investigative materials, which would include police
14 reports, audio/video recordings of interviews, and then they told me that they
15 would sit down with me to go over some of the evidence that they had against
16 Mr. Allen to try and put my mind at ease.

17 Q Put your mind at ease?

18 A That is correct.

19 Q I want to talk about some – so like videotapes of who? Who did you – well,
20 strike that. Did you do that when you arrived?

21 A Yes, I did.

22 Q Okay. Did Mr. McLeland ask you, in May – well, or anybody from law
23 enforcement ask you to bring any of those items in May of 2023?

24 A No, sir.

25 Q Did they – anybody in law enforcement or in Mr. McLeland's office ask you

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1 to bring any of those pieces of evidence, videos of Elvis Fields and others, in June
2 of 2023?

3 A No, sir.

4 Q July of 2023?

5 A No, sir.

6 Q Okay. But it was in August of 2023?

7 A Yes.

8 Q All right. So then what did you do?

9 A I went to the Indiana State Police Post and met with the detectives, Mr.
10 Holeman and Mr. Vido [phonetic], I believe.

11 Q What happened there?

12 A I provided them with everything that I had. I provided them with a thumb
13 drive that contained all of the interviews that was conducted. I believe there was
14 some cell phone extraction data that was included in that, like my audio and
15 video interviews, and then I sat down with Detective Vido [phonetic] for
16 approximately an hour or so and just kind of gave a brief summary of the
17 investigative work that Detective Ferency, Detective Murphy, and I had
18 completed.

19 Q Did they seem interested in your investigative efforts?

20 A In my opinion, no.

21 Q Well, you said you were there because you were – how is it that you
22 phrased it? – you were concerned?

23 A They – part of it was they were going to show me evidence against Mr. Allen
24 to help put my mind at ease.

25 Q Did they do that?

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1 A No, sir.

2 Q After this meeting with Vido and Holeman and whoever else you said, what
3 then happened?

4 A I left the State Police Post. As I was walking out, I noticed Brad Holder
5 sitting in the front lobby. I went out – on out to my car and drove back to
6 Rushville.

7 Q After you drove back to Rushville, what – how often, if ever, did anybody
8 from law enforcement contact you about what you had just provided them?

9 A I was never contacted.

10 Q Did you ever contact them?

11 A I contacted them – I contacted Detective Holeman and –

12 Q Why did you do that?

13 A Shortly after the *Franks* memorandum had been released, I was contacted
14 by a friend of mine that stated a female by the name of Alycia Cole, who was –
15 had had a child with Johnny Messer, had a cell phone of Johnny's that she
16 believed I might be interested in.

17 Q Were you aware during your – the course of your investigation, before you
18 kind of got off the investigation, of a phone that you would have liked to have
19 had?

20 A Yes. We searched for several cell phones belonging to Johnny Messer that
21 Johnny would have been using during the time that Abby and Libby would have
22 been killed. We actually referred to that cell phone as the Goldilocks cell phone.
23 We believed that there might have been information contained on that cell phone.

24 Q Okay. So what did you do once you heard that somebody had contacted
25 you about a cell phone that belonged to Johnny Messer – did you say in 2017?

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1 A That is correct.

2 Q What did you then do?

3 MS. DIENER: Judge, may I renew my objection unless this Johnny
4 Messer cell phone relates somehow to Brad Holder.

5 THE COURT: Yeah -

6 MR. BALDWIN: It does.

7 THE COURT: -- sustained.

8 Q Did you cont -

9 MR. BALDWIN: I don't know where I can go, Judge. I mean -

10 Q Did you contact anyone about this phone to go - from the law enforcement
11 side to go pick up this phone with evidence that you thought might be on there
12 from 2017?

13 A I contacted Detective Holeman.

14 Q Okay. And what happened?

15 A I checked with Alycia Cole - when I spoke with Detective Holeman, I
16 explained to him the significance that we felt the cell phone provided. Detective
17 Holeman said that he would make arrangements to obtain that cell phone. I
18 contacted Alycia Cole and told her that a Detective Holeman from the State Police
19 would be contacting her to retrieve that cell phone. After approximately two
20 weeks, I contacted Alycia, just to make sure that that cell phone had been
21 recovered by the State Police and it had not been.

22 Q And then what happened?

23 A At that time, I contacted Brian Alvey, who's an investigator for the - your
24 criminal defense team, advised him of the cell phone, and he went and retrieved
25 the cell phone.

DIRECT EXAMINATION OF TODD CLICK

1 Q Are you familiar with Cellebrite and how, once the – tell the Judge what
2 Cellebrite is and what you know – how you know how to use it.

3 A Cellebrite is a program that law enforcement uses to extract data from
4 electronic devices. You can – for a cell phone, example, you can recover data
5 that is currently on the cell phone and you can recover data that has been deleted
6 from the cell phone.

7 Q Okay. Have you had a chance to look at the results of a phone dump from
8 2023?

9 A I briefly looked at it, yes.

10 Q Okay. I want to hand you what's marked as Defendant's Exhibit C or
11 should be. Are you familiar with this thumb drive?

12 A Yes, I am.

13 Q Okay. What is that?

14 A This is the thumb drive that contains the extracted data from Patrick
15 Westfall's cell phone.

16 Q How much data was on there, in terms of the dates? From what date to
17 what date?

18 A There wasn't –

19 MS. DIENER: Judge, may I interrupt with a preliminary question?

20 THE COURT: Yes.

21 MS. DIENER: Did you already testify as to where the Westfall phone
22 dump came from?

23 A No, I did not testify to that.

24 MS. DIENER: I would object on foundation.

25 THE COURT: Foundation?

DIRECT EXAMINATION OF TODD CLICK

1 Q Where did you get the phone dump information from?

2 A From you, sir.

3 Q Okay. What – I asked you to review that for me?

4 A That is correct.

5 MS. DIENER: Do you have specialized training in Cellebrite?

6 A I have not been trained on the Cellebrite program; however, I'm very
7 familiar with the reports that are generated from the cell phone extractions.

8 MS. DIENER: But you're not trained?

9 A I have not been trained by the Cellebrite company, no.

10 MS. DIENER: And when you were a law enforcement officer, did
11 you have access to Cellebrite equipment in order to operate that and to complete
12 examinations with regard to a Cellebrite dump?

13 A When I was a detective, I was an investigator for the Indiana State Police
14 Crimes Against Children Task Force. Any cell phone that we had that we were
15 going to do a forensic examination on, we would take to the Indiana State Police
16 Cybercrimes Unit, they were – they would extract that data and then they would
17 provide me with the data that was extracted.

18 MS. DIENER: No other questions.

19 Q And, sir, that phone dump that you looked at today, that's what you have
20 seen in other cases, that's the extraction?

21 A That is correct.

22 Q What dates did Patrick Westfall, on his phone, have for that extraction?

23 A The first date of significant extracted detail that I saw was on August 12th
24 of 2023.

25 Q What about the last date?

DIRECT EXAMINATION OF TODD CLICK

1 A I did not review that.

2 Q Okay. Did you see anything in July of 2023, texts, e-mails, photographs,
3 anything like that?

4 A No, I did not.

5 Q What about – let's go back to April, anything in April?

6 A No, sir.

7 Q Anything in January?

8 THE COURT: Excuse me, would counsel approach, please.

9 (Sidebar conference conducted.)

10 THE COURT: None of this is in your motion, not one shred of this
11 is in your motion. Your motion deals with a document dated February 17th,
12 2017, it is an FBI report of Brad Holder, and on the same day – strike that,
13 February 19th, the interview of Patrick Westfall. That is what you have
14 complained about in your motion.

15 MR. BALDWIN: Right.

16 THE COURT: None of this is in your motion.

17 MR. BALDWIN: This is the evidence to support the motion and to
18 counteract Mr. McLeland's argument that there's bad – there's not bad faith and
19 that this is –

20 THE COURT: This is very specific, Mr. Baldwin. You did not
21 incorporate any of this information in your motion to dismiss.

22 MS. DIENER: May I speak to our response?

23 THE COURT: Sure.

24 MS. DIENER: Our response about bad faith, we don't even get to
25 bad faith unless they show that it's exculpatory, and then, in the alternative,

DIRECT EXAMINATION OF TODD CLICK

1 that it's potentially useful. We haven't even gotten to potentially useful for the
2 recording that's missing of Brad Holder. So our response about bad faith is after
3 we get through whether we're in the category of materially exculpatory, which is
4 the heading of their motion, or potentially useful, and we aren't at either one.

5 MR. BALDWIN: What you would learn, Judge, is that Patrick
6 Westfall, his phone – he brought his phone in to the police at their request, and
7 the phone that he brought to them only had four days – knowing that he was
8 going there, that he brought a phone with no data on it predating when he knew
9 he was going in there; i.e., it's either scrubbed or he brought in a new phone.
10 And that goes toward, Judge, showing that he had a predisposition or a – he was
11 trying to hide evidence; and when he's trying to hide evidence, that then goes
12 toward, "Well, if he was trying to hide evidence in 2023, what was he doing back
13 in 2017?"

14 THE COURT: Then, perhaps, you should have pled that, because
15 you did not plead that in this particular motion that I am holding in my hand.

16 MS. DIENER: And if I may say, Judge, the content of the motion
17 with regard to Patrick Westfall says that they have been given a narrative and
18 there is no recording and they are speculating as to whether we're not telling the
19 truth about whether there's a recording, so I have a witness here to testify to
20 that effect. So our preparation has been for the allegation of a dismissal based
21 on destruction of exculpatory evidence, it is specific to a recording of Brad Holder
22 on February 17 of '17 that was discovered missing or lost in August of '17. That's
23 their time window.

24 THE COURT: And I've given you a lot of leeway. None of this – none
25 of this testimony, very little of this testimony, deals with your motion to dismiss

DIRECT EXAMINATION OF TODD CLICK

1 for destroying exculpatory evidence as you pled. You can stand there and tell
2 me all you want, but this is what you pled, and I'm not hearing any evidence
3 about that.

4 MR. BALDWIN: In order to win on that, we don't - this is - we don't
5 have to plead everything that's going to happen in a trial. I mean, the -

6 THE COURT: No, but you do in a motion to dismiss. You have to
7 put the other party on notice, which you did, and they filed a particularized
8 response to it.

9 MR. BALDWIN: I - well, if you're not going to allow me to do it, I
10 can do an offer to prove and we can move this hearing along a little bit more
11 quickly.

12 THE COURT: You can do an offer to prove, that's fine, yes.

13 MR. BALDWIN: As it relates to Patrick Westfall and his phone.

14 MS. DIENER: The missing -

15 THE COURT: As it relates to -

16 MS. DIENER: To Brad Holder.

17 THE COURT: -- what you have in your pleading.

18 MS. DIENER: Brad Holder is the missing interview, that's what's
19 destroyed.

20 MR. BALDWIN: Well, Patrick Westfall, too.

21 MS. DIENER: No, he does not have a recording. This is about a
22 lost recording. You've been given the narrative of Patrick Westfall. There is no
23 recording.

24 MR. BALDWIN: That's the point.

25 MS. DIENER: You're alleging -

DIRECT EXAMINATION OF TODD CLICK

1 MR. BALDWIN: That's the point, there's not a recording.

2 ATTORNEY JAMES LUTTRELL: That's not destruction of evidence.

3 MS. DIENER: Your dismissal's based on destruction of evidence.

4 MR. BALDWIN: Yeah. All right.

5 THE COURT: So let's get to that.

6 MR. BALDWIN: Okay.

7 THE COURT: And if you want to do an offer to prove, do an offer to
8 prove.

9 (Sidebar conference concluded.)

10 MR. BALDWIN: I'll do an offer to prove.

11 Q All right, let's move on to Brad Holder. You said you saw Brad Holder
12 outside the interview room - correct? - when you left.

13 A I saw him in the lobby of the State Police Post.

14 Q What kind of questions do you - would you expect State Police to be asking
15 Brad Holder in an interview, as an investigator?

16 MS. DIENER: Objection, Judge: Speculation.

17 THE COURT: Sustained.

18 Q I'm handing you what's been - going to be marked as Defendant's Exhibit
19 D; can you identify that for me, please.

20 A Yes, this is a thumb drive that contains the audio recording of an interview
21 conducted with Brad Holder.

22 Q And did you get a chance to review that?

23 A Yes, I did.

24 MR. BALDWIN: Move to admit Defendant's Exhibit D.

25 **DEFENDANT'S EXHIBIT D OFFERED**

DIRECT EXAMINATION OF TODD CLICK

1 MS. DIENER: I have a couple more questions, Judge. Mr. Click,
2 what date is this interview from?

3 A August 30th of 2023.

4 MS. DIENER: State would object based on relevance with regard to
5 a missing recording from 2017, which is the subject of this motion.

6 MR. BALDWIN: This is a Brad Holder interview, Judge, that can be
7 compared to the transcripts that are memorialized – one page, a hundred words
8 or something like that, memorization of the 2017 missing videotape, so I think
9 that that's certainly appropriate and relevant.

10 MS. DIENER: Judge – I'm sorry, can you restate how that's
11 relevant? I'm missing the connection.

12 MR. BALDWIN: Well, there's a missing video in 2017, and then the
13 State followed up with an interview in 2023; and what's contained in here, which,
14 if anything is different that's in here versus over in 2017, that would show that
15 the missing evidence has value, so that's the relevance.

16 MS. DIENER: Judge, the evaluation of the value of the missing
17 evidence, again the case law, which I'm sure the Court's well familiar with, that
18 is cited in both the Defense's motion and the State's response, makes it very
19 clear that with regard to missing evidence, the evaluation is specific to the time
20 during which the evidence went missing. That's in 2017. This interview in 2023
21 is not relevant to that timeframe. Again, we're way beyond what the law requires
22 for a motion to dismiss for destruction of exculpatory evidence.

23 THE COURT: Your objection is well founded. I will show it and not
24 admit D.

25 MR. BALDWIN: Judge, if what's contained in the memorialized

DIRECT EXAMINATION OF TODD CLICK

1 transcript or report from 2017 has different information than what is contained
2 in the 2023 interview, how can that – I don't understand how that can not be
3 relevant.

4 THE COURT: Based on your pleading, sir, it is not relevant.

5 MR. BALDWIN: I will offer to prove, then, if that's okay. I will
6 summarily detail what Mr. Click would have testified to and what the exhibit
7 would show. Is that okay, Judge?

8 THE COURT: Yes, make an offer to prove.

9 MR. BALDWIN: Thank you. What you would learn from Mr. Click
10 and his review of this document or this exhibit that Brad West – the 2023
11 videotaped interview, as well as the videotaped interview itself, is this: Brad
12 Holder was never asked a single question about Elvis Fields; Brad Holder was
13 never asked a single question about Johnny Messer; Brad Holder was never
14 asked a single question about what he – what his ex-wife, Amber Holder, said
15 that Brad Holder confessed that Patrick Westfall was involved in the case and
16 was involved in the murders, that Brad Holder was scared of Patrick Westfall.
17 All of that would be missing. Also, you would find out that in the 2023 interview,
18 Brad Holder claims that he met Abby one time, but in 2017 memorialized paper,
19 he never met her. All of that.

20 MS. DIENER: Judge, I renew my objection. The statements made
21 by counsel with regard to Brad Holder not being questioned about Fields, Messer,
22 or the ex-wife is all conjecture as to whether that information was even helpful
23 to police. Again, these people are not on the inside of this investigation and
24 they're making an evaluation from the outside and then transposing what Mr.
25 Click knows from reviewing interviews that have been provided in Defense or

CROSS EXAMINATION OF TODD CLICK

1 through his own investigation and its relevance as to what the law enforcement
2 agencies knew in 2017 with regard to the interview of Brad Holder on February
3 17th of 2017, and the time period between then and when the interview recording
4 was lost. It's a very specific timeframe. It's their motion. I don't understand
5 why we're so far beyond it -

6 MR. BALDWIN: Judge -

7 MS. DIENER: -- but I'd appreciate your consideration.

8 MR. BALDWIN: Part of the evidence is also we did not receive any
9 of those videos for ten months after they were owed us; three months, almost
10 four months, after Mr. McLeland and his office was provided this documentation
11 from Mr. Click, telling him, "We have all this evidence of other suspects." I think
12 it's all relevant, but I will move on.

13 THE COURT: Please do.

14 MR. BALDWIN: Actually, that's all the questions I have.

15 THE COURT: Any cross?

16 **CROSS EXAMINATION OF TODD CLICK**

17 **QUESTIONS BY MS. DIENER.**

18 Q Mr. Click, in 2023, you were no longer with law enforcement?

19 A That is correct.

20 Q And you wrote a letter to the prosecutor about this investigation that you
21 knew had been going on since 2017?

22 A That is correct.

23 Q And you actually participated it - in it at the request of - you described it
24 being Ferency and Murphy; is that correct?

25 A That is correct.

CROSS EXAMINATION OF TODD CLICK

1 Q And so if you prepared investigative materials and collected evidence and
2 they were your connection to this investigation, why would they not have been
3 given all of your information so that it was forwarded on to the Unified
4 Command?

5 A They were provided with everything that was completed.

6 Q Why didn't you do that?

7 A No, I did provide them with that information.

8 Q You gave it to Ferency and Murphy?

9 A Ferency and Murphy, yes.

10 Q Okay. So as long as Ferency and Murphy passed it along, 'cause you guys
11 were all working together, there'd be no reason to think they didn't have it;
12 correct?

13 A That is correct.

14 Q You make statements about Mr. Holder and Mr. Westfall wearing
15 Vinlander t-shirts; does that mean something? Why do you know it's a Vinlander
16 t-shirt?

17 A Because the t-shirt said "Vinlander" across the chest.

18 Q You said you've know Elvis Fields for a long time?

19 A Yes, I have.

20 Q He's a local in your area?

21 A Yes, he is.

22 Q What's the mental capacity of Mr. Fields?

23 A I know he did not complete high school. He has -

24 Q Does he have diminished mental capacity?

25 A That I do not know.

RE-DIRECT EXAMINATION OF TODD CLICK

1 Q Have you had contact with him?

2 A Yes, I have.

3 Q Often?

4 A Yes, I have. I know he's not a very smart individual. As far as if he's been
5 diagnosed with any type of intellectual disability or anything like that, I'm not
6 aware.

7 MS. DIENER: No other questions.

8 THE COURT: Mr. Baldwin.

9 **RE-DIRECT EXAMINATION OF TODD CLICK**

10 QUESTIONS BY MR. BALDWIN.

11 Q Did you ever run into anybody, in your time as a detective, that had low
12 mental capacity that committed crimes?

13 A Yes, sir.

14 Q Serious crimes?

15 A Yes, sir.

16 MR. BALDWIN: Thank you. I did want to supplement my previous
17 offer to prove with – Judge, if I may, and then I'll be done with him.

18 THE COURT: Go ahead.

19 MR. BALDWIN: Also, you would find that on this videotaped
20 interview of Brad Holder, he is not asked about why he and Patrick Westfall were
21 no longer friends, as described by Amber Holder, who said that it had something
22 to do with a ritual gone bad in a forest – in a forest by a river. With that, I am
23 done with this witness.

24 MS. DIENER: Again, the State would object that it was not known
25 to law enforcement at the time that the video went missing and that's the reason

DIRECT EXAMINATION OF AMBER HOLDER

1 that we're here.

2 THE COURT: And your objection is well-noted. You may step down,
3 sir.

4 THE WITNESS: Thank you.

5 THE COURT: Would you give that exhibit to the court reporter,
6 please.

7 THE WITNESS: I'm free to go, Your Honor?

8 THE COURT: I didn't subpoena you.

9 THE WITNESS: Okay.

10 I THE COURT: He's asking if he's released and -

11 MR. BALDWIN: He's released from the Defense.

12 THE WITNESS: Okay.

13 MR. BALDWIN: Call Amber Holder.

14 (Witness sworn.)

15 **DIRECT EXAMINATION OF AMBER HOLDER**

16 QUESTIONS BY MR. BALDWIN.

17 Q State your name for the record, please.

18 A Amber Holder.

19 Q How old are you, Amber?

20 A I am 33.

21 Q Okay. What do you do for a living?

22 A I'm a manager at Public Storage, I work 11 properties.

23 Q You work 11 properties doing what?

24 A I clean the inside of the properties and the outside and help customers.

25 Q Okay. How long you been doing that?

DIRECT EXAMINATION OF AMBER HOLDER

1 A Maybe a year and three months.

2 Q Okay. I'll get right to this. Have you ever talked to the police about the
3 murders in Delphi?

4 A Yes.

5 Q How many times?

6 A Twice.

7 Q Okay. Let's talk about the first time you talked to the police. You
8 remember where that happened?

9 A Yes. At my grandmother's.

10 Q Okay. How long was that, the whole interview?

11 A Maybe an hour.

12 Q What did you talk about?

13 MS. DIENER: Objection. Judge, I would ask that he establish the
14 date of this to determine relevance to this motion.

15 Q Was the -

16 THE COURT: Yeah. When was it?

17 Q When was it?

18 A I'm not sure. I'm not good with dates.

19 Q Was it after the girls were murdered?

20 A Yes.

21 Q They were investigating the murders?

22 A Yes.

23 Q Okay.

24 MS. DIENER: I renew my objection. It still needs to be within 2017,
25 before the videos were - the video was missing.

DIRECT EXAMINATION OF AMBER HOLDER

1 THE COURT: Do you have the date that she was interviewed?

2 A I was -

3 THE COURT: No, I'm not - I'm asking -

4 MR. BALDWIN: Yeah.

5 THE COURT: -- counsel. Was she - when was she interviewed
6 by -

7 MR. BALDWIN: I think it was 2018.

8 THE COURT: Okay. Then, again -

9 MS. DIENER: That would be after.

10 THE COURT: Would counsel approach, please.

11 (Sidebar conference conducted.)

12 THE COURT: I'm sorry, I don't know how to make myself any
13 clearer to you that you've made specific allegations in your pleading that you are
14 held to. Calling witnesses up here that have been interviewed well past that date
15 is not well founded and it's improper.

16 MR. BALDWIN: I respectfully disagree with you, Judge. I think we
17 plead and then we prove our pleadings through other evidence. The State, in its
18 charging information, didn't include very single piece of information.

19 THE COURT: That's not what we're here to talk about, Mr. Baldwin.
20 We're here to talk about your motion to dismiss for destroying exculpatory
21 evidence where you claim that a document dated February 17th of 2017, of Mr.
22 Holder, and February 19th of Mr. Westfall was destroyed. That's the very narrow
23 focus of what it is that we're here for.

24 MR. BALDWIN: Yeah.

25 THE COURT: And if you don't have witnesses that are gonna testify

DIRECT EXAMINATION OF AMBER HOLDER

1 to these things, you're wasting everybody's time.

2 MR. BALDWIN: As Mr. McLeland argued in his response, Judge,
3 that they had to - we have to prove that the State of Indiana or the law
4 enforcement knew back in 2017 that there was material or exculpatory
5 evidence -

6 THE COURT: Um-hmm. (Affirmative response)

7 MR. BALDWIN: -- or helpful evidence and also that there was bad
8 faith.

9 THE COURT: Um-hmm. (Affirmative response)

10 MR. BALDWIN: And at the end of the road here, there is an
11 argument to be made that back in 2017, based upon everything that you have
12 heard, that the police - there was - and - that the police knew that there was
13 exculpatory evidence on there and that -

14 THE COURT: And where is that evidence? That's what I keep
15 asking you, where is that specific evidence? Because she wasn't interviewed
16 until 2018, so how did the police know that in 2017, when you claim they
17 destroyed it?

18 MR. BALDWIN: Police are not ever going to say, "I destroyed
19 exculpatory evidence," it is not going to happen. What is going to happen is other
20 evidence comes out, like what's contained in the *Franks* memo, that shows that
21 there is a on-going hiding of evidence, not - refusing to investigate, things like
22 that, and this is what we're trying to do. I can't - if you expect that there's gonna
23 be a police officer that they're gonna call or that I'm gonna call that's gonna say,
24 "I erased exculpatory evidence," that is never gonna happen anywhere in the
25 world.

DIRECT EXAMINATION OF AMBER HOLDER

1 MS. DIENER: Judge, he has to show that it's exculpatory evidence
2 based on what was known on that date or in that timeframe before we have to
3 show that it was not the result of bad faith. And if he shows it's exculpatory,
4 bad faith doesn't even matter. If only - if he - if he can't show exculpatory and/or
5 in the potentially useful category that we get to show that it was not as a result
6 of bad faith. So his first burden is to show that it is materially exculpatory, the
7 video that's missing. That's his burden.

8 MR. BALDWIN: It's an impossible burden, Judge, because it is
9 missing.

10 THE COURT: That is unfortunate, but -

11 MS. DIENER: Then concede and shift to potentially useful.

12 THE COURT: -- that's what the case law says, Mr. Baldwin.

13 MR. BALDWIN: Well -

14 THE COURT: I can't change the case law.

15 MR. BALDWIN: Well, this is how we prove it is by showing other
16 evidences of police behavior, bad behavior, not - and then you can surmise, as
17 a judge, "Well, if all this happened then, then it could have happened back then."

18 MS. DIENER: I'm sorry, that's not what the case law indicates.

19 THE COURT: No, that is not what the case law says, sir; and if
20 that's all you have, then we're done.

21 MR. BALDWIN: Then, I will offer to prove.

22 THE COURT: No, then we're done, if that's all you have.

23 MR. BALDWIN: I'm going to offer to prove, Judge, an offer of proof
24 and then we will be done.

25 THE COURT: We are done, sir.

DIRECT EXAMINATION OF AMBER HOLDER

1 MR. BALDWIN: For the record, they have a right to offer to prove
2 so that the Court of Appeals can understand, you know, what we're doing, and
3 we will have no record unless I offer to prove, Judge.

4 THE COURT: Well, you can sum up your offer to prove, Mr.
5 Baldwin; but again, if all of the evidence that you have is after the dates that you
6 allege, then your offer to prove is -

7 MR. BALDWIN: If Amber - thank you, Judge.

8 (Sidebar conference concluded.)

9 MR. BALDWIN: If Amber Holder were allowed to testify, she would
10 tell you that police, including Jerry Holeman and the other people that were
11 deposed by the defense counsel in August of 2023, have never talked to Amber
12 Holder since August of 2023. She would testify that Brad Holder talked about
13 the Delphi case; that Brad Holder told her that he and Patrick Westfall had a
14 falling out over a ritual in the woods near a river because Patrick Westfall wanted
15 to up the ante from animal sacrifices. If Amber Holder were allowed to testify,
16 she would tell you that Patrick Westfall, according to Brad Holder, committed
17 these crimes, he is protected by powerful people. He would al - she would also
18 testify that she saw on Brad Holder's phone girls that he knew that he posed on
19 the ground with sticks, and that she knows are runes from her own heathenism
20 belief system, that were runes on these girls in the form of sticks, and that he
21 had them on his phone and there were multiple photos on his phone; and finally,
22 that she would also testify that Brad Holder knew Abby Williams much better
23 than he told the police, he told her that he met her several times. That is the
24 end of my offer of proof in this witness. Thank you.

25 THE COURT: Do you have any questions for her?

1 MS. DIENER: I have no questions for this witness.

2 THE COURT: You may step down, ma'am.

3 MR. BALDWIN: We have no other evidence, Judge.

4 THE DEFENSE RESTS

5
6 THE COURT: All right. Ms. Diener.

7 MR. BALDWIN: Oh, I'm sorry, Judge, I did. I wanted to – I apologize.

8 I wanted to ask for the Court to take judicial notice of the *Franks* memo as it
9 relates to this request to dismiss charges, that included Jerry Holeman's
10 deposition. I would also ask for the Court to take judicial notice – well, I was
11 going to move to admit – well, I think the *Franks* memo, taking judicial notice of
12 that will be sufficient for what I need to do and argue. Thank you.

13 THE COURT: When did you file the *Franks* motion?

14 MR. BALDWIN: September 18th, 2023.

15 THE COURT: All right. I will take judicial notice of that specific
16 *Franks* motion filed September 18th, 2023.

17 MR. BALDWIN: And the exhibits contained in it, Judge, as also part
18 of that. Oh, and the supplemental *Franks* – the second *Franks* motion, as well,
19 we'd ask for and its exhibits, as well. That was filed, I believe, October the 3rd,
20 2023.

21 THE COURT: So you don't wish me to take judicial notice of the
22 supplemental motion for *Franks* hearing that you filed October 2nd?

23 MR. BALDWIN: I do. I must have – I thought it was October the
24 3rd, it was October the 2nd.

25 THE COURT: Well, there was one filed October 2nd and then there

1 was one filed October 3rd.

2 MR. BALDWIN: And then, there was one more recent, and I'll just
3 throw that in, as well, for you to take judicial notice of the one filed a week or
4 two or ago – I don't remember the date – for purposes of this argument.

5 THE COURT: And when did you file that one?

6 MR. BALDWIN: I don't have that at the tip of my tongue here,
7 Judge. It was a week – probably two weeks ago.

8 THE COURT: I don't see one filed two or three weeks ago.

9 MR. BALDWIN: Give me a second. I just don't have it, but I know
10 it was filed.

11 THE COURT: Well, I can't take judicial notice of something you
12 can't tell me about. March 13th.

13 MR. BALDWIN: March 13th.

14 THE COURT: Well, I'll take judicial notice of the *Franks* motions
15 filed September 18th, October 2nd, October 3rd of 2023, and March 13th of 2024.

16 MR. BALDWIN: Is – Judge, does that include all the exhibits?
17 Which I'm asking for judicial notice of all the exhibits, as well.

18 THE COURT: I don't see exhibits attached to this last one.

19 MR. BALDWIN: Yeah, there – I don't think there were on that one.

20 THE COURT: And I don't see exhibits from the ones in October,
21 either.

22 MR. BALDWIN: Then, just the first one.

23 THE COURT: Ms. Diener, you may proceed.

24 MS. DIENER: Thank you. The State would call Steve Mullin.

25 (Witness sworn.)

DIRECT EXAMINATION OF STEPHEN MULLIN

QUESTIONS BY MS. DIENER.

Q Officer Mullin, you've already been on the stand today, but I'm gonna have you repeat some of that information, since this is a separate hearing for a separate purpose; okay?

A Yes.

Q Please state your full name, spell your first and last name, and tell us where you're employed.

A Stephen L. Mullin, S-T-E-P-H-E-N M-U-L-L-I-N. I am a investigator with the Carroll County Prosecutor's Office.

Q And when did you begin as prosecutors investigator?

A In January of 2020.

Q The investigation for Abby and Libby was well underway by that time, was it not?

A Yes, it was.

Q What was your position in 2017, when the murders occurred?

A I was chief of police in Delphi.

Q And I believe we covered this, as well, but how many total years do you have in law enforcement?

A Forty-two.

Q I believe you indicated you had been with the Delphi PD, then with the Carroll County Sheriff's Department as a detective, then back with the City as chief, and now with the Prosecutor's Office; is that correct?

A That is correct.

Q And what is your role in the Prosecutor's Office with regard to the *State*

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1 *versus Richard Allen?*

2 A I handle and manage the evidence, most of the evidence, in the Richard
3 Allen case and process it and make sure the Defense has it in discovery.

4 Q So you're cataloging it and keeping track of what's passed along to
5 Defense; is that correct?

6 A I am, yes.

7 (Cell phone rings.)

8 THE COURT: I'm sorry, Ms. Diener. Whose phone is going off?

9 MS. DIENER: It almost sounds like it's in the next room.

10 MR. BALDWIN: I apologize, Your Honor. (Inaudible) Oh, it is
11 ringing.

12 ATTORNEY NICHOLAS MCLELAND: Judge, there's a phone right
13 here, too. I don't know what that is.

14 MR. BALDWIN: It was turned off, but now it's on.

15 MS. DIENER: Is this yours also, Mr. Baldwin?

16 MR. BALDWIN: Yeah. Oh, I can grab that later. I'm sorry, I don't
17 want to interrupt your -

18 Q Are you familiar with the Brad Holder interview in 2017?

19 A I am.

20 Q Is there only one?

21 A That's correct.

22 MS. DIENER: May I approach, Judge?

23 THE COURT: You may.

24 Q Mr. Mullin, I'd like to show you what is marked as State's Exhibit 1. Do
25 you recognize that document?

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1 A Yes, I do.

2 Q Okay. And how would you describe it?

3 A This is what's called an ORION document; in other words, it's a narrative
4 of a report which Special Agent Adam Pohl created after his interview with Brad
5 Holder, and that narrative was placed into the ORION - FBI ORION RMS report
6 system.

7 Q That is part of discovery; is that correct?

8 A Yes, it is.

9 Q And that interview was on what date?

10 A It was done, according to the report, on 2/17 of 2017.

11 Q And is Agent Pohl with what agency?

12 A Agent Pohl is a special agent with the FBI.

13 Q And he was assisting at that time -

14 A Yes.

15 Q -- with this investigation?

16 A Yes, that's correct.

17 MS. DIENER: State would move to admit Exhibit 1.

18 **STATE'S EXHIBIT 1 OFFERED**

19 MR. BALDWIN: No objection.

20 THE COURT: All right. Without objection, 1 is admitted.

21 **STATE'S EXHIBIT 1 ADMITTED**

22 Q You indicated that report is part of ORION and would be contained in
23 discovery. With regard to preparation for today's hearing, are there other places
24 that you know that particular narrative to be located within discovery?

25 A Yes. That narrative would also be in the FBI general reports that were

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1 furnished to us in discovery.

2 Q And did you prepare records -

3 MS. DIENER: Oh, Judge, may I go back to Exhibit 1? We would
4 ask that that be admitted under seal, because it is discovery that has a protective
5 order and it contains discovery information. I think that would be appropriate.
6 It's the report -

7 MR. BALDWIN: No objection.

8 MS. DIENER: -- of Brad Holder.

9 THE COURT: All right. I'll show it's sealed, then.

10 Q So, I'm sorry, you compared documents with regard to discovery on each
11 disclosure or each disbursement to Defense; is that correct?

12 A Yes.

13 Q I'd like to show you what's marked as State's Exhibit 2. Just check all the
14 pages, make sure you recognize the entire document. Do you recognize that 19-
15 page document?

16 A Yes.

17 Q And how would you describe the contents of that exhibit?

18 A This is an example of the itemized list of discovery which was given to the
19 Defense and they were - signed for the document - signed the document as
20 having reviewed the items listed in each page.

21 Q So you use this to keep track of what you've given them and on what date
22 it was provided; is that correct?

23 A Yes, it is.

24 MS. DIENER: Judge, may I leave a copy with him in order to -

25 THE COURT: Sure.

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1 MS. DIENER: State would move to admit Exhibit 2 under seal.

2 **STATE'S EXHIBIT 2 OFFERED**

3 MR. BALDWIN: No objection.

4 THE COURT: All right. Without objection, 2 is admitted and sealed.

5 **STATE'S EXHIBIT 2 ADMITTED**

6 Q Now, can you point to that document and provide to us information about
7 when this narrative report of Special Agent Pohl from the 2/17/2017 interview
8 of Brad Holder would have been provided?

9 A That report should have been provided in the disbursement titled 04 Allen,
10 dated as received by an agent from Mr. Rozzi's office on February 13th, 2023.

11 Q And when you look at the discovery disclosure that's number 04, by
12 looking at that, would a person unfamiliar with the evidence drives or how they're
13 named, know that this report is contained within that discovery disclosure?

14 A The disclosure says that there was a 3.5 inch SATA internal hard drive
15 containing the files 04 Allen with several files and also a box containing hard
16 drives, this also contained the FBI documents then. And we also maintained a
17 copy of whatever was given to the Defense and a quantification of the data that
18 was given to them on site in a particular file that goes along with this document.

19 Q And so the report that you identified in Exhibit 1 you identified as an
20 ORION report and you believe it to be contained in disclosure number four?

21 A 04.

22 Q 04, yes.

23 A Yes.

24 Q And on that was on February 13th of '23?

25 A That's correct.

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1 Q And then, in preparation for today, did you also print out screenshots that
2 would show what is contained within discovery disclosure number four, to be
3 certain that the FBI reports, the ORION reports, and the State Police reports were
4 all contained therein?

5 A I did.

6 Q Here's State's Exhibit Number 3; can you identify that? It is three pages.

7 A I can.

8 Q And can you describe it for the Court.

9 A This is a screenshot taken from the computer screen which displayed the
10 files which were contained in this February 13th of 2023 disbursement of evidence.
11 It shows the FBI files, Indiana State Police files, some search warrants, the 04
12 discovery receipt actually, and then – one, two, three, four – five Excel documents
13 which quantify the data contained on the hard drives.

14 Q And then, on the subsequent pages, what does that provide for reference?

15 A Thank you. The subsequent page, the next page, shows the Indiana State
16 Police report, which, at this time, was redacted, and it shows three separate files.
17 They received three separate files because the report, in their system, was too
18 large for one particular case report. The next page shows the file which had the
19 FBI general reports in it. And then, the next is an ORION – the download of the
20 ORION file, dated 12/2/2022.

21 Q Now, the interview by Agent Pohl of Brad Holder was subsequently
22 discovered that the audio/video recording was no longer available; is that
23 correct?

24 A That is correct.

25 Q Can you describe the circumstances and how you learned that it was no

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1 longer available.

2 A Where would you like me to begin?

3 Q Start with a description of where the interview recording was kept.

4 A At the beginning of the investigation, we started out at the Delphi Police
5 Department, and at that time, as chief, I had just installed a new interview
6 system, it was a DVR, which we had put in because we didn't have anything
7 sufficient in the county to be able to record interviews within the city of Delphi.
8 So as we used the facility at the Delphi Police Department for the investigation
9 process, it became natural for everyone to use the interview room at the City
10 Police Department, which was located downstairs inside the police department.
11 And as interviews were conducted, officer would go into the interview room, flip
12 on the switch on the outside, illuminate a blue light to indicate the recording
13 was operating. And when they concluded, they would shut the interview room -
14 the recording off by turning the switch off. The DVR was located inside the squad
15 room at the police department and it was sitting on top of a filing cabinet. At
16 that time, I was, more or less, obtaining the video off of the DVR for the officers
17 at their request, so they could attach it to their reports.

18 Q And you were not part of the lead agencies for this investigation; is that
19 correct?

20 A As chief of police, I was not part of the investigation, but I had become part
21 of the Unified Command somehow.

22 Q Because of your position as chief of police in Delphi?

23 A Yes.

24 Q And so the lead agencies would be whom, if you know?

25 A Indiana State Police, Carroll County Sheriff's Department, and obviously,

1 the FBI.

2 Q Okay. And so tell us about the discovery of loss of video that includes the
3 Brad Holder 20 – February 17, 2017, interview.

4 A Around August of 2017, I went into the police department to recover a
5 video off of the DVR, which I believe was unrelated to this particular case, and
6 noted that the DVR was recording continuously. That meant that any video that
7 was on the DVR prior to the date where it recorded up to was gone, it was no
8 longer there, no longer recoverable. I, through my investigation, found that the
9 last date of the interview was either the 19th or the 20th of February of 2017. So,
10 unfortunately, all of the interviews that had been conducted during that period
11 of time and after the crime – homicide was discovered up to that date were gone.
12 Immediately when I discovered that the recorder was recording continuously, I
13 unplugged it and contacted the vendor, and we determined that the videos were
14 gone, and that somehow the settings had been changed in the DVR to only record
15 when the switch was activated to record continuously, and we have no idea how
16 it could have happened.

17 Q And have you consulted with the vendor about that particular issue to
18 discern whether it was from a person versus just a spontaneous event like
19 electricity going out or unplugging the equipment?

20 A I have. I've talked to the vendor and he has told me that on many
21 occasions with the DVRs which he uses or sells that the – a power surge or
22 unplugging the DVR could change the settings in the DVR so that it would record
23 continuously.

24 Q So the murder of the girls is February 13th of 2017, or that's when they're
25 reported missing; correct?

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1 A Yes.

2 Q And the investigation began as soon as the bodies were found; would that
3 be fair to say?

4 A Yes.

5 Q And then your discovery would indicate that interviews conducted in that
6 interview room with that DVR were missing from 2014 [sic] until February 20th,
7 but not including February 20th?

8 A I think there was some still available to be seen on the 20th.

9 Q Okay. There might be some missing, but some are there for the 20th?

10 A Yes. And I should also add that some of the audio was missing even for
11 the times where there was actually video visible, so there may be video that's
12 visible, but the audio randomly sometimes is not available to be heard.

13 Q Okay. And did you or anyone that you know of intentionally leave the
14 recording on so that it would delete interviews?

15 A Absolutely not.

16 Q Do you consider this to be either human error or just a spontaneous event
17 with the DVR recording?

18 A That's the only explanation I can provide.

19 Q Now, during that time period, there was also a follow-up interview with
20 Brad – regarding Brad Holder; is that correct? Follow-up interviews to finish the
21 lead or tip investigation? Is that right?

22 A Can you be more specific in your question, please?

23 Q Sure. When Brad Holder was initially interviewed, what was going on with
24 the investigation during the first few days where officers would be – like Special
25 Agent Pohl, would be sent to make contact with someone? Can you describe for

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1 us what was going on.

2 A My recollection of the process was, as each day would happen, we would
3 start with a meeting at the beginning of the day and tips and leads would be
4 assigned to officers to follow up on or, throughout the day, as officers became
5 available, they would follow up on tips and leads as they had time to do so. If
6 people walked into the city building, as a way to provide information to officers
7 in the investigation, someone on station would take that interview and talk to
8 the person who was providing the information. If someone came to the Carroll
9 County Sheriff's Department, they would either be instructed to come to the
10 Police Department so they could talk with them there or - (clears throat) - excuse
11 me - a phone number or contact information would be forwarded to someone in
12 the command structure so that that could be followed up on as soon as possible.

13 Q And were instructions given on - in the morning of these daily meetings
14 about use of the DVR if someone wished to use it?

15 A Yes. They were instructed as to how to turn the recorder on and to be sure
16 to turn it off afterwards.

17 Q And when you discovered that it had been continuously running, did you
18 look to see if someone had left the switch on, which would cause it to then
19 continuously run?

20 A Thank you. I did, but I knew it wasn't on, because the switch was located
21 in a very conspicuous location in the hallway at the police department. If I were
22 to walk in the police department through the door from the outside, I would
23 immediately see the blue light on on the interview room switch and I would
24 realize somebody left it on and so it would be turned off. On that day, there was
25 no light on.

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1 Q Okay. And the actual hard drive in this DVR, how much data could it
2 hold?

3 A I believe it was - I'm sorry, I think it was six terabytes. My report reflects
4 the size.

5 Q It's quite a lot?

6 A A lot.

7 Q Okay. So my question to you is: During this time period between when
8 the first - well, let's go back to the way that leads were conveyed. So you have
9 these meetings each day, officers come, you have this contact with them to give
10 them instructions. Would it be fair to say that you have different officers pretty
11 much every day, depending on who's available?

12 A It was quite fair to say there was different officers every day. There were
13 officers who worked within the departments who were coming every day, but
14 there were also officers that came outside of the Carroll County Sheriff's
15 Department, Indiana State Police. There were officers from West Lafayette,
16 Lafayette, Tippecanoe County Sheriff's Department, others.

17 Q In fact, Special Agent Adam Pohl and Hammond Police Sergeant
18 Christopher Gootee, who appear on these reports - or is it Gootee?

19 A Right.

20 Q -- are not local officers?

21 A No, they are not local to our area.

22 Q And so in what capacity were they at these meetings or assisting?

23 A Special Agent Pohl and Christopher Gootee were there to assist us in the
24 process of following up on tips and they, like the others, would be there at the
25 beginning of the day and receive instructions or, throughout the day, receive new

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1 instructions on who to go interview and to follow up on.

2 Q Can you give us a brief description of what a person in their capacity would
3 be asked to do when following up on a lead or tip in order to be useful to the
4 investigation.

5 A They would seek out the information from either the – seek out the person
6 they were needed to talk with and then interview them concerning the
7 information that was either provided about them or from them.

8 Q And then, if that person was – would there be anything about the person
9 that might cause the officer to need to do more than just take an initial interview;
10 for example, find out where they were on the day of February 13 or February 14?

11 A Yes. All the officers were asked to follow up on that completely or as much
12 as possible to determine where they were at on February 13th around the time
13 we believe the homicides were to have occurred.

14 Q Okay. So that brings me back to Brad Holder. Before the video was lost
15 or discovered lost in August of 2017, and after Special Agent Pohl did his
16 interview on February 17th of 2017, was there additional follow-up with regard
17 to Bradley Holder that you know exists because of your intimate knowledge of
18 discovery and taking care of reports with regard to this case?

19 A Yes, there is.

20 Q And do you recall what it is?

21 A I'm sorry?

22 Q Do you recall what it is?

23 A Yes.

24 Q I'm gonna show you what's marked as State's Exhibit 4. I apologize. Can
25 you identify that? There we go. Okay, sorry. Can you identify that?

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1 A I can.

2 Q Okay. Can you describe that for us.

3 A This is the report which was completed by Special Agent Rich Davies of
4 the FBI, it details follow up which was done and relayed to him by Grid Officer –
5 which is a task force officer assigned to the FBI – Fred Rogers, where he followed
6 up on Brad Holder's work history on the date of February the 13th, 2017.

7 Q Okay. And so that would be a lead follow up; correct?

8 A Yes, yes.

9 Q And did the content of that provide information as to Brad Holder's
10 whereabouts during that particular day when the murders were believed to have
11 occurred?

12 A Yes, it did.

13 Q Okay. And so with regard to leads being assigned to officers, would this
14 lead to a particular event with regard to lead follow up with Unified Command?
15 Does it put it in a particular category? Is it considered completed for the time
16 being?

17 A Yes.

18 Q Okay.

19 A It completed the investigation concerning Mr. Holder.

20 Q Unless something new became available?

21 A Correct.

22 Q Okay. During the time period between when the first interview was taken
23 and recorded and the date that you were made aware that that first recording is
24 missing, are these the only interviews of Mr. Holder that occurred?

25 A Yes.

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1 Q And the second interview or the second report really isn't an interview of
2 Mr. Holder, it's follow up about Mr. Holder; is that right?

3 A That's correct.

4 Q Okay. So at the time that the video was lost, destroyed, whatever
5 terminology one might want to use, was Brad Holder a key suspect in this case?

6 A No.

7 MS. DIENER: The State would move for the admission of Exhibit 4
8 under seal.

STATE'S EXHIBIT 4 OFFERED

9
10 THE COURT: Any objection?

11 MR. BALDWIN: No. I hadn't - have you given it to me?

12 THE COURT: All right. I'll show 4 is admitted without objection
13 and sealed.

STATE'S EXHIBIT 4 ADMITTED

14
15 MR. BALDWIN: Yeah, no objection, Judge. I'm sorry.

16 MS. DIENER: Judge, did I admit Exhibit 3 that was the three pages
17 of screenshots?

18 THE COURT: You did not offer it, no.

19 MS. DIENER: The State would move to admit Exhibit 3 with regard
20 to the screenshots, it's a three-page document.

STATE'S EXHIBIT 3 OFFERED

21
22 MR. BALDWIN: No objection.

23 THE COURT: All right. I'll show 3 is admitted without objection.

STATE'S EXHIBIT 3 ADMITTED

24
25 Q In fact, during the first seven days of the investigation, from February 13

DIRECT EXAMINATION OF STEPHEN MULLIN

1 until February 20th, the period of time where the audio/video recordings are
2 missing, was anyone considered a key suspect, to your knowledge?

3 A To my knowledge, no.

4 Q Do you have knowledge that Patrick Westfall was interviewed –

5 A Yes, I do.

6 Q -- in February of 2017?

7 A Yes, I do.

8 Q I'm gonna show you State's Exhibit 5, it has two pages. Can you identify
9 that?

10 A I can.

11 Q And what does that document contain?

12 A This is a report that would have been found in the FBI general reports,
13 given to the Defense in discovery, detailing an interview which took place on
14 Sunday, February 19th, 2017, conducted by Special Agent Adam Pohl and Grid
15 Officer – I'm sorry, Officer Gootee with the Hammond Police Department, where
16 they did an interview at Patrick Westfall's residence of Patrick Westfall.

17 Q And is that particular document also contained within discovery, as
18 previously testified to?

19 A Yes.

20 Q In the same location as documents with regard to Brad Holder?

21 A Yes.

22 Q In FBI –

23 A In the FBI general reports.

24 Q And in ORION?

25 A And it is – I believe it's in ORION, yes.

DIRECT EXAMINATION OF STEPHEN MULLIN

1 MS. DIENER: State would move to admit Exhibit 5.

2 **STATE'S EXHIBIT 5 OFFERED**

3 MR. BALDWIN: No objection.

4 THE COURT: Show 5 admitted without objection.

5 **STATE'S EXHIBIT 5 ADMITTED**

6 Q There have been some questions raised about whether a video of Patrick
7 Westfall exists or has been destroyed by the State. Do you have knowledge about
8 that?

9 A One never existed.

10 Q And what do you rely on for that information?

11 A They went to Patrick Westfall's residence. One, it was uncommon for the
12 FBI to record their interviews; two, we talked with Special Agent Pohl, who told
13 us he did not record the interview by any means and only memorialized it in his
14 report.

15 Q And just to reiterate, even though you've already answered this in a general
16 sense, was Patrick Westfall a key suspect in 2017?

17 A No, no.

18 Q Did you make attempts to retrieve or somehow recreate lost video from the
19 continuous play of the DVR?

20 A First of all, I contacted the vendor and we discussed options for recovery,
21 and then I presented the DVR video – excuse me, the DVR DVD to the Indiana
22 State Police to see if they could recover the video. It was never recovered.

23 Q It was never recovered?

24 A Correct.

25 Q In the discovery disclosures, did you share with Defense that the DVR for

DIRECT EXAMINATION OF STEPHEN MULLIN

1 the time period of February 14th until the 20th had missing files, and if so, in
2 what way?

3 A From my memory, I believe that I informed the agent from Mr. Rozzi's office
4 that there were problems with some of the video and that they could try to recover
5 whatever video they could, but they had, in essence, the same thing that we did.
6 I did not document that in any way at the time of the release at that stage, before
7 they withdrew themselves from the case.

8 Q Okay. So on the discovery disclosure or transfer to Defense that we
9 referred to as the 04, based on the number that's on the top, it's from February
10 13th of 2023, that contained these interviews in written form, but is that the
11 same day or time when you would have transferred any audio recordings or is it
12 possibly on another day?

13 A I'm sorry, Ms. Diener, can you rephrase the question?

14 Q Yeah. The 04 disclosure that you talked about that contained these
15 written reports from FBI and ORION from February of 2017, if there was video
16 recordings that were also given, would they have been at that same time or some
17 other disclosure?

18 A I'm sorry, I can't remember exactly when I gave them what I gave them at
19 this point, I'd have to look at my records to be able to refresh my memory. I'm
20 sorry.

21 Q That's okay, it's a lot of information. And at some point, the Defense
22 specifically asked for video of Brad Holder; is that correct?

23 A Yes.

24 Q And was a detailed response provided through a discovery disclosure?

25 A Yes.

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1 Q And indicated to them that there were lost recordings –

2 A Yes.

3 Q -- and his was one of them?

4 A Yes.

5 Q Was Brad Holder's the only recording that was lost?

6 A Heavens, no.

7 Q Okay. And the recordings weren't just for this investigation, were they?

8 A There were other investigations that were probably conducted during that
9 period of time in that same interview room that were destroyed, as well.

10 Q And do you have any way of recreating a list of all of the interviews that
11 happened during that timeframe?

12 A I do not.

13 Q And if officers did what was expected, which is write a narrative for the
14 interview that was recorded, then where would that information be contained?

15 A It would be contained within the reports and narratives that the officer
16 memorialized their interviews and either the State Police reports, the FBI reports,
17 or perhaps, in the ORION RMS system.

18 Q Or even other agencies –

19 A Or –

20 Q -- beyond those; correct?

21 A Yes, other agencies; and that's true, there were other agencies that did
22 memorialize reports that we have turned over.

23 Q But the Court gave us a deadline of November 1st of 2023, to provide
24 discovery, and did you do everything you could to provide everything to them
25 that we had?

DIRECT EXAMINATION OF STEPHEN MULLIN

1 A Yes, ma'am.

2 Q In fact, what has been your directive from Prosecutor McLeland with
3 regard to discovery and whether there should be decisions made about what we
4 share and what we don't share?

5 A To share everything that we have with them, even to a fault.

6 Q Which means every tip that came in through the FBI tip line they've been
7 provided?

8 A Absolutely.

9 Q If we have a record of it, they have it?

10 A Yes.

11 Q In the beginning – or when did you start your discovery transfers to the
12 Defense?

13 A I believe December the 7th, 2022.

14 Q And that would have been shortly after their appointment, would it not?

15 A Yes.

16 Q And has it been on-going since then, as reflected in your documents that
17 you prepared that are in Exhibit 2?

18 A Yes.

19 Q Now, there's some discovery that continues to be given to them; is that
20 correct?

21 A Yes.

22 Q Even though the deadline has passed?

23 A Yes.

24 Q And some of that information is information you could not have had before
25 November 1st of 2023; would that be fair to say?

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1 A I'm sorry, I couldn't hear all the question.

2 Q That's okay. Some of the information you're giving them, you could not
3 have given to them before November 1st, 2023, because it didn't exist; is that fair
4 to say?

5 A Yes.

6 Q For example, what would something like that be?

7 A Recently, we recovered some interviews the State Police had located on one
8 of their devices that had been recovered because of an inquiry about an interview
9 that had taken place, and that was furnished to us a few weeks ago and we
10 turned it over to the Defense as soon as we got it in our hands.

11 Q And those interviews had actually been requested to be downloaded and
12 attached to the State Police records, was it not?

13 A Yes, and there was a report accompanying those, that evidence that was
14 turned over to the Defense.

15 Q And specifically the officer who located that for you and did a supplement
16 report -

17 A Yes, he did.

18 Q -- can you provide his name?

19 A Yes. Oh, his name is Matthew J Harper.

20 Q Thank you. And then, aren't you also providing information that comes in
21 from the DOC?

22 A Yes.

23 Q And so that would be discovery that was not available before November 1?

24 A Yes.

25 Q And just to be clear, before the protective order for discovery existed, were

CROSS EXAMINATION OF STEPHEN MULLIN

1 there challenges to discovery and the transfer that were then alleviated by the
2 discovery protection order?

3 A Monstrous problems.

4 Q And what were those problems?

5 A The redaction of the data to remove criminal record information, Social
6 Security numbers, phone numbers, anything that might identify persons'
7 personal information which we had talked with or interviewed or followed up on
8 in that six- or seven-year period of time.

9 Q And so once that protective order for discovery was granted, you then felt
10 comfortable duplicating discovery and providing it to the Defense without
11 redaction; is that correct?

12 A Yes, because we had the assurance that that information would not get
13 out to the general public.

14 MS. DIENER: I'd pass the witness.

15 THE COURT: Mr. Baldwin.

16 **CROSS EXAMINATION OF STEPHEN MULLIN**

17 QUESTIONS BY MR. BALDWIN.

18 Q So let me get this straight, you knew – you knew, in August of 2017, that
19 Brad Holder's video was missing, it had been taped over; right? Well, let me
20 make – I'll strike that. You knew, in August of 2017, that from February – what
21 was it? – the 14th up until February 20th of 2017, that there – those no longer
22 existed, those videos; right?

23 A Yes, that's correct.

24 Q But then, when you provided the Defense with discovery in – let's say I
25 think it was – the first time was in December, you didn't say, "Hey, by the way, I

CROSS EXAMINATION OF STEPHEN MULLIN

1 need to tell you this, there's some missing video of people that were interviewed
2 in the very early stages of this case"? You didn't tell me that, did you? You
3 didn't tell Mr. Rozzi that, did you?

4 A I didn't tell you and I didn't tell Mr. Rozzi that, but I believe I mentioned it
5 to you or agent – his agent. It's from memory, my memory, I didn't write it down,
6 I didn't document it –

7 Q But it's not – okay. Well, did you tell Mr. McLeland that there was missing?

8 A Oh, yes, he knew.

9 Q You did? Okay. So in your – this is part of the packet that you just
10 introduced into evidence, this is from August 22nd, that you just introduced that
11 into evidence, I don't know which number it is.

12 MS. DIENER: Okay.

13 Q So in August of 20 – 22nd, we got – you're involved in these letters that go
14 to Mr. McLeland or come from him. I want you to look at the very bottom that
15 I've highlighted, and that's one of the exhibits that's been introduced, I don't
16 remember which particular exhibit it was.

17 MS. DIENER: Number 2.

18 Q Exhibit 2, page 11, Exhibit 2.

19 A Page 11, Exhibit 2, yes.

20 Q Read the bottom of that just to yourself where I highlighted, just for ease.
21 I'm going to ask you a question about that.

22 A Yes.

23 Q May I have that?

24 A Sure.

25 Q So in August of 2023, here's what you said about Brad Holder's video that

CROSS EXAMINATION OF STEPHEN MULLIN

1 we requested, "You had previously received ISP reports that document those
2 interviews and what was said in those interviews, though we did not locate any
3 videos of those interviews"; right?

4 A Correct.

5 Q What you didn't say was, "That's because they were taped over," did you?
6 You didn't tell us that, did you?

7 A I didn't include that information, no.

8 Q We did not learn about that, that this tape-over business happened, until
9 February of 2024; isn't that right?

10 A Yes.

11 Q Then we asked for any reports that detail the lost recordings, and we just
12 got that in evidence in the last couple weeks; right?

13 A Correct.

14 Q I'm gonna hand you what's gonna be marked as Defendant's Exhibit E and
15 ask you to identify that for me -

16 A Thank you.

17 Q -- tell me if you know about that.

18 A Yes.

19 Q That is a document, a report that I requested - we requested about, "Hey,
20 tell us about what - how did you memorialize the lost videotaped interviews";
21 right? And that's what you gave us, Exhibit C?

22 A Yes. Or -

23 Q It doesn't -

24 A It's E.

25 Q It's not dated though, is it?

CROSS EXAMINATION OF STEPHEN MULLIN

1 A It's E.

2 Q E. Thank you.

3 A Sorry.

4 Q This document that we just got in the last couple weeks, it's not dated, is
5 it? There's no date on it.

6 A There is no date on it.

7 Q Did you just produce this?

8 A No.

9 Q You produced – you wrote this out way back in 2017?

10 A Yes.

11 Q And we've just gotten it in 2024?

12 A Yes.

13 Q After we had to request it; right?

14 A Yes.

15 Q And that wasn't the only thing we got. I'm gonna hand you what's gonna
16 be marked as Exhibit F. Because we wanted all reports about anything missing.

17 A Sure.

18 Q Review that document and then – this was provided to us in the last couple
19 weeks. Tell me when you're ready to talk about it.

20 A Go ahead.

21 Q This says that, "drive 2 contained the – containing the data of recordings
22 made" – this is in the third paragraph – "made by the DVR includes interviews
23 in room one, two, and three, and four were missing from April the 28th, 2017, to
24 June 30th, 2017; right? That's what that says? There's missing video for almost
25 two months; right?

CROSS EXAMINATION OF STEPHEN MULLIN

1 A I'm not certain that that was the final conclusion. I drafted this report
2 after the incident had occurred, but in that DVD – excuse me, that hard drive
3 there were errors associated with that DVR and the compromise of the data on
4 it –

5 Q And –

6 A -- and I explained in the report how that occurred.

7 Q You do, but the crux of it is from April 28th, 2017, to June 30th, 2017, there
8 ain't no videos of any interviews; right?

9 A I'd have to go back and review now to make sure, but I believe there may
10 be interviews, but they may not have sound.

11 Q And this was the first time this document, Exhibit F I think it is, was given
12 to this off – to my partner, co-counsel and I, was within the last couple weeks
13 and we had to ask for it; right?

14 A Yes.

15 Q But we did get a narrative report of Brad Holder; right?

16 A Yes.

17 Q About six paragraphs for Brad Holder, that's what his interview with police
18 or law enforcement kind of came down to, just a number of paragraphs; right?

19 A Yes.

20 Q How long was this interview?

21 A I don't know.

22 Q What did he say in this interview, do you know?

23 A I don't know.

24 Q What happened to his – when you discovered, in August of 2017, that he
25 – his videotaped interview had been taped over, what did he say when you

CROSS EXAMINATION OF STEPHEN MULLIN

1 followed up in September of 2017, to follow up to make sure that at least that's
2 memorialized, what was lost was memorialized closer in time to 2017? What did
3 he say?

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

5 Q Did you interview back Brad Holder in August of 2017, after you found out
6 that his video was missing, just to give a good accounting of what he said, just
7 another interview?

8 A I didn't.

9 Q That'd been a good idea, don't you think?

10 MS. DIENER: Objection. It wasn't his place to decide.

11 THE COURT: Sustained.

12 Q So I wanna go through those two timeframes, we've got February – what?
13 – 14th through the 20th, 2017. There's not a single log, is there, of who went in
14 and was interviewed; right?

15 A Not that I'm aware of.

16 Q The early stages of an investigation – you did an investigation, at some
17 point?

18 A I talked to people and investigated leads.

19 Q Would you agree with me that, early on in an investigation, that can be
20 some of the most important timeframe to receive information?

21 A Yes.

22 Q You didn't go back and reinterview any of those people from the first few
23 days, did you? Not just Brad Holder, but anybody whose video interview was
24 lost?

25 A I did not.

CROSS EXAMINATION OF STEPHEN MULLIN

1 Q And nor did you try to recreate a log of, "Hey, I want to send a memo out
2 to all the police officers who interviewed people, please tell me who you
3 remembered videotaping, because there's six days of lost video." Did you do
4 anything like that or -

5 A I didn't.

6 Q -- did law enforcement?

7 A No.

8 Q No. Brad Holder was only interviewed in 2023 as a follow up because of
9 our depositions that were focusing on him; would you agree?

10 A Possibly.

11 Q There's no other reason you would have gone and deposed - interviewed
12 Brad Holder then; right?

13 A I did not interview Brad Holder.

14 Q You know he was interviewed?

15 A I've heard - yes, I've heard he was interviewed and there's a report about
16 it.

17 Q I mean, if you could get the recordings back, you would want them back,
18 would you agree?

19 A Absolutely.

20 Q The second video timeframe that we're talking about, April 28th through
21 June 30th, there was an opportunity to get - unearth those lost videos with some
22 type of Chinese equipment -

23 A Software.

24 Q -- software; right?

25 A Um-hmm. (Affirmative response)

CROSS EXAMINATION OF STEPHEN MULLIN

1 Q Did you get the software?

2 A I turned it over to the State Police for them to follow up with.

3 Q Do you know whether they followed up with the Chinese software to
4 unearth these?

5 A I know that we were able to view the videos, but some do not have audio;
6 so it may have been successful, but limited success.

7 Q Okay. Okay. So did all the videos get recovered then with this Chinese
8 software?

9 A I can't say whether all of them were recovered. We tried to see as many as
10 possible.

11 Q Did you follow up – once the Chinese software came into place and
12 something seems, according to you, to have been recovered, did you do a report
13 on that and say, “Well, here's what's been recovered and here's, you know, I
14 think here's what that is and here's what we don't have recovered”? You do
15 anything like that? Because I don't see any report about a Chinese – the Chinese
16 software working. Is there such a report somewhere that said the Chinese
17 software worked?

18 A I don't have it.

19 Q Okay. You did these other reports.

20 A Um-hmm. (Affirmative response)

21 Q Undated; right? You should have put the date on there.

22 A Thank you.

23 Q Yeah. Can we agree on that?

24 A I'll do better.

25 Q Yeah. There were lots of tips – I mean, you're an investigator for the

CROSS EXAMINATION OF STEPHEN MULLIN

1 Prosecutor's Office. Early on, there were lots of tips about Brad Holder; right?

2 A There was a few.

3 Q More than a few. More than a few, would you agree?

4 A A few.

5 Q And some – and so what I understood on direct examination is that when
6 people came in about a tip, then they were told, some of them, at least, to go to
7 the Delphi Police Department and get interviewed on video; is that right?

8 A Yes.

9 Q So some of these people that were – if there were people, these few tips
10 that were related to Brad Holder, they would have, theoretically, gone into the
11 interview room, as well; is that correct?

12 A Likely, yes.

13 Q And those would be lost?

14 A Yes.

15 Q And because there's no log, you don't know who was interviewed or who
16 was even interviewing; right?

17 A Correct.

18 Q You should have a log; would you agree?

19 A Hindsight's 20/20.

20 Q And the State was talking about, well, if they go – they were trained to look
21 for specific information like alibis and then follow up on the alibis; right?

22 A Yes.

23 Q So that's kind of a no-brainer, alibis; but would you agree with me that,
24 early on in the investigation, you don't know what's relevant or important related
25 to things that could be found in the future?

CROSS EXAMINATION OF STEPHEN MULLIN

1 A True.

2 Q So it's nice that you can do an alibi, but what happens if a single sentence
3 - would you agree that a single sentence in an interview, taken in context with
4 evidence in the future, might make a big difference in the case?

5 MS. DIENER: Objection: Speculation.

6 MR. BALDWIN: I'm asking him as an investigator.

7 THE COURT: Sustained.

8 Q And you talked and referenced one of the State's exhibits regarding - I
9 think I have it here - the unclassified Federal Bureau of Investigation 413.17
10 follow up on Brad Holder's alibi; right?

11 A Yes.

12 Q And that's entered into evidence - here, I'll hand you this, I don't know
13 what exhibit that is.

14 A Thank you.

15 MS. DIENER: I believe it's 5.

16 MR. BALDWIN: Exhibit 5.

17 Q It says, "The Human Resources director, Susan Case, said that the
18 security camera at the scales may have picked up his vehicle," the video may
19 have picked up the vehicle coming and going on that date; right? That's what it
20 says?

21 A Yes. (Clears throat) Excuse me. Yes.

22 Q Did you get the video of this - from the Human Resources director? Is that
23 a part of the discovery that we all have?

24 A No.

25 Q Shoulda had that; right?

CROSS EXAMINATION OF STEPHEN MULLIN

1 A I didn't have it.

2 Q All that they had really was somebody – the Human Resources director
3 said that somebody clocked in with Brad Holder – saying they were Brad Holder;
4 right? That's all they said? Go ahead and read it.

5 A “I suppose they would have to work his with entire shift, running his
6 machine, as well.”

7 Q Did somebody go – is it your understanding that somebody went and
8 talked to Bradley Holder's co-workers that day to say, “Hey, was Bradley Holder
9 working beside you?”

10 MS. DIENER: Objection. It's irrelevant.

11 THE COURT: Sust –

12 MR. BALDWIN: I'll move on. I'm almost done.

13 Q Did you check to see if Brad Holder switched vehicles with his oldest son
14 that day? Has that been –

15 MS. DIENER: Again, objection.

16 MR. BALDWIN: I'll move on.

17 MS. DIENER: This officer did not complete the follow up
18 investigation.

19 THE COURT: Sustained.

20 Q Would you agree with me that if an officer failed to prepare his report
21 before the video was the erased, and he was gonna use the video to help
22 supplement, you know, as he wrote, that there may not even be a memorialized
23 copy? Could that be a possibility?

24 A It would be difficult to, if you're going to use that process, because the
25 video was gone; however, I should say, that it was a practice for a lot of officers

CROSS EXAMINATION OF STEPHEN MULLIN

1 to request the video be retrieved from the DVR before the erasal occurred.

2 Q Okay. So that was common, officers would come in and say, "Hey, I want
3 to do a report. Can I see the video?"

4 A Yes.

5 Q Because there's things on a video that can be important to an officer.
6 "Gosh, I just found out this one thing over here. Let me see, what was important
7 over there on the video"; right? That's maybe why they want to do that; right?

8 A It's possible.

9 Q Yeah. You said that Brad Holder was never - has he ever been a key
10 suspect to this day in this case?

11 A He was at work.

12 Q He was at work. So therefore, he has never been a key suspect, no matter
13 what any other evidence that exists out there, he was at work?

14 A That's what the report says.

15 Q Patrick Westfall the same?

16 A His interview would be contained in the report that Agent Pohl did.

17 MS. DIENER: Judge, I would object to the question anyway. We're
18 here on a motion to dismiss for destruction of exculpatory evidence or potentially
19 useful, and that was -

20 MR. BALDWIN: No more questions.

21 MS. DIENER: -- specific to Brad Holder.

22 THE COURT: Sustained.

23 MR. BALDWIN: Sorry to interrupt. Sorry, Judge. No more
24 questions.

25 THE COURT: Any redirect, Ms. Diener?

RE-DIRECT EXAMINATION OF STEPHEN MULLIN

1 MS. DIENER: Yes.

2 **RE-DIRECT EXAMINATION OF STEPHEN MULLIN**

3 QUESTIONS BY MS. DIENER.

4 Q Investigator Mullin, you prepared two documents that have been marked
5 by Defense as Exhibit E and F, which are the letters regarding the two different
6 issues with DVR recordings. They do not contain dates, but they do have
7 information at the top referencing Delphi case number and multiple others. Do
8 you have those exhibits in front of you?

9 A I do.

10 Q And so at the top, can you explain what's under "Investigative Report" for
11 the Court.

12 A It is titled "Delphi Police Department Investigative Report" and it shows
13 the Delphi Police Department case number that we did for an assist in this
14 investigation and the Carroll County Sheriff's Department case number for the
15 double homicide and the State Police's case number, and the FBI number
16 associated with their case reporting system.

17 Q So when this discovery was made and you documented this information,
18 did you share it with other law enforcement?

19 A I did.

20 Q And can you tell from your memory or from these letters who you shared
21 it with?

22 A I certainly advised first Sergeant Holeman immediately and Detective
23 Liggett and Detective Kevin Hammond of the unfortunate events with the DVRs.

24 Q Okay. And they were part of Unified Command?

25 A Yes.

RE-DIRECT EXAMINATION OF STEPHEN MULLIN

1 Q And so they could then pass that along to anyone that did an interview
2 that might need to be redone or follow up that might be necessary based on the
3 fact that those interviews were no longer available; is that true?

4 A That is true.

5 Q And you indicated that you gave information to an agent of defense counsel
6 that certain data was missing when discovery was turned over. Could you
7 expand on that, how did you identify that and to whom would you have been
8 speaking?

9 A An agent of Mr. Rozzi's office, and again, this is my memory, I didn't
10 document it anywhere.

11 Q Did you mark the hard drives?

12 A Most recent, yes, I did. The most recent after their - they had been placed
13 back on the case again, I marked them, each one as having no sound or -

14 Q So -

15 A -- no video.

16 Q Or no video. So when they got discovery back, after being removed and
17 put back on the case, and you were giving them discovery in January and
18 thereafter, you marked the DVRs that had no video and no sound?

19 A Yes, I did.

20 Q And when you say an agent of Mr. Rozzi's office, are we talking about Sarah
21 Luxenberg?

22 A Yes.

23 Q And isn't it true that she picked up the evidence almost every single time?

24 A Yes.

25 Q Okay. Did you feel you had a rapport with her where you could share that

RE-CROSS EXAMINATION OF STEPHEN MULLIN

1 with her and it would get passed along to defense counsel?

2 A Yes.

3 MS. DIENER: Okay. No other questions.

4 THE COURT: Mr. Baldwin.

5 **RE-CROSS EXAMINATION OF STEPHEN MULLIN**

6 QUESTIONS BY MR BALDWIN.

7 Q There was lots of video that had blank on it; right? Where – that you gave
8 Sarah? Could you have been talking about that, where you open it up and
9 there's nothing on there?

10 A I'm not sure how they appeared on the DVD – or the hard drive, excuse
11 me. I believe only the videos that were left on the hard drive would actually
12 appear, so you wouldn't be able to pull up something that was just blank.

13 Q I'm talking about empty files that were provided to us. There were things
14 that you told Sarah Luxenberg, "Hey, you're gonna open up some things and
15 there are empty files in there"; isn't that right?

16 A Perhaps at the first, because we had – and each one of those showed in
17 progress as we were putting more information into them. That might be in
18 December of '22.

19 Q But we didn't know about the April 28th through the June 30th, those two
20 timeframes of missing video, until just in the last two weeks, you didn't tell Sarah
21 Luxenberg about that, did you?

22 A I'm sorry, Mr. Baldwin, I didn't hear all of your question.

23 MR. BALDWIN: You know what, it's late, I'm gonna shut up. No
24 more questions.

25 THE COURT: Anything else, Ms. Diener?

1 MS. DIENER: No.

2 THE STATE OF INDIANA RESTS

3
4 THE COURT: You may step down, sir.

5 THE WITNESS: Thank you.

6 MS. DIENER: No other witnesses.

7 THE COURT: You may step down, yeah. Do you wish to admit E
8 and F? They have not been offered or admitted.

9 MR. BALDWIN: I do. I'm sorry, Judge, I do wish to admit E and F.

10 **DEFENDANT'S EXHIBITS E AND F OFFERED**

11 THE COURT: Any objection?

12 MS. DIENER: No.

13 **DEFENDANT'S EXHIBITS E AND F ADMITTED**

14 MR. BALDWIN: Thank you.

15 THE COURT: Does the Defendant have any additional evidence?

16 MR. BALDWIN: We don't, Judge. Thank you.

17 THE COURT: You wish to make any closing statements?

18 MR. BALDWIN: I'll wave, Judge.

19 THE COURT: Ms. Diener.

20 MS. DIENER: Judge, I believe that our response, filed with the
21 Court on February 22nd, properly summarizes the issues and the case law, so I
22 will waive.

23 THE COURT: All right. I will take the matter under advisement
24 with all of the respective exhibits that have been admitted. And before you all
25 leave, you have respectively filed – the State filed a motion for leave of Court to

1 subpoena third party records to the Department of Correction. I've received no
2 objection or motions to quash from the Defense. The Defense filed a notice of
3 discovery, indicating that Mr. Allen's medical records, part one and two, had
4 been provided to the State, so does that take care of your request for the medical
5 records?

6 MR. MCLELAND: Judge, no, because I think – Defense and I had a
7 conversation, we're concerned that the records that were provided to the Defense
8 may not be a complete set of records from the DOC. I found it necessary that we
9 want the complete set of medical and mental health records to address those
10 issues at trial and so that is the reason we subpoenaed the DOC, to make sure
11 we get the complete record from DOC.

12 THE COURT: Okay. And the Defendant filed a motion to compel
13 and request for sanctions, that needs to be set for hearing.

14 MR. BALDWIN: Judge, I amended that because, after I filed it, I
15 found an e-mail from a few days before where Mr. McLeland had responded and,
16 therefore, I would move to – well, I would ask the Court to focus on the motion
17 to amend, because in that motion to amend, I explain that and then I focused
18 on the things that weren't satisfactorily explained or provided.

19 THE COURT: So you want me to just rule on the amended
20 pleading?

21 MR. BALDWIN: Correct, not on the first motion to compel.

22 THE COURT: And the State, you filed your response to the original
23 pleading March 18th, so if you want to supplement, you need to do that quickly.

24 MR. MCLELAND: Will do, Judge.

25 THE COURT: And then, you also filed your third *Franks* notice and

1 request for a *Franks* hearing. I'll have to review that and issue an order. Is there
2 anything else – oh – before we go? Then I will grant the State's motion for leave
3 of Court to subpoena third party records to the Department of Correction, both
4 of the ones that have been filed.

5 MR. ROZZI: Judge – I'm sorry, may I, Judge?

6 THE COURT: Yes.

7 MR. ROZZI: I'd like to speak on that issue, if that's okay.

8 THE COURT: Sure.

9 MR. ROZZI: Actually, I'm opposed to the Court granting that at
10 this point. We're still within the 15-day notice period, and what's going on here
11 is, is that I made a new request on the Department of Corrections after we were
12 reinstated in this case and they had just provided that to me, and there's nothing
13 untimely about any of this, but it just happened I want to say in the last – it was
14 last week. Ms. Gallagher from the DOC has been working with me to try to get
15 that information, and so there – it – and when I received it, we were having a
16 difficulty – we were having difficulty, essentially, recovering that from their
17 software program, which has been one of the – frankly, one of the challenges that
18 we faced. You get discovery from one entity and it comes through Dropbox, and
19 you get it from another entity and it comes through a Google account, and you
20 get it from another entity and they've got their own software program, and so my
21 staff member, up until I think this past Friday, was working with the DOC rep,
22 Ms. Bedwell, to try and get that information converted into a format that we
23 could read. And I do believe Mr. McLeland's correct, that I do think that there
24 was information available to me that the DOC had about Mr. Allen, medical and
25 psychiatric, when I made the first request that I didn't get; because now that I

1 have kind of a refreshed request, I'm seeing additional stuff. So this is a short –
2 a long way of saying I would like a chance to review what I just received before I
3 just agree to disclose it, 'cause I don't know what it is, and it's quite voluminous,
4 as you might imagine with medical records. I know one of the files I think that I
5 shared with Mr. McLeland was like 900 pages, so I mean, in fairness, there were
6 some blank pages mixed in there, but my request is, is the Court allow me the
7 15 days or whatever time period is left to file my motion to quash. I really do
8 believe that's probably not gonna happen, because I'm trying to be transparent
9 with Mr. McLeland, I already showed him the first two dumps I got, so I'd like
10 some time to look at that before my –

11 THE COURT: The 15 days is up March 29th, so it needs to be filed
12 on or before that date.

13 MR. ROZZI: Very good. Thank you.

14 THE COURT: Okay. Anything else from the State on anything that
15 we've covered yet today?

16 MR. MCLELAND: No, Your Honor. I think that covers it.

17 THE COURT: Anything else from the Defense?

18 MR. ROZZI: No, ma'am.

19 MR. BALDWIN: Thank you.

20 THE COURT: Thank you very much. We are completed. Jodie, you
21 can go off the record. Thank you very much.

22 (THIS CONCLUDES THE PROCEEDINGS AT HEARING ON MOTION TO DISMISS
23 CONDUCTED MARCH 18, 2024, IN THIS CAUSE.)

1 STATE OF INDIANA)
2 COUNTY OF CARROLL)

IN THE CARROLL CIRCUIT COURT
)SS:
CAUSE NO.: 08C01-2210-MR-1

3
4 STATE OF INDIANA,
Plaintiff,

5 VS.

6 RICHARD ALLEN,
7 Defendant,

8
9 **CERTIFICATE OF REPORTER**

10
11 I, Jodie L. Williams, official reporter for Special Judge Frances C. Gull,
12 hereby certify that I took down by means of electronic reporting equipment all of
13 the proceedings had the Hearing on Motion to Dismiss held March 18, 2024, in
14 said cause.
15

16 I further certify that the above and foregoing transcript is a full, true, and
17 complete copy of said proceedings.

18 WITNESS my hand and seal this 27th day of March, 2024.
19
20

21 *Jodie L. Williams*

22 Jodie L. Williams, Reporter
23 Allen Superior Court
24 Allen County, Indiana
25