

1
2
3
4
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STATE OF MICHIGAN
30th JUDICIAL CIRCUIT FOR THE COUNTY OF INGHAM
CRIMINAL DIVISION

THE PEOPLE OF THE
STATE OF MICHIGAN

v

Case No. 14-1380-FH
Hon. James S. Jamo

JOHN C. KELSEY II,

Defendant.

_____ /

JURY TRIAL - VOLUME 3

BEFORE THE HON. JAMES S. JAMO, CIRCUIT JUDGE

Ingham County, Michigan - Friday, May 29, 2015

APPEARANCES:

For the People:

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For the Defendant:

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ALSO PRESENT:

John C. Kelsey II, Defendant
Detective Sergeant Kyle McPhee
Detective Trooper Troy Johnston
Darryl Banks, Attorney for B. Hildabridle

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| | | |
|----|---|------|
| 1 | T A B L E O F C O N T E N T S | |
| 2 | | PAGE |
| 3 | | |
| 4 | <u>WITNESSES: PEOPLE</u> | |
| 4 | ALLAN AVERY | |
| | Direct Examination by Mr. Roth | 7 |
| 5 | Voir Dire Examination by Mr. Morley | 9 |
| | Direct Examination (Cont'g) by Mr. Roth | 10 |
| 6 | Cross-Examination by Mr. Morley | 38 |
| | Redirect Examination by Mr. Roth | 47 |
| 7 | | |
| | LISA GEE-CRAM | |
| 8 | Direct Examination by Mr. Roth | 49 |
| | Voir Dire Examination by Mr. Morley | 54 |
| 9 | Direct Examination (Cont'g) by Mr. Roth | 55 |
| | Cross-Examination by Mr. Morley | 58 |
| 10 | Redirect Examination by Mr. Roth | 67 |
| 11 | CHERYL L. JOHNSON | |
| | Direct Examination by Mr. Roth | 72 |
| 12 | Cross-Examination by Mr. Morley | 76 |
| | Redirect Examination by Mr. Roth | 96 |
| 13 | | |
| | LESLIE J. ROCHEFORT III | |
| 14 | Direct Examination by Mr. Roth | 97 |
| | Cross-Examination by Mr. Morley | 113 |
| 15 | | |
| | Motion for Mistrial | 119 |
| 16 | | |
| | Redirect Examination by Mr. Roth | 130 |
| 17 | | |
| | HOWARD BAUM | |
| 18 | Direct Examination by Mr. Roth | 133 |
| | Cross-Examination by Mr. Morley | 143 |
| 19 | Redirect Examination by Mr. Roth | 145 |
| 20 | BRIAINNA N. OWENS | |
| | Direct Examination by Mr. Roth | 147 |
| 21 | Cross-Examination by Mr. Morley | 155 |
| 22 | NICOLE B. SWEENY | |
| | Direct Examination by Mr. Roth | 157 |
| 23 | Cross-Examination by Mr. Morley | 163 |
| 24 | DEBRA K. WILLIAMS | |
| | Direct Examination by Mr. Roth | 166 |
| 25 | Cross-Examination by Mr. Morley | 170 |

| | | |
|----|-----------------------------------|-----------------|
| 1 | Redirect Examination by Mr. Roth | 173 |
| 2 | NICOLE HISEROTE | |
| | Direct Examination by Mr. Roth | 175 |
| 3 | Cross-Examination by Mr. Morley | 180 |
| 4 | Capias Warrant Hearing | 182 |
| 5 | | |
| 6 | | |
| 7 | <u>EXHIBITS:</u> | <u>RECEIVED</u> |
| | PX#22 Photograph | 15 |
| | PX#23 Photograph | 15 |
| 8 | PX#24 Photograph | 15 |
| | PX#25 Photograph | 15 |
| 9 | PX#26 Photograph | 15 |
| | PX#27 Photograph | 15 |
| 10 | PX#28 Photograph | 15 |
| | PX#29 Photograph | 15 |
| 11 | PX#30 Photograph | 15 |
| | PX#31 Photograph | 15 |
| 12 | PX#32 Photograph | 15 |
| | PX#33 Photograph | 15 |
| 13 | PX#34 Photograph | 15 |
| | PX#35 Photograph | 15 |
| 14 | PX#36 Photograph | 15 |
| | PX#37 Photograph | 15 |
| 15 | PX#41 12-9-14 Press release | 55 |
| | PX#42 Neighborhood canvas poster | 55 |
| 16 | PX#43 Vehicle wanted poster | 55 |
| | PX#44 12-19-14 Press release | 55 |
| 17 | PX#45 LEIN report | 100 |
| | PX#46 Records | 103 |
| 18 | PX#47 Photograph | 105 |
| | DXC Photographs | 115 |
| 19 | PX#48 Documents | 137 |
| | PX#52 Photograph | 148 |
| 20 | PX#50 Photograph | 158 |
| | PX#51 Photograph | 158 |
| 21 | PX#183 Cellebrite report - LG | 179 |
| | PX#184 Cellebrite report - iPhone | 179 |
| 22 | | |
| 23 | | |
| 24 | | |
| 25 | | |

1 Ingham County, Michigan
 2 Friday, May 29, 2015 - At 8:35 a.m.
 3 THE COURT: We're back on the record in the
 4 matter of People versus Kelsey, File No. 14-1380-FH.
 5 This is for the continuation of the jury trial in this
 6 matter.
 7 Before we bring the jury in, it is my
 8 understanding there is a stipulation you want to put on
 9 the record, Mr. Roth?
 10 MR. ROTH: Two small ones that Mr. Morley and I
 11 discussed yesterday. People's Exhibit -- Proposed
 12 Exhibit 44, news release dated December 19th, it
 13 initially had on there that the Defendant was charged as
 14 a habitual offender. I redacted that in white so that
 15 the jury would not see that. I think Mr. Morley is in
 16 agreement to that redaction.
 17 MR. MORLEY: That's accurate, Your Honor.
 18 MR. ROTH: Then as to Exhibit 45, it is a
 19 certified document with the letters sent to the Defendant
 20 notifying him of his suspensions in the front, and it
 21 includes all of his current suspensions and convictions.
 22 We're going to stipulate to remove those without
 23 otherwise compromising the certification.
 24 MR. MORLEY: That's agreed, Your Honor.
 25 THE COURT: All right. Any other matters to

4

1 put on the record, Mr. Roth?
 2 MR. ROTH: With regard to -- and I forgot to
 3 speak to Mr. Morley about this, this morning, but the
 4 proposed limiting instruction as it relates to the
 5 hearsay, I'm going to, for the time being, withdraw that
 6 request. If it becomes so prevalent that we need to
 7 address it again, I'll bring it up, but for now I think
 8 it's fine as is.
 9 THE COURT: It turned out to be a non-issue
 10 after all of that debate yesterday.
 11 Mr. Morley, anything that you want to put on
 12 the record, sir?
 13 MR. MORLEY: I don't think so, Your Honor.
 14 Did you want us to approach real quick?
 15 THE COURT: Sure.
 16 (At 8:34 a.m., an at-the-bench
 17 discussion is held off the
 18 record.)
 19 THE COURT: All right. For those of you in the
 20 audience, I'm going to remind you again that all
 21 electronic devices are to be off. There is no recording
 22 or videotaping of any of these proceedings absent a media
 23 request, a written request to do so. So you have to have
 24 all of your cell phones and any other type of electronic
 25 device off. If you're seen with having them on -- and I

5

1 don't just mean on silent. You can't put them on silent.
 2 They have to be turned off.
 3 If you're found to have them on during the
 4 proceedings, you will be removed from the courtroom and
 5 will not be allowed back into these proceedings today.
 6 For the media, just as a reminder, no filming
 7 of the jurors.
 8 And as to lay witnesses, no filming of the
 9 faces of the lay witnesses as well.
 10 Anything else anybody wants to put on the
 11 record?
 12 Mr. Roth?
 13 MR. ROTH: No, Your Honor. I have made the
 14 redaction on 45 taking out the pages with the certified
 15 record.
 16 THE COURT: Okay.
 17 MR. MORLEY: Nothing further, Your Honor.
 18 Thank you, though.
 19 THE COURT: Let's bring the jurors in.
 20 THE BAILIFF: All rise.
 21 (At 8:38 a.m., the jury entered
 22 the courtroom.)
 23 THE COURT: Please be seated. Good morning,
 24 Ladies and Gentlemen of the Jury.
 25 VARIOUS JURORS: Good morning.

6

1 THE COURT: Mr. Roth, you may call your next
 2 witness, sir.
 3 MR. ROTH: Thank you, Your Honor. The People
 4 call Sergeant Allan Avery.
 5 THE COURT: Please raise your right hand.
 6 Do you swear or affirm to tell the truth, the
 7 whole truth, and nothing but the truth?
 8 SERGEANT AVERY: Yes, sir.
 9 THE COURT: Please be seated. State your full
 10 name, and spell it for us, please.
 11 THE WITNESS: Special Sergeant Allan Avery,
 12 A-L-L-A-N A-V-E-R-Y.
 13 MR. ROTH: Thank you.
 14 ALLAN AVERY
 15 called by the People at 8:39 a.m., sworn by the Court,
 16 testified:
 17 DIRECT EXAMINATION
 18 BY MR. ROTH:
 19 Q. Where are you employed?
 20 A. **The Michigan State Police, currently assigned as the**
 21 **first district traffic crash reconstructionist.**
 22 Q. How long have you been with the Michigan State Police in
 23 total?
 24 A. **Since January of '95. In the specific job, since January**
 25 **of 2005.**

7

1 Q. What are your responsibilities in that current
2 assignment?

3 **A. As a traffic crash reconstructionist?**

4 Q. Yes, sir.

5 **A. I'm responsible for investigating serious injury and
6 fatal crashes.**

7 Q. Do you have training for that position?

8 **A. I do.**

9 Q. Can you talk to us about the initial training that you
10 received?

11 **A. Initially there is 80 hours in the -- in the police
12 academy. There is an additional 80-hour class in the --
13 it's the advance at scene, so our post-level guys. The
14 next step from there is our technical crash
15 reconstruction, which is another 80-hour class. And then
16 there is a crash reconstruction that makes me a
17 reconstructionist after that.**

18 **Subsequently I've got about 1200 hours of
19 training in crash reconstruction and related fields.**

20 Q. Over the course of your time in that position, about how
21 many of these sorts of accidents have you investigated?

22 **A. About 350, 400, give or take, over the last ten years.**

23 Q. Are you a member of any related or relevant professional
24 organizations?

25 **A. I am.**

8

1 Q. Would you please explain those for the jury?

2 **A. Sure. I'm an ACTAR accredited, which is -- it's a
3 national certification and a test that tests not only
4 knowledge but theory also. My number in that is 1815.**

5 Q. Can you explain what that number means?

6 **A. I'm the 18 -- 1815 is my number. So there is -- well,
7 there is 1814 people in front of me that have also taken
8 and passed the test.**

9 Q. Very good. Have you previously been recognized as an
10 expert in the field of accident investigation and
11 reconstruction?

12 **A. I have.**

13 Q. Could you give the jury an idea of how many times?

14 **A. Maybe, I don't know, 15 or 20, maybe.**

15 Q. That includes within the Ingham County Circuit Court?

16 **A. Correct.**

17 MR. ROTH: Your Honor, at this time we'd move
18 to recognize Sergeant Avery in the field of accident
19 investigation and reconstruction.

20 THE COURT: Mr. Morley, any voir dire or
21 objection?

22 MR. MORLEY: Voir dire, please, Your Honor?

23 THE COURT: Certainly.

24 VOIR DIRE EXAMINATION

25 BY MR. MORLEY:

9

1 Q. Sergeant, I believe I asked this at a prior hearing, but
2 have you ever been offered as an expert and not so
3 qualified or not allowed to testify?

4 **A. No, sir.**

5 Q. On what will you be relying today to form your opinion or
6 to give your opinion?

7 **A. My training and experience.**

8 Q. Okay. As well as your report and your calculations and
9 data and whatnot?

10 **A. Correct.**

11 Q. Those are a necessary part of your testimony -- expert
12 testimony today?

13 **A. Yes, sir.**

14 MR. MORLEY: All right.
15 Nothing further, and no objection, Your Honor.

16 THE COURT: All right. The witness is
17 qualified and shall be permitted to testify as an expert
18 in the area of accident investigation and reconstruction.
19 Mr. Roth, you may proceed.

20 MR. ROTH: Thank you, Your Honor.

21 THE WITNESS: Thank you, sir.

22 DIRECT EXAMINATION (CONT'G)

23 BY MR. ROTH:

24 Q. I want to now talk specifically about this case. Were
25 you called to assist in the investigation of a crash on

10

1 Dexter Trail in Stockbridge in the early morning of
2 December 7th, 2014?

3 **A. I was, yes.**

4 Q. Approximately what time did you arrive on scene?

5 **A. I got the call about, I don't know, 2 o'clock-ish, 2. So
6 probably -- I got on scene probably by 3, 3:15. About an
7 hour it took me to get there.**

8 Q. What was the status when you arrived?

9 **A. The status was, there was -- I'm not sure that
10 Deputy Whitaker had officially been declared deceased at
11 that point.**

12 Q. But he was no longer at the scene?

13 **A. I don't -- no. He was not at the scene when I got there.**

14 Q. Very good. Go ahead.

15 **A. He -- the scene was -- where I stopped, the scene was
16 further east. My approach was from the west. So the
17 scene was further to the east. And I could see the fire
18 trucks with their lights shining in the field on the
19 north side of the road. There were lots of people,
20 police officers walking around, moving around.**

21 **Obviously there was some long faces and some
22 tears being shed at the same time. At that point, I
23 couldn't even see where the crash scene was, but I made
24 contact with Sergeant Harrison from the Ingham County
25 Sheriff's Department.**

11

1 Q. What was your purpose in making contact with him?
 2 A. I've known Ted for a while. He was one of their crash
 3 investigators there. So I've known him. I had a
 4 relationship with him. I knew he was a sergeant there
 5 and would probably have some information at least how to
 6 get started here.
 7 I made contact with him, talked with him about
 8 it; what was going on. Got some of the background
 9 information involving the chase to start with and then
 10 subsequently the crash and where everything ended up.
 11 Originally they asked just for me to
 12 reconstruct the scene. As we walked towards the scene
 13 and found it, I realized how horrific it was and how
 14 monumental task it was going to be not only to plan a
 15 funeral but to actually investigate the crash. And
 16 having a relationship with Ted, I was able to -- able to
 17 talk to him a little bit about what was going on, and
 18 then subsequently they turned the crash over to me and my
 19 department.
 20 Q. So at that point the sheriff's department yielded the
 21 subsequent investigation to the Michigan State Police?
 22 A. Yes, sir.
 23 Q. Once that decision was made, did you call for
 24 investigators?
 25 A. I did.

12

1 Q. Now, briefly, what's the difference between an
 2 investigator and what you were there for?
 3 A. I was there to reconstruct the crash. I knew that since
 4 this was a one-vehicle crash involving a chase where the
 5 second vehicle was not on scene, I knew that it was going
 6 to be a substantial type or of -- potentially be a
 7 substantial investigation where I was going to need more
 8 resources than just me.
 9 At that point, I called operations back and
 10 advised them that it was confirmed a fatal crash at that
 11 point. That it was a flee and elude where the second
 12 vehicle wasn't around, and that I was going to need at
 13 least a couple detectives as well as potentially a
 14 polygraph, potentially aviation, potentially the crime
 15 lab, potentially a polygraph operator, and, you know, the
 16 world was my oyster at that point.
 17 Q. Very good. And at that point you began your crash
 18 investigation?
 19 A. I did.
 20 Q. Thank you. Showing you People's Exhibit 20 on the screen
 21 in front of you. You already gave us some indication.
 22 Could you describe what you initially saw on the roadway
 23 here?
 24 A. Well, initially it was dark. It was still dark.
 25 Basically, everything was illuminated either by

13

1 headlights, by the lights from the fire trucks or
 2 flashlight. We're able to see in the road where there
 3 were two tire marks that started in the road and then are
 4 in the eastbound lane, crossed across the westbound lane
 5 and left the roadway on the north side of the road.
 6 Q. Are those visible in this picture?
 7 A. The marks themselves aren't but the paint that I put down
 8 is.
 9 Q. What's the purpose in putting it down at that point?
 10 A. The purpose of putting down the paint is to identify,
 11 first of all, the mark and be able to go back and
 12 document it with the Total Station.
 13 Q. So this is an overhead view, but the paint you're
 14 referring to is the orange paint we see here?
 15 A. Yes, sir.
 16 Q. Very good. Were you able to determine which vehicle left
 17 that trail or those marks?
 18 A. The deputy's car is the one that left it. They were
 19 pretty clear that they started in the eastbound lane,
 20 went across the westbound lane into the grassy shoulder,
 21 ditch on the north side of the road. And then you could
 22 see where it kind of picked up and then went into the
 23 treeline, and that's where the crash actually occurred.
 24 Q. And you were able to determine that it was the deputy's
 25 car that left these marks because that path is fairly

14

1 continuous?
 2 A. Correct.
 3 MR. ROTH: Very good.
 4 Your Honor, may I approach the witness?
 5 THE COURT: You may.
 6 BY MR. ROTH:
 7 Q. (Approaching the witness.)
 8 I'm going to hand you what's been marked as
 9 Proposed Exhibits 22 through 37 already shown to defense
 10 counsel. If you could take a moment and look through
 11 those.
 12 Do each of those fairly and accurately depict
 13 your observations at the scene the early morning hours
 14 and then a little bit later in the morning?
 15 A. Yes, they do.
 16 MR. ROTH: Your Honor, I'd move for the
 17 admission of Proposed 22 and through 37.
 18 MR. MORLEY: Without objection, Your Honor.
 19 THE COURT: People's Exhibits 22 through 37 are
 20 admitted and received.
 21 (At 8:49 a.m., PX#22 through
 22 PX#37 are received.)
 23 BY MR. ROTH:
 24 Q. So before we get too far into specific observations, is
 25 it fair to say that you supplemented the nighttime

15

1 pictures with some a little bit later in the day to help
 2 see?
 3 **A. Yes, sir.**
 4 **Q.** All right. So I'm going to start with the nighttime
 5 ones. Those are obviously taken first. Showing you
 6 Proposed -- excuse me, showing you People's Exhibit 22.
 7 What do we see in this picture?
 8 **A. It's a picture facing east from obviously west of the**
 9 **crash scene. In the -- starting in the eastbound lane, I**
 10 **have reflective markers that are different colors. So**
 11 **the red marker indicates a specific tire mark, and the**
 12 **blue marker --**
 13 **Q.** Could you circle on the screen the markers you're
 14 referring to?
 15 **A. (Illustrating.)**
 16 **Q.** Thank you. And what is it that they are down there to
 17 mark?
 18 **A. They marked an actual tire mark. So the blue one is a**
 19 **continuous tire mark, and the red one is a continuous**
 20 **tire mark.**
 21 **Q.** Thank you. So moving down the road to the east, we see
 22 that better in Exhibit 23?
 23 **A. Yes, sir.**
 24 **Q.** Continuous tire mark. Why are the skid marks so close
 25 together there?

16

1 **A. What happens is the vehicle rotates. The tire -- the**
 2 **rear tire tracks inside of the front tire. As the**
 3 **vehicle rotates, the rear tire actually starts to track**
 4 **outside of the front tire, which puts it into a yaw.**
 5 **Once that separation occurs, the vehicle**
 6 **rotates around, I'm able to do some speed calculations**
 7 **based on the tire marks itself.**
 8 **Q.** You used a term there "yaw." Could you explain what that
 9 means?
 10 **A. A yaw is a rolling and sliding tire. As the vehicle**
 11 **rotates around, the vehicle is -- er, the tire is**
 12 **actually still rolling forward, but it's actually sliding**
 13 **sideways at the same time. The best analogy I can use is**
 14 **if you watch NASCAR when you see them crash, the**
 15 **vehicle's tires are spinning forward. As the vehicle**
 16 **rotates around 90 degrees, the tires slow down and**
 17 **eventually stops. But as that vehicle continues to**
 18 **rotate around, the tires start spinning only backwards at**
 19 **that point, and so that's the same thing only at a much**
 20 **higher speed.**
 21 **Q.** As we see in this picture, what were the physical road
 22 conditions immediately prior to these skid marks?
 23 **A. They're clear and dry. It was dark. It was in December,**
 24 **but it was kind of cool but not bitterly cold.**
 25 **Q.** What about the actual pavement? Anything about the

17

1 actual pavement?
 2 **A. Where the crash occurred, no. It was your typical**
 3 **country road.**
 4 **Q.** So let's take -- let's move backwards from that. Was
 5 there anything significant about the pavement?
 6 **A. Prior to the crash, there were several dips in the road.**
 7 **Q.** How far behind this first skid mark? Just an idea.
 8 **A. I don't know, a few hundred feet.**
 9 **Q.** Very good. Could you describe for the jury as best as
 10 possible how significant those dips were?
 11 **A. They were -- they were substantial, but it's not like**
 12 **anybody driving over it would lose control over it, but**
 13 **they would -- they would be dips in the road, maybe, I**
 14 **don't know, three feet, give or take.**
 15 **Q.** When you say three feet, I mean, you don't mean it comes
 16 off the ground like a three feet hill, right?
 17 **A. Well, it would dip down and over whatever the distance**
 18 **was, about three feet.**
 19 **Q.** So they look like a lot more subtle than they actually
 20 are?
 21 **A. Potentially, yes, sir.**
 22 **Q.** Moving closer to the accident site in 24, what do we see
 23 now?
 24 **A. It's -- it's another photograph where you can actually**
 25 **see the separation of the front and the rear tires as**

18

1 **they start in the eastbound lane, cross over to the**
 2 **westbound lane and actually leave the road to the north.**
 3 **Q.** I want to move now to that same view but during the
 4 daytime hours. People's Exhibit 27. Could you describe
 5 for the jury, now that we have the light, in more detail
 6 what are we seeing on the roadway?
 7 **A. You can actually see the marks.**
 8 **Q.** Could you circle them as you discuss them?
 9 **A. Sure. (Illustrating.)**
 10 **This is the front tire mark, being the red one,**
 11 **and then you can actually see the actual mark of the blue**
 12 **one. The vehicle is rotating counterclockwise. So the**
 13 **outside edge of the tire is loaded. That's the actual --**
 14 **the thin dark mark that you can see.**
 15 **Q.** When you say it's loaded, what does that mean?
 16 **A. It is -- the car is rotating this way, so it's pitched**
 17 **towards the passenger's side as it rotates**
 18 **counterclockwise.**
 19 **Q.** Were you able to determine what speed, approximately,
 20 Deputy Whitaker was traveling when he gets to near the
 21 edge of the roadway?
 22 **MR. MORLEY:** Your Honor, may we approach?
 23 **THE COURT:** Sure.
 24 (At 8:54 a.m., an at-the-bench
 25 discussion is held off the

19

1 record.)

2 BY MR. ROTH:

3 Q. All right. So I'm going ask the question again. Were

4 you able to determine the speed, and I'm not asking what

5 the number was yet, but were you able to determine the

6 speed, approximately, that Deputy Whitaker was traveling

7 on the roadway near where he exits the pavement?

8 **A. Through mathematical calculations or through electronic**

9 **evidence?**

10 Q. Is the answer both?

11 **A. The answer is both, yes.**

12 Q. Very good. Now, tell me about that process.

13 **A. Well, the mathematical calculations come off a chord in a**

14 **middle ordinate measurement. Basically what it is, is a**

15 **measurement across the arc. And then -- in this case it**

16 **was 40 and 80 feet, is what we used. Then you go back to**

17 **40 feet and then measure to the mark on this case. So**

18 **originally it was done in the dark. When the sun came**

19 **up, it was obvious that there was more of the mark that**

20 **was visible, so we did it again and measured it again and**

21 **actually got some different speeds.**

22 **The electronic evidence comes actually from the**

23 **car. There is a box inside of the event data recorder**

24 **that is an accelerometer is basically what it is. It**

25 **measures speed. It measures change in velocity. It**

20

1 **measures throttle position, as well as brake status, and**

2 **that was imaged at the scene also.**

3 Q. Is that what we would commonly refer to as a black box?

4 **A. It was. A black box is actually a flight recorder. A**

5 **black box actually records voices, as well as electronic**

6 **data. In the cars they don't -- they don't record the**

7 **voices. So it's not technically a black box as you know**

8 **it in an airplane.**

9 Q. Very good. So based on the mathematical calculation that

10 you described, what did you determine the speed to be as

11 he's nearing the edge of the roadway?

12 **A. Well, it's actually where the separation occurs. And it**

13 **slows down as it rotates counterclockwise. So the actual**

14 **speed that was calculated was much further back in the**

15 **eastbound lane.**

16 Q. So if I show you 22, would that show it, approximately

17 the location?

18 **A. Yeah. That's a good picture of it.**

19 Q. Very good. Could you make a line, roughly, where it is

20 you're making this calculation?

21 **A. Sure. It's back here. (Illustrating.) Oops. It starts**

22 **too high. But it starts back on the blue mark.**

23 Q. So it's the first blue mark?

24 **A. Right.**

25 Q. Very good.

21

1 **A. The closer to separation you can get, the more accurate**

2 **you can calculate the speed.**

3 Q. Just so the jury understands, when you use the phrase

4 separation, what are you describing is separating?

5 **A. It's actually where the back tire, the rear tire, is**

6 **tracking outside of the front tire.**

7 Q. Very good. So mathematically at that point what were you

8 able to calculate the speed to be?

9 **A. Originally it was much lower because we didn't see all**

10 **the mark. When the sun came up when we went back and**

11 **remeasured, it ends up in the 115 -- 109 to 115-mile-**

12 **an-hour range.**

13 Q. And as it relates to the data form, the way you were able

14 to take away from the vehicle, what did that indicate?

15 **A. It was 117 miles an hour two and a half seconds prior to**

16 **algorithm enable. All algorithm enable is, is it wakes**

17 **up the module and it starts recording backwards. It's**

18 **recording stuff all the time, but it's kind of asleep.**

19 **When the module senses a significant event, which could**

20 **be something as simple as driving over rough railroad**

21 **tracks, it wakes up, and it starts running its algorithms**

22 **or its program to decide, hey, what's going on here? Do**

23 **I need to deploy the airbags? Are they belted? Where**

24 **are they sitting? All those kinds of things go into**

25 **these calculations very quickly. And in this case, it**

22

1 **ends up being a deployment event.**

2 Q. What is a deployment event?

3 **A. A deployment event is actually the airbags are fired. A**

4 **non-deployment event could be, like I said, running over**

5 **the railroad tracks real rough where it wakes up the**

6 **module. It senses that something is going on, and it**

7 **actually says, oh, okay. This isn't so bad, and it goes**

8 **back to sleep nearly immediately.**

9 Q. So the triggering event in this case was not the dip. It

10 was the impact with the tree?

11 **A. Well, there was an actual dip. There is actually two**

12 **events that were recovered. One was a non-deployment**

13 **event, and one was a deployment event. Those two events**

14 **are about three-tenths of a second apart.**

15 **And when you look at it, as the car goes off**

16 **the road, there is a ditch there. And there was some --**

17 **some gouging and some more significant things than**

18 **sliding across the top of the grass. So that is where,**

19 **most likely, the non-deployment event occurred.**

20 **And then approximately three-tenths of a second**

21 **later is the deployment event, which is the impact into**

22 **the trees.**

23 Q. But the dip in the road initially did not register as a

24 triggering event?

25 **A. No. And if it did, it was overwritten.**

23

1 Q. Very good. And why this small discrepancy between the
 2 mathematical equation and the event data recorder?
 3 **A. Well, the mathematical calculation is -- is as best as I
 4 can get it. I mean, it's on a graduated tape measure,
 5 but, I mean, is it -- is it 1.25 or is it 1.27, or is
 6 it -- you know, so I get it as close and as accurate as I
 7 can, but there is a potential there that there is a
 8 little bit of --**
 9 Q. There is a margin of error.
 10 **A. Well, yes. There is a margin of error.**
 11 Q. Very good. Showing you People's Exhibit 28. I want to
 12 now start talking about the path that Deputy Whitaker's
 13 car took once it exited the roadway. What do we see in
 14 Exhibit 28?
 15 **A. Well, you can see the crash scene in the back that would
 16 be further east behind the police tape. But approaching
 17 the scene, you can see tire marks as they go towards the
 18 -- I think this is one too -- as they rotate into impact.
 19 So the vehicle is actually rotating clockwise at this
 20 point.**
 21 Q. When we look at Exhibit 5, we see the same area just at
 22 nighttime?
 23 **A. Yes, sir.**
 24 Q. During the nighttime when you first arrived, what was the
 25 condition of the grass?

24

1 **A. It was kind of frosted dewy. It was your typical winter
 2 morning, I guess, December morning.**
 3 Q. So while the roadways were clear and dry, the grass was
 4 not as much?
 5 **A. Yes, sir.**
 6 Q. Showing you Exhibit 29, did you create this diagram?
 7 **A. I did.**
 8 Q. What's the purpose of this diagram?
 9 **A. This is an aerial, two-dimensional view of the crash
 10 scene as I found it.**
 11 Q. So could you make a line on the screen generally showing
 12 the jury the path that the vehicle traveled, and then
 13 we're going to go back and follow that path.
 14 **A. Okay. So it kind of starts back here (illustrating)
 15 across the road and then the impact.**
 16 Q. Very good. So moving then across that path through the
 17 grass that we already discussed to what we see in
 18 Exhibit 30, where did the tracks through that grass lead?
 19 **A. Over towards these trees.**
 20 Q. Were you able to determine the point of impact?
 21 **A. I was able to determine the area of impact, yes, sir,
 22 around those trees.**
 23 Q. Could you explain what that means to the jury?
 24 **A. The point of impact would be where they actually started
 25 to touch the area is the -- a bigger area where obviously**

25

1 **the impact occurred.**
 2 Q. How far through that path once off the road is this area
 3 of impact?
 4 **A. It was another maybe 100 feet, 80 feet.**
 5 Q. Were you able to determine the speed, approximately, that
 6 the vehicle was traveling at the time it makes impact?
 7 **A. Yes.**
 8 Q. How?
 9 **A. Through the electronic evidence. Through the airbag
 10 control module. The event data recorder shows the speed
 11 approximately half a second prior to algorithm enable of
 12 83 miles an hour.**
 13 Q. So a half second before impact, looks like, with a tree
 14 or these trees 83 miles per hour?
 15 **A. At the wheel speed sensor potentially it's faster because
 16 the vehicle is rotating and sliding at the same time.**
 17 Q. Could you explain why that is to the jury?
 18 **A. Well, if the vehicle is rotating, like I said before with
 19 my NASCAR analogy, the vehicle is actually moving faster
 20 than what the tires are spinning. So the brakes are
 21 applied at this point. If you actually do the math
 22 between one second and a half second, there is -- it's
 23 like 2.6 Gs that is just about un -- you know, maybe in a
 24 fire aircraft, or something like that. Usually a car is
 25 three quarters of a G, maybe one for the most part. So**

26

1 **that's, you know, one and a half times that. So that's
 2 not even realistic. But if you do the math backwards,
 3 the car is about 112 miles an hour as it is a second away
 4 from impact. And then if you take the average drag
 5 factor there and calculate it out, it ends up at about
 6 108 at 109 miles an hour at impact.**
 7 Q. Thank you. Moving to Exhibit 31, we have the passenger's
 8 side of Deputy Whitaker's patrol car. Approximately how
 9 far past the area of impact was this piece of the
 10 vehicle?
 11 **A. It was probably 40 or 50 feet.**
 12 Q. And could you describe the condition of this part of the
 13 vehicle?
 14 **A. It looked like somebody had taken a band saw and cut the
 15 side of the car off maybe a foot or so wide. I've never
 16 seen anything like it.**
 17 Q. We have the reverse view of that in Exhibit 32?
 18 **A. Once again it's the passenger's side from looking what
 19 would be the inside towards the outside of the car, and
 20 once again it looks like a band saw has taken and cut
 21 part of that car, the passenger's side of that car, just
 22 about off. So it's sheared that -- that portion of the
 23 car right off.**
 24 Q. What do we see in Exhibit 33?
 25 **A. That is the motor from the vehicle.**

27

1 Q. So explain to me, first of all, what the motor in the
2 vehicle does.
3 A. **Well, it's the power plant for the car.**
4 Q. All right. Mechanically what's going on in the motor?
5 A. **It's -- mechanically it's getting -- it gets fuel, which
6 drives the drive shaft which powers the wheels.**
7 Q. And we notice that it's obviously outside of the vehicle
8 in this. How far outside of the point of impact was
9 this?
10 A. **That was about 80 feet.**
11 Q. And how far past the pieces of the vehicle is it?
12 A. **That was about 80 feet past the last -- from impact to
13 its location is probably 130, 150 feet, give or take.**
14 Q. How does an engine get ejected from a vehicle in that
15 way?
16 A. **It sheared it right off of the motor mounts. And
17 basically it's just a big bowling ball as it's rolling
18 through the foliage and the trees and, you know, the
19 cattails and stuff like that.**
20 **Actually when I got there, I actually couldn't
21 see the motor, but I could see a path where something had
22 tumbled through the -- through the -- you know, the
23 smaller trees and the grass and stuff like that. And as
24 I walked down the path, I could see oil and fluids, and
25 stuff like that. And then as I continued walking the**

28

1 **path, I eventually found where the motor was.**
2 Q. Thank you. Showing you Exhibit 34. Once you were done
3 with your measurements with the vehicle as you initially
4 found it, what did you do at the scene?
5 A. **What I decided to do is I got all the pieces out when the
6 wrecker got there. I got all the pieces out of the --
7 out of the grass, and I reassembled them in the roadway.**
8 Q. Why?
9 A. **Just because I wanted to make sure that I had all the
10 pieces and to show the severity of the crash.**
11 Q. So could you orient the jury. In Exhibit 34, what are we
12 looking at?
13 A. **(Illustrating.)**
14 **Well, over here is the passenger's side of the
15 vehicle. Okay. This is the rear portion of the vehicle.**
16 **And then obviously this is the frontal part of the
17 vehicle. And then this is the trunk. And then this is
18 the hood over here.**
19 Q. Thank you. In Exhibit 35, what angle are we looking at?
20 A. **You are looking from the driver's side corner -- front
21 corner diagonally across the back of it.**
22 Q. So this is the reverse view of the last one? This is
23 front to back?
24 A. **Correct. Well, diagonally from front to back, yes, sir.**
25 Q. What do we see in 36?

29

1 A. **That is the front bumper fascia and the hood. Actually,
2 in the hood you can actually see where the impact
3 occurred.**
4 Q. And, finally, 37. You took a picture of the speedometer.
5 Why is that?
6 A. **I did. I took a picture of the speedometer because it
7 showed the vehicle at roughly 84 miles an hour. That was
8 prior to doing any type of downloading or doing any type
9 of math calculations. Sometimes the speedometer gets
10 pegged at or about the impact speed. Sometimes it
11 doesn't. So, I mean, it's one of those things you have
12 to take the evidence while it's available, obviously, or
13 otherwise it's gone.**
14 **In this case, I saw it. Took a picture. Made
15 sure we got a picture of it. And, coincidentally, it's
16 pretty close to what the actual event data recorder
17 speeds recorded as.**
18 Q. Very good. So once you piece this vehicle back together
19 in the roadway, did you make some observations about the
20 condition of it?
21 A. **As -- of the vehicle?**
22 Q. Yes.
23 A. **Yes, sir, I did.**
24 Q. Could you please describe those for the jury?
25 A. **It's probably one of the most horrific crashes that I've**

30

1 **ever dealt with in ten years of doing this. Originally
2 when I got there and looked at it, it reminded much of a
3 plane crash just with the way that the debris was just
4 kind of strewn along the path of travel.**
5 Q. Had the airbags deployed?
6 A. **They had, yes. They were still evident. The front as
7 well as the side curtain airbags had also deployed.
8 Obviously it's ripped into several significant pieces.**
9 Q. What about the front driver's seatbelt? What condition
10 was that in?
11 A. **I think it was torn. I don't remember seeing it, but I
12 think it was torn.**
13 Q. Would your report refresh your memory?
14 A. **It would.**
15 Q. All right. I'm going to hand you what's marked as page 4
16 of 6.
17 **(Approaching the witness.)**
18 **Starting with the end of the third line down,
19 if you can silently read that to yourself and look up
20 when you're done.**
21 A. **Yep.**
22 Q. Did that refresh your memory as to the condition of the
23 front driver's seatbelt?
24 A. **It was.**
25 Q. All right. What was the condition of the driver's front

31

1 seatbelt?

2 **A. It was buckled but stretched indicating use during the**

3 **crash.**

4 Q. What does that mean?

5 **A. It means when a force -- when you're wearing a seatbelt**

6 **and the force is applied, it's a herringbone type of a**

7 **mesh in your seatbelt. And it actually stretches. It**

8 **does that for a couple different reasons. One is it kind**

9 **of slows down the crash sequence. The other is that it**

10 **allows the body not to be just held in one place so the**

11 **organs kind of -- just kind of hang and swing there so it**

12 **doesn't tear them off. So it helps in survivability.**

13 Q. What about the condition of the front tires of the

14 vehicle?

15 **A. The front tires of the vehicle were worn. They were**

16 **almost to the point where they were going to need**

17 **replacement. The rear tires were -- appeared newer with**

18 **plenty of tread on them.**

19 Q. Very good. And the front right corner of the vehicle,

20 what condition was that?

21 **A. The front right corner? The passenger's side front**

22 **corner?**

23 Q. Correct.

24 **A. Was crushed. Obviously the passenger's side of the**

25 **vehicle was sheared off. And then we looked at the**

32

1 **picture a second ago that shows where the hood is crushed**

2 **and the front bumper fascia.**

3 Q. What part of the vehicle first made impact with the tree?

4 **A. The right front corner.**

5 Q. Very good. Based on your training and experience, did

6 you form an opinion as to what caused the crash?

7 **A. I did.**

8 Q. Could you please explain, first, your conclusion, and

9 then we're going to get to how you arrived at that

10 conclusion. Okay?

11 **A. Okay. The conclusion is the vehicle made contact with**

12 **the tree at a significant rate of speed shearing the**

13 **vehicle into several pieces and then strewing it about**

14 **the debris field from there.**

15 Q. What caused the initial loss of control?

16 **A. The initial loss of control, in my opinion, is that the**

17 **vehicle is loading and unloading the suspension on those**

18 **hills that we talked about earlier. And so as it goes**

19 **over the second one, the vehicle drifted toward the**

20 **right. There is a steering input to keep it in its lane.**

21 **As the suspension is loaded back down, there is**

22 **that steering input which causes the vehicle to rotate**

23 **counterclockwise and ultimately lost control.**

24 Q. You talked about suspension loading and unloading. I

25 want to get into some detail as to what that means.

33

1 First of all, what does the suspension do in your

2 vehicle?

3 **A. It pretty much wants to keep you at an equal ride height,**

4 **I guess. So in this case it actually is the shock**

5 **absorbers where the tires are going up and down, the**

6 **springs. The shock absorbers are actually compressing**

7 **and expanding as you go over all the bumps that we have**

8 **and the potholes that we have here. That's what it's**

9 **doing.**

10 **In this case, there are several bumps that are**

11 **prior. And as it goes up the hill, it compresses it. As**

12 **it gets to the top of the hill, it stretches everything**

13 **out. As it goes over the hill and goes down to the**

14 **bottom, it compresses everything again. And as it goes**

15 **back up the hill, it gets to the top of it, and it**

16 **stretches everything out again.**

17 **At that point, that's where the vehicle was**

18 **starting to leave the roadway to the right. Just a very,**

19 **very slight correction of the wheel and add all that --**

20 **that force down on top of it causes the loss of control.**

21 Q. You used the phrase "the suspension loading." What part

22 of that description you just gave is the suspension being

23 loaded?

24 **A. The loaded is at the bottom part.**

25 Q. When it's compressed?

34

1 **A. When it's compressing. And then the unloading is the top**

2 **part where it's expanding.**

3 Q. Why does the loaded suspension cause a loss of control in

4 that situation?

5 **A. Because there is already a steering input. And then when**

6 **you add all of the forces on top of that steering input,**

7 **then it makes the car want to turn. It's a very, very**

8 **common thing that happens at the drive track where I'm a**

9 **drive track instructor also. We have a large sweeping**

10 **curve in the back and as the -- basically what you can do**

11 **is you can just hold the wheel and hold the throttle, and**

12 **the car will drive all the way through it. But if you're**

13 **on the throttle and then off the throttle, the car is**

14 **tilting back and forth. Well, when you take weight off**

15 **the front of the car, the car wants to go to the right.**

16 **So the students add steering input to make the**

17 **car go left, but then they get back on the gas or they**

18 **get off the gas which puts more weight and it rocks back**

19 **forward trying to get to that neutral point. It makes**

20 **the car want to turn left.**

21 **So basically what the car ends up doing is this**

22 **(demonstrating) as it goes through the curve. And this**

23 **is a very similar type of incident here only at a much**

24 **higher speed that we're dealing with.**

25 Q. How did you arrive at this conclusion as to what

35

1 happened?

2 **A. Basically, the drive track is where -- is what brought it**

3 **to my attention, and that's when I started looking at it.**

4 **And as I went backwards to see what potentially could**

5 **cause that, that's where the extra hills in the road or**

6 **bumps in the road were located.**

7 Q. Did you review Deputy Hoeksema's in-car video?

8 **A. I did.**

9 Q. Did that factor in as well?

10 **A. Yes and no. It factored into part of the conclusion**

11 **based on he was driving a similar car at a similar type**

12 **of speed, and I could see that the suspension was being**

13 **loaded and unloaded through the video.**

14 Q. Were you able to determine anything about the suspect

15 vehicle based on what you observed at the scene, the car

16 that the deputies were chasing?

17 **A. I couldn't see it, no.**

18 Q. Why not?

19 **A. It wasn't in the video.**

20 Q. I want to ask that differently. Not based on the video

21 but observations at the scene, are you able to link any

22 other tire marks or anything else at the scene to that

23 vehicle?

24 **A. No.**

25 Q. And why is that?

36

1 **A. There wasn't anything left. Basically, the only reason**

2 **there were tire marks here was because there was a loss**

3 **of control of the patrol car, and actually it's sliding**

4 **and rolling at the same time leaving the marks. Had**

5 **those marks been left by the suspect vehicle, then I**

6 **would have expected to see the vehicle crashed also.**

7 Q. Very good. Did Trooper Johnston --

8 We're going to move off of the accident

9 reconstruction for now.

10 Did Trooper Johnston ask you to perform some

11 math calculations about average speed from what's known

12 as the Dam Site Inn in Pinckney to the Marathon station

13 in Stockbridge?

14 **A. Yes, sir.**

15 Q. What information were you provided?

16 **A. The distance of 11.3 miles.**

17 Q. That's between those two buildings?

18 **A. Between those two points, as well as a time parameter of**

19 **nine and a half minutes, ten minutes, and ten and a half**

20 **minutes.**

21 Q. And from that information, what were you able to

22 calculate?

23 **A. That the vehicle was traveling -- the average speed of**

24 **that vehicle over that distance was about -- I think it**

25 **was 66 or 67 miles an hour to 70, 71 miles an hour.**

37

1 Q. Depending on whether it was nine and a half, ten, or ten

2 and a half minutes?

3 **A. Correct.**

4 MR. ROTH: Very good.

5 Nothing further, Your Honor.

6 THE COURT: Thank you, Mr. Roth.

7 Mr. Morley, you may question the witness.

8 MR. MORLEY: Thank you, Judge.

9 CROSS-EXAMINATION

10 BY MR. MORLEY:

11 Q. Sergeant, this was a one-car motor vehicle crash, right?

12 **A. In its simplest form, yes, sir.**

13 Q. Is there a more complex form?

14 **A. Well, if you add in the reason why it's a one-car crash.**

15 Q. I'm asking, it was a one-car crash, correct?

16 **A. Correct.**

17 Q. No other vehicle involved?

18 **A. No, sir. Not as far as --**

19 Q. As you sit here today --

20 **A. -- the crash is concerned.**

21 Q. I stepped on you. I apologize. Go ahead.

22 **A. Not as far as the crash is concerned. It's a one-vehicle**

23 **crash.**

24 Q. And as you sit here today, you saw no evidence of any

25 other vehicle involved or any other vehicle assisting or

38

1 coming into contact with the deputy's vehicle, right?

2 **A. Correct.**

3 Q. And this crash was caused by a loss of control, and high

4 speed was a factor, right?

5 **A. Yes, sir.**

6 Q. And these bumps we're talking about are actually pretty

7 good dips in the road, right?

8 **A. Well, I said they were about three feet. So that -- I**

9 **would consider that a decent dip in the road.**

10 Q. Well, but you also said earlier, and tell me if I wrote

11 it down right, you said "Dips were substantial, but it's

12 not like anyone driving over them would lose control."

13 Do you recall that statement?

14 **A. I do.**

15 Q. Is that at 55 miles an hour?

16 **A. Correct. That's what I meant by that.**

17 Q. In this case, at 110 to 120 miles an hour, these dips

18 significantly contributed to the loss of control, didn't

19 it?

20 **A. Correct.**

21 Q. So that statement is limited to somebody driving the

22 speed limit.

23 **A. Correct.**

24 Q. Okay. Have you done -- I asked you this before, I

25 believe, but you were just briefly referencing another

39

1 speed calculation report. And you have -- I'll be glad
2 to show it to you, but I've been provided with your
3 report that was done back in December of '14. Did you do
4 any other reports in this matter other than your speed
5 calculation and your traffic crash report?
6 **A. I did a supplementary report as far as the average speed
7 over the -- over the time and distance.**
8 Q. The Pinckney to Stockbridge average speed issue?
9 **A. From the Dam Site Inn to the Marathon, yes, sir.**
10 Q. That's what I was talking about. And that was the one
11 that was done approximately April 27th of 2015?
12 **A. Yes, sir.**
13 MR. MORLEY: Approach the witness, Your Honor?
14 THE COURT: You may.
15 BY MR. MORLEY:
16 Q. (Approaching the witness.)
17 I just want to make sure this is what I was
18 given. It's just a four-page report. It's my highlights
19 on it, but is that all you did?
20 **A. Yes, sir. It was just a three-quarter page supplemental
21 with some rec forms; speed calculations on the other side
22 of that.**
23 Q. And to be clear, you were asked to determine how fast
24 somebody can get from a bar in Hell, Michigan, to
25 Stockbridge, Michigan, right?

40

1 **A. No. I was asked for what the average speed would be
2 based on the distance of 11.3 miles being the Dam Site
3 Inn to the Marathon in nine and a half, ten, and ten and
4 a half minutes.**
5 Q. And which -- which streets did you use, or did you use as
6 the crow flies?
7 **A. They gave me the distance, and that's what I used to
8 figure it out.**
9 Q. Oh, so you didn't have particular roads; Doyle Road,
10 Patterson Road; anything like that?
11 **A. No, sir.**
12 Q. It was just how long does it take to drive 11.3 miles?
13 **A. Correct.**
14 Q. Okay. Did you do the --
15 MR. ROTH: I just -- I have to object to this.
16 It was not how long does it take. It's how fast would
17 you drive.
18 MR. MORLEY: You're right. I apologize.
19 BY MR. MORLEY:
20 Q. And you answered me. It's how fast it would take to
21 drive 11.3 miles, correct?
22 **A. Correct.**
23 Q. Did you do the same calculation, for example, from Hell,
24 Michigan, to Brighton, Michigan?
25 **A. No, sir.**

41

1 Q. Were you asked to do any other similar calculations?
2 **A. No, sir.**
3 Q. Other than when you went out there the day of the crash,
4 did you go out and drive the area or test the roads at
5 all?
6 **A. I did.**
7 Q. When was that?
8 **A. Later that morning I went -- I went back and actually
9 drove through it at speed.**
10 Q. Let me interrupt. At speed is 55?
11 **A. Posted. Yeah. At the posted 55 speed. And then I came
12 back a couple weeks later, ten days later, maybe, and did
13 it again.**
14 Q. At speed?
15 **A. At the 55-mile an hour speed, yes, sir.**
16 Q. Might be a dumb question but, why, just 'cuz?
17 **A. I just wanted to make sure that I had a -- a view and a
18 vision of the road as it -- as I was writing the report
19 to make sure that I had it correct when I wrote it down.**
20 Q. That's fair. You testified, and let me make sure I got
21 it right. 117 is what the event data recorder provided,
22 right?
23 **A. Yes, sir.**
24 Q. I'm a little confused. That's the speed that the cruiser
25 was likely going at the exact point that it started to

42

1 lose control. Am I right?
2 **A. No.**
3 Q. Am I close to right?
4 **A. No.**
5 Q. All right. Help me out.
6 **A. In what fashion?**
7 Q. When was 117?
8 **A. 117 is two and a half seconds back from algorithm enable,
9 which is roughly zero. Okay. So it records in half
10 second increments. In this case it's the fifth increment
11 back. So that -- that may or may not necessarily be
12 where the separation occurred, but it's two and a half
13 seconds before the crash occurred.**
14 Q. Is there any evidence that the car may have been
15 traveling faster at any point prior to that?
16 **A. Not that I have.**
17 Q. You've actually established a range of between 110 and
18 120 miles an hour, right?
19 **A. As far as my mathematical calculations, it's 109 to 115.**
20 Q. But your expert opinion is it was somewhere between 110
21 and 120 miles an hour, right?
22 **A. Right. Give or take.**
23 Q. Well, I mean, and let me make sure. You recall
24 testifying previously, right?
25 **A. I do.**

43

1 Q. And you said, "I gave a range of between 110 and
2 120 miles an hour," right?
3 A. **Yes, sir.**
4 Q. Okay. Is that different today?
5 A. **No. It's not different today.**
6 Q. All right. And you indicated, I believe, that you
7 reviewed the cruiser -- yeah, the cruiser video. You
8 couldn't see any other vehicle in that cruiser video,
9 right?
10 A. **That's correct.**
11 Q. Do you ever receive any other information as it relates
12 to your reconstruction about a suspect vehicle?
13 A. **I know that -- that there was some significant**
14 **investigation and follow-up done, but my portion of the**
15 **-- of the complaint was the crash and the reconstruction**
16 **of the crash, which is why I called operations and got**
17 **immediate assistance from detectives from there so they**
18 **could follow up on that.**
19 Q. Is there evidence of braking or anything prior to the
20 crash?
21 A. **I don't see it.**
22 Q. Which means there is no -- might be a simple stupid
23 statement but when you say you don't see it, there is no
24 brake marks on the roadway. Is that fair?
25 A. **I didn't see any marks on the road that would indicate**

44

1 **the wheels were locked up. That doesn't mean that there**
2 **wasn't. It just means that if there was, that it wasn't**
3 **significant enough to leave a mark.**
4 Q. You found debris on the roadway related to the cruiser,
5 right?
6 A. **Yes, sir.**
7 Q. What did you find?
8 A. **The exhaust as well as the tire.**
9 Q. All right. And do you know how those got there?
10 A. **I assume they bounced there.**
11 Q. Well, my question is, the exhaust is -- if I get a
12 muffler changed, it's the long part that goes the whole
13 length of the car, not just the muffler, right?
14 What's a car, 12 feet, I think?
15 A. **Well, this one was from the catalytic converter back. So**
16 **we're talking about eight feet, roughly.**
17 Q. And did that get, if you know, jarred out from hitting
18 the dips at such speed or from the crash?
19 A. **No. It's from the crash.**
20 Q. Same question with the tire.
21 A. **The whole tire. It wasn't just the tire. It was the**
22 **whole tire assembly from the axle -- the drive shaft, I**
23 **mean. The tire. The knuckle. Everything. The rim.**
24 **Everything was just ripped out of the front of the car**
25 **and then ends up in the roadway.**

45

1 Q. Couple quick follow-ups. You said it was frosted that
2 morning, but I think the clean-up testimony was that the
3 grass was frosted, not the roadway?
4 A. **Correct.**
5 MR. ROTH: Your Honor, I'm going to object to
6 the characterization of clean-up testimony. I think
7 that's an impermissible and unsupported suggestion.
8 MR. MORLEY: That's fair. I didn't mean
9 anything by it.
10 THE COURT: You can restate it, Mr. Morley.
11 MR. MORLEY: I apologize.
12 THE COURT: I'll sustain the objection. You
13 can restate it.
14 BY MR. MORLEY:
15 Q. Let me be a little bit more professional with that.
16 A. **Sure.**
17 Q. You were asked words to the effect of the grass was
18 frosted but not the roadway. Do you recall that?
19 A. **Yes, sir.**
20 Q. Is that fair and accurate?
21 A. **The grass was frosted over, and the road was clear and**
22 **dry.**
23 MR. MORLEY: I think that's all I have,
24 Sergeant. Thank you.
25 THE WITNESS: Okay. Thank you.

46

1 THE COURT: Thank you, Mr. Morley.
2 Mr. Roth, redirect examination?
3 MR. ROTH: Thank you, Your Honor.
4 REDIRECT EXAMINATION
5 BY MR. ROTH:
6 Q. To the extent that it needs to be explained, could you
7 please tell us a little bit why road and grass would have
8 different conditions in early morning hours of December?
9 A. **Well, it's because there is the dew that has settled in**
10 **during the night and it's gotten cold enough where it's**
11 **actually frozen on the grass.**
12 Q. Thank you. Mr. Morley asked you about brakes on the road
13 or brake marks, and you said "Not significant enough to
14 leave marks."
15 Are officers taught not to jam brakes at a loss
16 of control?
17 A. **Correct.**
18 Q. Why is that?
19 A. **Because it loads the front end of the vehicle up which**
20 **causes a lighter rear end which causes the vehicle to**
21 **spin more violently.**
22 Q. It only makes it worse?
23 A. **Correct.**
24 Q. You gave the speed off the event data recorder at two and
25 a half seconds before a triggering event.

47

1 **A. Yes, sir.**
 2 Q. And you said that there was two -- two events that were
 3 recorded. One was -- I don't want to say dip because
 4 we're going to call that what happened on the road, but
 5 there is something as he leaves the road in that ditch
 6 area and then when he hit the tree?
 7 **A. Yes, sir.**
 8 Q. So the two and a half seconds back, is it off the ditch
 9 or the impact?
 10 **A. It's off the impact.**
 11 Q. Thank you. Mr. Morley started by saying that this was a
 12 one-car accident. And you said, "Only in its simplest
 13 form." What did you mean?
 14 **A. What I mean is that, yes, there is one vehicle that's**
 15 **crashed here. However, the situation surrounding it is**
 16 **the patrol car is chasing another vehicle.**
 17 **Subsequently during that chase, the driver**
 18 **loses control and ends up with a horrific crash at the**
 19 **end of it.**
 20 MR. ROTH: Nothing further, Your Honor.
 21 Thank you.
 22 THE COURT: Thank you, Mr. Roth.
 23 Thank you, Sergeant. You may step down.
 24 THE WITNESS: Thank you.
 25 (At 9:31 a.m., the witness

48

1 stepped down from the witness
 2 stand.)
 3 THE COURT: Mr. Roth, you may call your next
 4 witness.
 5 MR. ROTH: People call Detective Sergeant
 6 Lisa Gee-Cram. Lieutenant Sergeant Lisa Gee-Cram. I
 7 apologize.
 8 THE COURT: Right up here, ma'am. Please raise
 9 your right hand. Do you swear or affirm to tell the
 10 truth, the whole truth, and nothing but the truth?
 11 LIEUTENANT SERGEANT GEE-CRAM: Yes, sir, I do.
 12 THE COURT: Please be seated. State your full
 13 name, and spell it for us, please.
 14 THE WITNESS: Lisa Gee-Cram, G-E-E - C-R-A-M.
 15 THE COURT: Mr. Roth.
 16 MR. ROTH: Thank you, Your Honor.
 17 LISA GEE-CRAM
 18 called by the People at 9:32 a.m., sworn by the Court,
 19 testified:
 20 DIRECT EXAMINATION
 21 BY MR. ROTH:
 22 Q. Good morning.
 23 **A. Good morning.**
 24 Q. Where are you employed?
 25 **A. With the Michigan State Police.**

49

1 Q. In what capacity?
 2 **A. I'm a detective lieutenant in the Jackson area now.**
 3 Q. How long have you been with the State Police?
 4 **A. Twenty years.**
 5 Q. You said you're a detective lieutenant now. At the time
 6 of this investigation, were you a detective sergeant?
 7 **A. Yes, sir, I was.**
 8 Q. And in that position, what were your responsibilities?
 9 **A. At the time, primarily to investigate criminal activity.**
 10 **I was on an assignment at the time of this incident that**
 11 **took me out of the Jackson area and had me working on a**
 12 **temporary assignment up in the Lansing area on an**
 13 **unrelated case.**
 14 Q. As an interruption to that other assignment, were you
 15 asked to assist in the investigation of the police
 16 pursuit that resulted in the death of Deputy Grant
 17 Whitaker?
 18 **A. Yes, sir, I was.**
 19 Q. Within that investigation -- well, first of all, fair to
 20 say there was a number of officers involved in that
 21 investigation?
 22 **A. Yes, there was.**
 23 Q. Did you have a specific assignment within that
 24 investigation?
 25 **A. I did.**

50

1 Q. And what was that?
 2 **A. I was asked if I could assist with the tip management**
 3 **program that we refer to as the Rapid Start program.**
 4 Q. Rapid Start?
 5 **A. Yes.**
 6 Q. Could you explain generally what the Rapid Start program
 7 is?
 8 **A. The Rapid Start program is a tip management database**
 9 **that's used to keep track of incoming tips and ensure**
 10 **that something doesn't get left behind in a clipboard or**
 11 **in a car and that an open tip or some type of follow-up**
 12 **that is requested is actually completed.**
 13 Q. And I think you touched on this, but personally what is
 14 your responsibility within that assignment as it relates
 15 to that program?
 16 **A. As it related to that program, my assignment was to keep**
 17 **track of the tips that came in. Once they come in,**
 18 **they're entered, essentially, into an access database.**
 19 **It's a way that a number is assigned to a tip to make**
 20 **sure that we can refer to tips as an individual item.**
 21 **And so my job was to -- I was a central point**
 22 **of contact for tips that came in from any source whether**
 23 **it be a public tip that came in or a self-generated tip**
 24 **that somebody within the task force, perhaps, thought of.**
 25 **My role was to enter that into the database and**

51

1 **to assign a tip number to it. Additionally then either**
 2 **turn it to one of the detectives in charge of the**
 3 **investigation, Detective McPhee or Trooper Johnston,**
 4 **and/or have -- assign that tip myself to an individual to**
 5 **follow up on.**
 6 Q. So when I hear tip, I think that it's the public calling
 7 in. Is that the only source, or are there other sources
 8 that are put into this system?
 9 **A. There are other sources that are put into the system.**
 10 Q. Could you explain how that happens?
 11 **A. Certainly. We may be having a conversation and you say,**
 12 **you know, "I don't want to forget to follow up on -- I**
 13 **don't want to forget to contact so and so." Because**
 14 **things get so busy in special investigations such as this**
 15 **and with multiple people, just a conversation between the**
 16 **two of you us might generate what I refer to as a tip.**
 17 **It's just essentially a way of taking that idea or that**
 18 **thought and putting it down on paper and making sure that**
 19 **somebody is responsible for following up on it.**
 20 Q. On the other hand, some of the tips did come from the
 21 public in this case?
 22 **A. Yes, sir, they did.**
 23 Q. And why were you seeking tips from the public?
 24 **A. We were seeking tips to assist with the investigation of**
 25 **the death.**

52

1 Q. And what was the way of soliciting this information or
 2 asking for this information from the public?
 3 **A. Press releases and media releases were put out to the**
 4 **public to request information.**
 5 MR. ROTH: Your Honor, may I approach the
 6 witness?
 7 THE COURT: You may.
 8 BY MR. ROTH:
 9 Q. (Approaching the witness.)
 10 I'm going to show you what's been marked, and
 11 previously shown to defense counsel, Proposed Exhibits 41
 12 through 44. If you could take a moment and look through
 13 those.
 14 Are each of those fair and accurate pictures of
 15 press releases that were used to generate tips in this
 16 case?
 17 **A. Yes, they are.**
 18 MR. ROTH: Your Honor, I would move for the
 19 admission of Proposed Exhibits 41 through 44.
 20 THE COURT: Mr. Morley, do you have any
 21 questions for the witness about these, or do you have any
 22 objection?
 23 MR. MORLEY: Voir dire, Your Honor --
 24 THE COURT: You may.
 25 MR. MORLEY: -- please?

53

1 VOIR DIRE EXAMINATION
 2 BY MR. MORLEY:
 3 Q. Lieutenant, did you prepare these flyers, for lack of a
 4 better phrase?
 5 **A. No, sir, I did not.**
 6 Q. Were they prepared at your direction?
 7 MR. MORLEY: Is it okay if I stand near the
 8 witness, Your Honor?
 9 THE COURT: Yes.
 10 BY MR. MORLEY:
 11 Q. (Approaching the witness.)
 12 Were they prepared at your direction?
 13 **A. No, sir, they were not.**
 14 Q. All right. Exhibit 41, in relevant part, has a
 15 photograph in it of a blurry vehicle.
 16 **A. Correct.**
 17 Q. Do you know where that photograph came from?
 18 **A. I was not responsible for obtaining that photograph.**
 19 Q. Same question with Exhibit 42. It has a vehicle in it.
 20 Same question.
 21 **A. Again, sir, that was not -- I did not obtain that**
 22 **photograph.**
 23 Q. Same question with 43.
 24 **A. I did not obtain that photograph.**
 25 Q. Same with 44.

54

1 **A. Correct.**
 2 MR. MORLEY: Your Honor, I'm going to have to
 3 object. This witness does not have first-hand knowledge.
 4 THE COURT: Mr. Roth?
 5 MR. ROTH: Your Honor, the purpose of these --
 6 first of all, whether she prepared them or not is not an
 7 element of foundation.
 8 Second of all, the purpose of these is not to,
 9 as we've discussed at length, not for the truth of the
 10 matter asserted but the effect on the listener. It gives
 11 context to the people who are going to come in say, "I
 12 saw this flyer, and based on that, I gave a tip to the
 13 police as to who I associated that vehicle with."
 14 THE COURT: Objection is overruled.
 15 MR. MORLEY: Thank you, Judge.
 16 THE COURT: People's Exhibits 41, 42, 43, and
 17 44 are admitted and received.
 18 (At 9:38 a.m., PX#41, PX#42,
 19 PX#43, and PX#44 are received.)
 20 DIRECT EXAMINATION (CONT'G)
 21 BY MR. ROTH:
 22 Q. So as Mr. Morley pointed out, first of all, 41 has a
 23 different picture than what we see in 42, 43, and 44,
 24 correct?
 25 **A. That is correct.**

55

1 Q. You see there is a date on 41, the first press release.
2 What is that date?
3 **A. December 9th, 2014.**
4 Q. In general, where were these distributed or posted?
5 **A. Well, this is a media release that I'm looking at as it**
6 **indicates on top. So they would have been shared with**
7 **the local media.**
8 Q. Put out on the news, newspaper; things like that?
9 **A. Correct.**
10 Q. Without knowing the specific source of the picture that
11 we see in 42, 43, and 44, fair to say that the picture
12 was updated as you received more information?
13 **A. That is correct.**
14 Q. And 42, in the first paragraph, it specifically talks
15 about the vehicle may have traveled past your residence
16 during a critical time. Why were you soliciting that
17 sort of residential information?
18 **A. That information came from a suspected course of travel**
19 **where it is believed the vehicle originated and then**
20 **ended and it was the route in which that vehicle drove.**
21 **So it was a neighborhood canvass where actually the**
22 **troopers knocked on the doors and provided this to the**
23 **residents.**
24 Q. And it talks about surveillance cameras, residential
25 surveillance cameras. Why were you seeking those?

56

1 **A. Specifically we wanted those because it was on a -- this**
2 **particular course of travel to determine whether we could**
3 **confirm whether or not this vehicle did travel from what**
4 **information was -- the information that we were believing**
5 **did start at point A and go to point B. Our intent and**
6 **hope was that residence may have roadside surveillance**
7 **cameras or cameras that pointed towards the road that**
8 **would reflect and reveal, perhaps, this vehicle actually**
9 **working its way from point A to point B.**
10 Q. Could you give us an idea of the number of tips that were
11 received both from the public as well as what we, I
12 guess, referred to as self-generated; police generated?
13 **A. There's 151.**
14 Q. Were some anonymous?
15 **A. Yes.**
16 Q. Fair to say they don't all implicate the Defendant, John
17 Kelsey, correct?
18 **A. No, they dot not.**
19 Q. And whether they implicated him or somebody else, were
20 they followed up on?
21 **A. Yes, they were.**
22 Q. Could you give us an idea how many officers were involved
23 in this investigation?
24 **A. A lot. I can't --**
25 Q. Okay.

57

1 **A. I can't give an accurate number. It was as manpower**
2 **allowed, and I can't give you an accurate number.**
3 Q. In the week following, fair to say that was the prime
4 time of this investigation?
5 **A. Yes, sir, it was.**
6 Q. And over the course of that time, what sort of hours were
7 the Michigan State Police working towards this
8 investigation?
9 **A. 24/7, if that's what was required during the course of**
10 **that week.**
11 MR. ROTH: I have nothing further of this
12 witness, Your Honor.
13 THE COURT: Thank you, Mr. Roth.
14 Mr. Morley, do you wish to question the
15 witness?
16 MR. MORLEY: I do. Thank you, Judge.
17 CROSS-EXAMINATION
18 BY MR. MORLEY:
19 Q. Lieutenant, you offered a reward with this flyer as well,
20 did you?
21 **A. I did not offer a reward, but a reward was offered.**
22 Q. You're right. I'll apologize. I'll tighten it up a
23 little bit. The Michigan State Police was offering --
24 **A. Yes.**
25 Q. -- a \$10,000 award with that, right?

58

1 **A. I believe so.**
2 Q. I'm hearing it might have been Crime Stoppers?
3 **A. Yeah. I would need to look at the -- the Michigan State**
4 **Police itself would not have --**
5 Q. Well, I'm not --
6 **A. -- provided a reward, but a reward, I guess I -- a reward**
7 **may be posted on --**
8 Q. It's not.
9 **A. Okay.**
10 Q. It's not on any of these.
11 **A. Okay.**
12 Q. I'm just -- I'm just curious. I don't want to go down a
13 path that I don't have to go too far down. But the
14 Michigan State Police would work in conjunction with
15 Crime Stoppers to try and offer a reward. Is that how it
16 works?
17 **A. We would, yes. Law enforcement would work with Crime**
18 **Stoppers, yes.**
19 Q. And I see them all the time, but I never pay attention.
20 It's a \$10,000 reward leading to arrest; leading to
21 information; what, do you know?
22 **A. It would be the arrest or conviction.**
23 Q. Okay. And do you know if that reward was paid?
24 **A. I do not.**
25 Q. All right. Do you know who would know?

59

1 **A. To be honest, my experience in Crime Stoppers, when Crime**
2 **Stoppers is involved and a tip is paid, having used them**
3 **in previous investigations, I can tell you that Crime**
4 **Stoppers would be -- if it was paid, we would not as law**
5 **enforcement even be told who.**
6 Q. And that makes sense. You were the tip coordinator, I
7 believe, right?
8 **A. Correct.**
9 Q. And correct me if I'm wrong, Sergeant McPhee helped set
10 up the tip line, and then you get assigned as the tip
11 coordinator. Is that about accurate?
12 **A. Correct. I did not set up -- when you say the tip line,**
13 **are you referring to the telephone --**
14 Q. Yes, ma'am.
15 **A. -- number? Yes. I did not set that up.**
16 Q. But -- and you generated 151 tips or 151 tips were
17 generated?
18 **A. Correct.**
19 Q. When did you stop investigating these?
20 **A. Actually I was asked to assign a number as late as**
21 **yesterday on a tip that came in.**
22 Q. Okay. What was the nature of that tip?
23 MR. ROTH: Your Honor, I'm going to object as
24 to the hearsay.
25 BY MR. MORLEY:

60

1 Q. Did that tip --
2 MR. MORLEY: Well, do you want me to respond to
3 that?
4 THE COURT: Sure.
5 MR. MORLEY: The way the question was asked,
6 it's probably hearsay. I can rephrase.
7 THE COURT: I'll sustain the objection, and you
8 can restate it.
9 BY MR. MORLEY:
10 Q. Did you receive a tip yesterday that involved a white SUV
11 relating to this incident?
12 **A. Yes.**
13 Q. Did you take any action with response to that tip?
14 **A. I generated a number.**
15 Q. What does that mean?
16 **A. That was my role. That means that I was contacted and**
17 **asked to generate a number essentially logging it in to**
18 **ensure that the tip was originated and closed out. So I**
19 **initiated the number, which means that I was provided**
20 **information regarding the tip. And I generated Tip**
21 **No. 151. Another detective followed up on it.**
22 **And then at the conclusion of that, they just**
23 **advised that the tip is closed, so to speak, or settled.**
24 **And then I indicate so in my report -- in my database.**
25 **So Tip 151 is -- the tip is managed, it was opened, and**

61

1 **it was closed. It's not still outstanding.**
2 Q. Is it fair to say that this investigation is ongoing?
3 **A. That the investigation is ongoing?**
4 MR. ROTH: Your Honor, I guess I'll object to
5 the lack of foundation. I don't think she has -- she's
6 not the one to make that determination. She's not the
7 officer in charge.
8 MR. MORLEY: I'll rephrase it.
9 THE COURT: All right. I'll sustain the
10 objection.
11 You can rephrase it.
12 BY MR. MORLEY:
13 Q. Is your tip line still open?
14 **A. No.**
15 Q. Okay. And I asked this on voir dire, but let me ask you
16 this: We've heard testimony about a police cruiser video
17 from the underlying incident. Did you review that
18 cruiser video?
19 **A. From the patrol car, yes. I saw that video.**
20 Q. And are the pictures in 42 -- check that, 41, 42, 43, and
21 44, are these the vehicle -- er, any of these the vehicle
22 that was in the police cruiser video?
23 **A. Are those -- they appear like the vehicle that was in the**
24 **police cruiser vehicle, yes.**
25 Q. Is it the vehicle?

62

1 **A. I don't know.**
2 Q. Okay. I'd like to show you a couple other --
3 MR. ROTH: Your Honor, I'm going to object as
4 to best evidence. Her comparing it is outside of the
5 scope of the foundation. The video speaks for itself.
6 It's under the best evidence rule.
7 MR. MORLEY: I don't understand the objection.
8 I'm not talking about the video. I'll respond but --
9 MR. ROTH: If she doesn't have first-hand
10 knowledge, best evidence rule applies.
11 THE COURT: Are you objecting to what
12 Mr. Morley is about to do --
13 MR. ROTH: Yes.
14 THE COURT: -- or what he did?
15 MR. ROTH: Well, I think this is a continuation
16 of what just happened.
17 THE COURT: I guess I don't know what he's
18 going to do.
19 MR. ROTH: May we approach?
20 THE COURT: Sure.
21 MR. MORLEY: Sure. And I'm not trying to be
22 difficult.
23 (At 9:47 a.m., an at-the-bench
24 discussion is held off the
25 record.)

63

1 MR. MORLEY: Approach the witness, Your Honor?
2 THE COURT: You may.
3 BY MR. MORLEY:
4 Q. (Approaching the witness.)
5 Lieutenant, I'm going to show you what's
6 previously been marked as Defendant's B, a series of
7 photographs. I'd ask you to take a look at those,
8 please. As you can see --
9 Are you done?
10 A. I am.
11 Q. As you can see, there is a larger white or a larger
12 vehicle in that picture, right?
13 A. Correct.
14 Q. Is that -- do you know, is that the same vehicle that's
15 in either -- any of these flyers?
16 A. Right. I don't know for certain.
17 Q. Same question with Exhibit C, which is also a series of
18 photographs. Same question. Is that the same vehicle
19 that's in any of these flyers?
20 A. I don't know that.
21 Q. Okay. Same with Exhibit D, a series of photographs.
22 Same question.
23 A. I don't know.
24 Q. And, actually, Exhibit E, you see this is Tip 99 at the
25 top. By any chance is that your handwriting, if you

64

1 know? It's not much handwriting on it. So...
2 A. You know, I don't know.
3 Q. Okay. Is that the same vehicle that's in any of these
4 flyers?
5 A. I don't know.
6 Q. Okay. I believe you testified earlier -- candidly, I
7 didn't take notes, and I don't know if you need to see
8 these, but did you testify -- and if I'm wrong, tell
9 me -- the picture of not -- well, not an alleged vehicle,
10 but the picture of some vehicle in 41 is different than
11 what's in 42, 43, and 44?
12 A. Did I testify that they're different?
13 MR. ROTH: Let me object as to the vagueness of
14 the question. Is it that the picture is different or
15 that the vehicle is different?
16 THE COURT: He can rephrase it. I'll sustain
17 the objection. Mr. Morley can rephrase the question. I
18 think he was asking about the vehicle, but go ahead.
19 MR. MORLEY: I was, and I apologize. I'm
20 trying to tighten it up.
21 BY MR. MORLEY:
22 Q. Is 41 the same vehicle as 42, 43, and 44?
23 A. I did not put these together. So I do not --
24 Q. So you don't know?
25 A. I don't know if it's the same. They're not the same

65

1 pictures.
2 Q. Okay.
3 A. Is it the same vehicle? I don't know.
4 Q. Do you know who would know?
5 A. I would probably go to the officer in charge on that to
6 at least address who would know. Again, I was the tip
7 management so I wasn't part of that process.
8 Q. Do you know where any of these -- this vehicle is?
9 A. Do I know where that vehicle is?
10 Q. Yes.
11 THE COURT: Mr. Morley, if you could identify
12 for purposes of the record which exhibit you're referring
13 to --
14 MR. MORLEY: The pictures --
15 THE COURT: -- which photos.
16 MR. MORLEY: I apologize, Judge. I stepped on
17 you.
18 BY MR. MORLEY:
19 Q. The pictures in 41, 42, 43, and 44, disregarding whether
20 41 may be a different vehicle, do you know where the
21 vehicle depicted in any of these pictures is as we sit
22 here today?
23 A. No, I do not.
24 Q. I might have asked this, and if I did, I apologize, but
25 -- I think I did. The tip line is closed?

66

1 A. The telephone number to my knowledge is closed.
2 Q. Okay. When did that happen?
3 A. I don't know. I was not responsible for that. Again, my
4 role is to assign numbers. If you said to me today and
5 gave a tip and a detective got ahold of me, I would put
6 it in my system. So that could continue to happen as it
7 did yesterday, but I don't know how that tip came in. I
8 don't know what number that person called.
9 Q. I see.
10 A. So I don't know. That phone number to my knowledge
11 that's on that particular flyer, I think you would have
12 to check with Detective McPhee as to whether -- when it
13 was shut down and where that phone is today.
14 MR. MORLEY: Thank you, Lieutenant.
15 That's all I have.
16 THE COURT: Thank you, Mr. Morley.
17 Mr. Roth?
18 REDIRECT EXAMINATION
19 BY MR. ROTH:
20 Q. Fair to say, from your personal knowledge, you are
21 actually not sure if that line, the phone line, is open
22 or closed?
23 A. That is correct.
24 Q. Mr. Morley asked you about a tip that came in yesterday,
25 and he said that it was related to this case. Is it more

67

1 accurate to say that it was potentially related to this
2 case?
3 **A. That is correct.**
4 **Q.** And I think you indicated you didn't personally follow up
5 on it. Was somebody assigned to follow up on it?
6 **A. Yes, sir.**
7 **Q.** Could you explain the difference between the officers in
8 charge and the investigating officers as opposed to your
9 role?
10 **A. Yes, I can. I did not have -- my role is simply -- I**
11 **perform my role for the most part from a conference room**
12 **table. I did not go out. I did not, with limited**
13 **exception, have any role other than -- than getting a tip**
14 **on a piece of paper, rewriting it on a carbon charged**
15 **piece of paper, putting it into the database, and**
16 **assigning a tip number.**
17 **The reason that that was my primary role is the**
18 **significance. In order for this to work properly is --**
19 **we never know when a large investigation, potentially**
20 **large investigation begins, it's important to have the**
21 **same person in that function because I may -- a name may**
22 **come across four days later that I say, "Hey, I typed**
23 **that name in."**
24 **Because I get information back, I will often**
25 **review what the results are when a tip is followed up on.**

68

1 **And so it's one central point. In this particular case,**
2 **I don't know how many police officers were involved. I**
3 **know there were a lot. And so essentially I was kind of**
4 **the one person who knew what went out and had an idea of**
5 **what came in.**
6 **And so to keep that consistent, that -- that --**
7 **that was my primary goal or my primary role, I should**
8 **say. So as far as the officers in charge, they were in**
9 **charge being more direct, telling -- directing the**
10 **different troopers and the different police officers that**
11 **were assisting with the follow-up and what to do and how**
12 **to do and the flyers. That's not my function. I was not**
13 **an active investigator as far as the officers in charge**
14 **went.**
15 **Q.** So Mr. Morley asked you about comparing a number of
16 pictures that he has. That was not your role in this
17 investigation.
18 **A. That was not my role in this investigation.**
19 **Q.** Those comparisons would be more appropriate for the
20 officers investigating those specific tips or the
21 officers in charge?
22 **A. Correct.**
23 MR. ROTH: Nothing further.
24 Thank you.
25 THE COURT: Thank you, Mr. Roth.

69

1 You may step down, Lieutenant. Thank you, very
2 much.
3 (At 9:58 a.m., the witness
4 stepped down from the witness
5 stand.)
6 MR. MORLEY: Your Honor, I don't know if I need
7 to say this every time, but I'm going to reserve the
8 right to call this lieutenant.
9 MR. ROTH: It doesn't need to be said.
10 THE COURT: All right. It's understood that
11 you reserved that right.
12 MR. MORLEY: Thank you. Which continues the
13 sequestration order for all such witnesses.
14 THE COURT: Correct.
15 MR. MORLEY: Thank you.
16 THE COURT: Mr. Roth, you may call your next
17 witness.
18 MR. ROTH: Your Honor, may we take a short
19 break?
20 THE COURT: We can.
21 MR. ROTH: Thank you.
22 THE COURT: Ladies and Gentlemen, we'll have
23 you go back to the jury room, and I don't know if it's
24 Ms. Cole who's going to take you back there or
25 Mr. Adkins.

70

1 (At 9:59 a.m., the jury left the
2 courtroom.)
3 THE COURT: Mr. Roth, is 15 minutes --
4 MR. ROTH: More than enough.
5 THE COURT: Okay. We'll take about 15 minutes.
6 MR. ROTH: Thank you, Your Honor.
7 MR. MORLEY: Thank you, Judge.
8 (At 9:59 a.m., recessed;
9 reconvened at 10:21 a.m.)
10 THE COURT: Are we ready for the jurors?
11 MR. MORLEY: We are.
12 MR. ROTH: Yes, Your Honor.
13 THE COURT: We're ready for the jurors.
14 (At 10:22 a.m., the jury entered
15 the courtroom.)
16 THE COURT: Please be seated.
17 Mr. Roth, you may call your next witness.
18 MR. ROTH: Thank you, Your Honor. The People
19 call Cheryl Johnson.
20 THE COURT: Please raise your right hand.
21 Do you swear or affirm to tell the truth, the
22 whole truth, and nothing but the truth?
23 MS. JOHNSON: Yes.
24 THE COURT: Please be seated. State your full
25 name for us, and spell your last name for us, please.

71

1 THE WITNESS: Cheryl Lynn Johnson,
2 J-O-H-N-S-O-N.
3 CHERYL L. JOHNSON
4 called by the People at 10:23 a.m., sworn by the Court,
5 testified:
6 DIRECT EXAMINATION
7 BY MR. ROTH:
8 Q. Good morning, ma'am.
9 A. **Good morning.**
10 Q. In December of 2014, where did you live? And by that I
11 don't mean the address specifically, but generally.
12 A. **Stockbridge, Michigan.**
13 Q. How long had you lived in Stockbridge?
14 A. **Fifteen years.**
15 Q. For those of us that don't live in Stockbridge, big town?
16 Small town?
17 A. **Small town.**
18 Q. Know a lot of people there?
19 A. **Yes, I do.**
20 Q. I'm going to show you what's been admitted as Exhibit 41.
21 There is a lot of words on it, but I want to focus on the
22 picture. Do you recall seeing this picture either in the
23 media, newspaper, on TV, something like that, shortly
24 after December 7th, 2014?
25 A. **Yes.**

72

1 Q. And was it in the newspaper, on TV?
2 A. **Both.**
3 Q. And when you saw this specific picture, did you recognize
4 the vehicle?
5 A. **Yes.**
6 Q. Who did you recognize it as belonging to?
7 A. **Driver John Kelsey.**
8 Q. And at the time did you know Mr. Kelsey's last name?
9 A. **No, I did not.**
10 Q. Do you see that man in the courtroom today?
11 A. **Yes, I do.**
12 Q. Could you please point him out and identify him for the
13 record?
14 A. **He's over there in the blue shirt.**
15 MR. ROTH: Your Honor, I'd ask that the witness
16 has identified the Defendant.
17 MR. MORLEY: Without objection, Your Honor.
18 THE COURT: The record will reflect that the
19 witness has identified Mr. Kelsey.
20 MR. ROTH: Thank you, your Honor.
21 BY MR. ROTH:
22 Q. So I want to back up then. How long have you known the
23 Defendant?
24 A. **For quite some time.**
25 Q. Could you give us an idea of how many years that is?

73

1 A. **Oh, I would say about eight years, maybe.**
2 Q. And generally how is it that you knew the Defendant?
3 A. **He's the father of the children to my husband's niece.**
4 Q. All right. So some sort of -- sort of attenuated family
5 relationship?
6 A. **Yes.**
7 Q. And in 2014, in the fall, did you see him on a regular
8 basis?
9 A. **Only at the school.**
10 Q. What school was that?
11 A. **Smith Elementary.**
12 Q. Is that in Stockbridge?
13 A. **Yes, it is.**
14 Q. How often would you see the Defendant at the school in
15 the fall of 2014?
16 A. **A couple times a week.**
17 Q. Throughout the fall?
18 A. **Correct.**
19 Q. And in what context would you see him at the school?
20 A. **In the lobby.**
21 Q. And did you ever see him with a vehicle?
22 A. **Yes, I did.**
23 Q. How often during that specific time?
24 A. **A couple times a week.**
25 Q. What kind of vehicle?

74

1 A. **A white Suburban Chevy.**
2 Q. When you say -- I'm sorry, when you saw Suburban, what do
3 you mean?
4 A. **A large SUV.**
5 Q. And what color was it?
6 A. **White.**
7 Q. And you say Suburban. Were you sure of the make and
8 model?
9 A. **Chevy SUV white. Big, like, Suburban.**
10 Q. You believe it was a Chevy?
11 A. **Yes.**
12 Q. In Stockbridge, just for some context, this accident
13 happens on December 7th, 2014. Is it a big deal in
14 Stockbridge that week after?
15 A. **Correct.**
16 Q. And during that week after, is school still in session?
17 A. **Correct.**
18 Q. Did you see the Defendant with that white SUV at any
19 point at the school that week?
20 A. **No, I did not.**
21 Q. Once you saw this picture, did you contact the number and
22 alert them to this information?
23 A. **Yes, I did.**
24 MR. ROTH: I have nothing further, Your Honor.
25 THE COURT: Hold -- hold on, ma'am, please.

75

1 Mr. Morley, you may cross-examine the witness.
2 MR. MORLEY: Thank you, Judge.
3 CROSS-EXAMINATION
4 BY MR. MORLEY:
5 Q. Ma'am, I apologize. I didn't make a note. How do you
6 know Mr. Kelsey?
7 A. **He's the father of the children of my husband's niece.**
8 Q. And how regularly did you see him on a monthly basis in
9 2014?
10 A. **Just at school. We had no contact.**
11 Q. Okay. Approximately how regular?
12 A. **A couple times a week.**
13 Q. Do you talk?
14 A. **In the lobby we did, yes.**
15 Q. Just chitchat talk?
16 A. **Yes.**
17 Q. You were shown People's Exhibit 41.
18 MR. MORLEY: Approach the witness, Your Honor?
19 THE COURT: You may.
20 BY MR. MORLEY:
21 Q. (Approaching the witness.)
22 Is that -- that's the one that -- is that the
23 one you were looking at earlier?
24 A. **Correct.**
25 Q. What type of car is that?

76

1 A. **It's a Suburban, a large SUV.**
2 Q. Okay. What's the license plate number?
3 A. **I don't have a license plate number.**
4 Q. Is that tinted windows or anything?
5 A. **Not in the picture, no.**
6 Q. Okay. Is that a sunroof or anything?
7 A. **Not in the picture, no.**
8 Q. Broken taillights, headlights?
9 A. **No.**
10 Q. Then how do you know this is Kelsey's vehicle?
11 A. **Well, Kelsey was driving that particular vehicle. I only**
12 **said he was a suspect. I didn't accuse him of driving.**
13 **I said it's a suspect; John Kelsey.**
14 Q. He was driving this vehicle? This is a rather blurry
15 vehicle. You would agree, right?
16 A. **I saw him at the school with that type of vehicle, and**
17 **that's all I said. "I know somebody who drives a white**
18 **SUV." That's what I said.**
19 Q. You don't know if it's this one?
20 A. **No, that is correct.**
21 Q. You would agree with me that is a pretty blurry photo?
22 A. **That is correct.**
23 Q. (Approaching the witness.)
24 Show you what's been marked as Defendant's E.
25 Ask you to take a look at that. If you see the blurry

77

1 photo of a larger SUV in the upper, right-hand corner?
2 A. **Correct.**
3 Q. Is that the same vehicle that you seen Mr. Kelsey
4 driving?
5 A. **Correct.**
6 MR. ROTH: Your Honor, I'm going to renew my
7 objection. These witnesses are not qualified to be
8 making these opinions. These are not pictures they've
9 ever seen before.
10 THE COURT: It's a foundation objection,
11 Mr. Roth?
12 MR. ROTH: Yes, Your Honor.
13 THE COURT: Okay. Mr. Morley, can you lay a
14 foundation?
15 MR. MORLEY: Certainly, yes. Do you need me to
16 go back to my Exhibit E?
17 THE COURT: Yes. I think that's what the
18 objection is to.
19 MR. ROTH: Yes, Your Honor.
20 BY MR. MORLEY:
21 Q. All right. I'm going to show you what's been previously
22 marked as Defendant's E and ask if you can identify that.
23 A. **It's a large SUV.**
24 MR. ROTH: Your Honor, I think she needs to
25 identify where this is coming from.

78

1 BY MR. MORLEY:
2 Q. Is that a photograph?
3 A. **Yes.**
4 Q. Does it depict a vehicle?
5 A. **Yes.**
6 MR. ROTH: Your Honor, this is a really fancy
7 way of skirting voir dire on admitting exhibits by not
8 moving to admit them.
9 MR. MORLEY: I'll be happy to admit them. I
10 haven't gotten to the custodian of records.
11 Can we approach, Judge?
12 THE COURT: Sure.
13 (At 10:31 a.m., an at-the-bench
14 discussion is held off the
15 record.)
16 THE COURT: All right. Ladies and Gentlemen,
17 Mr. Adkins is going to come and take you back to the jury
18 room. He needs to be able to hear me say that, and he
19 didn't hear that because I think we had the other
20 background noise. So let's give him a second.
21 (At 10:36 a.m., the jury left the
22 courtroom.)
23 THE COURT: Counsel, I need to see you --
24 You may be seated.
25 I need to see you at the bench one more time

79

1 before we go back on the record about this.
2 (At 10:37 a.m., an at-the-bench
3 discussion is held off the
4 record.)
5 THE COURT: We're going to have the witness
6 step out of the courtroom for this discussion.
7 (At 10:38 a.m., the witness
8 stepped down from the witness
9 stand and left the courtroom.)
10 THE COURT: All right. Let's go back and
11 review what we have talked about in part at the bench and
12 finish the discussion on the record so that I can
13 understand the position of each of the parties.
14 What had occurred with the witness was that
15 Mr. Morley was attempting to show her some exhibits,
16 Defense exhibits, that had been marked but not yet
17 offered, and to ask the witness, as I understood it --
18 I'm not trying to rephrase this question, but he can
19 correct me if I'm wrong -- as I understand it to ask the
20 witness whether based upon her personal knowledge of the
21 vehicle she identified as being Mr. Kelsey's vehicle,
22 whether the photographs she's being shown are the vehicle
23 or are not the vehicle. And the photographs, as I
24 understand it, are taken from some of the -- are they
25 the --

80

1 MR. ROTH: I think it's safe to say a number of
2 sources. There's a number of different sources.
3 THE COURT: All right. And so initially
4 Mr. Roth objected to that. I asked whether the objection
5 was based on foundation. He said yes. I indicated
6 Mr. Morley would need to lay a foundation that she was
7 able to compare the vehicles.
8 Mr. Roth said that he could do that. This is
9 partly the discussion at the bench; that he could attempt
10 to lay a foundation only if the marked exhibits were
11 already admitted into evidence.
12 While that is true in circumstances where the
13 exhibits are pretty solidly anticipated to be admitted
14 because we just haven't reached the witness who can lay
15 the foundation for the admission of those exhibits, it is
16 not uncommon to take the testimony subject to the
17 introduction of those exhibits later unless there is
18 going to be some serious or significant objection to the
19 introduction of those exhibits.
20 As I understand it, the prosecutor is not
21 necessarily going to object to the Defense exhibits at a
22 later point in time, but we just have not had that
23 witness testify.
24 So as a matter of efficiency, not to have all
25 of these witnesses come back and testify again after the

81

1 person who comes in who can lay the foundation, to admit
2 the Defense exhibits. It ordinarily would be allowed
3 that these witnesses could testify subject to that later
4 introduction of those exhibits.
5 As I understand it, we're now to the point
6 where Mr. Roth is not necessarily objecting based on the
7 exhibits not being introduced into evidence but based
8 upon --
9 And you can set forth your objection, Mr. Roth,
10 so I can understand it better.
11 MR. ROTH: Thank you, Your Honor.
12 I provided the Court with two cases. And they
13 speak to identification of people by way of video, but
14 obviously identification of a vehicle would apply by
15 analogy. And what the case says is to do that sort of
16 comparison and to say this is that, the person has to be
17 in a better position than the jurors to make that
18 judgment.
19 In this case, she is in a better position than
20 the jurors to say "What I saw on the TV with this
21 specific picture in 41 --" that I showed her "--fits what
22 I have in real life." She's in no better position to say
23 that the picture in 41 is the same picture in all of
24 these other exhibits that she's never seen before. It's
25 an attempt to try to trick the witness because we all

82

1 agree that there is all different vehicles in all these
2 different pictures that Mr. Morley is about to show her.
3 There's specific case law that says it infringes on the
4 province of the jury.
5 THE COURT: So what is the distinction between
6 41 and the other photos; only that she has not been shown
7 them before?
8 MR. ROTH: 41 is the one that she reviewed
9 which triggered her to make the call, and in that way
10 it's relevant to the case. There is a foundation for it.
11 As it relates to having her compare those other
12 ones, she does not have a foundation of knowledge to give
13 an opinion as to that. Her opinion as to that has no
14 relevance and is not legally appropriate pursuant to
15 those cases.
16 THE COURT: Well, I thought what the witness
17 just said was that when she saw the vehicle that you're
18 referencing in 41, that triggered her to report that she
19 knew of somebody with a white SUV, not that she
20 identified that as being the specific vehicle in 41. And
21 I don't understand how that's different than any of these
22 other photos. Just because she saw that one before?
23 You're saying a witness cannot be shown a photo that
24 she's never seen before?
25 MR. ROTH: I am reciting the case law that I

83

1 provided to the Court. It says lay opinion is not
2 appropriate in that manner unless that person has a
3 better foundation of knowledge than the jurors.
4 Otherwise, it infringes upon their province.
5 THE COURT: All right. And so to repeat the
6 question I asked you at the bench, why is it not the case
7 that this witness does have a better foundation because
8 this witness actually saw the vehicle she was reporting
9 on, whereas the jurors haven't seen any vehicle? So what
10 is the distinction? That's what I'm trying to
11 understand.
12 MR. ROTH: Because we're asking her to do an
13 analysis and a comparison of these pictures she's never
14 reviewed. And, A --
15 THE COURT: Well, how is that different than
16 her doing an analysis and comparison the first time she
17 saw the picture that she called the tip in about?
18 MR. ROTH: Primarily relevance; in that, the
19 first one is relevant because it triggered her to make
20 the call. And in that way it's obviously relevant.
21 But to have her do these other ones, it's
22 problematic for relevance. But, more importantly, in
23 terms of case law, it's problematic in that way. It's
24 providing improper opinion testimony.
25 THE COURT: How is it problematic from a

84

1 relevance point of view if these other photos are
2 relevant to the case and you all are going to put them
3 into the case?
4 MR. ROTH: It is not my position that those
5 photos are relevant. Mr. Morley is going to put them in,
6 in an attempt to distract and confuse. I don't believe
7 those are relevant to the investigation.
8 THE COURT: You are going to be object to those
9 being not relevant?
10 MR. ROTH: I'm not going to object to them
11 because the threshold for admission is incredibly low.
12 THE COURT: The threshold for the relevance
13 admission, correct?
14 MR. ROTH: Correct.
15 THE COURT: So that would make them relevant,
16 doesn't it?
17 MR. ROTH: No. It's just an objection I'm
18 going to lose.
19 THE COURT: Mr. Morley?
20 MR. MORLEY: Judge, first of all, so it's
21 clear, this is not an attempt to trick the witness as I
22 was accused of. Secondly, there is no basis anywhere,
23 rules of evidence or any case law, that a witness needs
24 time to review a photograph. You're at a deposition.
25 You show a witness a photograph. "I'll ask if you've

85

1 ever seen it before. Can you identify that?" Same thing
2 at trial.
3 Thirdly, and respectfully, the case law does
4 hold, and there is a couple of cases. One is published.
5 One is unpublished. One is *People v Fomby*, F-O-M-B-Y, 300
6 Mich App 46. And then a related unpublished rather
7 helpful, *People v McLilly*, M-c-L-I-L-L-Y. It's a Westlaw
8 cite of 2015 Westlaw 302676, January 22nd of this year.
9 Here is the issue, Judge. Counsel is right
10 when he says if a person is asked to identify -- identify
11 a defendant in a video or a photograph, whether it be lay
12 or expert testimony, that probably invades the province
13 of the jury. It's reversible error.
14 I think to simply say although these cases
15 apply to a defendant, they apply equally to a picture,
16 he's wrong. It's -- the issue in both of these cases,
17 Judge, is if you identify --
18 What happened in the unpublished case, Flint
19 police identified somebody in a photograph and said,
20 "Yeah. That's the defendant." Well, the inference is
21 you're saying he's guilty. That's invading the province
22 of the jury. That's pretty easy, and it makes sense.
23 The issue here is, that's not a picture of the
24 Defendant. That's a picture of a vehicle that I don't
25 want to say impeachment testimony because I don't think

86

1 it is, but it's just to figure out the breadth or her
2 amount of knowledge. Is this the vehicle? The vehicle
3 is not on trial here. The Defendant is.
4 I'm not showing her a photograph, and that's
5 what the case law is. You can't invade the province of
6 the jury because of the risk of showing that the
7 Defendant is guilty. Clearly the jury is -- er, that's
8 the jury's job.
9 The issue here is, is that the same vehicle?
10 She has -- if she doesn't know, she says, "I don't know."
11 There is nothing that says "I need ten minutes to review
12 that." If she does, I'll be happy to. There is no basis
13 for that.
14 So I'd ask the Court to allow me to continue
15 with the line of questioning. I think we've tried
16 several ways of not letting me ask these questions, and
17 I'm not doing anything improper or outside of the rules,
18 and I think the Court needs to allow it.
19 THE COURT: Mr. Roth?
20 MR. ROTH: Your Honor, with respect to
21 Mr. Morley's claim that there is no requirement as to
22 time, I don't think that's supported by the case law.
23 One of the factors that they cite in one of the two cases
24 is that the person drawing that opinion can spend hours
25 and hours and hours poring over this video and was,

87

1 therefore, in a better position than the jury to opine on
2 that issue.

3 With this particular witness, she's never seen
4 these pictures before, and we say we're not trying to
5 confuse. We all recognize this is ten different
6 pictures. So if we ask her, "Is this the one? Is this
7 the one? Is this the one?" That's exactly what it is.

8 She's already conceded "I don't know if that
9 was the specific vehicle," when shown the one in 41. She
10 said, "I think it was a similar," you know, "make and
11 model," or I think it was a similar kind of SUV."

12 THE COURT: Why do you anticipate that's going
13 to be different than the answers she's going to say about
14 any of the other photographs?

15 MR. ROTH: What her answer is, is less
16 important than the legal propriety of the questions.

17 THE COURT: Well, the answer is the evidence in
18 this case. And I'm still trying to understand your
19 argument from the perspective of her not having -- the
20 witness not having a perspective that is something that
21 the jury doesn't have and why get -- I'll get back to my
22 question. Why is it that this witness, you say, doesn't
23 have that distinguishing bit of information when she has
24 already indicated she has seen a particular vehicle and
25 the jury has seen no vehicle?

88

1 MR. ROTH: She has 50 percent of the foundation
2 required. She has seen a vehicle previously. She
3 doesn't have the other 50 percent necessary to make that
4 comparison. That's the distinction.

5 THE COURT: Well, didn't you ask her to make
6 the comparison with regard to Exhibit 41?

7 MR. ROTH: 41 was something that she had
8 previously reviewed enough that she felt comfortable
9 contacting the police about it.

10 THE COURT: So we're back to the timing of when
11 she saw it and --

12 MR. ROTH: The amount of time she's had to
13 review these items, which is one of the factors in the
14 case law.

15 THE COURT: All right. Well, first of all,
16 since the prosecutor is not standing on the objection any
17 longer that the photographs are not yet in evidence,
18 that's not going to be a basis to preclude the question.

19 I disagree with the prosecutor that the witness
20 is not in a better position than the jury to provide
21 testimony regarding the vehicle since the jury never saw
22 the vehicle the witness is testifying about. So the jury
23 obviously could not compare that vehicle the witness
24 referenced to the photographs. This witness is the only
25 person who can do that.

89

1 I also disagree that there is any issue as far
2 as an evidentiary preclusion for admission for allowing
3 the witness to testify in this regard based upon timing
4 or the fact that the witness has never seen the
5 photograph before.

6 The question is simple. "Here's the
7 photograph. If you look at it now, do you think or do
8 you know whether it's the same vehicle that you described
9 to the jury as having previously -- as a witness having
10 previously seen?"

11 I think the critical issue is --

12 And, Mr. Morley, I'm going to constrain your
13 examination to having you first lay the foundation as to
14 whether this witness can tell from the photograph if it
15 is the vehicle that she has seen before. She may come in
16 here and say "I can't tell from these photos." Most of
17 them are fairly grainy and not very identifiable as a
18 particular vehicle.

19 So I need it to be clear that you first have to
20 determine whether from the photograph she can tell what
21 vehicle it is or whose vehicle it is.

22 MR. MORLEY: Yes, sir.

23 THE COURT: You understand?

24 MR. MORLEY: Yes, sir.

25 THE COURT: Mr. Roth --

90

1 MR. ROTH: Thank you, Your Honor.

2 THE COURT: -- anything further?

3 MR. ROTH: May I retrieve the case law?

4 THE COURT: You may.

5 MR. ROTH: (Approaching the bench.)

6 THE COURT: Let's have the witness come back in
7 and resume the stand, and we'll bring the jurors in.

8 (At 10:54 a.m., the witness
9 entered the courtroom.)

10 THE COURT: Ma'am, you can come right back up
11 to the witness stand, please. You may be seated.

12 Can I have counsel at the bench, please?

13 Before we do that, Mr. Morley, I want to talk
14 with you at the bench before we do that. I just want to
15 add an additional comment to the ruling that I just made
16 unless it's -- I assume this is clear, but just so it's
17 clear, Mr. Roth, after Mr. Morley asked these questions,
18 you obviously would have the ability to cross-examine as
19 to the basis for whatever the witness says like any other
20 witness. I'm not restraining that, in any way.

21 MR. ROTH: Thank you, Your Honor.

22 (At 10:56 a.m., an at-the-bench
23 discussion is held off the
24 record.)

25 MR. ROTH: We're ready, Your Honor.

91

1 THE COURT: All right.
 2 (At 11:00 a.m., the jury entered
 3 the courtroom.)
 4 THE COURT: Please be seated.
 5 Mr. Morley, you may proceed.
 6 MR. MORLEY: Thank you, Judge.
 7 BY MR. MORLEY:
 8 Q. Ma'am, if you recall, how many times did you call the tip
 9 line?
 10 A. **One time.**
 11 Q. Were you subsequently interviewed by law enforcement?
 12 A. **Yes, I was.**
 13 Q. Do you recall approximately when that was?
 14 A. **Shortly after the picture went out.**
 15 Q. Any follow-up contact with law enforcement since that
 16 time?
 17 A. **Just on the phone.**
 18 Q. You and -- I don't know the answer to this question, but
 19 is there animosity between you and Mr. Kelsey?
 20 A. **There is not.**
 21 Q. Okay. I previously started to show you --
 22 MR. MORLEY: And I'm going to approach the
 23 witness, Your Honor.
 24 THE COURT: You may.
 25 BY MR. MORLEY:

92

1 Q. (Approaching the witness.)
 2 I'm going to show you what's been marked but
 3 not admitted as Defendant's Exhibit E. Take a look at
 4 that, and I'll ask you a question.
 5 A. **Ready.**
 6 Q. Okay. Would you agree with me that that appears to show
 7 a vehicle in the upper, right-hand corner?
 8 A. **Correct.**
 9 Q. Would you agree with me that that appears to be an SUV?
 10 A. **Correct.**
 11 Q. Can you tell whether that's the same vehicle that you
 12 believe is in 41 and that you believe Mr. Kelsey was
 13 driving?
 14 A. **All I see is a white SUV.**
 15 Q. I understand, but can you tell if that's either the same
 16 as what's in People's 41 or the same one that you've seen
 17 Mr. Kelsey driving?
 18 A. **It looks similar to me.**
 19 Q. Okay. Same series of questions. I'll show you what's
 20 previously been marked as Defendant's D and ask you to
 21 take a look at those and let me know when you're ready,
 22 please.
 23 A. **I'm ready.**
 24 Q. Same series of questions. You'd agree with me that --
 25 actually, those are three different photographs but each

93

1 one shows a larger SUV. Would you agree?
 2 A. **Correct.**
 3 Q. Can you tell whether that SUV is the same one that you've
 4 identified in People's 41?
 5 A. **No.**
 6 Q. Can you tell if that's the same SUV that you believe
 7 Mr. Kelsey has previously driven?
 8 A. **No.**
 9 Q. Same series of questions with Defendant's Exhibit C.
 10 Can I grab those back from you, please?
 11 A. **Sure.**
 12 Q. Thank you. Take a look at C. Let me know when you're
 13 done, please.
 14 A. **Okay.**
 15 Q. Can you tell if that's the same -- well, let me step
 16 back. I apologize. You'd agree with me that that shows
 17 -- the first one doesn't, but it's a series of
 18 photographs, and in it is a white SUV or in one of those
 19 photographs is a white SUV. Would you agree?
 20 A. **White SUV, yes.**
 21 Q. I shouldn't say white because it's a black and white
 22 photo. It's an SUV --
 23 A. **Correct.**
 24 Q. -- that appears light in color. Is that correct?
 25 A. **A different make and model.**

94

1 Q. Okay. So you don't think it's the same one that's in 41?
 2 A. **That is correct.**
 3 Q. And you don't think it's the same one that Mr. Kelsey --
 4 you had maybe seen Mr. Kelsey previously driving?
 5 A. **This one is not the one Kelsey was driving.**
 6 Q. Okay. How is it, then, that you're so sure on D that you
 7 can't tell at all?
 8 A. **I saw the vehicle that Mr. Kelsey was driving. And I had
 9 a similar Suburban. I'm very familiar with Suburbans and
 10 Excursions. I own both vehicles.**
 11 Q. Okay.
 12 A. **And I know that he was driving a Chevy big large vehicle.**
 13 Q. Defendant's B, same series of questions. Tell me when
 14 you're ready, please.
 15 A. **Okay.**
 16 Q. Again, that seems to show a rather blurry big vehicle.
 17 Is that fair?
 18 A. **That is correct.**
 19 Q. All right. Can you tell if that's the same photo that's
 20 in People's 41 or the same vehicle, excuse me?
 21 A. **No, I cannot.**
 22 Q. Can you tell if that's the same vehicle that you believe
 23 Mr. Kelsey previously was driving?
 24 A. **Not in this picture, no, sir.**
 25 MR. MORLEY: Okay. Thank you.

95

1 I think that's all I have. Thank you.
 2 THE COURT: Thank you, Mr. Morley.
 3 Mr. Roth, you may conduct your redirect
 4 examination.
 5 MR. ROTH: Thank you, Your Honor.
 6 REDIRECT EXAMINATION
 7 BY MR. ROTH:
 8 Q. How sure are you that the vehicle that you saw him
 9 routinely driving to the school was white?
 10 A. **100 percent.**
 11 Q. How sure are you that it was large in size?
 12 A. **100 percent.**
 13 Q. How sure are you that it was an SUV?
 14 A. **100 percent.**
 15 Q. And did you ever see that vehicle at the school again
 16 after the accident?
 17 A. **That is correct.**
 18 Q. I'm sorry. That's not a correct or incorrect. Did you
 19 ever see it again after that?
 20 A. **No, I did not.**
 21 MR. ROTH: Nothing further, Your Honor.
 22 THE COURT: Thank you, Mr. Roth.
 23 Ma'am, you may step down. Thank you, very
 24 much.
 25 (At 11:06 a.m., the witness

96

1 stepped down from the witness
 2 stand.)
 3 THE COURT: Mr. Roth, you may call your next
 4 witness.
 5 MR. ROTH: People call Trooper Les Rochefort.
 6 THE COURT: Please raise your right hand.
 7 Do you swear or affirm to tell the truth, the
 8 whole truth, and nothing but the truth?
 9 TROOPER ROCHEFORT: I do.
 10 THE COURT: Please be seated. State your full
 11 name, and spell it, please.
 12 THE WITNESS: Leslie Joseph Rochefort III.
 13 L-E-S-L-I-E. Joseph is J-O-S-E-P-H. Rochefort,
 14 R-O-C-H-E-F-O-R-T.
 15 LESLIE J. ROCHEFORT III
 16 called by the People at 11:07 a.m., sworn by the Court,
 17 testified:
 18 DIRECT EXAMINATION
 19 BY MR. ROTH:
 20 Q. Good morning, Trooper.
 21 A. **Good morning, sir.**
 22 Q. Where are you employed?
 23 A. **Michigan State Police.**
 24 Q. How long have you been with the State Police?
 25 A. **Three years.**

97

1 Q. How are you currently assigned?
 2 A. **In an undercover capacity.**
 3 MR. ROTH: I apologize.
 4 May we approach real quick?
 5 THE COURT: Yes.
 6 (At 11:08 a.m., an at-the-bench
 7 discussion is held off the
 8 record.)
 9 THE COURT: All right. For those of you here
 10 in the media, you are not to report Mr. -- er,
 11 Trooper Rochefort's work assignment or photograph him in
 12 any way.
 13 MR. ROTH: Thank you, Your Honor.
 14 THE COURT: Mr. Roth?
 15 MR. ROTH: Thank you.
 16 BY MR. ROTH:
 17 Q. So you're currently assigned in an undercover capacity.
 18 That's why you're growing a beard?
 19 A. **Yes, sir.**
 20 Q. Normally in a uniform capacity, you would not have that?
 21 A. **I would not.**
 22 Q. All right. Previously were you assigned as a uniform
 23 trooper?
 24 A. **Yes, I was.**
 25 Q. How long were a uniform trooper?

98

1 A. **Just under three years.**
 2 Q. What are your responsibilities in that capacity?
 3 A. **We answer 9-1-1 calls through regular patrol as you see**
 4 **us on the freeway.**
 5 Q. Do you also assist in investigations as ordered?
 6 A. **Yes, sir.**
 7 Q. And is it in that capacity that you're employed in
 8 December of 2014?
 9 A. **Yes, it was.**
 10 Q. Specifically, were you asked to assist in the
 11 investigation of the police pursuit that resulted in the
 12 death of Deputy Grant Whitaker?
 13 A. **That is correct.**
 14 Q. As part of that information, were you asked to follow up
 15 on some information received via the Michigan State
 16 Police tip line?
 17 A. **Yes, I was.**
 18 Q. At the time that you were brought in to assist, was there
 19 a specific subject that you were asked to follow up on?
 20 A. **Yes.**
 21 Q. What was that person's name?
 22 A. **John Kelsey.**
 23 Q. Were you able to gather some preliminary information
 24 about John Kelsey?
 25 A. **Yes, I was.**

99

1 Q. How?

2 **A. Utilizing what's called LEIN. It's an acronym for a**

3 **database law enforcement uses.**

4 Q. What does the acronym LEIN stand for?

5 **A. Law Enforcement Information Network.**

6 Q. Generally, what is LEIN?

7 **A. LEIN is -- to use, like, a TV reference, if you see them**

8 **type a name into a computer, it will bring back,**

9 **essentially, a person's driving status and if they have**

10 **any warrants or if there is a PPO against them.**

11 Q. Some background information?

12 **A. Yes, sir.**

13 Q. Very good.

14 MR. ROTH: Your Honor, I would move for the

15 admission of People's Proposed Exhibit 45 pursuant to the

16 certification previously shown to defense counsel.

17 MR. MORLEY: No objection. There is a

18 certification pursuant to the rules of evidence, Judge.

19 THE COURT: All right. People's Exhibit 45 is

20 admitted and received.

21 (At 11:10 a.m., PX#45 is

22 received.)

23 MR. ROTH: Thank you, Your Honor.

24 BY MR. ROTH:

25 Q. You indicated that LEIN provided the status of the

100

1 Defendant's driver's license at that time?

2 **A. Yes, it did.**

3 Q. And what was the status?

4 **A. It was suspended.**

5 Q. When somebody's license is suspended, how are they

6 notified of that?

7 **A. They're issued a letter through the Secretary of State's**

8 **office making them aware of their suspension and why it's**

9 **suspended.**

10 Q. And those letters are then saved and recorded?

11 **A. Yes, sir.**

12 Q. Do we see several of those letters to the Defendant --

13 excuse me, to John Kelsey in this packet here?

14 **A. Yes.**

15 Q. Now, there are several letters notifying of the

16 suspension at various different dates. Each different

17 letter is for a unique suspension?

18 **A. Yes, sir.**

19 Q. And we see, for example, this one dated at the bottom

20 here 8-8- [verbatim] 10. What is this bottom

21 certification here? Let me ask it a different way. How

22 is this sent to the Defendant. How does it indicate?

23 **A. First-Class Mail.**

24 Q. And on what date?

25 **A. 8-18 of '10.**

101

1 Q. Thank you. We won't do this for all of them, but there

2 is, for example, another one. What is our date here?

3 **A. 4-30 of 2009.**

4 Q. How is this notice of suspension mailed to him?

5 **A. First-Class Mail.**

6 Q. Thank you. And the destination address is whatever it is

7 registered with the Secretary of State at the time?

8 **A. Yes, sir.**

9 Q. Very good. Were you able to determine through LEIN the

10 Defendant's current address?

11 **A. I was.**

12 Q. And what was that address?

13 **A. It was 4109 Morton Road near Stockbridge.**

14 Q. And were you provided with any prior addresses for him?

15 **A. 8041 Teahen in -- near Brighton, Michigan.**

16 Q. Thank you. Did you discover anything relevant to your

17 discussion as it relates to that Teahen address?

18 **A. I did.**

19 Q. Would you, please, explain that for the jury?

20 **A. When you run an address, you can essentially get vehicles**

21 **that are registered to that address through the Secretary**

22 **of State. There was a 2003 GMC Yukon registered to that**

23 **address.**

24 MR. ROTH: Your Honor, I would move for the

25 admission of People's Proposed 46 pursuant to

102

1 certification. I've already shown it to defense counsel.

2 MR. MORLEY: Without objection, Your Honor.

3 THE COURT: People's Exhibit 46 is admitted and

4 received.

5 (At 11:13 a.m., PX#46 is

6 received.)

7 BY MR. ROTH:

8 Q. Showing you 46, what is this document?

9 **A. That's another document from the Secretary of State.**

10 **Essentially it shows a vehicle's registration history at**

11 **the Secretary of State. So who it was registered with**

12 **throughout the years.**

13 Q. So you say throughout the years. So each time the title

14 is transferred, it's recorded and contained in this

15 document?

16 **A. Yes, sir.**

17 Q. Is this the VIN number and vehicle that you found

18 registered to that Teahen address?

19 **A. It is.**

20 Q. And what name was it registered to at the time?

21 **A. It was Frank --**

22 Q. I'm sorry. Let me turn the page and show you the

23 relevant page.

24 **A. Frank Edward Kelsey, it looks like, II.**

25 Q. What kind of vehicle is it?

103

1 **A. It's a 2003 GMC. They list it as a station wagon.**
 2 Q. What does station wagon mean for Secretary of State?
 3 Does it encompass more than what we think of
 4 traditionally as a station wagon?
 5 **A. It does.**
 6 Q. What does it include?
 7 **A. SUVs, your traditional station wagon. Sometimes**
 8 **Secretary of State, like the smaller, mid-size SUVs will**
 9 **-- like, a hatchback they sometimes list as a station**
 10 **wagon.**
 11 Q. And are you able to determine from this document when
 12 Frank Kelsey first registered that vehicle?
 13 **A. Yes, sir.**
 14 Q. When was that?
 15 **A. January 17th of 2014.**
 16 Q. And did you determine or find out later the relation
 17 between Frank Kelsey and John Kelsey?
 18 **A. I did, sir.**
 19 Q. And what was that?
 20 **A. Father and son.**
 21 Q. Which one is father?
 22 **A. Frank.**
 23 Q. Thank you. Son then being John?
 24 **A. Yes, sir.**
 25 Q. Did you do further follow-up on this information?

104

1 **A. I did.**
 2 Q. What did that include?
 3 **A. Checking the 4109 Morton Road address for John Kelsey.**
 4 THE COURTROOM: (Phone ringing.)
 5 BY MR. ROTH:
 6 Q. I'm sorry, the Morton Road address, that is currently
 7 registered to John Kelsey?
 8 **A. Yes.**
 9 MR. ROTH: May I approach the witness,
 10 Your Honor?
 11 THE COURT: You may.
 12 BY MR. ROTH:
 13 Q. (Approaching the witness.)
 14 Showing you Proposed Exhibit 7. Is that the
 15 address?
 16 **A. Yes, it is.**
 17 Q. Is that a fair and accurate picture of that residence?
 18 **A. Yes.**
 19 MR. ROTH: Your Honor, I'd move for admission
 20 of Proposed 47.
 21 MR. MORLEY: Without objection.
 22 THE COURT: People's Exhibit 47 is admitted and
 23 received.
 24 (At 11:15 a.m., PX#47 is
 25 received.)

105

1 BY MR. ROTH:
 2 Q. All right. So before we talk about your trip there, do
 3 we see that residence shown on Exhibit 4?
 4 **A. Yes, sir.**
 5 Q. And where is it located relative to the Marathon station
 6 and where the pursuit began?
 7 **A. I'd say it's less than about a mile, mile and a half,**
 8 **maybe, west of the Marathon station, if that, on the same**
 9 **road if you keep going west instead of taking 52.**
 10 Q. And how far set off the road is it, approximately?
 11 **A. Oh, I'd say 500 feet.**
 12 Q. Thank you. So now looking at 47, this was the residence
 13 associated with John Kelsey at the time?
 14 **A. Yes, sir.**
 15 Q. When was the first time that you went to this location?
 16 **A. On December 9th.**
 17 Q. I'm sorry?
 18 **A. December 9th.**
 19 Q. What time of day?
 20 **A. It was early afternoon. So daylight hours.**
 21 Q. Were you in full police uniform?
 22 **A. I was.**
 23 Q. Therefore easily identifiable as a police officer?
 24 **A. Yes, in full uniform and marked patrol car. There is**
 25 **actually two of us in two separate vehicles.**

106

1 Q. When you went to the residence, since we have about a
 2 500 feet driveway, where did you park your vehicles
 3 initially?
 4 **A. Initially there wasn't any markings. We pulled into the**
 5 **neighbor's driveway, and then we figured out it was the**
 6 **other house. So we just drove right up the driveway.**
 7 Q. What did you observe when you arrived and then approached
 8 this specific residence that we see in 47?
 9 **A. When I approached, there is a front window. There is a**
 10 **front door. There is a garage. I could see lights**
 11 **flashing like a TV.**
 12 Q. Could you circle on the picture -- if you touch the
 13 screen it will make a mark -- which window we're
 14 referring to?
 15 **A. (Illustrating.)**
 16 Q. Thank you.
 17 **A. Right there.**
 18 Q. So what did you observe through that window?
 19 **A. Through that window, the blinds were open. You could**
 20 **clearly see there was a TV on inside. It looked like the**
 21 **living room, it looked like it had people sleeping out**
 22 **there. There is a mattress on the floor, a bunch of**
 23 **blankets, and stuff like that.**
 24 Q. What about on the side of the residence? Did you observe
 25 anything?

107

1 **A. This is going to be -- there was a red or maroon Ford**
2 **Mustang. It had front-end damage and airbag deployment.**
3 **You could see the airbag was deployed. It appeared to be**
4 **sitting there for a little bit of time.**
5 Q. Once you arrived at the residence and you make these
6 observations, did you attempt to make contact with the
7 people inside?
8 **A. I did, sir.**
9 Q. How?
10 **A. Knocked on the front door. Nobody came. Knocked on the**
11 **front window. Again, nobody came. We stayed there for a**
12 **job. Knocked on the garage door. Knocked on the garage**
13 **window. Essentially, you go around the house knocking on**
14 **all of the doors and windows until somebody comes to the**
15 **door.**
16 Q. Did you identify yourself as police as you're knocking?
17 **A. Yes.**
18 Q. In what way?
19 **A. State Police.**
20 Q. Loudly?
21 **A. Yes, sir.**
22 Q. Each time you knocked?
23 **A. I can't say each time, but at each door and window, we**
24 **say, "State Police," and you knock.**
25 Q. Did anybody ever exit the residence or identify

108

1 themselves to you?
2 **A. No, sir.**
3 Q. Did you attempt to surveil the residence at all?
4 **A. Yes.**
5 Q. For how long, initially?
6 **A. Initially maybe 30 minutes to an hour.**
7 Q. From what location were you doing that?
8 **A. I was down on Morton Road. I don't know, it was just**
9 **west. There is a small treeline, and then there is,**
10 **like, an access road, I believe, for farm field. I just**
11 **parked a little bit back where I could see the driveway**
12 **and see if any cars are going in or out.**
13 Q. During that time, did you see any vehicles or people come
14 or go from that residence?
15 **A. No, sir.**
16 Q. While you were there, did you make contact with any
17 neighbors?
18 **A. Yes.**
19 Q. For what purpose?
20 **A. A lot of times neighbors know who they live next to or at**
21 **least see the people. And I wanted to make sure that the**
22 **person I'm looking for was at that residence.**
23 Q. And without getting into content, you did confirm you
24 were at the right residence?
25 **A. Yes, sir.**

109

1 Q. You said you did surveillance at that time for about
2 30 minutes. Did you return to that residence at another
3 time?
4 **A. Yes. Later that day I returned again.**
5 Q. How late?
6 **A. It was -- it was dark at this time. I believe maybe 9 or**
7 **10 p.m.**
8 Q. Again, you were in full uniform?
9 **A. Yes, sir.**
10 Q. What did you -- what did you do when you arrived the
11 second time to that residence?
12 **A. The second time we didn't pull right into the driveway.**
13 **We parked short of the driveway. Extinguished our**
14 **headlights and walked up in the dark.**
15 Q. Why did you take a difference approach this time?
16 **A. In my experience, it's common for people that don't want**
17 **to talk to the police, if they see you pull up in a**
18 **fully-marked patrol car in a full uniform, they typically**
19 **don't answer the door.**
20 Q. So taking this different approach this time, what
21 happened when you arrived at the residence?
22 **A. TV was still on. Nothing appeared to change from earlier**
23 **in the day, and nobody came to the door.**
24 Q. Again, you knocked on doors and windows?
25 **A. Yes, sir.**

110

1 Q. Identified yourself as police?
2 **A. After a little while, I did.**
3 Q. Did you again attempt to surveil the residence?
4 **A. Yes, sir.**
5 Q. For how long?
6 **A. Probably 30, 40 minutes again.**
7 Q. From what location?
8 **A. The same location.**
9 Q. And, again, at this time did you see anybody come or go
10 from the residence?
11 **A. No, sir.**
12 Q. At some point, did you also walk around the property?
13 **A. Later that night we returned, yes, sir.**
14 Q. And at that time, why did you walk around the property?
15 **A. To look for the suspect vehicle.**
16 Q. This is the one that we looked at the vehicle
17 registration for the 2003 Denali?
18 **A. Yes, sir.**
19 Q. Where did you look?
20 **A. There is a large field and then a farm directly north of**
21 **the residence. Can I touch?**
22 Q. You can. And you can also give some identification as to
23 which direction is north.
24 **A. (Illustrating.)**
25 **Okay. Well, this direction is going to be**

111

1 north on the screen, and back there, there is a large
 2 farm. There is a treeline right here to the west of the
 3 residence, and there is actually a road that goes back.
 4 Right over the west there is actually, there is going to
 5 be, like, a garage and a house back here.
 6 We walked the road, and it came back into,
 7 like, a field in the farm area back here, and we just
 8 looked back there. It's common for people to store
 9 vehicles away from the road.
 10 Q. And did you find, first of all, the 2003 white Denali
 11 that you were looking for?
 12 A. No, sir.
 13 Q. Did you find any vehicles back there?
 14 A. No, sir.
 15 Q. Very good. That week, did you also make contact at a
 16 market near the intersection of Gregory and Main Street?
 17 A. Yes, sir.
 18 Q. Is that in Gregory?
 19 A. It is.
 20 Q. Could you tell me, generally, where that is? If we have
 21 Exhibit 4 as Stockbridge and to the east is Pinckney,
 22 where is Gregory?
 23 A. It would be east and maybe a little bit north.
 24 Q. What was your purpose in going to that location?
 25 A. To check the store. The marketplace had cameras on the

1 outside, and just to see if the suspect vehicle came back
 2 south through Gregory.
 3 Q. And did you observe that at any point during their
 4 surveillance video from the evening of December -- I'm
 5 sorry, the early morning hours of December 7th, 2014?
 6 A. No, sir.
 7 Q. Is that a, and correct me if I'm wrong, a fairly
 8 significant intersection in Gregory?
 9 A. It is.
 10 Q. And that's why you chose that location?
 11 A. Yes, sir.
 12 MR. ROTH: I have nothing further of this
 13 witness, Your Honor.
 14 THE COURT: Thank you, Mr. Roth.
 15 Mr. Morley, do you wish to question the
 16 witness?
 17 MR. MORLEY: I do, Your Honor.
 18 THE COURT: All right.
 19 CROSS-EXAMINATION
 20 BY MR. MORLEY:
 21 Q. Trooper, I'm looking at a police report. Appears to be
 22 drafted by you. Monday, December 8th, 2014. In relevant
 23 part, it indicates that you were involved in securing a
 24 video from a Sunoco in Stockbridge. Does that ring a
 25 bell?

1 A. Yes, sir.
 2 Q. Okay. And that was -- I'm sorry, were you still talking?
 3 A. No.
 4 Q. That was subsequently, I believe, recorded to a DVD and
 5 turned over to the investigative team. And I have it in
 6 evidence as No. 35. Would you have any reason to
 7 disagree with that?
 8 A. No, sir.
 9 Q. Did you review that video?
 10 A. Briefly.
 11 Q. Did you see anything in that video?
 12 A. I don't recall right now, sir.
 13 Q. And if we need to, I can find the video, and we can play
 14 that. So please let me know.
 15 MR. MORLEY: Approach the witness, Your Honor?
 16 THE COURT: Yes.
 17 BY MR. MORLEY:
 18 Q. (Approaching the witness.)
 19 Show you what's been marked as Defendant's C.
 20 Ask you to take a look at those and tell me when you've
 21 had an opportunity to review them, please.
 22 A. I remember, sir.
 23 Q. And do these -- well, let me ask you this: You say you
 24 remember. Are these photographs taken from the video at
 25 the Sunoco?

1 A. They are.
 2 Q. They fairly and accurately represent -- although they're
 3 not the video, do the photos fairly and accurately
 4 reflect what was contained on the video?
 5 A. Yes, sir.
 6 MR. MORLEY: Your Honor, move for the admission
 7 of Defendant's Exhibit C.
 8 MR. ROTH: Without objection, Your Honor.
 9 THE COURT: Defendant's Exhibit C is admitted
 10 and received.
 11 (At 11:25 a.m., DXC is received.)
 12 BY MR. ROTH:
 13 Q. And Defendant's C is, I believe, seven photographs. At
 14 the very top is a time stamp of December 7th at 01:59 and
 15 12 seconds. That would be 1:59 in the morning, right?
 16 A. Yes, sir.
 17 Q. Do you know, as you sit here today, whether that time
 18 stamp is accurate?
 19 A. I do not.
 20 Q. Is there any reason to think that this isn't a white SUV
 21 at the Stockbridge Sunoco about three minutes before this
 22 underlying chase commences?
 23 A. I wouldn't know, sir.
 24 Q. Do you know if this was the vehicle that was involved in
 25 the chase that commences about three minutes later?

1 **A. It was not.**
 2 Q. How do you know that?
 3 **A. Because that vehicle was said to turn around and head**
 4 **south out of town.**
 5 Q. Who told you that?
 6 **A. The employee at the Sunoco, and I believe it's on the**
 7 **video, sir.**
 8 Q. Okay. And did you follow that vehicle or follow it down
 9 to see where it went?
 10 **A. I was not working on that night, sir. I was not at the**
 11 **Sunoco whenever the vehicle was there.**
 12 Q. Report drafted to that effect?
 13 **A. I don't understand what you're saying, sir.**
 14 Q. Did you draft a report to that effect?
 15 **A. To the -- I don't write a report that I'm not working.**
 16 Q. No. You're right. Dumb question. Did you draft a
 17 report that this vehicle went the other way and you
 18 interviewed somebody at the Sunoco station?
 19 **A. It may have been a tip sheet. I don't know if there is a**
 20 **report.**
 21 Q. Okay. You indicated at the outset of your testimony that
 22 you were interviewed -- er, excuse me, investigating, I
 23 believe -- and if I'm putting words in your mouth, please
 24 tell me. On or about December 9th, you were sent to
 25 investigate John Kelsey. Do you recall that?

116

1 **A. Yes.**
 2 Q. What information were you provided?
 3 **A. I was just provided attempt to locate him and question**
 4 **him about his whereabouts; in that, there are several**
 5 **tips that came in --**
 6 Q. Do you recall --
 7 **A. -- with his name.**
 8 Q. I apologize. Do you recall the substance of any of those
 9 tips?
 10 MR. ROTH: Your Honor, I'm going to object to
 11 the hearsay. It's also going to be not something
 12 Mr. Morley wants in evidence.
 13 MR. MORLEY: Your Honor, I'm going to move to
 14 strike and ask to excuse the jury.
 15 THE COURT: All right. Hold on. Let's see
 16 counsel at the bench.
 17 (At 11:27 a.m., an at-the-bench
 18 discussion is held off the
 19 record.)
 20 THE COURT: Ladies and Gentlemen, we're going
 21 to have you go back to the jury room with Mr. Adkins,
 22 please.
 23 (At 11:28 a.m., the jury left the
 24 courtroom.)
 25 THE COURT: Please be seated.

117

1 First of all, before you proceed with what the
 2 objection is, is this something we can take in the
 3 presence of the witness, who has been sequestered, or
 4 not?
 5 MR. ROTH: Yes, Your Honor.
 6 MR. MORLEY: I rather we didn't.
 7 THE COURT: Pardon?
 8 MR. MORLEY: I'd rather we didn't.
 9 THE COURT: All right.
 10 Then I'll ask the witness to step out in the
 11 hallway while we take care of this motion, sir. Thank
 12 you.
 13 (At 11:29 a.m., the witness left
 14 the courtroom.)
 15 THE COURT: Mr. Roth, your objection was to the
 16 question by Mr. Morley as to whether he recalled --
 17 whether the witness recalled the substance of any of
 18 those tips. Your objection?
 19 MR. ROTH: My objection is, first of all, is
 20 that would be hearsay. Second of all, from a
 21 preventative standpoint, the answer is going to be
 22 extremely damaging, and it's going to be improper hearsay
 23 implicating the Defendant.
 24 THE COURT: Improper hearsay as to what?
 25 MR. ROTH: It's going to involve prior criminal

118

1 record. I think it could involve the prior pursuit the
 2 Court eliminated. It's going to involve anonymous tips,
 3 tipsters of which I can't produce. I mean, we can put
 4 all of that substance in, but I don't think that's
 5 appropriate in deference to the Defendant.
 6 THE COURT: Mr. Morley?
 7 MR. MORLEY: Your Honor, the rules require that
 8 an objection be based on a rule of evidence. To say
 9 "Hearsay" is fine. To say "Mr. Morley is not going to
 10 like the results" has significantly prejudiced this jury.
 11 If I ask the question now -- certain things
 12 can't come in. We could have approached and said "Brian,
 13 here's what we're looking at," and I could have been
 14 cognizant of that. We're not simply going to let in
 15 prior bad acts or anything like that because the Court's
 16 already moved on it or ruled on it.
 17 The issue becomes, Judge, if I don't ask.
 18 That's what the jury heard. "Morley is not going to like
 19 this." Boy, I better move on.
 20 You have a significantly prejudiced jury. "I
 21 wonder what he was going to say? I wonder why Morley's
 22 not asking."
 23 This is a specifically prejudiced jury. It
 24 shouldn't have been said in front of the jury, and I move
 25 for a mistrial.

119

1 THE COURT: Mr. Roth?
2 MR. ROTH: If I had what the ensuing
3 information would have been, then maybe we could have a
4 discussion about a mistrial, but the burden for mistrial
5 is fairly significant. And this comment is incredibly
6 benign. I think -- I think the inference that Mr. Morley
7 is drawing is very improper. I don't think it's
8 justified by what was said on the record.
9 And I think to allow the question underlying --
10 just to move away from the mistrial motion for a second.
11 To allow the question underlying but trim out the
12 information that Mr. Morley doesn't want because it's
13 precluded, or whatever else, is then misleading the jury.
14 So I'm going to rest on that as to both issues.
15 THE COURT: All right. Well, I'll deny the
16 request for the mistrial, but the question is how do we
17 proceed at this point then?
18 Mr. Morley is correct in some sense in terms of
19 just not asking the question. I can rule on the
20 objection just -- I can sustain the objection --
21 MR. ROTH: As to hearsay.
22 THE COURT: -- in the essence of the jury as to
23 hearsay and then move on from there.
24 Unless, Mr. Morley, you're asking that parts of
25 it be admitted and other parts not be admitted, which I'm

120

1 not sure how we parse that out.
2 MR. MORLEY: Judge, I'll take the ruling on
3 hearsay and move on. The jury needs to be instructed.
4 They need to be told to disregard that. It's a comment
5 that shouldn't have been made in the presence of the
6 jury, and that they're not to read anything into it.
7 MR. ROTH: To say that it shouldn't have been
8 made in front of the jury is to then say that I acted
9 improperly, which --
10 MR. MORLEY: I think you did.
11 MR. ROTH: I understand Mr. Morley's opinion,
12 but I don't think that's legally supported. There is no
13 rule of evidence that dictates when we approach and when
14 we don't approach. I didn't say anything that implicated
15 the Defendant whatsoever.
16 MR. MORLEY: That's not accurate, Your --
17 MR. ROTH: I'm going to --
18 THE COURT: Hold on.
19 MR. ROTH: -- finish one sentence at some point
20 in this trial.
21 THE COURT: Hold on. You both understand and
22 you're both experienced enough to understand you can't,
23 first of all, talk at the same time.
24 And, more importantly, direct your comments to
25 the Court instead of directing them to each other,

121

1 please.
2 Let me suggest this as a way to resolve it:
3 First, I will rule on the objection and sustain the
4 hearsay objection because, as I hear what you're saying,
5 Mr. Morley, knowing now what you know; albeit, I
6 understand your position that it should have been taken
7 care of out of the presence of the jury, knowing now what
8 you know, you are not intending to pursue even parts of
9 the answer that might come from the question, correct?
10 MR. MORLEY: I think that's the safest course
11 of conduct. Yes, Your Honor.
12 THE COURT: All right. And then what I will
13 simply -- I'm not going to restate what the comment was.
14 I'm just simply going to tell the jury that the -- that
15 they're to be reminded that the attorneys' comments
16 during objections are not evidence and that they are not
17 to speculate about my reasons for the rulings of any --
18 on any objection.
19 MR. ROTH: Thank you, Your Honor.
20 THE COURT: Mr. Morley, is that satisfactory?
21 MR. MORLEY: Yes, Your Honor.
22 THE COURT: Okay. We are at a point where
23 we're going to need to break soon with the jury.
24 Otherwise, we'll carry them too long. Is this an
25 appropriate place, do you think, in your questioning to

122

1 break or --
2 MR. MORLEY: I'll give you the call, Judge.
3 I'd be surprised I'm more than five minutes.
4 THE COURT: Maybe we should just finish this
5 witness then.
6 MR. ROTH: That would be fine.
7 MR. MORLEY: Don't let me call the ball.
8 THE COURT: That's fine.
9 Do you know how long, approximately, your next
10 witness will be, Mr. Roth? Is it a long witness; a short
11 witness?
12 MR. ROTH: Ten to 15 minutes. It certainly
13 will not go over 15 on my part.
14 THE COURT: Okay. Thank you. Let's bring the
15 jurors in.
16 (At 11:36 a.m., the jury entered
17 the courtroom.)
18 THE COURT: Please be seated.
19 Mr. Roth, as to your objection, I am going to
20 sustain the objection as to hearsay.
21 Ladies and Gentlemen of the Jury, I just want
22 to remind you from the preliminary instructions that the
23 lawyers' comments, including during objections, are not
24 evidence. So you're not to take any comments as
25 evidence, nor are you to speculate about the reasons for

123

1 my rulings on any particular objection.
 2 And with that, Mr. Morley, you may proceed,
 3 sir.
 4 MR. MORLEY: Thank you, Judge.
 5 BY MR. MORLEY:
 6 Q. Trooper, earlier you referenced running Mr. Kelsey
 7 through LEIN, the Law Enforcement Information Network.
 8 And that's a State of Michigan compilation of data and
 9 information regarding vehicles, driver's licenses, a
 10 bunch of other stuff, but is that a fair and accurate
 11 representation?
 12 A. **Yes, sir.**
 13 Q. And when you check Mr. Kelsey through LEIN, you're
 14 looking for status of his operator's license and vehicles
 15 registered to him?
 16 A. **You can. I was looking for his location.**
 17 Q. Okay. Did you ever check vehicles registered to him?
 18 A. **I did not.**
 19 Q. Okay. Do you know if any of the vehicles that you found
 20 at his residence were registered to him?
 21 A. **I do not.**
 22 Q. And, in fact, the station wagon that you referenced
 23 earlier was not registered to him, right?
 24 A. **It was not.**
 25 Q. Okay. The residence that you're talking on Morton Road

124

1 that you surveilled, there is no mailbox at that
 2 residence, is there?
 3 A. **I do not know. I would assume there was.**
 4 Q. Okay. But you don't know as you sit here today?
 5 A. **That's correct.**
 6 Q. Is there a post office in Stockbridge?
 7 A. **I would also assume so, but...**
 8 Q. You received information about a fight at a bar in
 9 Stockbridge on the evening of this incident, didn't you?
 10 A. **I did.**
 11 Q. And you subsequently towed a vehicle related or were
 12 involved in the towing of a vehicle relating to that
 13 fight, weren't you?
 14 A. **No, sir.**
 15 Q. I'm going to show you -- and maybe I'm reading it the
 16 wrong way.
 17 MR. MORLEY: Approach the witness, Your Honor?
 18 THE COURT: You may.
 19 BY MR. MORLEY:
 20 Q. (Approaching the witness.)
 21 I want to show you --
 22 MR. ROTH: Let me --
 23 MR. MORLEY: Go ahead. Were you saying
 24 something? Tell me if I'm wrong.
 25 MR. ROTH: (Talking to Mr. Morley off the

125

1 record.)
 2 BY MR. MORLEY:
 3 Q. I'm going to show you -- ask you to review that. That's
 4 a tip sheet. If you -- your handwriting. You can take
 5 it. Review your handwriting there just to yourself and
 6 tell me know when you're ready.
 7 A. **I'm ready.**
 8 Q. And this is where I think I was corrected by the
 9 prosecutor. It indicates in there that you located a
 10 vehicle and it was TOTDB, turned over to the detective
 11 bureau, right?
 12 A. **It indicates a little bit more.**
 13 Q. Well, I understand that, but I'm asking about towed
 14 vehicle. It says:
 15 William Porter vehicle located.
 16 TOTDB.
 17 That means a vehicle belonging to William
 18 Porter was located and turned over to the detective
 19 bureau, right?
 20 A. **No, sir.**
 21 Q. What does that mean?
 22 A. **That means I located William --**
 23 **Was it William Porter?**
 24 **And his vehicle, and I turned that information**
 25 **over to the detective bureau.**

126

1 Q. The information. Okay. Thank you. Did you do any other
 2 investigation into the fight at the Back Street bar?
 3 A. **Yes.**
 4 Q. Interview other people?
 5 A. **Yes.**
 6 Q. Did you interview a Davie Bettelon, B-E-T-T-E-L-O-N?
 7 A. **I believe so.**
 8 Q. In fact, he lives on Morton Road as well, right?
 9 A. **He does.**
 10 Q. How far away from Mr. Kelsey's residence?
 11 A. **I don't recall.**
 12 Q. Who is the other trooper involved with you in the visits
 13 to Mr. Kelsey's residence?
 14 A. **There are several other troopers. It depends on what**
 15 **time.**
 16 Q. Do you recall?
 17 A. **I know there was a Trooper Zonts, there is a Trooper**
 18 **Boggs, and then there is several other troopers.**
 19 Q. Did you ever go inside of the residence?
 20 MR. ROTH: I guess I'm going --
 21 THE WITNESS: I'm sorry.
 22 MR. ROTH: -- to object.
 23 THE WITNESS: I'm confused here.
 24 MR. ROTH: Whose --
 25 MR. MORLEY: Mr. Kelsey's.

127

1 MR. ROTH: -- residence?
 2 BY MR. MORLEY:
 3 Q. Mr. Kelsey's residence.
 4 THE COURT: Hold on. Hold on one second,
 5 please.
 6 THE WITNESS: All right.
 7 THE COURT: So I'll sustain the objection
 8 because I do think, based on what the witness said, we
 9 need some clarification.
 10 So if you can go back over it, Mr. Morley.
 11 BY MR. MORLEY:
 12 Q. Did you ever go into Mr. Kelsey's residence on Morton
 13 Road?
 14 A. **No, sir.**
 15 Q. Did you ever -- you said you visited a few times. Did
 16 you ever have any reason to think that there was anybody
 17 inside attempting to hide or evade the police?
 18 A. **Yes, sir.**
 19 Q. What gave you that impression?
 20 A. **The TV was on. There is stuff scattered throughout the**
 21 **living room.**
 22 Q. Anything else?
 23 A. **No, sir.**
 24 Q. Could you see through all of the windows?
 25 A. **Not all of them.**

128

1 Q. Okay. Did you hear any noise other than the television?
 2 A. **No.**
 3 Q. When you walked around the residence, the back of the
 4 residence, you could see for quite a while almost up to
 5 Dexter Trail, can't you?
 6 A. **It's quite a ways. I don't know about Dexter Trail.**
 7 Q. Did you walk that area?
 8 A. **Briefly, yes.**
 9 Q. Any indication that there was a vehicle back there?
 10 A. **As I indicated earlier, there is a road that runs -- I**
 11 **did not find a vehicle.**
 12 Q. Any indication of, I don't know, tire tracks or anything
 13 that there recently had been a vehicle hidden back there?
 14 A. **There is -- I don't know about hidden, but there was tire**
 15 **tracks back there, yes.**
 16 Q. Did you do any follow-up on that?
 17 A. **No, sir.**
 18 Q. Okay. Did you ever find a vehicle related to this
 19 incident?
 20 A. **I did not.**
 21 MR. MORLEY: That's all I have.
 22 Thank you.
 23 THE COURT: Thank you, Mr. Morley.
 24 Mr. Roth, you may redirect.
 25 MR. ROTH: Thank you.

129

1 REDIRECT EXAMINATION
 2 BY MR. ROTH:
 3 Q. Mr. Morley asked you about the white SUV shown in Defense
 4 Exhibit C, and you indicated that you were able to
 5 eliminate it as a possibility. How was that?
 6 A. **I talked to a lot of people in Stockbridge. There is**
 7 **obviously other people here at the gas station, and there**
 8 **was obviously a worker there. Unfortunately, I don't**
 9 **recall at this time who the worker was, but they**
 10 **remembered the vehicle going south.**
 11 **And I also talked to a bar owner in**
 12 **Stockbridge, a local -- I can't remember the name of the**
 13 **bar -- a local establishment, and I wanted to say she**
 14 **also said that the vehicle did not go north, and she left**
 15 **the bar around the same time.**
 16 Q. So I'm going to show you the general area of Stockbridge
 17 in Exhibit 4. Where is the Sunoco station, roughly?
 18 A. **52 and 106 meet, and then it goes south. I believe the**
 19 **Sunoco is --**
 20 **(Illustrating.)**
 21 **My last little touch is probably essentially**
 22 **where it's at.**
 23 Q. So time-wise going south, it was not a potential suspect?
 24 A. **Not at all.**
 25 Q. And then there was also witnesses that similarly

130

1 disproved it?
 2 A. **Yes.**
 3 Q. Mr. Morley also asked you about David -- I think it's
 4 Bettelon. Is that the name?
 5 A. **I don't know how to pronounce it.**
 6 Q. All right. Where is his residence on Morton?
 7 A. **It's -- it's west. I don't know the exact residence. I**
 8 **believe -- I can't -- I wouldn't be able to point to it,**
 9 **sir.**
 10 Q. West or east of Marathon?
 11 A. **West.**
 12 Q. Very good. West or east of the Defendant's house?
 13 A. **West.**
 14 Q. Very good. Was there any white SUV registered to
 15 David Bettelon?
 16 A. **Not that I recall.**
 17 Q. And that would have been something significant to note if
 18 there was?
 19 A. **Yes, sir.**
 20 Q. And did you ever locate a white SUV at his home?
 21 A. **I did not.**
 22 Q. And how are you able to eliminate him as a potential
 23 suspect?
 24 A. **We went to his home, and he was interviewed by several**
 25 **troopers.**

131

1 Q. As well as surrounding witnesses as well?
2 A. Yes.
3 Q. And not just you but other troops could discuss that
4 maybe in more detail?
5 A. Yes, sir.
6 MR. ROTH: Very good.
7 I have nothing further, Your Honor.
8 THE COURT: Thank you, Mr. Roth.
9 You may step down. Thank you, very much.
10 THE WITNESS: Thank you, Your Honor.
11 (At 11:44 a.m., the witness
12 stepped down from the witness
13 stand.)
14 THE COURT: Mr. Roth, you may call your next
15 witness.
16 MR. ROTH: People call Howard Baum.
17 THE COURT: Right up here, sir. Please raise
18 your right hand.
19 Do you swear or affirm to tell the truth, the
20 whole truth, and nothing but the truth?
21 MR. BAUM: I do.
22 THE COURT: Please be seated. State your full
23 name for us, and spell your last name, please.
24 THE WITNESS: Howard Baum, spelled B, like boy,
25 A-U-M, like Mary.

132

1 HOWARD BAUM
2 called by the People at 11:45 a.m., sworn by the Court,
3 testified:
4 DIRECT EXAMINATION
5 BY MR. ROTH:
6 Q. Good morning, sir.
7 A. Morning.
8 Q. Where are you employed?
9 A. AAA.
10 Q. In what capacity?
11 A. I'm a claims investigator.
12 Q. So the AAA part that does insurance?
13 A. Yes.
14 Q. How long have you been with AAA?
15 A. About four and a half years.
16 Q. How long have you been a claims investigator?
17 A. Four and a half years.
18 Q. What are your responsibilities in that position?
19 A. Basically, once -- if a claim comes in and claims
20 adjustor has some questions concerning the claim, it's
21 our job to basically clarify the facts and make sure the
22 claim is legitimate.
23 Q. Does a person by the name of Frank Kelsey have an
24 automobile insurance policy with AAA?
25 MR. MORLEY: Objection, relevance.

133

1 THE COURT: Hold on before you answer.
2 Mr. Roth?
3 MR. ROTH: The Defendant -- the Defendant's
4 father has a white GMC Yukon Denali registered in his
5 name and insured with AAA. I think putting it in the
6 possession -- the immediate possession of the Defendant
7 is paramount to relevance.
8 MR. MORLEY: There's no foundation for that,
9 Your Honor. So my objection is further buttressed
10 foundation.
11 THE COURT: Well, I'll overrule the relevance
12 objection.
13 And then you can lay whatever foundation
14 needed, Mr. Roth.
15 MR. ROTH: The foundation to ask?
16 THE COURT: I'm not sure which -- are you
17 saying the foundation as to what, Mr. Morley; as to
18 whether this witness has the information that's being
19 asked about?
20 MR. MORLEY: A GMC Yukon Denali registered to
21 Frank Kelsey, there is no foundation for any of that yet.
22 We have no evidence of a GMC Yukon Denali. There is no
23 foundation.
24 THE COURT: I thought we introduced an exhibit
25 that had the Secretary of State records.

134

1 MR. ROTH: I did too, Your Honor. 46.
2 MR. MORLEY: You're right. You're right.
3 THE COURT: So is your --
4 MR. MORLEY: To that extent, I'll withdraw my
5 objection.
6 THE COURT: All right. Thank you.
7 Mr. Roth, you may proceed.
8 BY MR. ROTH:
9 Q. Let's back up, sir. In your position as an investigator
10 through AAA, you have access to the various policies
11 through that agency?
12 A. Yes.
13 Q. And does a person by the name of Frank Kelsey have an
14 automobile insurance policy with AAA?
15 A. He is not the named insured.
16 Q. Who is the named insured?
17 A. The name insured would be Marcia McGarry.
18 Q. And are there other people covered under that policy?
19 A. Yes.
20 Q. Who are the other people?
21 A. Give me one second here.
22 Q. Take your time.
23 A. Basically, yeah. There is two people who are showed to
24 be rated drivers on the policy. That would be
25 Marcia McGarry and Frank Kelsey.

135

1 Q. And you said rated drivers?

2 A. Yes.

3 Q. What does that mean?

4 A. **Basically they're listed on the policy to drive the**

5 **vehicles that are covered.**

6 Q. They're covered.

7 MR. ROTH: May I approach the witness,

8 Your Honor?

9 THE COURT: You may.

10 BY MR. ROTH:

11 Q. (Approaching the witness.)

12 I'm going to show you what's been marked as

13 People's 48. I've shown it to defense counsel. What is

14 this document?

15 A. **This would be the policy information concerning**

16 **Ms. McGarry's policy.**

17 Q. That's the one dealing also with Frank Kelsey?

18 A. Yes.

19 Q. Are these records kept in the normal course of business

20 at AAA?

21 A. Yes.

22 MR. ROTH: Your Honor, I'd move for admission

23 of Proposed Exhibit 48.

24 MR. MORLEY: Without objection.

25 THE COURT: People's Exhibit 48 is admitted and

136

1 received.

2 (At 11:48 a.m., PX#48 is

3 received.)

4 MR. ROTH: Thank you, Your Honor.

5 BY MR. ROTH:

6 Q. So I'm going to go to -- for some reason it lists

7 starting on a handwritten page 2. I assume there is a

8 fax cover on top. So let's go to what's labeled page 3.

9 What is the name that we see at the top of that

10 page?

11 A. **John Coryell Kelsey II.**

12 Q. And you indicated he's not one of the rated drivers. So

13 why is he listed in the policy?

14 A. **What they would do -- that's a household profile. And**

15 **what that basically indicates is if there are drivers in**

16 **the household, it will list them.**

17 Q. And what was his status as it relates to the policy?

18 A. **He was an ex -- at the time that I was asked to pull**

19 **these records in January, I believe, he was an excluded**

20 **driver.**

21 Q. What does that mean "an excluded driver"?

22 A. **Basically that's he's excluded from driving any of the**

23 **vehicles that are rated on that policy.**

24 Q. And that could happen for a number of reasons?

25 A. **It could be anything.**

137

1 Q. A suspended license would be one of them?

2 A. **Suspended license. From my knowledge, it would actually**

3 **come from the agent. So it would be -- you know, the**

4 **family that would exclude him, for whatever reason.**

5 Q. Very good. Go to what's labeled as page 7. What

6 vehicles were covered under this policy?

7 A. **That particular -- looks like there is an '04 Saab, a**

8 **2001 Volvo, 2014 Honda, and a 2003 GMC Yukon.**

9 Q. Could you read me what exactly it says as to the 2003

10 GMC?

11 A. **Basically it just says that the cancellation date looks**

12 **like it's 6-1 of 2015. Looks like it's Vehicle No. 7.**

13 **That's really about it.**

14 Q. Very good. And it says GMC 4W. Does that mean four

15 wheel?

16 A. Yes.

17 Q. Then it says Yukon DenXL. Do you know what DenXL means?

18 A. **That would a Denali XL.**

19 Q. Thank you. Is the VIN number listed somewhere in the

20 policy for the Yukon Denali XL?

21 A. **It would probably be on a page that's -- I'm not sure**

22 **what page it would be listed on for you, but it would**

23 **have, like, an IDNT on it.**

24 Q. Let me hand you that, and you can find it.

25 A. **Sure. Yeah. That's it. It's right there on the bottom.**

138

1 Q. All right. Could you show the jury where the VIN is

2 located on there.

3 A. **It would be --**

4 Q. If you touch the screen, it will make a mark.

5 A. **(Illustrating.)**

6 **Okay. Right there.**

7 Q. And showing you People's Exhibit 46. Is this VIN number

8 that we see on 46, the same?

9 A. **Yes, it is.**

10 Q. Very good. When was this -- and, again, you may need to

11 clarify the page. When was this Yukon Denali added to

12 the policy?

13 A. **That's going to be probably in underwriting. Let me see**

14 **if I have it. I don't have that information with me.**

15 Q. On page 9, we have some notes about storage with the 2003

16 GMC. Why is that relevant for the policy storage?

17 A. **Basically when a vehicle is put in storage, the only**

18 **coverage that it would have on it is comprehensive. So**

19 **if it's parked in the garage and garage caught fire, it**

20 **would be covered. There is no collision coverage. There**

21 **is no liability coverage. There is no -- the only thing**

22 **that's on there is comprehensive. So basically it would**

23 **not be -- shouldn't be allowed to be driven on the road.**

24 Q. How many times was it, according to the records, taken in

25 and out of storage, allegedly?

139

1 **A. Let's see. Well, let's see. We've got one, two,**
2 **probably about four times. Four or five times.**
3 Q. And on December 7th, 2014, what was AAA's understanding
4 of the vehicle's status as it relates to storage?
5 **A. On what date, again, I'm sorry?**
6 Q. On December 7th, 2014.
7 **A. December 7, 2014? It looks like it was -- I'm looking at**
8 **my note because the note -- the first note that I see**
9 **where they put it back into storage was August 22nd. My**
10 **first note here is dated December 16th.**
11 **So on the seventh, I don't know what that would**
12 **-- what that would be if it was in storage or not.**
13 Q. All right. So you're unable to say whether AAA's
14 understanding was storage or not on December 7th, 2014?
15 **A. With these available notes, yes.**
16 Q. And with this idea of putting a vehicle in storage, do
17 you require the person to provide any proof that the
18 vehicle is in storage?
19 **A. No.**
20 Q. Does AAA do any investigation as to whether or not the
21 vehicle is actually put into storage?
22 **A. No.**
23 Q. As a result, if the vehicle is in an accident while not
24 in storage during that time, is there coverage?
25 **A. If it's -- could you rephrase the question?**

140

1 Q. I can. I apologize. So they call and they say "Vehicle
2 is in storage" except at the same time, it's out on the
3 road. It's on Grand River, and it's in an accident
4 because it's not actually in storage.
5 **A. The claim would more than likely be denied because it**
6 **wouldn't have any collision coverage on it. It would**
7 **just have comprehensive only.**
8 Q. All right. And that's why you're able to just take the
9 word for it from the policyholder?
10 **A. Correct.**
11 Q. Were there ever any claims as it relates to the 2003 GMC
12 Yukon Denali XL after or on December 7th of 2014?
13 **A. No.**
14 Q. Was it ever reported stolen after that time?
15 **A. No.**
16 Q. And what is the status of that policy at this current
17 time today?
18 **A. The policy is active. And the Yukon still has storage**
19 **coverage on it.**
20 MR. ROTH: May I please approach the witness,
21 Your Honor?
22 THE COURT: You may.
23 BY MR. ROTH:
24 Q. So let me just back up. So as far as AAA is concerned,
25 Frank Kelsey and/or Marcia, the initial policyholder,

141

1 should have access to that vehicle in a storage facility
2 somewhere?
3 **A. Correct.**
4 Q. Currently?
5 **A. Yes.**
6 Q. (Approaching the witness.)
7 Showing you Proposed Exhibit 49. What is this
8 document?
9 **A. Looks like it's a -- looks like it's an invoice from AAA.**
10 Q. Those documents are kept in the normal course of business
11 at AAA?
12 **A. Yes.**
13 MR. ROTH: Your Honor, I'm not going to move
14 for the admission of 49 at this time. But I will tender
15 it for voir dire, if necessary, through the officer that
16 actually found it.
17 THE COURT: Mr. Morley, do you wish to voir
18 dire on the document?
19 MR. MORLEY: Approach, Your Honor?
20 THE COURT: Yes.
21 (At 11:57 a.m., an at-the-bench
22 discussion is held off the
23 record.)
24 MR. MORLEY: No voir dire, Your Honor.
25 THE COURT: All right. Thank you, Mr. Morley.

142

1 MR. ROTH: With that, I have nothing further of
2 this witness.
3 THE COURT: Thank you, Mr. Roth.
4 Mr. Morley, you may question the witness, if
5 you wish, sir.
6 MR. MORLEY: Thank you, Judge.
7 CROSS-EXAMINATION
8 BY MR. MORLEY:
9 Q. Mr. Baum, I'm looking at the same materials. Do you have
10 what the prosecutor was looking at?
11 **A. Yes.**
12 Q. I'm looking at the same materials as you have, and I
13 think you said a rated driver is somebody who is allowed
14 to drive it. Did you say rated? That's what I have in
15 my notes.
16 **A. Yes.**
17 Q. And then there is an excluded driver. That's somebody
18 who's not allowed to drive it, right?
19 **A. Correct.**
20 Q. And in all the documentation that you have, John Kelsey
21 is an excluded driver of any of the vehicles that are
22 insured by Marcia McGarry. Is that accurate?
23 **A. Yes.**
24 Q. Do you know John Kelsey?
25 **A. No.**

143

1 Q. Okay. Do you have any knowledge as to whether this
2 vehicle had been driven by John Kelsey at any time since
3 it was added to their policy?
4 A. No.
5 Q. Do you know whether any traffic tickets were received by
6 somebody driving that vehicle?
7 A. **Not that I'm aware of, no.**
8 Q. Is that something you would know?
9 A. **Only if there was a claim filed and we would have been**
10 **asked to investigate it. Otherwise, no.**
11 Q. The registered address in these materials is a Brighton
12 address, right?
13 A. Yes.
14 Q. Any other cities? There is no Stockbridge or any other
15 cities referenced in here, right?
16 A. No.
17 Q. And just to be clear, you have -- and I'm looking at
18 what's marked at the top No. 9, little number 9. It's my
19 writing on it, but here's my question: You were asked
20 questions -- and I'm paraphrasing, so if I'm putting
21 words in your mouth, let me know that. You were asked
22 about storage, and you say it looks about four or five
23 times.
24 Specifically, put into storage in March. Taken
25 out in May. Back in, in June. Taken out in April. And

144

1 then back in, in August, right?
2 A. Yes.
3 Q. Okay. Not necessarily uncommon for insurance purposes,
4 is it?
5 A. No.
6 Q. In fact, am I right that a lot of times if you have a car
7 that maybe doesn't drive well or you don't use much or
8 you only use it at certain times, no reason to not put it
9 in storage because it lowers your rates, right?
10 A. Right.
11 Q. And every record that you have and every piece of
12 information you have as you sit here today is that as of
13 August 22nd, 2014, until today, AAA considers that
14 vehicle to have been in storage. Is that accurate?
15 A. Correct.
16 MR. MORLEY: That's all I have.
17 Thank you.
18 THE COURT: Thank you, Mr. Morley.
19 Mr. Roth?
20 REDIRECT EXAMINATION
21 BY MR. ROTH:
22 Q. Do AAA's records indicate that any information about this
23 alleged storage facility was ever provided?
24 A. **Not that I'm aware of.**
25 MR. ROTH: Nothing further.

145

1 THE COURT: Thank you, Mr. Roth.
2 You may step down, sir. Thank you, very much.
3 (At 12:00 p.m., the witness
4 stepped down from the witness
5 stand.)
6 THE COURT: Ladies and Gentlemen of the Jury,
7 we're going take a short break now. We'll have
8 Mr. Adkins take you back to the jury room.
9 (At 12:01 p.m., the jury left the
10 courtroom.)
11 THE COURT: Take about ten minutes.
12 MR. MORLEY: Thank you, Judge.
13 (At 12:01 p.m., recessed;
14 reconvened at 12:14 p.m.)
15 THE COURT: Mr. Morley, are you ready for the
16 jury?
17 MR. MORLEY: Yes, sir.
18 THE COURT: Mr. Roth, are you ready for the
19 jury?
20 MR. ROTH: We are, Your Honor.
21 THE COURT: Let's bring them in.
22 (At 12:16 p.m., the jury entered
23 the courtroom.)
24 THE COURT: Please be seated.
25 Mr. Roth, you may call your next witness, sir.

146

1 MR. ROTH: Thank you, Your Honor. People call
2 Brianna Owens.
3 THE COURT: Please raise your right hand.
4 Do you swear or affirm to tell the truth, the
5 whole truth, and nothing but the truth?
6 MS. OWENS: Yes, I do.
7 THE COURT: Please be seated. State your full
8 name, and spell both your first and last name for us.
9 THE WITNESS: All right. My name is Brianna
10 Nicole Owens. B-R-I-A-I-N-N-A O-W-E-N-S.
11 MR. ROTH: Thank you, Your Honor.
12 BRIANNA N. OWENS
13 called by the People at 12:17 p.m., sworn by the Court,
14 testified:
15 DIRECT EXAMINATION
16 BY MR. ROTH:
17 Q. Good afternoon, ma'am.
18 A. Hi.
19 Q. I apologize. Just one moment. In December of 2014,
20 where did you work?
21 A. **I worked at Mugg & Bopps in Stockbridge, Michigan.**
22 Q. What is the Mugg & Bopps in Stockbridge, Michigan?
23 A. **It's a gas station.**
24 Q. What other name is it known by?
25 A. **Marathon, sorry.**

147

1 Q. That's okay. Showing you People's Exhibit 17 already
 2 admitted. Is that the front area of the Mugg & Bopps
 3 Marathon station?
 4 **A. The front side, yeah, side view.**
 5 Q. How long had you worked there?
 6 **A. From October of 2014 until April 2015.**
 7 Q. I'm sorry, I didn't hear. When in 2014 did you start?
 8 **A. October.**
 9 Q. October?
 10 **A. Mm-hmm.**
 11 MR. ROTH: May I approach the witness,
 12 Your Honor?
 13 THE COURT: Yes.
 14 BY MR. ROTH:
 15 Q. (Approaching the witness.)
 16 Showing you Proposed Exhibit 52. Is that a
 17 fair and accurate picture of the front?
 18 **A. Yes, it is.**
 19 MR. ROTH: Your Honor, I'd move for the
 20 admission of People's 52.
 21 MR. MORLEY: Without objection.
 22 THE COURT: People's Exhibit 52 is admitted and
 23 received.
 24 (At 12:18 p.m., PX#52 is
 25 received.)

148

1 BY MR. ROTH:
 2 Q. All right. So this is the front area. Is that correct?
 3 **A. Yes.**
 4 Q. And could you show us, generally, this road and this
 5 view, where is that on this picture? There is a screen
 6 in front of you. If you touch it, it will make a mark.
 7 **A. Okay. This takes you up towards Webberville. This is**
 8 **the side view in your first exhibit you showed us, and**
 9 **this is the front of the store.**
 10 Q. So the first view looks towards the road?
 11 **A. Yes.**
 12 (Illustrating.)
 13 Q. In addition to gas, what did the Mugg & Bopps sell?
 14 **A. Everything. Cigarettes, snacks, drinks. Just about**
 15 **everything.**
 16 Q. Did you, over the course of your job there, get to know
 17 some of the customers, have some familiarity with them?
 18 **A. Quite a few.**
 19 Q. Do you see any of them in the courtroom today?
 20 **A. I saw a couple, actually.**
 21 Q. Okay. Let me be more specific. Is there one that you
 22 knew buy the name of John Kelsey?
 23 **A. Yes.**
 24 Q. Do you see him in the courtroom today?
 25 **A. Um --**

149

1 Q. Could you please point him out and identify him for the
 2 record?
 3 **A. (Pointing.)**
 4 MR. ROTH: Your Honor, I'd ask that the witness
 5 has identified the Defendant.
 6 MR. MORLEY: Without objection, Your Honor.
 7 THE COURT: The record will reflect that the
 8 witness has identified Mr. Kelsey.
 9 MR. ROTH: Thank you, Your Honor.
 10 BY MR. ROTH:
 11 Q. So in October, November, and December, let's talk --
 12 **A. Okay.**
 13 Q. -- October, November, let's say, how often were you
 14 seeing him come into the Marathon station?
 15 **A. It wasn't too often. I mean, he wasn't a regular**
 16 **customer that I usually see, like, every day. He was**
 17 **once or twice a week, maybe, while I was working there.**
 18 **I can't speak for the other employees, though.**
 19 Q. So once or twice per week just while you were there?
 20 **A. Yes.**
 21 Q. And during that time, did you get to learn anything about
 22 what he was coming to the store for? Do you understand
 23 what I'm saying?
 24 **A. Yes, yes.**
 25 Q. Go ahead.

150

1 **A. I believe he was a smoker of the dark green American**
 2 **Spirits. My manager, Maryann, I don't know if you met**
 3 **her yet, but she agreed. That's the only regular item**
 4 **that I can think of.**
 5 Q. All right. Tell me the name of the cigarettes again.
 6 **A. American Spirits.**
 7 Q. Was that a fairly unique thing to purchase?
 8 **A. No, no.**
 9 Q. Very good. Those specific brand of cigarettes are common
 10 there?
 11 **A. Yes.**
 12 Q. Very good. Was there anything that you would commonly
 13 see him wear?
 14 **A. No. I couldn't tell you, I'm sorry.**
 15 Q. Anything as it relates to a hat?
 16 **A. He might have worn a beanie a couple times if I'm**
 17 **thinking of the right person, but I cannot be too sure.**
 18 **I'm sorry.**
 19 Q. That's all right. Did you give -- did you speak to a
 20 police officer earlier on?
 21 **A. Yes, I did.**
 22 Q. Would reviewing that statement refresh your memory?
 23 **A. Okay.**
 24 MR. ROTH: May I approach the witness,
 25 Your Honor?

151

1 THE COURT: You may.

2 BY MR. ROTH:

3 Q. (Approaching the witness.)

4 I have actually highlighted two things. If you

5 can read those silently to yourself and then look up.

6 Did that refresh your memory?

7 A. **Yes, it does.**

8 Q. What did you usually see him wearing?

9 A. **A black hat, a black beanie.**

10 Q. And I want to ask you, did this refresh your memory as to

11 the cigarettes?

12 A. **Oh, I already remembered the cigarettes. It was the dark**

13 **green American Spirits.**

14 Q. All right. And isn't it true that you told the officer

15 that he's the only person that you ever sold that

16 particular kind to?

17 A. **That particular kind, yes.**

18 Q. Very good. Are there windows in the front of the

19 Marathon store so you could see out when you're working?

20 A. **Yes. Is it okay if I draw on the screen?**

21 Q. Absolutely.

22 A. **Okay. Past the gas pumps in this area, they're the only**

23 **windows that you could actually get a clear view out of.**

24 **(Illustrating.)**

25 **All these windows here are covered by posters.**

152

1 **So the ones right by the register are the ones that you**

2 **can actually see out of, but you have a whole view of the**

3 **area.**

4 Q. And over the course of the time that you serve the

5 Defendant at the store, did you learn what kind of

6 vehicle he was driving?

7 A. **At first, like I said before, I couldn't remember if it**

8 **was a red Jimmy or a red Blazer, but it was of that kind,**

9 **but then I have seen him a couple times in the white SUV.**

10 Q. Did it switch at some point from the red Blazer to the

11 white SUV?

12 A. **Not after I seen him in the white SUV, no.**

13 Q. So at first it's the red SUV, and then it's the white

14 SUV?

15 A. **Yes.**

16 Q. Do you know roughly when that transition was made to the

17 white SUV?

18 A. **It wasn't long before the accident. It may be -- I**

19 **possibly seen him two or three times before. I'm sorry**

20 **that I can't --**

21 Q. That's okay.

22 A. **-- remember clearly, but --**

23 Q. And --

24 A. **-- it was not long.**

25 Q. What did you observe about what kind of SUV it was?

153

1 A. **Yukon comes to mind, but, like I said --**

2 Q. Would the report refresh your memory again?

3 A. **Yes.**

4 Q. (Approaching the witness.)

5 Very good. Same page. Read this top one to

6 yourself and look up when you're done. Did that refresh

7 your memory?

8 A. **Yes. I apologize.**

9 Q. That's okay.

10 A. **It's been so long.**

11 Q. That's why they write down the statements. So what did

12 you tell the officers then about that?

13 A. **Just pretty much the same thing I'm telling now. I**

14 **didn't have much to say. I wasn't personal with him. I**

15 **just --**

16 Q. What about the kind of vehicle it was?

17 A. **It was a Denali.**

18 Q. Denali SUV?

19 A. **Yes.**

20 Q. And what color?

21 A. **White.**

22 Q. Thank you. At some point during your testimony you

23 referenced the accident. You're referring to when Deputy

24 Whitaker was killed in Stockbridge?

25 A. **Yes.**

154

1 Q. Working in Stockbridge, was that a fairly big deal?

2 A. **Yes, yes.**

3 Q. And did you see some of the posters that were put up

4 trying to help identify that vehicle afterwards?

5 A. **Posters, no, I did not. But on Facebook I had seen --**

6 Q. The vehicle?

7 A. **-- a lot of it, yes.**

8 Q. And did you associate that with what you saw the

9 Defendant driving?

10 A. **Yes, yes. Plus working there, I was able to see the**

11 **actual video footage of him arriving to the store,**

12 **pumping gas. So I firsthand that.**

13 Q. Very good. And after the accident, did you ever see the

14 Defendant drive that vehicle to the Marathon again?

15 A. **I never seen him since the accident.**

16 MR. ROTH: Nothing further, Your Honor.

17 THE COURT: Thank you, Mr. Roth.

18 Mr. Morley?

19 CROSS-EXAMINATION

20 BY MR. MORLEY:

21 Q. Ma'am, you also told the police you hadn't seen him in a

22 while because you switched shifts, right?

23 A. **Yes. A couple of times a week I go from morning shift to**

24 **night shift.**

25 Q. In fact, you told the police you hadn't seen him since

155

1 November because you switched shifts, right?

2 **A. Yes. If I'm -- yes.**

3 Q. Do you know John Kelsey, or is he just some guy that

4 comes in the store?

5 **A. He's just a customer that comes in the store.**

6 Q. Do you recall any specifics about this white car you're

7 talking about?

8 **A. No. It was a nicely looking white Denali.**

9 Q. Brand new, old?

10 **A. It looked fairly new, yes.**

11 Q. What's fairly new to you?

12 **A. 2006, 2007. Like I said, I never really got a good clear**

13 **view of it. I never sat and stared. I just knew it was**

14 **a white SUV.**

15 Q. Any other specifics about it?

16 **A. No. It was in great condition.**

17 MR. MORLEY: That's all I have.

18 Thank you.

19 THE COURT: Thank you, Mr. Morley.

20 Mr. Roth?

21 MR. ROTH: No redirect.

22 THE COURT: Thank you, Mr. Roth.

23 You may step down, ma'am.

24 THE WITNESS: Thank you.

25 (At 12:26 p.m., the witness

156

1 stepped down from the witness

2 stand.)

3 THE COURT: Mr. Roth, you may call your next

4 witness.

5 MR. ROTH: People call Nicole Sweeny.

6 THE COURT: Ma'am, please raise your right

7 hand.

8 Do you swear or affirm to tell the truth, the

9 whole truth, and nothing but the truth?

10 MS. SWEENY: Yes, I do.

11 THE COURT: Please be seated.

12 State your full name for us, and spell it,

13 please.

14 THE WITNESS: Nicole Butchbatch Sweeny.

15 Spell my whole name?

16 THE COURT: Please.

17 THE WITNESS: N-I-C-O-L-E B-U-T-C-H-B-A-T-C-H

18 S-W-E-E-N-Y.

19 MR. ROTH: Thank you.

20 NICOLE B. SWEENY

21 called by the People at 12:26 p.m., sworn by the Court,

22 testified:

23 DIRECT EXAMINATION

24 BY MR. ROTH:

25 Q. Good afternoon, ma'am.

157

1 **A. Good afternoon.**

2 Q. In December of 2014, where did you live?

3 **A. 4115 Morton Road, Stockbridge, Michigan.**

4 Q. How long had you lived in Stockbridge?

5 **A. A year and three months.**

6 MR. ROTH: May I approach the witness,

7 Your Honor?

8 THE COURT: Yes.

9 BY MR. ROTH:

10 Q. (Approaching the witness.)

11 I'm going to show you what's been marked as

12 Proposed Exhibits 50 and 51. Are these fair and accurate

13 pictures of the area in Stockbridge where you live?

14 **A. Yes.**

15 MR. ROTH: Your Honor, I move for the admission

16 of the 50 and 51.

17 MR. MORLEY: Without objection.

18 THE COURT: Exhibits 50 and 51 are admitted and

19 received.

20 (At 12:27 p.m., PX#50 and PX#51

21 are received.)

22 BY MR. ROTH:

23 Q. Showing you Exhibit 50, could you -- if you touch the

24 screen in front of you, it will make a mark. In December

25 of 2014, where were you living? Where was your home?

158

1 **A. (Illustrating.)**

2 **Right there.**

3 Q. Okay. Up here in the northeast corner?

4 **A. Correct.**

5 Q. Very good. I'm showing you Exhibit 4. That's around

6 this area on Morton Road that we see?

7 **A. Yes.**

8 Q. And for those of us that don't live in the Stockbridge

9 area, could you describe that area of Morton Road for us?

10 What kind of area is it?

11 **A. Rural.**

12 Q. Rural? Are there farms there?

13 **A. Yeah.**

14 Q. Showing you Exhibit 50 again. Does your home share a

15 driveway?

16 **A. Yes.**

17 Q. And that's with 4109 Morton Road?

18 **A. Yes.**

19 Q. About how far off Morton Road were your houses?

20 **A. I don't know, an eighth of a mile, maybe.**

21 Q. And what about between the two houses? How close were

22 they?

23 **A. I'm not good at distance.**

24 Q. That's okay. Just give us an idea in the courtroom. As

25 far as the doors?

159

1 **A. It's further than that.**
 2 Q. As far as the window in the hallway?
 3 **A. Probably to the outer window.**
 4 Q. Okay. So if I go through these doors, it's another five,
 5 six feet to the second one; that window?
 6 **A. No. Further.**
 7 Q. In the hallway?
 8 **A. Yeah.**
 9 Q. I understand. In December of 2014, did you know the
 10 person that lived at 4019 Morton Road?
 11 **A. Yes.**
 12 Q. When I say know, was it somebody you were friends with?
 13 **A. No.**
 14 Q. Somebody that you had seen near your residence at their
 15 residence?
 16 **A. Acquainted with, yeah.**
 17 Q. Very good.
 18 **A. You know, I introduced myself to my neighbor. So...**
 19 Q. How often did you see this person at that residence?
 20 **A. A few times a week.**
 21 Q. What is a few times to you?
 22 **A. Three, four times a week.**
 23 Q. Do you know about how often -- excuse me, how long that
 24 person had lived in that residence? Just an estimate.
 25 **A. Through the -- before the summer.**

160

1 Q. So before the summer of 2014?
 2 **A. Yeah. I think he moved in, in the winter.**
 3 Q. Okay. Do you see that person in the courtroom today?
 4 **A. No.**
 5 Q. Okay. Do you know that person's name?
 6 **A. Yes.**
 7 Q. John Kelsey?
 8 **A. Yes.**
 9 Q. You don't see him in the courtroom today?
 10 **A. No.**
 11 Q. Very good.
 12 MR. ROTH: May I approach the witness,
 13 Your Honor?
 14 THE COURT: You may.
 15 MR. ROTH: I'm going to move to admit through a
 16 later witness, but...
 17 BY MR. ROTH:
 18 Q. Proposed Exhibit 174. Is that the person that you knew?
 19 **A. Um --**
 20 Q. Does that look closer to him?
 21 **A. Yeah.**
 22 Q. All right. And you see nobody who has that appearance?
 23 **A. Yes, I do, but I didn't know him well. So...**
 24 Q. All right. That's okay. But this picture looks closer
 25 to how you knew him at the time?

161

1 **A. Yeah.**
 2 Q. Very good. Do you know what kind of vehicle he drove?
 3 **A. He had several vehicles.**
 4 Q. Tell me about them.
 5 **A. A Mustang, maroon, and two SUVs. One that was tan and**
 6 **one that was white.**
 7 Q. The white SUV. Big? Small?
 8 **A. Big.**
 9 Q. And how often did you see him driving that white SUV?
 10 **A. Usually during the week for work.**
 11 Q. That was the common vehicle?
 12 **A. Yeah.**
 13 Q. And living in Stockbridge you are, sort of, in terms of
 14 time familiar with when the accident occurred with Deputy
 15 Whitaker?
 16 **A. Somewhat. I was pregnant. So things were a little herry**
 17 **during that time.**
 18 Q. So you had other issues. All right. So in the week
 19 after that -- if you remember in the week after the
 20 accident, did you ever see the Defendant driving that
 21 white SUV?
 22 **A. No. I never saw the Defendant.**
 23 Q. Did you ever see that white SUV at the residence again
 24 after the accident?
 25 **A. No.**

162

1 Q. And I said Defendant. Let me ask it differently. John
 2 Kelsey; did you ever see him with the white SUV after the
 3 accident?
 4 **A. No.**
 5 Q. And you never saw it at the residence either after that
 6 time?
 7 **A. No.**
 8 Q. All the vehicles would usually be parked outside or --
 9 **A. Yes.**
 10 Q. -- inside of a garage?
 11 **A. Outside.**
 12 MR. ROTH: Nothing further, Your Honor.
 13 THE COURT: Thank you, Mr. Roth.
 14 Mr. Morley, you may question.
 15 MR. MORLEY: Thank you, Judge.
 16 CROSS-EXAMINATION
 17 BY MR. MORLEY:
 18 Q. There is no garage, is there?
 19 **A. No.**
 20 Q. You don't -- you don't know John Kelsey all that well,
 21 right?
 22 **A. No, I do not.**
 23 Q. And, in fact, you said -- you looked around the
 24 courtroom, and you couldn't identify him, right?
 25 **A. Correct.**

163

1 Q. And then the picture you were shown is actually a
 2 driver's license photo with a name on it. I assume you
 3 read the name as well?
 4 A. **Yes.**
 5 Q. Okay. But as you sat here today and were asked and took
 6 your time -- I assume you're competent and able to look
 7 around. Nothing like that?
 8 A. **No. I just got glasses too. So I was blind.**
 9 Q. There is nothing impairing your ability to look around
 10 the courtroom at all?
 11 A. **No. Absolutely not.**
 12 Q. All right. You have previously indicated that -- well,
 13 tell me if I'm right. He's more of a part-time resident
 14 of that house, isn't he?
 15 A. **Yes.**
 16 Q. What does that mean?
 17 A. **From what I understood, he --**
 18 MR. ROTH: Well, Your Honor, I guess I'm going
 19 to object to "what I understood." She can just talk
 20 about her observations.
 21 BY MR. MORLEY:
 22 Q. Without telling me what you were told --
 23 MR. MORLEY: And I'll ask -- do you need to
 24 address that, or do you want me just to move on?
 25 THE COURT: I'll sustain the objection, but you

164

1 can follow up in a different course.
 2 BY MR. MORLEY:
 3 Q. Mr. Kelsey didn't live there seven days a week, or you
 4 didn't notice him seven days a week, correct?
 5 A. **Correct.**
 6 Q. Sometimes he was there. Sometimes he wasn't, right?
 7 A. **Correct.**
 8 Q. And, in fact, he stayed at other residences, which you
 9 probably don't know where they're at, right?
 10 A. **He had told me he stayed at his parents' house.**
 11 Q. Okay. And your husband and him are friends, aren't they?
 12 A. **Yes.**
 13 MR. MORLEY: Okay. That's all I have, ma'am.
 14 Thank you.
 15 THE COURT: Thank you, Mr. Morley.
 16 Mr. Roth?
 17 MR. ROTH: No, Your Honor. Thank you.
 18 THE COURT: You may step down, ma'am.
 19 THE WITNESS: Thank you.
 20 (At 12:34 p.m., the witness
 21 stepped down from the witness
 22 stand.)
 23 THE COURT: Mr. Roth, you may call your next
 24 witness.
 25 MR. ROTH: Thank you, Your Honor. The People

165

1 call Debra Williams.
 2 THE COURT: Right up here, ma'am. Please raise
 3 your right hand.
 4 Do you swear or affirm to tell the truth, the
 5 whole truth, and nothing but the truth?
 6 MS. WILLIAMS: I do.
 7 THE COURT: Please be seated. State your full
 8 name for us, and spell your full name, please.
 9 THE WITNESS: Debra Kay Williams, D-E-B-R-A
 10 K-A-Y W-I-L-L-I-A-M-S.
 11 MR. ROTH: Thank you, Your Honor.
 12 DEBRA K. WILLIAMS
 13 called by the People at 12:35 p.m., sworn by the Court,
 14 testified:
 15 DIRECT EXAMINATION
 16 BY MR. ROTH:
 17 Q. In December of 2014, did you live in Stockbridge?
 18 A. **I did.**
 19 Q. How long had you lived in Stockbridge?
 20 A. **Thirty-six years.**
 21 Q. A long time.
 22 A. **Yes.**
 23 Q. Showing you People's Exhibit 50 on the screen. There is
 24 a screen in front of you. If you touch it with your
 25 finger, it will make a mark.

166

1 Could you circle where you lived in December of
 2 2014?
 3 A. **(Illustrating.)**
 4 Q. Thank you. So just west -- er, excuse me. Just east of
 5 this long driveway?
 6 A. **That's correct.**
 7 Q. And did you share that driveway or have your own
 8 driveway?
 9 A. **I have my own driveway.**
 10 Q. Directing your attention to the house in the northwest,
 11 4109 Morton Road, did you have some familiarity with the
 12 person that lived there?
 13 A. **He was my neighbor.**
 14 Q. So somebody you were friends with, socialized with, or
 15 just saw because he was the neighbor?
 16 A. **Just saw because he was the neighbor.**
 17 Q. How many times had you seen him there, do you think?
 18 A. **Um --**
 19 Q. Routinely? Once or twice?
 20 A. **For a while I would see him often.**
 21 Q. Okay. Do you have an idea in your mind roughly of when
 22 he moved in?
 23 A. **No. The only thing that I can remember is that I**
 24 **realized somebody was living down there, and it was warm**
 25 **weather. That's about all I can tell you.**

167

1 Q. And this warm weather, is that the summer of 2014?
 2 A. **Yes.**
 3 Q. Do you see that person in the courtroom today, the person
 4 that lived at that house?
 5 A. **Yes.**
 6 Q. Could you please point him out and identify him for the
 7 record?
 8 A. **(Pointing.)**
 9 MR. ROTH: Your Honor, I would ask that the
 10 record reflect that the witness has identified the
 11 Defendant.
 12 MR. MORLEY: I wasn't paying attention. Did
 13 she just point or say something?
 14 THE COURT: She did not say anything. She just
 15 pointed.
 16 MR. MORLEY: I'll defer to the Court.
 17 THE COURT: All right. I will -- the record
 18 will reflect that the witness did point to Mr. Kelsey.
 19 MR. ROTH: Thank you, Your Honor.
 20 BY MR. ROTH:
 21 Q. How many vehicles did you ever see the Defendant driving?
 22 A. **Two different vehicles.**
 23 Q. What's the first one?
 24 A. **A red Mustang.**
 25 Q. At some point did you stop seeing him with the red

168

1 Mustang and start seeing him with another one?
 2 A. **Yes.**
 3 Q. Did you know approximately when that was?
 4 A. **It sticks out in my mind that I seen the vehicle. It was**
 5 **roughly around deer season, November 15th.**
 6 Q. So -- and that's 2014?
 7 A. **That's correct.**
 8 Q. So after that time when you no longer see him with the
 9 red Mustang, what kind of vehicle did you see him with?
 10 A. **Repeat that again.**
 11 Q. I'm sorry. So you don't see him with the red Mustang
 12 anymore?
 13 A. **Right.**
 14 Q. What kind of car is he driving now?
 15 A. **It was a white, cream-colored older SUV.**
 16 Q. When you say older, what does that mean?
 17 A. **It was probably -- it was not the newer body style.**
 18 **That's about all I can tell you.**
 19 Q. Very good. SUVs come in all different sizes. Big SUV?
 20 Small SUV?
 21 A. **It appeared to be a full-sized SUV.**
 22 Q. And how often did you see him driving this full-size SUV
 23 in November or December of 2014?
 24 A. **I seen the vehicle come out of the driveway once that I**
 25 **recall when I was going to get my mail.**

169

1 Q. And being a resident of Stockbridge, in your mind you
 2 have an idea of when the accident was that killed
 3 Deputy Whitaker, correct?
 4 A. **That is correct.**
 5 Q. Did you ever see the Defendant with that white SUV after
 6 that accident?
 7 A. **No, I did not.**
 8 Q. Did you ever see that white SUV at that residence again
 9 after the accident?
 10 A. **No, I did not.**
 11 Q. Do you recall seeing, either on the news or around
 12 Stockbridge, posters asking for help identifying the SUV
 13 involved?
 14 A. **Yes, I did.**
 15 Q. What did you think when you saw that SUV?
 16 A. **It looks like my neighbor's vehicle.**
 17 MR. ROTH: I have nothing further, Your Honor.
 18 THE COURT: Thank you, Mr. Roth.
 19 Mr. Morley?
 20 MR. MORLEY: Thank you, Judge.
 21 CROSS-EXAMINATION
 22 BY MR. MORLEY:
 23 Q. Ma'am, I wrote something down. If I did it wrong, tell
 24 me. You saw the vehicle once when she was going to get
 25 -- when you were going to get the mail. Is that an

170

1 accurate statement?
 2 A. **That is correct.**
 3 Q. When was that, if you recall?
 4 A. **When I was going to get the mail?**
 5 Q. Yeah, when you saw the vehicle.
 6 A. **It was roughly around November 15th opening day deer**
 7 **season. It was in that vicinity.**
 8 Q. And this is the white truck we're talking about?
 9 A. **That is correct.**
 10 Q. Did you see who was driving it?
 11 A. **Yes, I did.**
 12 Q. Who was it?
 13 A. **He was a white male with facial hair. The neighbor that**
 14 **lived in the back because he was the same man that was**
 15 **driving the red Mustang that I had seen before.**
 16 Q. Do you know anything more -- and if you don't, just let
 17 me know. Do you know what make of car; Chevy? Ford?
 18 A. **It was a General Motors car.**
 19 Q. Okay. Do you know any model; anything like that?
 20 A. **The first thing that came to my mind was Suburban.**
 21 Q. You indicated it was cream-colored. Is that as opposed
 22 to a plain white or kind of a lighter white?
 23 A. **It just didn't appear to be a bright white. And that's**
 24 **just white cream. That's the best way I can describe it.**
 25 Q. Any distinguishing characteristics to it?

171

1 **A. Not that I remember.**
 2 Q. Do you have to go get the mail at your house?
 3 **A. I do.**
 4 Q. Is there a mailbox out front?
 5 **A. There is.**
 6 Q. Oh, you're going out front to get the mail. I see. Did
 7 Mr. Kelsey's residence have a mailbox?
 8 **A. I don't know if he had a mailbox.**
 9 Q. Okay.
 10 MR. MORLEY: Approach the witness, Your Honor?
 11 THE COURT: Yes.
 12 BY MR. MORLEY:
 13 Q. (Approaching the witness.)
 14 I'll show you a couple of pictures here. I'll
 15 show you what's been marked as Defendant's D. I'd ask
 16 you to take a look at those for just a minute, please.
 17 **A. Okay.**
 18 Q. Do you agree with me those are three separate photos that
 19 show a big SUV, right?
 20 **A. That's correct.**
 21 Q. Can you tell if that's the same vehicle that you've seen
 22 driving on your driveway or the shared driveway?
 23 **A. This one right here, is that what you're asking me?**
 24 Q. Any in the three of those photos.
 25 **A. The center one right here, you know -- you know, the**

172

1 **center one, I guess. I mean --**
 2 Q. Well, I don't want to put words in your mouth. That's
 3 why I said "Can you tell?" If you can't tell, just tell
 4 me, please.
 5 **A. Well, they all look the same.**
 6 Q. But can you tell if those look to be the same car that
 7 you're referencing here, the cream-colored one in your
 8 shared driveway?
 9 **A. I would have to say that the center one, the middle one,**
 10 **looks as close to it as what I saw when it came out of**
 11 **the driveway.**
 12 MR. MORLEY: Okay. I think that's all I have.
 13 Thank you.
 14 THE COURT: Thank you, Mr. Morley.
 15 Mr. Roth?
 16 MR. ROTH: One moment.
 17 REDIRECT EXAMINATION
 18 BY MR. ROTH:
 19 Q. Mr. Morley keeps referring to it as cream. On your
 20 direct examination, did you say white cream. Is that
 21 right?
 22 **A. That's what I'm saying, yes, sir.**
 23 Q. Okay.
 24 MR. MORLEY: I think that's the middle one.
 25 You might want to correct.

173

1 BY MR. ROTH:
 2 Q. So let's just clarify. When you said the middle one,
 3 you're referring to this one?
 4 **A. That's correct.**
 5 Q. Okay. And you said it's close. Is there anything about
 6 these pictures that's detailed enough that you can tell
 7 if it's the same one?
 8 **A. No, not really.**
 9 MR. ROTH: Very good.
 10 I have nothing further, Your Honor.
 11 THE COURT: Thank you, Mr. Roth.
 12 You may step down, ma'am. Thank you, very
 13 much.
 14 THE WITNESS: Thank you.
 15 (At 12:44 p.m., the witness
 16 stepped down from the witness
 17 stand.)
 18 THE COURT: Mr. Roth, you may call your next
 19 witness.
 20 MR. ROTH: Your Honor, the People call -- and
 21 this will be our final witness of the day -- Detective
 22 Trooper Nicole Hiserote.
 23 THE COURT: Right up here, ma'am. Please raise
 24 your right hand.
 25 Do you swear or affirm to tell the truth, the

174

1 whole truth, and nothing but the truth?
 2 DETECTIVE TROOPER HISEROTE: Yes, I do.
 3 THE COURT: Would you please state your full
 4 name, and spell it for us, please.
 5 THE WITNESS: My name is Nicole Hiserote. It's
 6 spelled N-I-C-O-L-E H-I-S, as in Sam, E-R-O-T-E.
 7 NICOLE HISEROTE
 8 called by the People at 12:45 p.m., sworn by the Court,
 9 testified:
 10 DIRECT EXAMINATION
 11 BY MR. ROTH:
 12 Q. Good afternoon.
 13 **A. Good afternoon.**
 14 Q. Where are you employed?
 15 **A. I'm employed with the Michigan State Police.**
 16 Q. In what capacity?
 17 **A. I am currently a detective trooper with the Michigan**
 18 **State Police cyber section computer crimes unit.**
 19 Q. In that capacity, do you have some special training as it
 20 relates to downloading cell phone information?
 21 **A. Yes, I do.**
 22 Q. In that capacity, were you asked to assist the task force
 23 investigation of the police pursuit that killed Deputy
 24 Grant Whitaker?
 25 **A. Yes, I was.**

175

1 Q. Specifically, were you asked to download all of the
2 information contained on two specific cell phones found
3 on his person?
4 A. **Yes, multiple. Oh, two found on his person. That is**
5 **correct.**
6 MR. ROTH: May I approach the witness,
7 Your Honor?
8 THE COURT: You may.
9 BY MR. ROTH:
10 Q. (Approaching the witness.)
11 I'm not going to move for the admission of
12 these at this time, but I'm going to provide you with 170
13 and 172 just in reference to the identifying information.
14 The information that you're actually able to
15 obtain off of the phones, is that different than what you
16 would get from the cell phone company?
17 A. **Yes, it is.**
18 Q. How does it differ?
19 A. **It differs in that what you would get from the cell phone**
20 **company pertaining to dates and times of phone calls,**
21 **that's probably best evidence because the data that's on**
22 **the phone can be manipulated or deleted by the user.**
23 Q. On the other hand, are there things that are on the
24 actual phones that you can't get through the cell phone
25 company?

176

1 A. **That would be correct. Sometimes you can get app data**
2 **usage and so forth.**
3 Q. Could you tell the jury, just briefly, the process by
4 which you can download all the data off of a phone?
5 A. **Basically the first thing we do is we ensure that the**
6 **phone is on airplane mode, which means basically we're**
7 **taking it off of the cellular network and that it's not**
8 **connected to any wireless Internet or anything like that,**
9 **and we do that to try to protect the information as it**
10 **is.**
11 **There are sources that can be used to wipe a**
12 **phone. So the first thing we do is we make sure it's off**
13 **of the network. And then the device, the most commonly**
14 **used one in our office is called Cellebrite, and it has**
15 **step by step instructions for different types of phones.**
16 **Some phones operate differently, and it will**
17 **walk you through each step to get it set just right to**
18 **get an acquisition. Once you connect it, it preloads a**
19 **small client to the phone that basically allows it to get**
20 **a dump of the data that's available. Each phone --**
21 **sometimes you can get a lot of data. Sometimes you can**
22 **get very limit data. It just depends on the particular**
23 **phone and the actual mobile forensic solution that you're**
24 **using. They're constantly trying to update it to be able**
25 **to pull more data off.**

177

1 **There are a couple different kinds of**
2 **accusations you can do. One is physical, which is a bit**
3 **by bit copy of the phone where you're getting every**
4 **single bit of it. And then the other is a logical, which**
5 **is basically the information that would be available to**
6 **the user that's operating the device that they can see on**
7 **their phone.**
8 **Unfortunately you cannot get a physical**
9 **acquisition on every phone. It's pretty limited on which**
10 **phones we can get the physicals from.**
11 MR. ROTH: May I approach the witness,
12 Your Honor?
13 THE COURT: Yes.
14 BY MR. ROTH:
15 Q. (Approaching the witness.)
16 So you have the two pictures of the two
17 physical phones there.
18 A. **Yes.**
19 Q. 183 and 184 proposed exhibits, are these the cell phone
20 downloads that you were able to get from those two
21 phones?
22 A. **Correct.**
23 Q. And these fairly and accurately report all of the data
24 this was available on the phones?
25 A. **Correct.**

178

1 Q. And as you indicated, when you download from a physical
2 phone, if something has been deleted by the user, that
3 doesn't get downloaded. Is that right?
4 A. **That is correct.**
5 MR. ROTH: Your Honor, I would move for the
6 admission of 183 and 184.
7 MR. MORLEY: Without objection, Your Honor.
8 THE COURT: People's Exhibits 183 and 184 are
9 admitted and received.
10 (At 12:49 p.m., PX#183 and PX#184
11 are received.)
12 BY MR. ROTH:
13 Q. We're going to talk about these in detail, but the one
14 thing that I want you to clarify, on the top of 184, it
15 says MSP ICAC. What is ICAC?
16 A. **ICAC stands for Internet Crimes Against Children. It's a**
17 **task force that the Michigan State Police is part of.**
18 Q. This case and this phone, the investigation, has nothing
19 to do with crimes against children, correct?
20 A. **That is correct. However, part of our funding for the**
21 **actual hardware for those forensic solutions is funded by**
22 **Internet Crimes Against Children Task Force.**
23 Q. And that's why it's printed on the top of all of the
24 reports?
25 A. **That is correct.**

179

1 MR. ROTH: I have nothing further of this
2 witness, Your Honor.
3 THE COURT: Thank you, Mr. Roth.
4 Mr. Morley?
5 CROSS-EXAMINATION
6 BY MR. MORLEY:
7 Q. Detective, were you asked to do the same inquiry, for
8 lack of a better phrase, on other phones?
9 A. Yes, I was.
10 Q. How many other phones?
11 A. In total, I believe it was 13 cell phones and one GPS.
12 Q. All right. And that occurred, approximately, when?
13 A. They came in at different points of time.
14 Q. When did it stop? When is the last time you did any work
15 of this nature in this matter?
16 A. I would have to check the reports on the GPS. I -- I'm
17 not sure what month that was. The majority of them came
18 in on the twelfth. I received two and then I received --
19 Q. Separate --
20 A. -- a group following. Yes, December 12th of 2014.
21 MR. MORLEY: That's all I have.
22 Thank you.
23 THE COURT: Thank you, Mr. Morley.
24 Mr. Roth?
25 MR. ROTH: No redirect.

180

1 THE COURT: You may step down, ma'am. Thank
2 you, very much.
3 THE WITNESS: You're welcome.
4 (At 12:51 p.m., the witness
5 stepped down from the witness
6 stand.)
7 THE COURT: I think, Mr. Roth, you said that
8 was the last witness lined up for today?
9 MR. ROTH: It is, Your Honor.
10 THE COURT: All right.
11 Ladies and Gentlemen of the Jury, we are going
12 to recess then for today. And as I have instructed you
13 before, you're not to read, watch, listen to any media
14 reports whatsoever about this case or conduct any
15 investigation or Internet search or anything else
16 pertaining to this case or discuss it with anyone.
17 And we'll have you report back Monday, same
18 thing you've been doing so far, about 8:15 downstairs.
19 Mr. Adkins, I think, on Monday will come down and get you
20 and have a great weekend.
21 THE BAILIFF: All rise.
22 (At 12:52 p.m., the jury left the
23 courtroom.)
24 THE COURT: All right.
25 Please be seated.

181

1 MR. ROTH: Can we go off of the record for a
2 second?
3 THE COURT: Sure.
4 (At 12:52 p.m., recessed;
5 reconvened at 1:12 p.m.)
6 THE COURT: We're back on the record in People
7 versus Kelsey, 14-1380-FH. And we're here on the record
8 for purposes of a hearing on writ of capias that I
9 ordered. And I understand that Mr. Hildabridle, Brian
10 Allan Hildabridle, has been detained, and he's here.
11 And that Mr. Banks -- I was told informally
12 Mr. Banks would probably be representing him, and
13 Mr. Banks is here.
14 Mr. Banks, you are representing
15 Mr. Hildabridle?
16 MR. BANKS: I am, Your Honor, as retained this
17 morning.
18 THE COURT: Okay.
19 MR. BANKS: I have not had an opportunity to
20 discuss this matter at any length whatsoever with my
21 client, but I have been retained this morning. So...
22 THE COURT: Do you need time to talk with him
23 now?
24 MR. BANKS: Not particularly here. I think
25 I've got a pretty good grasp on what we need to do today.

182

1 THE COURT: Okay. So let's bring him in then.
2 MR. BANKS: Thank you.
3 (At 1:14 p.m., Brian Hildabridle
4 entered the courtroom.)
5 THE COURT: Sir, are you Brian Allen
6 Hildabridle?
7 MR. BRIAN HILDABRIDLE: I am.
8 THE COURT: Mr. Hildabridle, we are here this
9 afternoon based on an order that I issued, a writ of
10 capias, resulting in your detention because you are
11 believed to be a material witness in this case.
12 We're going to have a proceeding about that
13 right now and about your detention in this matter. And
14 you are being represented, as I understand it based on
15 what I was just told a moment ago on the record, by
16 Mr. Darryl Banks, who is standing next to you, correct?
17 MR. BRIAN HILDABRIDLE: Correct.
18 THE COURT: All right. And part of this
19 proceeding is to -- there are a couple of parts to it.
20 One is, of course, for me to determine whether you are,
21 in fact, a material witness and to give you an
22 opportunity to be heard regarding that and regarding your
23 detention in this matter until you testify and for me to
24 determine whether there is a risk of your testimony not
25 being available if I do not detain you further and also

183

1 the matter of setting bail in this matter.
2 And so I don't know how you want to proceed,
3 Mr. Roth. Do you have any comment before we proceed?
4 MR. ROTH: At some point I would like to be
5 heard as to what the bond is set at. Whether the Court
6 wants to hear from me now or hear from me later, I'm at
7 your discretion.
8 THE COURT: I have no preference.
9 Mr. Banks, do you want to be heard first?
10 MR. BANKS: Sure, Your Honor. MCLA 767.35
11 relative to writs of capias involve what we're doing here
12 today. I briefly explained that to my client relative to
13 whether he's a material witness or not. I would note
14 from a brief review of part of a transcript from a
15 preliminary exam that's been taken sometime in the past,
16 he has been called. I haven't discussed his rights with
17 him at length relative to whether he will be able --
18 whether he wants to testify, whether he doesn't want to
19 testify, whether he wants to assert his Fifth Amendment
20 right against self-incrimination. I haven't spoken to
21 him about that. I'm sure --
22 THE COURT: And that's all -- that's all
23 something that can be addressed at a later point --
24 MR. BANKS: Correct.
25 THE COURT: -- in any event.

184

1 MR. BANKS: Correctly -- correct, Your Honor,
2 that's true. As far as him being released up and to that
3 point, his sister came and hired me. He has family in
4 the area. He has a job in the area. He has a brother in
5 the area, a sister in the area, a father in the area. I
6 know these things.
7 If he is deemed to be a material witness simply
8 from the transcript, and I understand that's probably the
9 facts that he testified to there, if that's the case,
10 then the Court just simply needs to set a surety bond,
11 and I would submit that he'll do what he can do to try to
12 post that or through his family or otherwise, but I want
13 it to be something reasonable.
14 THE COURT: All right. And do you have a
15 position as to what that amount should be?
16 MR. BANKS: Well, of course it would be a
17 personal recognizance bond, but the Court is not going to
18 grant that. I mean, as low as possible. He does have
19 limited means what he can come up with.
20 He has testified under oath before too,
21 Your Honor. You know, I think he'll appear.
22 THE COURT: All right. Thank you, Mr. Banks.
23 Mr. Roth?
24 MR. ROTH: I respect counsel's position, but I
25 don't think there is any reasonable hope that if released

185

1 that the -- not the Defendant, I'm sorry --
2 Mr. Hildabridle will appear simply because we ask him
3 politely to.
4 The Court in the writ of capias or the petition
5 for capias had some documentation of the months of effort
6 that were put into trying to find him. Counsel talks
7 about his ties to the community. We talked to all of
8 those people and none of them knew where we could find
9 him. So his ties to the community do not assist us in
10 that regard and should not be considered.
11 Moreover, many of them were either lying to
12 officers or gave information that the Defendant had lied
13 -- I'm sorry, not the Defendant -- Mr. Hildabridle had
14 lied to them. So, again, it belies this idea that he's
15 going to appear if released.
16 Moreover, since the writ of capias was issued,
17 the -- there were multiple teams of officers working
18 almost around the clock to find him, and it took hundreds
19 of hours to do so. And it is my understanding that when
20 they found him, he was hiding or attempting to hide
21 underneath a truck. So going through every effort
22 possible to avoid service and avoid arrest and avoid
23 testifying. He will testify on Tuesday of next week.
24 So I'm going to ask the Court to set bond or
25 bail at \$250,000 pending that time. After his testimony,

186

1 he can obviously be released.
2 THE COURT: And, Mr. Roth, I take it there is
3 no, at least based on the presentation that was in the
4 request for the writ of capias and based upon the
5 references in the -- in the preliminary exam transcript,
6 there is no question that he's a material witness?
7 MR. ROTH: None at all.
8 THE COURT: He is anticipated to testify in
9 what regard just for the record?
10 MR. ROTH: Just for the record, he took a
11 confession from the Defendant. Shortly after the
12 accident, he called -- excuse me, the Defendant called
13 Mr. Hildabridle and said that he had just fled from the
14 police on the back roads of Stockbridge.
15 In addition, he was with the Defendant on the
16 evening in question and witnessed and testified to him
17 drinking throughout the evening. In his initial
18 statement to police he described the Defendant being in a
19 white SUV that night. At the preliminary examination, he
20 didn't believe it was white, but obviously that would
21 make him extremely material to the case.
22 THE COURT: All right.
23 Mr. Morley, I'm not sure you have standing, in
24 any event, to make a statement or take a position, but
25 I'm going to defer to you and give you an opportunity

187

1 nonetheless.

2 MR. MORLEY: I'll defer to the Court, Your
3 Honor. I appreciate the accomodation, but I'll defer to
4 the Court. Thank you.

5 THE COURT: All right.

6 Mr. Banks, anything further in response to the
7 prosecutor's statement?

8 MR. BANKS: Well, you know, having been
9 involved in this case for less than a few hours, I was
10 able to read the transcript. I would note from the
11 transcript from the preliminary exam, if that is what
12 Mr. Roth is speaking of, there was some -- certainly some
13 testimony relative to what he witnessed on this
14 particular night.

15 I never saw the word fled from the police at
16 any point in there, but I haven't read all of it yet.
17 His freedom has been taken away. He's a witness, and
18 that's -- he's not the Defendant in this case. He's not
19 been arrested by a special writ. He's here. I
20 understand that there has been work put into this. I
21 think he realizes now if the Court even took at face
22 value what's being said by the prosecutor as far as his
23 efforts to hide, he realizes where he's going to be back
24 to and otherwise as far as that's concerned. He'll be in
25 even deeper trouble if he doesn't appear.

188

1 So his freedom has been taken away. A bond has
2 to be set. \$250,000 bond is something we set generally
3 for someone charged with a very serious felony. He's a
4 witness. So I'd ask it to be reasonable, Your Honor, so
5 that his family could possibly post this.

6 THE COURT: Mr. Roth, anything further?

7 MR. ROTH: If he was going to be held for
8 several months, I would say 250 was excessive. Given
9 that no matter what he's going to be out in a week, I
10 think it's appropriate.

11 THE COURT: All right. Well, it -- it does
12 appear that efforts were made to compel his appearance by
13 way of subpoena and not -- originally not by way of
14 issuing a writ of capias and that those efforts were
15 unsuccessful, at least as represented in part because
16 Mr. Hildabridle was making efforts not to be served with
17 the subpoena.

18 Based upon the statements of the prosecutor, it
19 appears that that continued even after the writ of capias
20 was issued; that there was extensive efforts made to
21 attempt to locate him, and I don't have any reason to --
22 to disbelieve the prosecutor's statement that at the
23 point in time he was apprehended, he was, in fact,
24 hiding. If he was hiding under a vehicle, I think that
25 pretty much shows the state of mind of Mr. Hildabridle as

189

1 far as returning for purposes of testimony.

2 He is, in fact, a material -- it does appear
3 that he is a material witness based upon the
4 representations of the prosecutor as to what he -- what
5 knowledge or information he has. Whether or not he's
6 going to testify to that, I, of course, have no way of
7 knowing. But at least based on the investigation what
8 information he has does make him a material witness.
9 There is a danger of a loss of his or her testimony. His
10 testimony in particular based upon what I know so far.

11 Mr. Banks, I guess the thing I didn't do is
12 give Mr. Hildabridle a chance to speak, but do you want
13 -- do you want to confer with him? Does he want to make
14 a statement?

15 MR. BANKS: I believe he -- he certainly has a
16 difference in opinion on the he was running or hiding
17 side of it. I know that I didn't address that in
18 Mr. Roth's last statement, but I believe -- my client has
19 told me that he was not hiding. He's been in the area.

20 It took a lot of time, it took a lot of time,
21 but I still think a reasonable bond for a surety bond for
22 his release would be warranted in this case. After all,
23 he did give two voluntary statements to the police. He
24 also appeared at the preliminary exam on this case and
25 has already testified under oath, been questioned by

190

1 Mr. Roth and cross-examined by Mr. Morley.

2 THE COURT: All right. So your statement is on
3 his behalf --

4 MR. BANKS: Yes, yes.

5 THE COURT: -- obviously. You're not asking
6 that he individually make any statement?

7 MR. BANKS: I would advise against that, and
8 he's taking my advice.

9 THE COURT: All right. Well, as I said, it
10 does appear that he's a material witness. It does appear
11 that there is a danger of loss of testimony unless he
12 either furnishes bail or is committed. This is a
13 significant case in the sense that there are a lot of
14 witnesses, there is a lot invested in this case as far as
15 the appearance, and it's unlike other types of hearings
16 where we could, perhaps, reconvene at some point in the
17 future if a witness doesn't appear and then is later
18 apprehended and we can just reconvene the hearing. It
19 would not be practical to do that with regard to the
20 trial in this matter. So I do think there needs to be a
21 significant requirement for recognizance and furnishing
22 of bail or bond.

23 So it is ordered that he -- that
24 Mr. Hildabridle enter into a recognizance with a surety
25 and furnish bail in the amount of \$100,000 for his

191

1 appearance at the above-captioned trial that I have just
2 referred to it. And it is further ordered that he's
3 committed to the Ingham County Jail until he enters such
4 recognizance and furnishes bail or is otherwise
5 discharged by the Court.

6 MR. ROTH: Your Honor, in the event that he is
7 able to make that bond, can the Court order a GPS tether?

8 THE COURT: I will add that as a condition if
9 he posts bond.

10 MR. ROTH: Thank you, Your Honor.

11 THE COURT: Any questions, Mr. Banks?

12 MR. BANKS: None, Your Honor.

13 THE COURT: We will prepare the -- I'll prepare
14 the order and furnish you a copy before you leave this
15 afternoon, Mr. Banks.

16 MR. BANKS: All right, Your Honor. Thank you.

17 THE COURT: Thank you.

18 (At 1:27 p.m., Mr. Brian
19 Hildabridle was escorted from the
20 courtroom.)

21 THE COURT: Mr. Morley, I'm going to furnish a
22 copy to you as well, sir.

23 Mr. Roth, we'll provide you a copy.

24 Mr. Banks, if you'll wait one minute, we'll
25 provide you a copy as well.

192

1 Is there anything else for the record in this
2 matter today, Mr. Roth?

3 MR. ROTH: No, Your Honor.

4 THE COURT: Anything, Mr. Banks, on your
5 behalf?

6 MR. BANKS: Nothing, Your Honor. Thank you.

7 THE COURT: Mr. Morley?

8 MR. MORLEY: No, sir, Judge. Thank you.

9 THE COURT: We're adjourned until Monday
10 morning.

11 MR. ROTH: Thank you.

12 MR. MORLEY: Thank you, Judge. Have a good
13 weekend.

14 Thank you, Mr. Banks.

15 Thank you, Mr. Roth.

16 (At 1:30 p.m., the matter was
17 concluded for the day.)

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193


1 STATE OF MICHIGAN)
) SS.
2 COUNTY OF INGHAM)

3
4 CERTIFICATE OF REPORTER

5
6 I, Melinda I. Dexter, Certified Shorthand
7 Reporter, do hereby certify that the foregoing
8 **193 pages** comprise an accurate, true, and complete
9 (Volume 3 of 9) transcript of the proceedings and
10 testimony taken in the case of the **People of the**
11 **State of Michigan** versus **John C. Kelsey II,**
12 **Case No. 14-1380-FH,** on **Friday, May 29, 2015.**

13 I further certify that this transcript of the
14 record of the proceedings and testimony truly and
15 correctly reflects the exhibits, if any, offered by the
16 respective parties. WITNESS my hand this the
17 twenty-third day of November 2015.

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