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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 4

BEFORE THE HON. JAMES S. JAMO, CIRCUIT JUDGE

Ingham County, Michigan - Monday, June 1, 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

REPORTED BY:

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1 Ingham County, Michigan
2 Monday, June 1, 2015 - At 8:35 a.m.
3 THE COURT: You can be seated, please.
4 We are back on the record in the matter of
5 People versus John Kelsey -- it is File No. 14-1380-FH --
6 for continuation of the jury trial in this matter.
7 And before we bring all of the jurors in, we
8 are going to address an issue that I have spoken about
9 with counsel in regard to an e-mail I received from the
10 prosecutor copied to defense counsel regarding
11 Juror No. 8.
12 So we will bring Juror -- by agreement, we'll
13 bring Juror No. 8 into the courtroom and ask some
14 questions about this matter.
15 So let's bring Juror No. 8 in.
16 (At 8:37 a.m., Juror No. 8
17 entered the courtroom.)
18 THE COURT: Please be seated.
19 Good morning, Juror No. 8.
20 JUROR NO. 8: Good morning.
21 THE COURT: I brought you into the courtroom to
22 ask you some questions about a matter that has come to my
23 attention, and that is a report that you have had some
24 contact with somebody who was a spectator during the
25 court proceedings, at least on Friday.

4

1 Is it true that you have had contact with
2 somebody who has been observing the court proceedings?
3 JUROR NO. 8: Not to my knowledge.
4 THE COURT: Had somebody who was here on Friday
5 in the courtroom, did somebody ride home with you or get
6 in your vehicle after the court proceedings after we
7 dismissed you for the day?
8 JUROR NO. 8: Let's see, I went over to my
9 wife's office, and I had her car. I got to think. But
10 I've had no --
11 THE COURT: You didn't leave with anybody who
12 -- did you leave the courthouse with anybody?
13 JUROR NO. 8: No. I remember just walking out
14 of here like everybody else.
15 THE COURT: And did you get into your vehicle
16 alone?
17 JUROR NO. 8: Let's see, I walked over, got my
18 wife's vehicle. Yeah, I didn't leave with anybody. I
19 had my wife's -- I had my wife's car, I believe, yeah. I
20 got to think back to what I did. I walked over to my
21 wife's building where she works and got her car and then
22 left for the day.
23 THE COURT: All right.
24 JUROR NO. 8: But --
25 THE COURT: But you didn't leave here with

5

1 somebody else in your vehicle?
2 JUROR NO. 8: No, not at all.
3 THE COURT: All right.
4 Mr. Roth, would you like to inquire?
5 MR. ROTH: Nothing, Your Honor. Thank you.
6 THE COURT: Mr. Morley, do you wish to inquire?
7 MR. MORLEY: No, thank you, Judge.
8 THE COURT: Okay. All right.
9 Thank you, Juror No. 8. You can go back with
10 Mr. Adkins.
11 THE BAILIFF: All rise.
12 (At 8:39 a.m., Juror No. 8 left
13 the courtroom.)
14 THE COURT: Mr. Roth, anything to put on the
15 record regarding that?
16 MR. ROTH: Can I have a moment, Your Honor?
17 THE COURT: You all may be seated.
18 MR. ROTH: Just one moment.
19 Brian, can we approach?
20 MR. MORLEY: Sure.
21 (At 8:39 a.m., an at-the-bench
22 discussion is held off the
23 record.)
24 THE COURT: All right. Anything else you want
25 to put on the record regarding that, Mr. Roth?

6

1 MR. ROTH: Not at this time, Your Honor.
2 THE COURT: Mr. Morley?
3 MR. MORLEY: No, sir.
4 THE COURT: Are we ready for the jurors?
5 MR. ROTH: Yes, Your Honor.
6 THE COURT: Mr. Morley, are you ready, sir?
7 MR. MORLEY: Putting a quick stipulation on the
8 record --
9 THE COURT: All right.
10 MR. MORLEY: -- regarding expert testimony.
11 And specifically Sergeant Avery, I believe it was, did
12 not -- his report, or at least the data within his
13 report, was not submitted as an exhibit, in accordance
14 with 703.
15 Brief conversation at the bench, and tell me if
16 I'm saying it wrong, the understanding was Sergeant Avery
17 was allowed to testify as an expert anyway. Assuming my
18 reconstructionist is qualified as an expert, he'll be
19 able to testify that he relied on the reports and data
20 prepared by Sergeant Avery. I think that's the
21 agreement.
22 MR. ROTH: That's correct, Your Honor.
23 THE COURT: That's also my recall also of the
24 discussion, so that will be a stipulation. In other
25 words, it will not be an objection by the prosecutor as

7

1 to the foundation by the defense witness's testimony
 2 relying upon Sergeant Avery's report and calculations.
 3 Correct, Mr. Roth?
 4 MR. ROTH: That's correct, Your Honor.
 5 THE COURT: Correct, Mr. Morley?
 6 MR. MORLEY: Yes, sir.
 7 THE COURT: Okay. With that, are we ready for
 8 the jurors?
 9 MR. ROTH: Yes, Your Honor.
 10 MR. MORLEY: One moment, Your Honor, please.
 11 THE COURT: All right. Sure.
 12 MR. MORLEY: I'm good, Your Honor. Thank you.
 13 MR. ROTH: It just occurred to me we should
 14 probably follow up the Juror 8 discussion with one thing
 15 to put on the record. One of the things Mr. Morley and I
 16 had discussed with Your Honor is that on Friday we
 17 discussed in the courtroom outside the presence of the
 18 jury the stipulation regarding the Defendant's habitual
 19 offender status as well as the prior fleeing and eluding
 20 convictions.
 21 I have offered to excuse this juror. It's my
 22 understanding defense counsel doesn't want to. I just
 23 don't want to make that an appellate issue to the extent
 24 that a solution has been offered now.
 25 THE COURT: And I guess we should probably put

8

1 on the record because I didn't fully state it when we
 2 started is that the reason we spoke with Juror No. 8 this
 3 morning was because the prosecutor or someone -- I don't
 4 know, was it you, Mr. Roth, or somebody in your office
 5 who received the call?
 6 MR. ROTH: Somebody in our office, and then I
 7 followed up.
 8 THE COURT: All right. Somebody in the
 9 prosecutor's office received a telephone call indicating
 10 that someone had observed Juror No. 8 getting into a car
 11 and drive off with someone after the proceedings were
 12 ended on Friday -- drive off with someone who had been in
 13 the audience during the court proceedings sometime during
 14 the day or maybe throughout the day, I don't know which
 15 it is. So that was the reasoning for the questioning.
 16 So with that, Mr. Morley, anything further?
 17 MR. MORLEY: Just that, Your Honor, I haven't
 18 taken the position of endorsing or objecting to Juror
 19 No. 8 post-questioning by the Court. I'm not sure that
 20 there is a sufficient basis to excuse Juror No. 8. All
 21 I'm doing is leaving that to the discretion of the Court.
 22 THE COURT: All right. And as we discussed at
 23 the bench, it does not appear, at least based on the
 24 content of the answers by Juror No. 8, that -- that there
 25 is a sufficient basis to discharge or dismiss Juror No. 8

9

1 absent a stipulation by the parties.
 2 And, again, that's based upon the content of
 3 the statements, not necessarily making any comment as to
 4 the manner in which he responded.
 5 Mr. Roth, anything further?
 6 MR. ROTH: No, Your Honor. I think that will
 7 clean up any appellate issue.
 8 THE COURT: Mr. Morley, anything further?
 9 MR. MORLEY: Nothing further, Judge. Thank
 10 you.
 11 THE COURT: Okay. Let's bring the jurors in.
 12 Just as a reminder to those in the audience in
 13 case you were not here previously, all of your electronic
 14 devices must be turned off, cell phones and any other
 15 kind of electronic devices, attorneys excepted. You
 16 cannot just have them on silent. You have to have them
 17 off. If you are found to have a device on at any point
 18 in time, you'll be removed from the courtroom and not be
 19 allowed to returned to these proceedings today.
 20 (At 8:51 a.m., the jury entered
 21 the courtroom.)
 22 THE COURT: Please be seated.
 23 Good morning, Ladies and Gentlemen of the Jury.
 24 VARIOUS JURORS: Good morning.
 25 THE COURT: I hope you had a great weekend. We

10

1 are ready to proceed this morning.
 2 And, with that, Mr. Roth you may call your next
 3 witness, sir.
 4 MR. ROTH: Thank you, Your Honor. The People
 5 call Mary Utermark.
 6 THE COURT: Ma'am, please raise your right
 7 hand. Do you swear or affirm to tell the truth, the
 8 whole truth, and nothing but the truth?
 9 MS. UTERMARK: I swear.
 10 THE COURT: Please be seated. State your full
 11 name for us, and spell your last name, please.
 12 THE WITNESS: Mary Louise Utermark,
 13 U-T-E-R-M-A-R-K.
 14 MR. ROTH: Thank you, Your Honor.
 15 MARY L. UTERMARK
 16 called by the People at 8:52 a.m., sworn by the Court,
 17 testified:
 18 DIRECT EXAMINATION
 19 BY MR. ROTH:
 20 Q. Good morning, ma'am.
 21 A. Good morning.
 22 Q. In December of 2014, where did you work?
 23 A. I worked at the Mugg & Bopps gas station in Stockbridge.
 24 That's a Marathon --
 25 Q. Is that also --

11

1 I'm sorry. Finish that.

2 **A. It was a Marathon station.**

3 Q. It was the Mugg & Bopps Marathon?

4 **A. Yes.**

5 Q. And in what capacity did you work there?

6 **A. I'm sorry?**

7 Q. In what capacity? What was your role there?

8 **A. I was a manager.**

9 Q. How long had you worked there?

10 **A. I would -- it was almost two years in December.**

11 Q. Do you recall what the address at that location was?

12 **A. 649 West Main Street.**

13 Q. What city?

14 **A. Stockbridge.**

15 Q. Thank you. And what were your responsibilities as the

16 manager there?

17 **A. I was in charge of cashiers, stock, making sure the**

18 **orders were placed, checking video cameras whenever there**

19 **was anything going on that I needed to be aware of,**

20 **assisting in all the -- if anything ever happened in our**

21 **parking lot, I was assisting the cops in finding out what**

22 **it was.**

23 Q. Very good. Thank you. Showing you Exhibit 52. Is that

24 the Marathon Mugg & Bopps station where you worked?

25 **A. Yes.**

12

1 Q. Did you have a customer there --

2 First of all, let me ask you in your role as

3 the manager, were there customers that you got to know on

4 a daily basis or a frequent basis?

5 **A. Quite a few.**

6 Q. And was one of those named John Kelsey?

7 **A. Yes.**

8 Q. Do you see that person in the courtroom today?

9 **A. I do.**

10 Q. Could you please point him out and identify him for the

11 record?

12 **A. It's the Defendant.**

13 Q. Thank you.

14 MR. ROTH: Your Honor, I would ask that the

15 record reflect that the witness has identified the

16 Defendant.

17 THE COURT: Mr. Morley, any objection to that?

18 MR. MORLEY: Your Honor, I'll defer to the

19 Court on that identification.

20 THE COURT: All right.

21 The record will reflect that the witness has

22 identified the Defendant.

23 MR. ROTH: Thank you, Your Honor.

24 BY MR. ROTH:

25 Q. Now, how often would you see him when you were working

13

1 there?

2 **A. Sometimes it was on a daily basis. Sometimes it was**

3 **every other day.**

4 Q. So pretty often?

5 **A. Yes.**

6 Q. Did you ever notice what kind of vehicle he was driving?

7 **A. Yes.**

8 Q. How was it from inside of the store are you able to see?

9 **A. As a gas station clerk, you want to pay attention to the**

10 **vehicles that come in your parking lot to fuel up because**

11 **if they drive off, you want to be able to identify the**

12 **vehicle.**

13 Q. And that's specifically you looked out for because of

14 that?

15 **A. Yes, sir. I know a lot of customers by what they drive.**

16 Q. And in the fall of 2014, so October, November, December,

17 what kind of vehicle did you see him driving?

18 **A. I saw him driving a white Suburban Denali.**

19 Q. I'm sorry?

20 **A. A white Suburban Denali.**

21 Q. Thank you. And you say Denali. Do you recall

22 specifically it being a Denali?

23 **A. I don't, but I think so.**

24 Q. Okay. You're sure about white?

25 **A. Yes.**

14

1 Q. And then let's talk about size. SUVs are big and small.

2 **A. It's a larger size.**

3 Q. Very good. And how often would you see him driving that

4 vehicle during that time?

5 **A. Every time I saw him come in. So maybe not on a daily**

6 **basis but at least every other day.**

7 Q. Working in Stockbridge, did you live there as well?

8 **A. Yes.**

9 Q. Were you aware when the accident occurred that involved

10 Deputy Whitaker?

11 **A. I was.**

12 Q. Was there a time in the next week or so when the police

13 came in and asked for some assistance?

14 **A. Yes.**

15 Q. And did you provide them with some video from your store?

16 **A. I did.**

17 Q. That video was kept in the normal course of business?

18 **A. Yes.**

19 Q. And you had access to it?

20 **A. Yes.**

21 Q. The video was working at that time?

22 **A. It was.**

23 Q. Showing you Proposed Exhibit 53, this disk, had you had

24 an opportunity to review that today?

25 **A. I did.**

15

1 Q. Does it fairly and accurately record the events of
 2 December 5th, 2014?
 3 A. Yes.
 4 Q. And then some still pictures, Proposed Exhibits 54
 5 through 61, taken from that video, are those also fair
 6 and accurate copy from that video?
 7 A. Yes.
 8 MR. ROTH: Your Honor, I move for the admission
 9 of Proposed Exhibits 53 through 61.
 10 MR. MORLEY: Brief voir dire, Your Honor?
 11 THE COURT: You may.
 12 VOIR DIRE EXAMINATION
 13 BY MR. MORLEY:
 14 Q. Ma'am, with respect to these photos, you haven't seen
 15 them today, but they have date stamps and time stamps on
 16 them. Do you know whether these are accurate?
 17 A. They are.
 18 Q. And how do you know that?
 19 A. Because I had -- we had them recalibrated whenever the
 20 times changed in the fall.
 21 MR. MORLEY: Okay.
 22 No objection, Your Honor. Thank you.
 23 THE COURT: Thank you, Mr. Morley.
 24 People's Exhibits 53 through 61 are admitted
 25 and received.

16

1 (At 8:56 a.m., PX#53 through
 2 PX#61 are received.)
 3 MR. ROTH: Thank you, Your Honor.
 4 DIRECT EXAMINATION (CONT'G)
 5 BY MR. ROTH:
 6 Q. So while I set this up, could you tell the jury briefly
 7 what is going to be shown in this video from
 8 December 5th?
 9 A. What is going to be shown in this video is actually the
 10 Defendant coming to the store, entering the store after
 11 walking away from the white Suburban Denali. He comes
 12 in, makes a purchase, goes to the clerk and completes his
 13 purchase, and then proceeds to walk out to the vehicle
 14 and enter on the driver's side.
 15 Q. Thank you.
 16 MR. ROTH: Your Honor, we're going to start
 17 with Channel 4. Last four digits of the file name are
 18 0632 starting at 17:38:40.
 19 BY MR. ROTH:
 20 Q. (Playing PX#53.)
 21 So, first of all, what part of the store are we
 22 looking at in this camera?
 23 A. This is the front door to the store.
 24 Q. Thank you. And then on the left side, what do we have?
 25 A. The clerk's office -- where the clerk sits.

17

1 Q. What do we have over on the right side?
 2 A. Hats and gloves and seasonal things.
 3 Q. And what happens if you go this way straight through the
 4 door?
 5 A. You're entering the store to the coolers.
 6 Q. Thank you. Who do we see enter the store at that time?
 7 A. The Defendant.
 8 Q. At that time, physically does he appear different than he
 9 does now?
 10 A. Yes.
 11 Q. How so?
 12 A. Facial hair and a beanie.
 13 Q. Facial hair. What did he have?
 14 A. He had a full beard that went from his ears all the way
 15 around and he had a mustache that connected to his beard.
 16 Q. And you said a beanie. What does that mean?
 17 A. Like a toboggan, the winter hat that people wear.
 18 Q. What color?
 19 A. Black.
 20 Q. How often did you see him with that black beanie?
 21 A. Almost every time I saw him.
 22 Q. Very good. And what direction does he go when he enters
 23 the store?
 24 A. Towards the coolers.
 25 Q. (PX#53 stopped.)

18

1 All right. That video finishes and we begin
 2 Channel 4. I believe the last four are 3857.
 3 (Playing PX#53.)
 4 (PX#53 stopped.)
 5 Stopping it at 17:39:52. Is the Defendant back
 6 in the picture?
 7 A. Yes.
 8 MR. MORLEY: Objection, Your Honor.
 9 May we approach?
 10 THE COURT: Yes.
 11 (At 9:01 a.m., an at-the-bench
 12 discussion is held off the
 13 record.)
 14 THE COURT: Thank you, Mr. Morley.
 15 Mr. Roth?
 16 MR. ROTH: Thank you, Your Honor.
 17 BY MR. ROTH:
 18 Q. I apologize. I was asking you at -- where we stopped at
 19 17:39:52, does the Defendant re-enter the picture?
 20 A. Yes.
 21 Q. (Playing PX#53.)
 22 And if I need to back it up, let me know. Were
 23 you able to determine what it is he purchased at this
 24 time?
 25 A. He purchased a six pack of beer.

19

1 Q. (PX#53 stopped.)
 2 Thank you. About what time is it that he
 3 leaves the store?
 4 A. **It was about --**
 5 Q. You can give it in military time. That's fine.
 6 A. **It says 17:40.**
 7 Q. All right. So now going to Channel 6, last four digits
 8 2830, starting at 17:39:40.
 9 (Playing PX#53.)
 10 This is just the same transaction from the
 11 opposite angle?
 12 A. **Yes.**
 13 Q. Is one of the cans already removed from the six pack when
 14 he puts it up?
 15 A. **They slip off sometimes.**
 16 Q. (PX#53 stopped.)
 17 Okay. And stopping that angle at 17:40:40.
 18 Final video is Channel 7. Last four digits 4159,
 19 starting at 17:48:20. No. I apologize. Last four
 20 digits are 1144.
 21 (Playing PX#53.)
 22 What do we see in this scene?
 23 A. **The SUV that I saw him driving.**
 24 Q. And that's the, as you described it, the Suburban Denali
 25 than you frequently saw the Defendant drive?

20

1 A. **Yes.**
 2 Q. At that point, he enters the store?
 3 A. **Yes.**
 4 Q. (PX#53 stopped.)
 5 All right. So fast forwarding to 17:40:35.
 6 (Playing PX#53.)
 7 What do we see at that time?
 8 A. **The Defendant walking back to the vehicle.**
 9 Q. (PX#53 stopped.)
 10 Where does he drive out of the Marathon
 11 station?
 12 A. **Most of the time if he was going towards where I'm
 13 assuming he lived, he would drive out towards the left.**
 14 Q. So is that Main Street left?
 15 A. **Main Street ends right at the fork, and it goes to either
 16 52 or it goes towards Chapman Road.**
 17 Q. Very good.
 18 A. **It's Morton, but it goes towards Chapman.**
 19 Q. But that's a left turn out of the Marathon station?
 20 A. **It is.**
 21 Q. Very good. In that video, in addition to the beer, did
 22 we see him purchase something else?
 23 A. **Yes. The cashier reached behind her for cigarettes.**
 24 Q. And when you were working, was there a specific kind of
 25 cigarettes that you sold to him?

21

1 A. **Yes.**
 2 Q. How many other people bought this kind of cigarettes?
 3 A. **None.**
 4 Q. Nobody else?
 5 A. **No.**
 6 Q. What kind of cigarettes are these?
 7 A. **There were American Spirit dark green.**
 8 Q. As the person that was in charge of the inventory and the
 9 ordering, did you keep an eye on these cigarettes?
 10 A. **Yes. Every week.**
 11 Q. Was there actually a tracking system about them?
 12 A. **Just if we looked up the receipt, we could see how many
 13 times they were sold.**
 14 Q. What about the numbers? Were the numbers put on the
 15 packs?
 16 A. **Yes.**
 17 Q. Tell me about that.
 18 A. **We put numbers on the packs of cigarettes so we could
 19 keep an inventory. So whenever I did my interrogatory to
 20 do order, I would know how many I would need to order.**
 21 Q. In the week after the fatal accident with Deputy
 22 Whitaker, did the Defendant ever come in and buy these
 23 cigarettes?
 24 A. **No.**
 25 Q. Did he ever come in at all?

22

1 A. **No.**
 2 Q. Did you ever see the white SUV after that time?
 3 A. **Not that one.**
 4 Q. Did anybody buy those cigarettes after that week?
 5 A. **Not until recently.**
 6 Q. When you say recently, what do you mean?
 7 A. **Within the last two months.**
 8 Q. Very good. And how is it that you know that in the
 9 specific week after the accident nobody else bought those
 10 kinds of cigarettes.
 11 A. **The number was the same.**
 12 Q. The number on the pack?
 13 A. **Yes.**
 14 Q. Do you recall seeing flyers around Stockbridge or on the
 15 news in the week after the fatal accident?
 16 A. **Of the vehicle, yes.**
 17 Q. And what did you think when you saw that vehicle?
 18 A. **I immediately thought of the Defendant.**
 19 MR. ROTH: Nothing further, Your Honor.
 20 THE COURT: Thank you, Mr. Roth.
 21 Mr. Morley, you may cross-examine.
 22 MR. MORLEY: Thank you, Judge.
 23 CROSS-EXAMINATION
 24 BY MR. MORLEY:
 25 Q. Ma'am, in the video we just looked at, you can't see

23

1 anybody getting out of the driver's seat of that vehicle,
2 right, because the whole driver's side is blocked from
3 your view, right?
4 **A. Partially.**
5 **Q.** But you can't see who was driving that vehicle. You only
6 see somebody coming around from the driver's side, right?
7 **A. Yes.**
8 **Q.** Do you know Mr. Kelsey personally?
9 **A. Not outside of the store.**
10 **Q.** Do you know anybody else in this matter? Do you know the
11 victim in this matter?
12 **A. Not outside the store.**
13 **Q.** That's not you working behind the counter in this video,
14 right?
15 **A. It's not.**
16 **Q.** So it's not you that sold him anything, right?
17 **A. No.**
18 **Q.** Were you working that night?
19 **A. No.**
20 **Q.** Do you know anything -- do you have a license plate on
21 this vehicle that we saw in the video?
22 **A. I don't.**
23 **Q.** Do you have any identifying or unique characteristics of
24 it?
25 **A. I don't.**

24

1 **Q.** Let's be clear: This video is December 5th, 2014, at
2 17:38. First of all, 17:38 is about twenty to 6 in the
3 evening, right?
4 **A. Yes.**
5 **Q.** And December 5th is two days before any crash happened,
6 right?
7 **A. Correct.**
8 **Q.** So this video, to your knowledge, has nothing to do with
9 any crash, right?
10 **A. Not the crash.**
11 **Q.** Okay. You are aware that Mr. Kelsey, as of
12 December 13th, was no longer residing in Stockbridge,
13 right?
14 **A. No.**
15 **MR. ROTH:** Your Honor, I'm going to object. I
16 don't think there is a foundation for that question.
17 **THE COURT:** Well, I guess you -- I'll sustain
18 the foundation objection, and you can attempt to lay a
19 foundation if she knows.
20 **BY MR. MORLEY:**
21 **Q.** Do you know whether Mr. Kelsey was residing full time in
22 Stockbridge?
23 **A. I do not.**
24 **Q.** Do you know whether he was living in Stockbridge as of
25 about December 13th of 2014?

25

1 **A. I do not.**
2 **Q.** How many people have you spoken with about this matter?
3 **A. Just my husband.**
4 **Q.** Say again.
5 **A. My husband.**
6 **Q.** Anybody else?
7 **A. No.**
8 **Q.** Talk with people at the store?
9 **A. No.**
10 **Q.** You were interviewed by law enforcement in December,
11 right?
12 **A. Correct.**
13 **Q.** Were you interviewed since?
14 **A. No.**
15 **Q.** You are aware, or you have seen Mr. Kelsey driving a gold
16 Blazer, right?
17 **A. No.**
18 **Q.** And you have seen him driving a red Mustang, right?
19 **A. No.**
20 **MR. MORLEY:** Approach the witness, Your Honor?
21 **THE COURT:** Yes.
22 **BY MR. MORLEY:**
23 **Q.** (Approaching the witness.)
24 I'd like to show you what's been marked as
25 Defendant's Exhibit D and ask you to take a look at

26

1 those. That's three photographs. Take a quick look,
2 please.
3 **Can you tell whether that's the vehicle that**
4 **you're alleging Mr. Kelsey was driving?**
5 **A. It looks like it.**
6 **MR. MORLEY:** That's all I have. Thank you.
7 **THE COURT:** Thank you, Mr. Morley.
8 **Mr. Roth?**
9 **MR. ROTH:** No redirect, Your Honor.
10 **THE COURT:** All right. Thank you, Mr. Roth.
11 You may step down, ma'am. Thank you, very
12 much.
13 **(At 9:16 a.m., the witness**
14 **stepped down from the witness**
15 **stand.)**
16 **THE COURT:** Mr. Roth, you may call your next
17 witness.
18 **MR. ROTH:** Thank you, Your Honor. The People
19 call Trooper David Clark.
20 **THE COURT:** Right up here, sir.
21 **TROOPER CLARK:** Thank you.
22 **THE COURT:** Please raise your right hand.
23 Do you swear or affirm to tell the truth, the
24 whole truth, and nothing but the truth?
25 **TROOPER CLARK:** Yes, sir.

27

1 THE COURT: Please be seated. State your full
 2 name for us, and spell your last name, please.
 3 THE WITNESS: David Clark, C-L-A-R-K.
 4 MR. ROTH: Just one moment, Your Honor.
 5 DAVID CLARK
 6 called by the People at 9:17 a.m., sworn by the Court,
 7 testified:
 8 DIRECT EXAMINATION
 9 BY MR. ROTH:
 10 Q. Good morning, Officer -- er, Trooper. Excuse me.
 11 A. **That's fine.**
 12 Q. Where are you employed?
 13 A. **With the Michigan State Police.**
 14 Q. In what capacity?
 15 A. **Right now I'm a detective trooper working out of Lansing.**
 16 Q. How long have you been with the State Police?
 17 A. **Twenty-two years.**
 18 Q. In that capacity, were you asked to assist in the
 19 investigation of the police pursuit that killed
 20 Deputy Grant Whitaker?
 21 A. **Yes, I was.**
 22 Q. Specifically, did you follow up on some information a few
 23 days after the fatal pursuit involving checking bars?
 24 A. **Yes, I did.**
 25 Q. In what area?

28

1 A. **Southern Livingston County and Northern Washtenaw.**
 2 Q. Could you explain for the jury, for those that don't
 3 know, where that is relative to Ingham County and
 4 Stockbridge, specifically?
 5 A. **Livingston County sits directly to the east of Ingham**
 6 **County, and I'm not sure where the southern borders match**
 7 **up. I was working in Livingston County, which is -- if**
 8 **you're familiar with Pinckney, Pinckney is directly south**
 9 **of Howell. And I was going further south of Pinckney in**
 10 **a little town called Hell.**
 11 Q. Very good. And about how many bars in those areas did
 12 you check?
 13 A. **I was working with two of my partners. So we checked all**
 14 **the bars in southern Livingston County which stretches**
 15 **all the way into Hamburg Township, but the ones that I**
 16 **checked, I probably checked three or four bars myself.**
 17 Q. And your team checked all of the bars in the area?
 18 A. **In southern Livingston, yes.**
 19 Q. When we talk about checking the bars, what specifically
 20 were you doing at each bar?
 21 A. **We had a photograph of the suspect at the time and a**
 22 **photograph similar of a vehicle that we were looking for,**
 23 **and I just went into the bars, and I showed the**
 24 **photograph and basically just asked if they recognized**
 25 **the person or the vehicle.**

29

1 Q. Do you know the name of the person in the photograph that
 2 you had?
 3 A. **I believe it's Kelsey. I don't --**
 4 Q. That's all right.
 5 A. **I'm not for sure.**
 6 Q. Do you see that person in the courtroom today?
 7 A. **Other than the photograph, that's the only contact. I**
 8 **never had contact with him.**
 9 Q. But the person in the photograph, is that the Defendant
 10 in this case to the best your recollection?
 11 A. **Similar. Yes, sir.**
 12 Q. Very good. And did the bars that you checked include the
 13 Dam Site Inn?
 14 A. **Yes. That's the one I checked.**
 15 MR. ROTH: Your Honor, may I approach the
 16 witness?
 17 THE COURT: You may.
 18 BY MR. ROTH:
 19 Q. (Approaching the witness.)
 20 I'm going to show you what's been marked as 62,
 21 63, and 64. If you could take a moment and look at
 22 those.
 23 A. **I'm familiar with the Dam Site. I worked -- this is part**
 24 **of my patrol area for over 20 years.**
 25 Q. Very good. Are these fair and accurate pictures and maps

30

1 of the area?
 2 A. **Yes.**
 3 MR. ROTH: Your Honor, I'd move for the
 4 admission of Proposed Exhibits 62, 63, and 64.
 5 THE COURT: Mr. Morley, do you have any
 6 objection, sir?
 7 MR. MORLEY: Object on relevance, Your Honor.
 8 THE COURT: Mr. Roth?
 9 MR. ROTH: We can come back to it then, and I
 10 will re-move for admission.
 11 THE COURT: All right. So you withdraw the
 12 request at this time?
 13 MR. ROTH: For a couple minutes, Your Honor.
 14 THE COURT: All right.
 15 BY MR. ROTH:
 16 Q. When you take that picture into the Dam Site Inn, did you
 17 make contact with somebody?
 18 A. **I did.**
 19 Q. Do you know the name of that person? Would it be in the
 20 tip sheet?
 21 A. **It would be, yes.**
 22 Q. Very good.
 23 MR. ROTH: May I approach the witness?
 24 THE COURT: You may.
 25 BY MR. ROTH:

31

1 Q. (Approaching the witness.)
 2 If you can read that silently to yourself and
 3 look up when you're done.
 4 Does that refresh your memory?
 5 A. Yes.
 6 Q. What was the name of the person that you made contact
 7 with at the Dam Site?
 8 A. It was Amber Peek.
 9 Q. Is she an employee there?
 10 A. Yes, she is.
 11 Q. Did you show her the picture of the Defendant?
 12 A. Yes, I did.
 13 Q. Did she recognize that as somebody that had been in the
 14 bar?
 15 A. Immediately.
 16 Q. And that's on the specific night in question?
 17 A. Yes, sir.
 18 MR. ROTH: Your Honor, I'd move for the
 19 admission of People's Proposed Exhibits 62, 63, and 64.
 20 THE COURT: Mr. Morley?
 21 MR. MORLEY: I have to apologize, Your Honor.
 22 What exactly are -- I saw pictures of the bar.
 23 MR. ROTH: Bar, map, map.
 24 MR. MORLEY: Same objection, Your Honor.
 25 THE COURT: Mr. Roth?

32

1 MR. ROTH: Your Honor, I think there is
 2 testimony now that the Defendant had been at the bar on
 3 the night in question. The Dam Site Inn is --
 4 MR. MORLEY: Well, I --
 5 MR. ROTH: -- relevant.
 6 MR. MORLEY: I apologize. I stepped on you. I
 7 apologize.
 8 THE COURT: Go ahead, Mr. Morley.
 9 MR. MORLEY: I don't think it's been
 10 established that he was at the bar in the night in
 11 question.
 12 MR. ROTH: I think that's exactly what the
 13 witness just said.
 14 THE COURT: Let's ask him again.
 15 BY MR. ROTH:
 16 Q. So you showed Amber Peek the picture of the Defendant.
 17 Did she recognize that as somebody that had been in the
 18 bar on the night in question?
 19 A. Yes, sir.
 20 Q. Did you use the word immediately when you testified the
 21 first time?
 22 A. I -- she recognized the person immediately and said "Yes.
 23 He was in the bar."
 24 MR. ROTH: Thank you, Your Honor.
 25 THE COURT: Mr. Morley?

33

1 MR. MORLEY: Voir dire, Your Honor?
 2 THE COURT: You may.
 3 MR. MORLEY: Approach the witness, Your Honor?
 4 THE COURT: Yes.
 5 VOIR DIRE EXAMINATION
 6 BY MR. MORLEY:
 7 Q. (Approaching the witness.)
 8 Trooper, what day did Ms. Peek say she saw
 9 Mr. Kelsey in the Dam Site bar?
 10 A. I was asking about Saturday night.
 11 Q. December 6th?
 12 A. If that was the Saturday night in question, yes, sir.
 13 Q. Well, if you looked at -- you recently looked at a tip
 14 sheet. If I showed that to you again, would that help
 15 refresh your memory?
 16 A. Certainly.
 17 Q. Read that to yourself, please.
 18 A. It would be the sixth.
 19 MR. MORLEY: Your Honor, I'm just pointing out
 20 that there is no evidence that Mr. Kelsey was in the bar
 21 the night in question. December 6th is the day before.
 22 THE COURT: Mr. Roth?
 23 MR. ROTH: I can further develop that if need
 24 be.
 25 THE COURT: All right.

34

1 DIRECT EXAMINATION (CONT'G)
 2 BY MR. ROTH:
 3 Q. What day comes after the sixth?
 4 A. The seventh.
 5 Q. And what hours are bars open?
 6 A. It would go from the sixth to the seventh. Obviously at
 7 midnight it switches over.
 8 Q. And what time on the seventh did they then close?
 9 A. Typically 2 o'clock is closing time for bars.
 10 Q. So that evening of the sixth would go at a bar until the
 11 early morning hours of the seventh?
 12 A. Correct.
 13 MR. ROTH: Nothing further, Your Honor. I
 14 think it would be appropriate to admit at this time.
 15 MR. MORLEY: Voir dire, Your Honor?
 16 THE COURT: You may.
 17 VOIR DIRE EXAMINATION
 18 BY MR. MORLEY:
 19 Q. Troop, as you sit here today, do you have any evidence
 20 that Mr. Kelsey was in the bar on December 7th?
 21 A. No, sir. Other than --
 22 MR. MORLEY: Same objection, Your Honor.
 23 THE COURT: Mr. Roth?
 24 MR. ROTH: Nothing further. I think a
 25 sufficient foundation has been laid.

35

1 THE COURT: I'll overrule the objection.
2 MR. ROTH: Thank you, Your Honor.
3 DIRECT EXAMINATION (CONT'G)
4 BY MR. ROTH:
5 Q. Let's start with 63.
6 THE COURT: So let me indicate for the record
7 then Exhibits 62, 63, and 64 on behalf of the People are
8 admitted and received.
9 (At 9:24 a.m., PX#62, PX#63, and
10 PX#64 are received.)
11 MR. ROTH: Thank you, Your Honor.
12 BY MR. ROTH:
13 Q. So let's start with 63. We see the Dam Site Inn here in
14 the bottom right. Is that correct?
15 A. **Yes, sir.**
16 Q. And what is to the west of that?
17 A. **Unadilla. It's -- there is a small village. I'll be**
18 **honest with you, I'm familiar with the Dam Site because I**
19 **go there often for backup for fights and stuff, but any**
20 **further west than that, there is a local police**
21 **department.**
22 Q. Very good. Then in 64, we have an overhead shot of the
23 Dam Site Inn?
24 A. **Yes, sir.**
25 Q. And it's located right here in the middle?

36

1 A. **Yes, sir.**
2 Q. What road is the Dam Site Inn located on?
3 A. **It's on Patterson Lake Road.**
4 Q. And do we see the front of the Dam Site and Patterson
5 Lake Road in 62?
6 A. **Yes.**
7 Q. All right. The picture is a little dark. It enters from
8 Patterson directly into the bar parking lot?
9 A. **Yes. And there is parking all around the building.**
10 Q. Did you determine while you were there that day if the
11 Dam Site Inn had video surveillance?
12 A. **I did inquire, and I was told there is video.**
13 Q. Why did you make that inquiry? Why did you want to find
14 out if they had surveillance video?
15 A. **So we could see on video if, in fact, the suspect and the**
16 **vehicle were at the Dam Site Inn bar.**
17 Q. After gathering this information, did you pass it onto
18 the officers in charge for further investigation?
19 A. **Yes, I did.**
20 Q. And that ended your role in the investigation?
21 A. **Yes, sir.**
22 MR. ROTH: I have nothing further of this
23 witness, Your Honor.
24 THE COURT: Thank you, Mr. Roth.
25 Mr. Morley, you may question.

37

1 MR. MORLEY: Thank you, Judge.
2 CROSS-EXAMINATION
3 BY MR. MORLEY:
4 Q. Troop, you specifically showed the bartender a photograph
5 of Mr. Kelsey driver's license and a photograph of a
6 vehicle, right?
7 A. **Yes, sir.**
8 Q. Did you show any other photographs of other people or
9 just Mr. Kelsey?
10 A. **Just Mr. Kelsey.**
11 Q. Where did you get -- er, who provided you with the
12 photographs?
13 A. **It was handed to me at the office. I'm not sure who**
14 **directly gave it to me.**
15 Q. Any other photographs provided to you?
16 A. **Just the vehicle and his photo.**
17 Q. So you went up to the bartender and said "Here's a
18 driver's license, and here is a vehicle. Do you
19 recognize either of these?"
20 A. **I didn't have his license per se. I had a photo of it**
21 **of --**
22 Q. Driver's license photo?
23 A. **-- just the photo on his license. It didn't show**
24 **information of names or anything like that. It was just**
25 **a picture of his photo.**

38

1 Q. But you didn't show any type of, like, photo lineup, like
2 six pictures, or anything like that?
3 A. **No, sir.**
4 Q. It was just one photo. "Do you know this guy?"
5 A. **Correct.**
6 Q. And you were told, apparently -- well, strike that.
7 Were you given any information about the
8 vehicle? By that, I mean a license plate, identifying
9 characteristics, anything like that?
10 A. **I was given a photo of a vehicle, and I'm not sure if it**
11 **was the vehicle. I'm sure it was a similar vehicle.**
12 Q. Okay.
13 A. **And then a description of it.**
14 MR. MORLEY: That's all I have. Thank you.
15 THE COURT: Thank you, Mr. Morley.
16 Mr. Roth, any redirect examination?
17 MR. ROTH: None, Your Honor. Thank you.
18 THE COURT: All right. You may step down.
19 Thank you, sir.
20 THE WITNESS: Thank you, sir.
21 (At 9:27 a.m., the witness
22 stepped down from the witness
23 stand.)
24 THE COURT: Mr. Roth, you may call your next
25 witness.

39

1 MR. ROTH: People call Amber Peek.
 2 THE COURT: Come right up here, ma'am. Please
 3 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. PEEK: Yes.
 7 THE COURT: Please be seated. State your full
 8 name, and spell it for us please.
 9 THE WITNESS: Amber Peek, A-M-B-E-R P-E-E-K.
 10 MR. ROTH: Thank you, Your Honor.
 11 AMBER PEEK
 12 called by the People at 9:28 a.m., sworn by the Court,
 13 testified:
 14 DIRECT EXAMINATION
 15 BY MR. ROTH:
 16 Q. Good morning, ma'am.
 17 A. **Good morning.**
 18 Q. Where did you work in December of 2014?
 19 A. **The Dam Site.**
 20 Q. Sorry. How long had you worked there?
 21 A. **Since November the year before.**
 22 Q. So in November of 2014?
 23 A. **Mm-hmm.**
 24 Q. Is that a yes?
 25 A. **Yep.**

40

1 Q. Have you since stopped working there?
 2 A. **Yeah. I quit in January.**
 3 Q. January of 2015?
 4 A. **Yes.**
 5 Q. Thank you. What did you do at the Dam Site Inn when you
 6 worked there?
 7 A. **I was a bartender.**
 8 Q. What are your responsibilities as a bartender? Day to
 9 day, what do you do there?
 10 A. **Bar tend.**
 11 Q. All right. Serve drinks to customers?
 12 A. **Yes.**
 13 Q. Do you stay behind the bar, or do you go essentially
 14 waitress as well?
 15 A. **I do both.**
 16 Q. Very good. Showing you what's already been admitted as
 17 Exhibit 62 on the screen in front of you, is that the Dam
 18 Site Inn?
 19 A. **Yes, sir.**
 20 Q. What are the hours of the Dam Site Inn?
 21 A. **They vary.**
 22 Q. By day?
 23 A. **Yeah. I mean, open at noon, close whenever it's dead or**
 24 **2 o'clock in the morning.**
 25 Q. 2 o'clock is the latest?

41

1 A. **Yes. Quarter to.**
 2 Q. On most Saturday nights, do you make it until 2 then?
 3 A. **Yeah.**
 4 MR. ROTH: May I approach the witness,
 5 Your Honor?
 6 THE COURT: You may.
 7 BY MR. ROTH:
 8 Q. (Approaching the witness.)
 9 I'm going to hand you what's been marked as
 10 People's Proposed Exhibits 65 through 77. Could you take
 11 a moment and look through these pictures?
 12 A. **Mm-hmm.**
 13 Q. And then look up when you're done.
 14 A. **When were these taken?**
 15 Q. We'll get to that. All right. So, first of all, the
 16 exterior of the bar, are these fair and accurate
 17 pictures?
 18 A. **Yes, sir.**
 19 Q. Are there a few things that have changed inside in the
 20 pictures --
 21 These were taken after. Are there things that
 22 were different in December of 2014 than are shown in the
 23 pictures?
 24 A. **Yes.**
 25 Q. And can you explain those to the jury when we get to

42

1 those pictures?
 2 A. **Yes.**
 3 Q. Other than that, are these fair and accurate pictures of
 4 the interior of the Dam Site Inn?
 5 A. **Yes, sir.**
 6 MR. ROTH: Your Honor, I'd move for admission
 7 of Proposed Exhibits 65 through 77.
 8 MR. MORLEY: Without objection, Your Honor.
 9 THE COURT: People's Exhibits 65 through 77 are
 10 admitted and received.
 11 (At 9:31 a.m., PX#65 through
 12 PX#77 are received.)
 13 MR. ROTH: All right.
 14 BY MR. ROTH:
 15 Q. So I want to start by having you explain the exterior of
 16 the bar to the jury. Okay?
 17 A. **Mm-hmm.**
 18 Q. What do we see in 65?
 19 A. **The right -- the left side of the bar.**
 20 Q. I'm sorry?
 21 A. **The side front of the bar.**
 22 Q. All right. And is this, what we see in 64, facing
 23 directly onto Patterson Lake Road?
 24 A. **Facing over to the left -- that would be the left, right?**
 25 Q. If you touch the screen, it will make a mark. Could you

43

1 show the jury what you mean?

2 **A. (Illustrating.)**

3 **Like, right here.**

4 Q. That's what we're seeing in 65?

5 **A. This corner right here.**

6 Q. Very good.

7 **A. Right there.**

8 Q. Sorry. Thank you. Where is the main entrance?

9 **A. (Illustrating.)**

10 **Right here.**

11 Q. Thank you. Moving next to 66. What do we see?

12 **A. The back.**

13 Q. Are there any other entrances to the bar?

14 **A. Yes.**

15 Q. Could you circle those?

16 **A. (Illustrating.)**

17 **It's over here.**

18 Q. And is that an employee entrance the main entrance?

19 **A. It's just -- it's, like, an emergency exit. It's usually**

20 **always locked.**

21 Q. Very good. What else do we see on the back of the bar?

22 **A. The back door. That's the employee entrance.**

23 Q. Very good. Is there parking for customers in the back as

24 we see here as well?

25 **A. Yep. (Illustrating.)**

44

1 **There is all this, and then there is way more**

2 **over here.**

3 Q. Very good. Showing you a little bit closer of a similar

4 angle. 67. What do we see here?

5 **A. More parking lot in the back.**

6 Q. So this door is the one that you indicated is usually

7 locked?

8 **A. Yep. It's right by the bathrooms.**

9 Q. So that's the door, I think you just said, that goes into

10 the hallway near the bathroom?

11 **A. Yep.**

12 Q. Very good. And we see that door closer in 68.

13 **A. Yep.**

14 Q. And now what do we see in 69?

15 **A. That's the main entrance.**

16 Q. So, again, we're back to the front corner of the bar?

17 **A. Yep.**

18 Q. Now, let's go into the bar. What do we see in

19 Exhibit 70?

20 **A. The front door and the fireplace.**

21 Q. So this door we see in 70, you enter through in 69?

22 **A. Mm-hmm.**

23 Q. Is that a yes?

24 **A. Yes.**

25 Q. Very good. So in 70, front door and fireplace. Is there

45

1 anything about this that was different in December of

2 2014?

3 **A. Yes.**

4 Q. What?

5 **A. This table wasn't here. This pool table wasn't here.**

6 **There was Jenga here, and there was no pool table. This**

7 **table was in front of this window.**

8 Q. There was something else you said. It sounded like

9 Jenga?

10 **A. Jenga. Like, a life-sized Jenga.**

11 Q. Okay. Moving to 71. What do we see here?

12 **A. A straight on view right into the bathrooms.**

13 Q. Other than the table and pool table that you already

14 talked about, is there anything different in this angle

15 than it was in December of 2014?

16 **A. Not that I noticed.**

17 Q. All right. You talked about that hallway.

18 **A. Yep.**

19 Q. Is that what we see in 72?

20 **A. Yes, sir.**

21 Q. What's down this hallway?

22 **A. The bathroom, and that's that door that is always locked.**

23 Q. Do we see the bathroom a little closer in 73?

24 **A. Yes.**

25 Q. Separate for men and women?

46

1 **A. Yep.**

2 Q. Could you explain what we're seeing here then?

3 **A. This is the men's bathroom. The women's bathroom is on**

4 **this side.**

5 Q. Thank you. And other than that, there is nothing else

6 back there?

7 **A. Nope.**

8 Q. Continuing to move clockwise around the bar, what do we

9 see in 74?

10 **A. That would be you standing at the front door looking**

11 **straight at the bar.**

12 Q. Continuing clockwise, 75, what do we see?

13 **A. Standing at the front door looking right.**

14 Q. Anything in this view that has changed since December of

15 2014?

16 **A. Not that I notice.**

17 Q. What do we have in the back corner of the bar?

18 **A. That's where the bands play. It's just a big open cement**

19 **slab.**

20 Q. Is that shown a little bit closer in 76?

21 **A. Yes.**

22 Q. And in 77, where do we go to the right of the stage?

23 **A. Where do you go to the right?**

24 Q. What's next if you're going clockwise around the bar?

25 Let me ask it a different way. We get back to the

47

1 entrance?

2 **A. So from my view, it's left.**

3 Q. Right. What's going right from there?

4 **A. The kitchen. Oh, that door?**

5 Q. Yes.

6 **A. It's a closet.**

7 Q. Yes. So let's back up.

8 **A. Okay.**

9 Q. There is a door back by the stage. Is that what you're

10 referring to?

11 **A. Yes. There's an exit sign. It's actually a closet. It**

12 **used to be the exit.**

13 Q. Okay. And then if we go in this direction

14 (illustrating), is that what we see in 77?

15 **A. Yes.**

16 Q. And then we're back to the front door where we started?

17 **A. Yes.**

18 Q. Very good. Now I want to speak specifically about the

19 night of December 6th, 2014, and into the early morning

20 hours of December 17th -- excuse me, December 7th of

21 2014.

22 **A. Okay.**

23 Q. Were you working during that --

24 **A. Yes, sir.**

25 Q. -- time? Thank you. What were your hours?

48

1 **A. I think I came in at 6.**

2 Q. And what time would you work until?

3 **A. Probably 3:30, 4.**

4 Q. So you continue to work after the bar is closed?

5 **A. I have to clean, wipe down everything.**

6 Q. Now, you talked about this a little bit earlier. When

7 you're working, you're not only behind the bar, but you

8 are out throughout the restaurant as well?

9 **A. Yeah, helping the waitress.**

10 Q. Do you see anybody in the courtroom today who came into

11 the bar during that shift?

12 **A. Yes.**

13 Q. Could you please point him out and identify him for the

14 record?

15 **A. He's right there (pointing).**

16 MR. ROTH: Your Honor, I would ask that the

17 record reflect that the witness has identified the

18 Defendant.

19 MR. MORLEY: I didn't hear what the witness

20 said.

21 THE COURT: She pointed and said, "Right here."

22 MR. MORLEY: I'll defer to the Court.

23 THE COURT: All right.

24 I will indicate the record should reflect that

25 the witness did identify Mr. Kelsey.

49

1 MR. ROTH: Thank you, Your Honor.

2 BY MR. ROTH:

3 Q. Is the Defendant somebody that you had seen at the bar

4 before?

5 **A. Yes.**

6 Q. How often?

7 MR. MORLEY: Objection. Relevance.

8 THE COURT: Mr. Roth?

9 MR. ROTH: It goes to show her familiarity with

10 the subject.

11 THE COURT: Overruled.

12 BY MR. ROTH:

13 Q. How often would you see him there?

14 **A. Fairly often.**

15 Q. What does that mean; once a week, once a month?

16 **A. Once a week.**

17 Q. Do you know his name?

18 **A. No.**

19 Q. Do you know what kind of car he normally drove?

20 **A. Yes.**

21 Q. What kind?

22 **A. A white SUV Suburban or something.**

23 Q. Big? Small?

24 **A. Big.**

25 Q. How do you know what he drove?

50

1 **A. I watched him get in it several times.**

2 Q. When you would see him get into it these times, were you

3 inside the bar or out?

4 **A. Both.**

5 Q. And there are windows, as we saw, throughout the bar that

6 you could see into the parking lot?

7 **A. Yes.**

8 Q. Going to the evening of December 6th, 2014, into the

9 early morning hours, who did the Defendant, if you know,

10 come into the bar with that night?

11 **A. The Hildabridle's.**

12 Q. Do you know their names?

13 **A. Brian, and his sister, I don't know, Shannon?**

14 Q. Anybody else that you recall?

15 **A. There is a guy sitting out there that he was with.**

16 Q. Okay. There is a man waiting to testify as well that was

17 there?

18 **A. Yes.**

19 Q. Is that a yes?

20 **A. Yes.**

21 Q. Anybody else?

22 **A. There was a couple randoms. I don't remember.**

23 Q. Okay. Are any of those people also regulars?

24 **A. Yeah.**

25 Q. Which ones, or all of them?

51

1 **A. Brian Hildabridle and that gentleman out there.**
 2 Q. Very good. Do you remember approximately what time they
 3 arrived that day?
 4 **A. No.**
 5 THE COURT: Ma'am, can I have you pull up a
 6 little closer to the microphone so we can hear you
 7 better?
 8 THE WITNESS: Sorry.
 9 BY MR. ROTH:
 10 Q. Do you recall what this group of people did while they're
 11 at the bar that night?
 12 **A. They just sat there and drank and listened to the band.**
 13 Q. When you say sat there, where in the bar were they
 14 located?
 15 **A. (Illustrating.)**
 16 Q. So this is on Exhibit 74. Could you describe for the
 17 record where that is?
 18 **A. At the end of the bar.**
 19 Q. Very good. And it's on the left side of the picture?
 20 **A. Yes, sir.**
 21 Q. Do you recall if they were drinking --
 22 **A. Yes.**
 23 Q. -- alcohol?
 24 **A. Yes.**
 25 Q. And the Defendant specifically, do you recall if he was

52

1 drinking?
 2 **A. Yes. Budweiser.**
 3 Q. Cans or bottles?
 4 **A. Cans.**
 5 Q. Do you recall how many he had?
 6 **A. Not exactly. Maybe three or four.**
 7 Q. Do you recall how he paid his tab that night?
 8 **A. Cash.**
 9 Q. And I think you mentioned this earlier that there was a
 10 band at the bar that night?
 11 **A. Yes.**
 12 Q. Do you recall what name they were?
 13 **A. No.**
 14 Q. All right. Approximately what time do bands stop playing
 15 at the bar?
 16 **A. 1 o'clock.**
 17 Q. What time is last call?
 18 **A. Between 1:30 and 1:45.**
 19 Q. I'm sorry, 1:30 and --
 20 **A. 1:45.**
 21 Q. And what is last call?
 22 **A. Last call means your last drink.**
 23 Q. Do you turn on the lights at that time also?
 24 **A. Yes.**
 25 Q. Do you recall approximately what time the Defendant left

53

1 that night?
 2 **A. Around last call.**
 3 Q. So that's now into the early morning hours of
 4 December 7th?
 5 **A. Yes, sir.**
 6 Q. And did you notice anything outside shortly after they
 7 left?
 8 **A. I know he was in the parking lot for a while. I don't**
 9 **know what he was doing. I was trying to clean up. I**
 10 **didn't really pay too much attention.**
 11 Q. All right. What happened next?
 12 **A. I know he was up by the front door, and then he backed**
 13 **out, and then he peeled off and took off, and then he**
 14 **came back, and then he left again.**
 15 Q. When you say he, is he in a vehicle?
 16 **A. Yes.**
 17 Q. And we're talking about the Defendant?
 18 **A. Yes.**
 19 Q. What vehicle was he in?
 20 **A. The white Suburban SUV.**
 21 Q. You say he peeled off -- peeled out; something like that?
 22 **A. Yes, sir.**
 23 Q. Was he driving fast or slow?
 24 **A. Fast.**
 25 Q. And where did he go when he peeled out?

54

1 **A. If you're looking at the bar, he went right.**
 2 Q. All right. So let's go back to our map of the Dam Site
 3 Inn. 64 is probably best. So when he exited the parking
 4 lot, which direction did he go?
 5 **A. (Illustrating.)**
 6 **He went left.**
 7 Q. So in the west direction?
 8 **A. Yeah.**
 9 Q. You said he peeled out. Did he continue to drive fast?
 10 **A. I couldn't -- after -- after he gets about right here,**
 11 **there is trees, and you can't see, and it's curves.**
 12 Q. Until that time, was he driving fast?
 13 **A. I mean, it was a peeling out, yeah.**
 14 Q. Very good. And that road, Patterson Lake, then turns
 15 into Doyle Road. Is that right?
 16 **A. Yes.**
 17 Q. Do you recall that there was an accident that happened
 18 that night involving a deputy that was killed?
 19 **A. I wasn't aware that night. I wasn't aware until they**
 20 **came in and told me.**
 21 Q. The police?
 22 **A. Yes.**
 23 Q. And that was in the next week or so?
 24 **A. Yes.**
 25 Q. After that night, December 7th, did the Defendant ever

55

1 come back in the bar that week?

2 **A. Not that I know of.**

3 Q. Nothing that you saw?

4 **A. Right.**

5 Q. And did the officers, when they came to speak to you,

6 show you a picture of the SUV?

7 **A. Yes.**

8 Q. Did it appear consistent with what you saw the Defendant

9 driving?

10 **A. Yes.**

11 Q. I just want to go back to one thing. You said you

12 couldn't recall about what time they came in. Did you

13 give a statement to the police initially?

14 **A. Yes.**

15 Q. And would looking at that, might that refresh your

16 memory?

17 **A. Maybe. I don't know.**

18 Q. All right.

19 **A. It's been a while.**

20 MR. ROTH: May I approach the witness,

21 Your Honor?

22 THE COURT: You may.

23 BY MR. ROTH:

24 Q. (Approaching the witness.)

25 I'm going to ask you to read this highlighted

56

1 portion to yourself silently real quick, and then look up

2 when you're done. Around what time do you believe they

3 got there?

4 **A. Probably around 10, 11.**

5 MR. ROTH: Thank you.

6 Nothing further, Your Honor.

7 THE COURT: Thank you, Mr. Roth.

8 Mr. Morley, you may question the witness.

9 MR. MORLEY: Thank you, Judge.

10 CROSS-EXAMINATION

11 BY MR. MORLEY:

12 Q. Ma'am, you were just testifying that you saw this vehicle

13 peel out. Do you recall that?

14 **A. Yes, sir.**

15 Q. But you don't know who was driving that vehicle, right?

16 **A. No, sir.**

17 Q. And, in fact, that's what you previously told the police;

18 you don't know who was driving it.

19 **A. Right.**

20 Q. So as you're sitting here today saying "It was him," you

21 don't know who "him" was, right?

22 **A. Right. He didn't ask me if he was driving. He asked me**

23 **whose car it was.**

24 Q. You have no idea who was driving, right?

25 **A. Right.**

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1 Q. No idea how many people are in it, right?

2 **A. Right.**

3 Q. No idea the license plate number, right?

4 **A. Right.**

5 Q. Do you have any identifying characteristics of the

6 vehicle?

7 **A. It's a big white truck that he always drove in there.**

8 Q. Anything else? Flashy taillights? A taillight out?

9 Headlight out? Anything like that?

10 **A. No.**

11 Q. And you don't know either whether this group of people

12 that you've talked about came in together or did anything

13 together, right? You don't recall that.

14 **A. They all came in together. They all sat together.**

15 Q. Do you know whether or not --

16 Were any of these people intoxicated that

17 evening?

18 **A. They had been drinking, yes.**

19 Q. All right. But my question --

20 You're a bartender, right?

21 **A. Yes.**

22 Q. Have you been TIPS trained?

23 **A. Yes.**

24 Q. And TIPS training is, what?

25 **A. It's being trained on how to see how drunk people are.**

58

1 Q. Okay. In case you have to cut anybody off?

2 **A. Yes, sir.**

3 Q. Did you have to cut anybody off that evening?

4 **A. No, sir.**

5 Q. Was anybody intoxicated of the people we've been talking

6 about here?

7 **A. They were intoxicated to the point of three to four**

8 **beers, not nothing that I had to cut them off. I didn't**

9 **have to cut them off.**

10 Q. And that specifically includes Mr. Kelsey?

11 **A. Yep.**

12 Q. And, in fact, you didn't know Mr. Kelsey. You can't --

13 you weren't able to give the police his name or anything,

14 right?

15 **A. No. I just know him as a familiar face.**

16 Q. And so it's your testimony that he came in sometime

17 between 10 or 11 p.m. and left sometime between 1 or

18 2 a.m., three or four hours either way, and he had three

19 or four beers, right?

20 **A. Mm-hmm.**

21 Q. Is that a yes?

22 **A. Yes.**

23 Q. Thank you. Did you testify that this vehicle came back?

24 **A. Yes.**

25 Q. When was that?

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1 **A. I don't know. I saw him leave because I thought they'd**
2 **all left because they're kind of, like, troublemakers at**
3 **the bar at the end of the night. So I'm, like, "Okay,**
4 **whew, they left," and they came back and they were out**
5 **there hooting and hollering, and I'm, like, "Oh, great.**
6 **They're back." And then he was out there in the front,**
7 **and all of a sudden he was gone. He peeled out and left.**
8 Q. This is after last call?
9 **A. Yes.**
10 Q. It's after you had already shut the bar down?
11 **A. Oh, yeah.**
12 Q. The bar gets shut down at 2 o'clock?
13 **A. Yep.**
14 Q. Was it comfortably after 2 o'clock?
15 **A. I can't recall.**
16 Q. But it was after 2 o'clock?
17 **A. I was shut down. So...**
18 MR. MORLEY: All right.
19 That's all I have. Thank you.
20 THE COURT: Thank you, Mr. Morley.
21 Mr. Roth, any redirect examination?
22 MR. ROTH: Briefly, Your Honor.
23 REDIRECT EXAMINATION
24 BY MR. ROTH:
25 Q. Mr. Morley asked you if you specifically knew on that

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1 night who was driving that white SUV, and you said you
2 didn't know, correct?
3 **A. Correct.**
4 Q. You didn't see it pass on the driver's side?
5 **A. Right.**
6 Q. Is that the same white SUV that you normally saw the
7 Defendant driving, though?
8 **A. Yes, sir.**
9 Q. Did you ever see anybody else driving that car?
10 **A. No, sir.**
11 Q. Mr. Morley asked you about the point at which you cut off
12 serving people. What is that point?
13 **A. If they appear intoxicated. I mean, you're just trained.**
14 **You can tell.**
15 Q. There are people that are served that shouldn't be
16 drinking, though -- excuse me, shouldn't be driving,
17 though, correct?
18 **A. Correct.**
19 Q. It's a different point of cutoff?
20 **A. Yes.**
21 MR. ROTH: Nothing further.
22 THE COURT: Thank you, Mr. Roth.
23 You may step down, ma'am. Thank you, very
24 much.
25 (At 9:48 a.m., the witness

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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 Justin Montgomery.
6 THE COURT: Right up here, sir. Please raise
7 your right hand.
8 Do you swear or affirm to tell the truth, the
9 whole truth, and nothing but the truth?
10 MR. MONTGOMERY: Yes, I do.
11 THE COURT: Please be seated.
12 And state your full name, and spell it for us,
13 please.
14 THE WITNESS: Justin Michael Montgomery.
15 J-U-S-T-I-N M-I-C-H-A-E-L M-O-N-T-G-O-M-E-R-Y.
16 JUSTIN M. MONTGOMERY
17 called by the People at 9:49 a.m., sworn by the Court,
18 testified:
19 DIRECT EXAMINATION
20 BY MR. ROTH:
21 Q. Good morning, sir.
22 **A. Good morning.**
23 Q. How old are you?
24 **A. Thirty-seven.**
25 Q. In December of 2014, where did you live?

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1 **A. In Pinckney.**
2 Q. Do you remember going out on the night of December 6th,
3 2014, and into the early morning hours of December 7th?
4 **A. Yes.**
5 Q. Where is the first place that you went out that night?
6 **A. To the Alley Bar. Alley pub. Alley Bar.**
7 Q. Did you stop at a friend's house on the way?
8 **A. Yes.**
9 Q. Whose house?
10 **A. Tony Hildabridle's --**
11 Q. Who is --
12 **A. -- dad's.**
13 Q. -- Tony?
14 **A. A friend of mine.**
15 Q. How do you know Tony?
16 **A. I met him through work, like, five years ago, maybe.**
17 Q. And he's a friend of yours?
18 **A. Yes.**
19 Q. How often would you two hang out?
20 **A. I don't know. We worked together every day up until a**
21 **couple of months ago.**
22 Q. When you go to --
23 I'm sorry, did you say to Tony's dad's house?
24 **A. Yes.**
25 Q. Tony lived there too?

63

1 **A. I don't know if he lived there or not. That's just where**
2 **we went. They got a big yard.**
3 Q. How did you get from your place to Tony's place -- Tony's
4 dad's place?
5 **A. I think -- I don't remember. I don't remember.**
6 Q. And where is his dad's place?
7 **A. It's in Pinckney on the south end of Portage Lake.**
8 Q. Who else did you meet up with at Tony's dad's place?
9 **A. It was me and Tony, and then his brother came.**
10 Q. What's his brother's name?
11 **A. Brian.**
12 Q. Anybody else?
13 **A. I don't -- John Kelsey.**
14 Q. All right. Let's back up and talk about Brian for a
15 second. Do you know Brian Hildabridle?
16 **A. Yes.**
17 Q. Tony's brother?
18 **A. Yes.**
19 Q. Are you friends with Brian as well?
20 **A. Yes.**
21 Q. You also talked about John Kelsey. Do you see him in the
22 courtroom today?
23 **A. Yes.**
24 Q. Could you please point him out and identify him for the
25 record?

64

1 **A. He's right there.**
2 MR. ROTH: Your Honor, I'd ask that the record
3 reflect that the witness has identified the Defendant.
4 THE COURT: Mr. Morley?
5 MR. MORLEY: I'll defer to the Court,
6 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. How do you know the Defendant?
12 **A. I don't know him.**
13 Q. And that brings me to my next question. Had you ever met
14 him before that night?
15 **A. No.**
16 Q. Were you introduced to him that night in some way?
17 **A. Through Tony, yes.**
18 Q. When you were with the Defendant that night, what did you
19 call him?
20 **A. That night, we didn't even, like, really talk. He was**
21 **just there with us.**
22 Q. How long were you at Tony's dad's house that night?
23 **A. Maybe two or three hours, maybe. I really couldn't say**
24 **for certain.**
25 Q. What were you doing while you were there?

65

1 **A. Just hanging out and messing around in the backyard.**
2 Q. After you leave Tony's dad's house, where do you go?
3 **A. We went to the Alley.**
4 Q. What is the Alley?
5 **A. It's a bar in Dexter.**
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 Showing you Proposed Exhibit 78. Is that a
12 fair and accurate picture of the Alley Bar?
13 **A. Yes.**
14 MR. ROTH: Move for the admission of Proposed
15 Exhibit 78.
16 MR. MORLEY: Without objection, Your Honor.
17 THE COURT: People's Exhibit 78 is admitted and
18 received.
19 (At 9:52 a.m., PX#78 is
20 received.)
21 BY MR. ROTH:
22 Q. Do you know approximately what time it was that you left
23 Tony's dad's house to go to the Alley?
24 **A. No, I don't.**
25 Q. Who drove?

66

1 **A. John did.**
2 Q. What kind of vehicle?
3 **A. It was a big truck.**
4 Q. When you say truck, is it, like, a pickup?
5 **A. No. Like an SUV.**
6 Q. Do you recall what color it was?
7 **A. No, I don't.**
8 Q. Was it big or small?
9 **A. I think it was just, like, a big SUV.**
10 Q. All right. So it was big?
11 **A. I think so.**
12 Q. Who was in this big SUV that the Defendant was driving?
13 **A. Me, Tony, Brian, and John.**
14 Q. Were there any animals in that SUV?
15 **A. I don't remember if there was an animal or not.**
16 Q. Did you give an initial statement to police when this was
17 a little fresher in your memory?
18 **A. Pardon?**
19 Q. Do you remember speaking to the police when this was a
20 little fresher in your memory?
21 **A. Yes, I do.**
22 MR. ROTH: Just one moment, Your Honor.
23 THE COURT: Sure.
24 MR. ROTH: May I approach the witness,
25 Your Honor?

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1 THE COURT: You may.

2 BY MR. ROTH:

3 Q. (Approaching the witness.)

4 All right. I'm going to ask you to read this

5 highlighted sentence to yourself silently, and then look

6 up when you're done.

7 A. **Yes.**

8 Q. Did that refresh your memory?

9 A. **Yes.**

10 Q. Was there an animal in the car?

11 A. **Yes.**

12 Q. What kind of an animal?

13 A. **Pit bull.**

14 Q. Who did that pit bull belong to?

15 A. **I think John.**

16 Q. The Defendant?

17 A. **Yes, sir.**

18 Q. Very good. Did the dog stay in the car when you guys

19 went into the Alley?

20 A. **Yes.**

21 Q. All right. Showing you what's now been admitted as 78.

22 Did you meet up with other people when you got to the

23 Alley Bar?

24 A. **There was a lot of people there. Some people showed up.**

25 Q. Do you know the names of any of the people that you were

68

1 with?

2 A. **Some -- some girl Tony was seeing. I can't think of her**

3 **name.**

4 Q. Okay. Anybody else?

5 A. **Not that I remember.**

6 Q. What did you guys do while you were there?

7 A. **Drank.**

8 Q. What did you drink?

9 A. **Beer.**

10 Q. What kind?

11 A. **Budweiser, I would assume.**

12 Q. Do you remember if it was cans or bottles?

13 A. **No, I don't.**

14 Q. Do you recall what other people were doing while you were

15 there? Other people in your group?

16 A. **Drinking.**

17 Q. What about Tony?

18 A. **He was playing pool.**

19 Q. What about Brian?

20 A. **I don't even remember what he was doing.**

21 Q. And the Defendant?

22 A. **I just -- I don't even think we talked.**

23 Q. Do you remember if he was drinking while you were there?

24 A. **No, I don't.**

25 Q. Where did you go after you left the Alley?

69

1 A. **To the Dam Site.**

2 Q. How did you get there?

3 A. **Sabrina and A. J. So they came and met us up at the**

4 **Alley also.**

5 Q. Who is Sabrina?

6 A. **She's a friend of mine. Well, a friend of my friend.**

7 Q. Is your friend A. J.?

8 A. **Yeah.**

9 Q. What's A. J.'s full name?

10 A. **A. J. Wynn.**

11 Q. Anthony?

12 A. **Yes.**

13 Q. So you did not ride with the Defendant in that big SUV to

14 go to the Dam Site?

15 A. **No.**

16 Q. Did he meet you at the Dam Site?

17 A. **I think he -- I think he was there, yes.**

18 Q. How long were you at the Dam Site Inn?

19 A. **I have -- I have no idea. I think I closed it down.**

20 Q. And was the Defendant there the whole time you were

21 there?

22 A. **I don't know.**

23 Q. Did you continue to drink while you were at the Dam Site

24 Inn?

25 A. **Yes.**

70

1 Q. What did you drink?

2 A. **Budweiser.**

3 Q. About how many?

4 A. **Too many.**

5 Q. Okay. What does that mean?

6 A. **I had -- I drank a lot. I don't even remember what**

7 **happened that night.**

8 Q. But the things you're telling us about driving in the

9 Defendant's big SUV, you remember that?

10 A. **Yes. It was before I was drinking.**

11 Q. Okay. Were most of the other people you were with

12 drinking as well?

13 A. **Yes.**

14 Q. Do you remember if the Defendant drank at all while at

15 the Dam Site?

16 A. **I honestly don't.**

17 Q. How did you get home from the Dam Site?

18 A. **I really don't remember. I was told that Brian's**

19 **roommate drove me home, but I don't -- I couldn't tell**

20 **you.**

21 MR. ROTH: May I approach the witness,

22 Your Honor?

23 THE COURT: You may.

24 MR. ROTH: I'll not be moving for the admission

25 of these exhibits with this witness.

71

1 BY MR. ROTH:
 2 Q. (Approaching the witness.)
 3 Showing you Proposed 89. Does this look like
 4 the SUV that you rode there in, if you remember?
 5 A. **I can't remember.**
 6 Q. All right. Same thing with 90? Can't remember?
 7 A. **No, sir.**
 8 Q. All right. Showing you 91. Do you recognize anybody
 9 that you know in this picture?
 10 A. **That's a picture of John. I don't know the other guy.**
 11 Q. Can't see well enough?
 12 A. **No. I don't know who that is.**
 13 Q. All right. What do we see in 92?
 14 A. **John.**
 15 Q. And this gentleman in 80 -- excuse me, 98 in the middle?
 16 A. **Brian.**
 17 Q. Brian Hildabridle?
 18 A. **Yes.**
 19 Q. Very good. Is this you with the baseball hat?
 20 A. **It could be.**
 21 Q. Okay. In the same picture?
 22 A. **Yes.**
 23 MR. ROTH: Very good.
 24 I have nothing else for this witness,
 25 Your Honor.

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1 THE COURT: Thank you, Mr. Roth.
 2 Mr. Morley, do you wish to question the
 3 witness?
 4 MR. MORLEY: I do. Thank you, Judge.
 5 CROSS-EXAMINATION
 6 BY MR. MORLEY:
 7 Q. Mr. Montgomery, I mean no disrespect by this question,
 8 but you don't recall a lot of that evening because you
 9 were pretty intoxicated, right?
 10 A. **Yes, sir.**
 11 Q. And you had been smoking marijuana earlier as well,
 12 right?
 13 A. **Yes, sir.**
 14 Q. And, in fact, that night was the first time you had ever
 15 met John Kelsey, right?
 16 A. **Yes, sir.**
 17 Q. In fact, you told the police that you thought that the
 18 vehicle you drove in was a different color, right?
 19 A. **Yes, sir.**
 20 Q. You told them, what?
 21 A. **Black.**
 22 Q. Or blue?
 23 A. **Black or blue. I thought it was darker.**
 24 Q. All right. And you recall that part of it?
 25 A. **Yes, sir.**

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1 Q. When you went to -- when the group of you went to the
 2 Alley Bar that evening, you went there to have dinner,
 3 didn't you?
 4 A. **Yes, sir.**
 5 Q. And everybody did have dinner?
 6 A. **I didn't. I didn't -- I think everyone else ate. I**
 7 **didn't ate -- eat.**
 8 Q. Is that a dinner place or just bar food, or what's
 9 that --
 10 A. **Bar food.**
 11 MR. MORLEY: Okay. That's all I have.
 12 Thank you.
 13 THE COURT: Thank you, Mr. Morley.
 14 Mr. Roth, do you have any redirect examination?
 15 MR. ROTH: None, Your Honor. Thank you.
 16 THE COURT: You may step down, sir. Thank you.
 17 (At 10:01 a.m., the witness
 18 stepped down from the witness
 19 stand.)
 20 THE COURT: Mr. Roth, you may call your next
 21 witness.
 22 MR. ROTH: The next witness, I think, is going
 23 to take some time. This might be a good time to take a
 24 morning break.
 25 THE COURT: That's fine. Let's take a morning

74

1 break.
 2 Let's have Mr. Adkins take the jurors back to
 3 the jury room.
 4 (At 10:01 a.m., the jury left the
 5 courtroom.)
 6 THE COURT: We'll take about 15 minutes or so.
 7 MR. ROTH: Do we want to take Mr. Morley's
 8 objection?
 9 THE COURT: Oh, right. You can be seated,
 10 everyone.
 11 Let's go back to -- I believe, Mr. Morley, what
 12 you want to put on the record has to do with the
 13 testimony by Witness Mary Utermark, correct?
 14 MR. MORLEY: Yes, sir. Just so the record is
 15 clear, we spoke at the bench. It was agreed for ease of
 16 scheduling that we would have the -- we would make a
 17 record of that objection after the testimony, and that's
 18 what we're doing now.
 19 Judge, there was testimony from Ms. Utermark,
 20 or however it's pronounced, where she began to identify
 21 the Defendant in the photograph. It was my position, and
 22 I stated it at the bench so as to not state it in front
 23 of the jury, that I believed the decision in *People v*
 24 *Fomby*, which I cited the other day, but I'll again, 300
 25 Mich App 46. It's a 2013 decision. And understanding

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1 the limitation of unpublished decisions, a subsequent
2 unpublished that cites to *Fomby, People v McLilly*. I
3 have a Westlaw cite of 2015 Westlaw 302676, dated
4 January 22nd, 2015.

5 And, Judge, my position is that -- and I'll
6 cite from *Fomby*, quote:

7 The court concluded that the
8 issue of whether the defendant in
9 the courtroom was the person
10 pictured in a surveillance video
11 was a determination properly left
12 to the jury.

13 Close quote. My position, Your Honor, is that
14 there should not have been allowed to be testimony from
15 Ms. Utermark that the person she saw in the photographs
16 -- er, check that, the videos was -- or the photographs
17 was potentially Mr. Kelsey. There was similar testimony
18 just now from an un-admitted exhibit from Mr. Montgomery.
19 I didn't object because I understand how we're doing
20 this.

21 But it's my position that we have invaded the
22 province of the jury by allowing lay people to identify
23 the Defendant within the -- within the photographs and in
24 the videos, like I said, because that -- the other day --
25 that that invades the province of the jury and infers to

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1 the jury or may infer to the jury an issue of guilt as to
2 the Defendant, and I think that's all I have.

3 THE COURT: All right. Thank you, Mr. Morley.

4 I'll let Mr. Roth put whatever he wants on the
5 record, but before he does that, I'll indicate that what
6 I said at the bench was that there is a distinguishing
7 factor here between the *Fomby* case and this case. In
8 *Fomby* the concern was that the witness would be
9 essentially supplanting the judgment of the jury by
10 making the identification in the video, and *Fomby* went on
11 to talk about distinction where the -- where the witness
12 had some special information that would be different than
13 what the jury had or the observation that the witness may
14 make might be different than what the jury would be able
15 to make upon a casual observation of the photograph or
16 the video here in the courtroom.

17 One of the examples used in *Fomby* was that the
18 -- one of the videos referenced in that case had an array
19 of people or multiple subjects in a video and that the
20 witness would be in a position because of familiarity
21 with the scene, and the individuals would be able to more
22 easily pick out of that array of subjects the person
23 being identified as opposed to what the jury may see or
24 lose in the context of the entire video. That was just
25 one example that was referenced in *Fomby*.

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1 Here, as I indicated on the bench, there is
2 sufficient distinguishing information that the witness by
3 actually -- actually now both witnesses would be able to
4 -- to use to identify Mr. Kelsey in the video or in the
5 photographs taken from the video. And that is that
6 Mr. Kelsey as he sits here in the courtroom today and is
7 presented to the jury looks much different than he does
8 in the photographs and video identified by the witnesses.

9 In particular when you look at the photographs
10 from the video and the video itself, Mr. Kelsey is in a
11 full beard, which he is not here in this courtroom, and
12 is wearing a hoodie which obscures his head in those
13 photographs. And so things such as hair pattern would
14 not be identifiable.

15 And so there is -- there are special knowledge
16 or additional knowledge that the witnesses have that the
17 jurors would not be able to utilize to determine in the
18 video just based on their observation of Mr. Kelsey in
19 the courtroom. They would not be able to have that
20 additional information from the point in time.

21 We also have to keep in mind this is video
22 taken at a different point in time than we are here
23 today. So I think those are sufficient distinguishing
24 characteristics. And, therefore, the witnesses'
25 identification is not invading the province of the jury

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1 in making the identification.

2 So that's why I overruled the objection. It
3 was proper, Mr. Morley, I think for you to have raised it
4 and to put it on the record. I understand why you're
5 doing so. And as I indicated at the bench, we're doing
6 this outside of the presence of the jury because I think
7 this whole discussion would only tend to exacerbate or
8 heighten the issue that you have objected to, Mr. Morley.

9 So with that, Mr. Roth, anything you want to
10 add for the record?

11 MR. ROTH: Briefly, Your Honor, I'm going to
12 add to the discussion unpublished Opinion No. 319639,
13 *People v Robert Pratt Jr.* talks about, and I think its
14 similar to what the Court said:

15 This type of testimony is
16 permissible when there is reason
17 to believe that the witnesses
18 were more likely to correctly
19 identify the defendant than the
20 jury.

21 The people who are being asked these questions
22 are people to who have a familiarity with the Defendant
23 outside of the courtroom and outside of only this case.

24 THE COURT: All right. Thank you, Mr. Roth.
25 Mr. Morley, anything further for the record on

79

1 that issue?

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

3 THE COURT: Mr. Roth, anything further?

4 MR. ROTH: No, Your Honor. Thank you.

5 THE COURT: Do either side have anything else

6 you want to put on the record even apart from that

7 objection before we take our break?

8 MR. ROTH: No, Your Honor.

9 MR. MORLEY: No, sir.

10 THE COURT: Okay. Well, let's go ahead and

11 take 15 minutes now.

12 MR. MORLEY: Thank you, Judge.

13 THE COURT: All right.

14 (At 10:09 a.m., recessed;

15 reconvened at 10:26 a.m.)

16 THE COURT: Mr. Roth, are we ready for the

17 jury?

18 MR. ROTH: We are, Your Honor.

19 THE COURT: Mr. Morley, are you ready, sir?

20 MR. MORLEY: Yes, sir. Thank you.

21 THE COURT: All right. Let's bring them in.

22 (At 10:27 a.m., the jury entered

23 the courtroom.)

24 THE COURT: Please be seated.

25 Mr. Roth, you may call your next witness.

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1 MR. ROTH: Thank you, Your Honor. The People

2 call Jessica Carter.

3 THE COURT: Please raise your right hand,

4 ma'am.

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

6 whole truth, and nothing but the truth?

7 MS. CARTER: I do.

8 THE COURT: Please be seated. State your full

9 name and spell it for us, please.

10 THE WITNESS: My full name is Jessica Elizabeth

11 Carter-Blair. The last name is hyphenated, and it's

12 spelled C-A-R-T-E-R - B-L-A-I-R. Jessica is spelled

13 J-E-S-S-I-C-A. Middle name is Elizabeth,

14 E-L-I-Z-A-B-E-T-H.

15 THE COURT: Mr. Roth?

16 MR. ROTH: Thank you, Your Honor.

17 JESSICA E. CARTER-BLAIR

18 called by the People at 10:28 a.m., sworn by the Court,

19 testified:

20 DIRECT EXAMINATION

21 BY MR. ROTH:

22 Q. Good morning, ma'am. Where do you work?

23 A. I work at the Alley Bar & Grill in Dexter, Michigan.

24 Q. How long have you worked there?

25 A. I've worked on and off for six years, but now I've been

81

1 back for two years.

2 Q. What is your position there?

3 A. Dayshift manager.

4 Q. What are your responsibilities in that position?

5 A. My responsibilities are scheduling, stock, ordering,

6 deliveries, training.

7 Q. Little bit of everything?

8 A. Yes.

9 Q. Showing you Exhibit 78. That's the Alley Bar?

10 A. Correct.

11 Q. And in December of 2014, did the Alley Bar have any

12 working surveillance cameras?

13 A. No.

14 Q. And did the Alley have another name that people commonly

15 referred to it as?

16 A. Katie's.

17 Q. Why was it often referred to as Katie's?

18 A. Because at one point before -- after it was the Alley, it

19 became Katie's when Paul Cook, the owner, was married to

20 Kathy, who liked to be called Katie.

21 And in the last few years we switched back to

22 the Alley due to his divorce and everybody calling and

23 asking for Katie.

24 MR. ROTH: May I approach the witness,

25 Your Honor?

82

1 THE COURT: You may.

2 BY MR. ROTH:

3 Q. (Approaching the witness.)

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

5 Proposed Exhibits 79 through 85. If you can take a

6 moment and look at those.

7 A. Yes.

8 Q. Okay. Are each of those fair and accurate pictures of

9 the inside of the Alley Bar?

10 A. Yes.

11 Q. Are there some things that were different in December of

12 2014 than we see in those pictures?

13 A. No.

14 Q. Okay.

15 A. No. Everything is still the same.

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

17 of Proposed Exhibits 79 through 85.

18 MR. MORLEY: Without objection, Your Honor.

19 THE COURT: People's Exhibit 79 through 85 are

20 admitted and received.

21 (At 10:30 a.m., PX#79 through

22 PX#85 are received.)

23 BY MR. ROTH:

24 Q. Very good. So starting with 78, ma'am, if you touch the

25 screen in front of you, it will make a mark. Could you

83

1 show the jury where the main entrance is for customers?

2 **A. The main entrance for customers, we actually have two**

3 **main entrances, the first one being this one**

4 **(illustrating), and then the second one being right past**

5 **the charger right there (illustrating).**

6 Q. Very good. So one on the far right of the building and

7 one more to the middle of the left?

8 **A. Correct.**

9 Q. Thank you. Showing you 79, what do we see in this part

10 of the picture?

11 **A. What we see is one of our main entrances being right**

12 **there.**

13 Q. Which entrance is this from the picture before?

14 **A. The entrance from right there is going to be the one on**

15 **the right. This one (illustrating).**

16 Q. Thank you.

17 **A. You're welcome.**

18 Q. All right. So you enter through that door, and what do

19 you see in the bar?

20 **A. When you walk in through that door, you see both of the**

21 **pool tables as shown in the picture. Also walking in**

22 **from that door you see a door against the wall, which is**

23 **the basement door, which leads you down into where we**

24 **keep all of the extra beer, coolers, and whatnot.**

25 Q. Very good. Moving through the bar, is this still part of

84

1 the main room that we see in Exhibit 80?

2 **A. Yes.**

3 Q. Where is this relative to what we see in 79?

4 **A. The window is right next to the door on the right.**

5 Q. Very good. Now, looking at the other direction to the

6 right, what do we see from 81?

7 **A. We see the ATM and the entranceway out into the dining**

8 **room floor where the main stage is over where door -- the**

9 **left door is, the left entrance door.**

10 Q. If we go in that entrance to the right that we already

11 talked about and go straight, is this where we would go?

12 **A. If you went to the entrance straight and took a right**

13 **or --**

14 Q. Straight through the entrance.

15 **A. Yes, yes. I'm sorry. If you went through that entrance,**

16 **yes, into the dining room and took a right, you would**

17 **come right through the bar.**

18 Q. Thank you. Now, 82 is that further in that same path?

19 **A. Yes.**

20 Q. What do we see on this door on the right?

21 **A. That door right there, you see right behind it is an air**

22 **hockey table, and it is also a door that will take you**

23 **into the dining room that leads to the stage area as well**

24 **as the bathrooms. Everything is connected in the dining**

25 **room.**

85

1 Q. Do we see that room in Exhibit 85?

2 **A. That room is off to the left with -- that air hockey**

3 **table is right there in front of that door.**

4 Q. I'm sorry, let's see, 83 goes through that door first?

5 **A. Yes.**

6 Q. And there is some darts through that room first?

7 **A. Correct.**

8 Q. And then turning the other direction, is that what we see

9 in 84?

10 **A. Yes.**

11 Q. Could you describe what we see here?

12 **A. What you see there is that air hockey table and also the**

13 **dining room. Off to the right is the stage where bands**

14 **play, and there is a dance floor. Off to the left are**

15 **the men's and women's restrooms. If you were to keep**

16 **going back to the right all the way, it's going to take**

17 **you back to the old bowling lanes.**

18 Q. And 85 you describe a stage or dance area. Is that what

19 we see in 85?

20 **A. Yes.**

21 Q. Very good. What is a bar tab?

22 **A. A bar tab is a tab that somebody starts upon arrival**

23 **after being carded. We start a tab normally for**

24 **customers who request tabs to be started. A tab is the**

25 **same as you would start at any other restaurant you would**

86

1 **go into, ours being ran by a focus POS machine. So upon**

2 **arrival after being carded, that's where we would**

3 **initially start the tabs, and everything is timed and**

4 **recorded as of what bartender and who were to ring it up.**

5 Q. Is there a time written on a bar tab?

6 **A. Only if you -- if you press it to print it out like that,**

7 **which most employees do not know how to do that. That is**

8 **more of a manager function.**

9 Q. If you print out a bar tab, is the time on it the time

10 the tab started? Ended?

11 **A. The time it ended.**

12 Q. Thank you. You indicated that when you start a tab,

13 whoever it is usually cards the person first. Who enters

14 a name onto the tab?

15 **A. Who enters the name onto the tab would be your bartender**

16 **or waitress, whoever is going to be ringing up the item**

17 **that is being purchased.**

18 Q. Even though they get ID, do they sometimes use

19 descriptions instead of names?

20 **A. Yes.**

21 Q. Why is that?

22 **A. That is because a lot of -- a lot of new waitresses, bar**

23 **staff that come in when they're ID'g customers, one of**

24 **the things that they look at first is the name, being the**

25 **last thing the birth date and the picture. Walking away,**

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1 you normally -- we don't think, "Oh, what is her name?"
2 Unless they're regulars in the bar. Now, when they
3 become regulars, we've ID'd them several times, and now
4 we're very familiar with their name. So, yes, we use
5 both depending on how new or how old of an employee you
6 are.
7 Q. Very good. On December 11th, 2014, did the Michigan
8 State Police contact you at the Alley Bar?
9 A. Yes.
10 Q. And did they ask you for bar tabs for a group of people
11 from December 6th of 2014?
12 A. Yes.
13 Q. Were they able to provide a description of the people,
14 the suspects, that they wanted tabs for?
15 A. Yes.
16 Q. Were you able to find those bar tabs?
17 A. I was able to find a couple bar tabs. Whereas to one of
18 them was named, another one was not necessarily named,
19 but there was a description about "hat" I want to say.
20 That's been a couple months since I looked at them.
21 Q. I understand.
22 A. So..
23 Q. But you also gave a few that were with the group
24 associated with that person, right?
25 A. Correct.

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1 Q. And they were able to identify for you the suspect that
2 they were most interested in?
3 A. Yes.
4 Q. And could you explain the process by which you were able
5 to get those tabs for the troopers?
6 A. Okay. Yes, I can. As being the manager once again,
7 everything is in the POS. So there is a back system to
8 everything. Going into the POS, we are able to pull up
9 all tabs. Going into the back of the system, we pull it
10 up. We press the date that we are looking for. Upon
11 pressing that date, it's going to bring up everything for
12 that date plus going into midnight and going into the
13 next day.
14 When we do this and we do pull them up, we are
15 able to touch the tabs and see exactly which bartender,
16 waitresses were taking care of these customers at the
17 time. Who transferred what, what was rang in, and
18 exactly what time everything was rang in, transferred and
19 done. Once again, that's all having rights from the back
20 of the POS.
21 Q. And these tabs are kept in the normal course of business
22 at the Alley Bar?
23 A. Correct. And it's available at all times but only to
24 management and somebody upon requesting it being an
25 authority.

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1 MR. ROTH: May I approach the witness,
2 Your Honor?
3 THE COURT: You may.
4 BY MR. ROTH:
5 Q. (Approaching the witness.)
6 I'm going to show you what's been marked as
7 People's Proposed Exhibit 86. If you could take a moment
8 and look through that. Are these fair and accurate
9 copies of the tabs that you found for the troopers based
10 on the description of the suspect and group that he was
11 with?
12 A. Yes.
13 MR. ROTH: Your Honor, I'd move for the
14 admission of People's Proposed Exhibit 86.
15 THE COURT: Mr. Morley?
16 MR. MORLEY: Voir dire, Your Honor?
17 THE COURT: Yes.
18 VOIR DIRE EXAMINATION
19 BY MR. MORLEY:
20 Q. You were just asked -- the last part of that question was
21 "And based on a description." Were you given a
22 description of somebody?
23 A. Yes.
24 Q. What were you given?
25 A. I was given a description of four different people as I

90

1 was also showed pictures of two.
2 Q. Okay. And who were those two, do you know?
3 A. The two pictures, one was Justin Montgomery, and the
4 other one was John Kelsey.
5 MR. MORLEY: Okay. That's all I have, Judge.
6 No objection.
7 THE COURT: People's Exhibit 86 is admitted and
8 received.
9 (At 10:38 a.m., PX#86 is
10 received.)
11 MR. ROTH: Thank you, Your Honor.
12 DIRECT EXAMINATION (CONT'G)
13 BY MR. ROTH:
14 Q. Who were the waitresses or bartenders who took care of
15 these people?
16 A. Lauri. Lauri Brooks and Megan -- I'm not sure of what
17 her last name was. She was an extremely new employee at
18 that time.
19 Q. Her name was Megan?
20 A. Megan, yeah. First name Megan.
21 MR. ROTH: Nothing further of this witness,
22 Your Honor.
23 THE COURT: Thank you, Mr. Roth.
24 Mr. Morley, do you wish to question?
25 MR. MORLEY: Yes, please.

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CROSS-EXAMINATION

1 BY MR. MORLEY:

2 Q. Ma'am, Exhibit 86 is copies of one, two, three, four, six

3 bar tabs, right? I'll be happy to show this to you if I

4 need to.

5 **A. Correct.**

6 MR. MORLEY: Approach the witness, Your Honor.

7 THE COURT: Yes.

8 BY MR. MORLEY:

9 Q. (Approaching the witness.)

10 And just so I'm clear -- and don't let me --

11 I'm not talking down to you. I'm not minimizing

12 anything. But as wait staff, basically you make up names

13 or identifier for whomever you're serving, right?

14 **A. Yes. And that's -- when I'm working, that's not**

15 **acceptable to me. It's always one of the things that I**

16 **train is to get to know your customers because they -- in**

17 **general, you're going to end up making more money in the**

18 **long run from remembering people.**

19 Q. That's fair. And you raise a good point. Were you

20 working on December 6th, 2014?

21 **A. I was not.**

22 Q. So you weren't working with any of these tabs we're

23 talking about?

24 **A. No.**

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1 Q. You don't remember or know or have any idea whether

2 Mr. Kelsey was in the bar, right?

3 **A. Nope.**

4 Q. And so when we have on the front page of 86, it says

5 Booth, that identifies a customer sitting in a booth,

6 right?

7 **A. Correct.**

8 Q. And Lauri B is the server. Is that what that means?

9 **A. Yes.**

10 Q. The second tab on the front page: Justin M. Lori B.

11 Same thing? That would be the extent of what we know

12 about Justin M?

13 **A. Correct.**

14 Q. Second page of this tab is A. J. Lori B. A. J. is just

15 an identifier?

16 **A. Yes, or it could be one of our customers. A. J. is,**

17 **honestly, a name that somebody is to go by as we do have**

18 **two customers that go by A. J. I'm familiar with what**

19 **they drink. It's one of those things. Since I was not**

20 **working that night, I couldn't necessarily tell who that**

21 **was.**

22 Q. You don't know?

23 **A. No.**

24 Q. Same with Black Hat? That was some male or female

25 wearing a black hat?

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1 **A. Correct.**

2 Q. Same thing with Booth? Is that the same booth?

3 **A. Yes.**

4 Q. And Hat?

5 **A. That is another tab that somebody just named Hat.**

6 Q. Okay. Then there is a John?

7 **A. Correct.**

8 Q. Any other information on any of these people?

9 **A. The only information that I have noticed on that is debit**

10 **cards that were used and the last four numbers of the**

11 **debit card that was processed that night.**

12 Q. That was going to be my next question. The only one of

13 the tabs that is a debit card is for Hat, right?

14 **A. Correct.**

15 Q. And you have no other knowledge or information or

16 anything about any of the people that were in the Alley

17 Bar on December 6th, 2014, right?

18 **A. No, sir.**

19 Q. No, I'm not right, or, no, you don't have any

20 information?

21 **A. No. I don't have any more information.**

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

23 Thank you, Judge.

24 THE COURT: Thank you, Mr. Morley.

25 Mr. Roth, do you have redirect examination?

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1 MR. ROTH: No, Your Honor. Thank you.

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

3 you.

4 (At 10:42 a.m., the witness

5 stepped down from the witness

6 stand.)

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

8 witness.

9 MR. ROTH: People call Megan Cousins.

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

11 hand. Do you swear or affirm to tell the truth, the

12 whole truth, and nothing but the truth?

13 MS. COUSINS: Yes.

14 THE COURT: Please be seated. State your full

15 name for us, and spell it, please.

16 THE WITNESS: Megan Ann Cousins.

17 What else?

18 THE COURT: Could you spell it, please.

19 THE WITNESS: Oh, M-E-G-A-N A-N-N

20 C-O-U-S-I-N-S.

21 MR. ROTH: Thank you, Your Honor.

22 MEGAN A. COUSINS

23 called by the People at 10:43 a.m., sworn by the Court,

24 testified:

25 DIRECT EXAMINATION

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1 BY MR. ROTH:
2 Q. Good morning, ma'am.
3 A. **Good morning.**
4 Q. And in December of 2014, where were you working?
5 A. **The Alley Bar.**
6 Q. Do you still work there?
7 A. **No.**
8 Q. When did you start, roughly?
9 A. **November.**
10 Q. 2014?
11 A. **Yes.**
12 Q. When did you quit?
13 A. **December.**
14 Q. Do you know about when in December?
15 A. **It was probably the second or third week in December.**
16 Q. You were not working there long?
17 A. **No.**
18 Q. Very good. I'm going to hand you a few pictures, 79
19 through 85. If you could take a moment and look through
20 them.
21 (Approaching the witness.)
22 Let me know if there is anything you remember
23 being different about the Alley Bar when you were working
24 there in December.
25 A. **The air hockey table wasn't there.**

96

1 Q. Okay.
2 A. **There is tables missing over here in front of the
3 employee area. I think there were tables right there,
4 not a booth. Yeah.**
5 Q. Okay.
6 A. **It's been a while since I've been in there.**
7 Q. That's okay. So now let's do that again. This time we
8 can show the jury what you're talking about.
9 Starting with the back room in Exhibit 84, you
10 said there was no air hockey table?
11 A. **Yes.**
12 Q. What was there instead?
13 A. **There were two long six-foot tables.**
14 Q. That customers could sit at?
15 A. **Yes.**
16 Q. And then 83 and 82, you said there was a change near the
17 employee area?
18 A. **Yeah. In the other picture that you just covered.**
19 Q. That shows it better?
20 A. **Yeah. There is --**
21 Q. If you touch a screen, it will make a mark.
22 A. **There were, like, tables right here. Like, right around
23 this area (illustrating). Sorry, yeah.**
24 Q. What kind of tables?
25 A. **It was where the six-foot tables were.**

97

1 Q. Very good. So are these the same tables that were where
2 the air hockey table is now?
3 A. **Yes.**
4 Q. Very good. Were you working on the night of
5 December 6th, 2014, into the early morning hours of
6 December 7th, 2014?
7 A. **Yes, sir.**
8 Q. Do you recall what your hours were during that shift?
9 A. **I want to say I came in probably about three or four, and
10 I know I closed. I don't remember exactly what time we
11 got out.**
12 Q. What were the hours of the bar at that time?
13 A. **We closed at 2.**
14 Q. Thank you. When you're working, where in the bar are
15 you?
16 A. **I stayed mainly behind the actual bar.**
17 Q. Did you also go out and serve some tables at times as
18 well?
19 A. **Yes.**
20 Q. Why would you go out at times and serve tables?
21 A. **Because there were only two bartenders on.**
22 Q. Do you recall who else was working with you that night?
23 A. **Lauri.**
24 Q. Do you know Lauri's last name?
25 A. **I do not.**

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1 Q. Showing you People's Exhibit 86, are these bar tabs from
2 that night?
3 A. **Yes.**
4 Q. Very good. Some of these have descriptions. Some of
5 them have names. Why is that?
6 A. **If we know your name, we'll put your name on the tab. If
7 we don't, we kind of just write where you're sitting or
8 what you're wearing so that it helps us get into each
9 other's tabs.**
10 Q. Are there times when somebody else is helping out on your
11 table and ringing up drinks?
12 A. **Yes.**
13 Q. And vice versa?
14 A. **Yes.**
15 Q. Do you recall the people that were associated with these
16 tabs in the bar that night?
17 A. **I remember the Justin tab.**
18 Q. All right.
19 A. **I remember him.**
20 Q. I can actually hand you the paper. That might be easier.
21 (Approaching the witness.)
22 A. **Thank you. Yeah. I remember the Justin tab because he
23 left his credit card, and somebody came back to pick it
24 up. I remember helping out making the onion rings. I
25 don't remember who they went to, and I don't, like,**

99

1 necessarily remember making the Hat tab, but I did.
 2 So...

3 Q. Okay. So the table that Justin is at, Justin M --
 4 A. Mm-hmm.

5 Q. -- do you remember people with him?
 6 A. I remember kind of what they look like.

7 Q. All right. Would you recognize any of them if you saw
 8 them again?
 9 A. Yes.

10 Q. Do you see any of them in the courtroom today?
 11 A. In the courtroom, no.

12 MR. ROTH: All right.
 13 May I approach the witness, Your Honor?
 14 THE COURT: You may.
 15 BY MR. ROTH:

16 Q. (Approaching the witness.)
 17 Proposed Exhibit 91, does this look like
 18 somebody that was there?
 19 A. Not -- no, not that I would remember.

20 Q. Not that you remember. Very good. So this table of
 21 people that were with Justin M, did you wait on them or
 22 did Lauri?
 23 A. Lauri waited on them mainly. I remember I brought a
 24 couple beers out, but --
 25 Q. Very good. Do you recall where in the bar they were

100

1 seated?
 2 A. Over by the pool tables.

3 Q. So I'm going to go through those pictures again. And you
 4 stop me when I'm at one that's helpful to show the table.
 5 MR. ROTH: Just a moment. I apologize.
 6 THE COURT: No problem.
 7 BY MR. ROTH:

8 Q. All right. 79, and then 80, 81.
 9 A. Right there. There used to be booths right here
 10 (illustrating). I didn't circle it that well, but there
 11 used to be booths right there.

12 Q. All right. And that's where they were seated?
 13 A. Yes, sir.

14 Q. So you said Justin M left his credit card, and somebody
 15 came back. Do you recall who came back?
 16 A. It was a girl.

17 Q. Do you recall anything about her?
 18 A. Not really, no. I can't --
 19 Q. All right.
 20 A. -- tell you what she looked like or anything.

21 Q. Do you remember any of the other people in the group?
 22 A. Not necessarily. Not without seeing faces.

23 Q. Okay.
 24 A. I remember a guy covered in tattoos, but...
 25 Q. All right. So there was a guy who had tattoos. Where on

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1 his body was he covered with tattoos?
 2 A. Everywhere.

3 Q. Face?
 4 A. I don't think so.

5 Q. Arms?
 6 A. Yes.

7 Q. Hands?
 8 A. Maybe.

9 Q. Do you recall what they were eating or drinking that
 10 night?
 11 A. I remember onion rings, and I remember Budweisers.

12 Q. Who was drinking Budweisers?
 13 A. I know Justin was.

14 Q. Anybody else?
 15 A. Yeah.

16 Q. Who else?
 17 A. A couple of other people. It was kind of one of those
 18 things where I was told to bring a couple of them out to
 19 the table, and I set them down.

20 Q. Thank you. I want to go back to the guy with all of the
 21 tattoos. What was his body type?
 22 A. Kind of, like, stocky, muscular a little bit.

23 Q. What else did they do in the bar that night?
 24 A. I know they played pool.
 25 Q. Were any of them regulars that you knew at the bar?

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1 A. I didn't really know any of the regulars. I wasn't there
 2 long enough.

3 Q. Showing you on the second page of Exhibit 86, there is a
 4 tab for Black Hat. Do you recall who in the group that
 5 was?
 6 A. I remember the hat. I don't remember the face or the
 7 name or anything.

8 Q. Tell me about the hat.
 9 A. I just -- I can remember the color. I don't remember if
 10 it had anything on it.

11 Q. Do you remember what kind of hat it was?
 12 A. It was, like, a bill hat.

13 Q. So not a beanie but a baseball hat?
 14 A. Yes.

15 Q. Was that the guy that had the tattoos also?
 16 A. I can't remember. I think so.

17 Q. Very good.
 18 A. Yeah. Because he -- the guy with the tattoos drank a
 19 Long Island.

20 Q. Very good. So there was one person that has tattoos on
 21 their arms, black baseball hat, drank a Long Island?
 22 A. Mm-hmm.

23 Q. Is that a yes?
 24 A. Yes, sir.
 25 Q. Very good. Was he with a girl?

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1 A. **Yes.**
 2 Q. Could you --
 3 A. **Not at first. She came later.**
 4 Q. Could you describe her for me?
 5 A. **I -- she had long hair. That's about the best I could**
 6 **tell you.**
 7 Q. All right. Tall or short?
 8 A. **Probably around my height, so about 5' 5"-ish.**
 9 Q. All right. What about body type?
 10 A. **Not real skinny but not big. So about average.**
 11 Q. Hair color?
 12 A. **Can't tell you that. I don't remember.**
 13 Q. Do you recall giving a statement to police when this was
 14 fresher in your memory?
 15 A. **I mean, it was back in March.**
 16 Q. All right. Would that refresh your memory looking at
 17 that?
 18 A. **A little bit, yeah.**
 19 Q. (Approaching the witness.)
 20 Okay. Showing you page 26, line 11 of your
 21 interview. If you could read that to yourself silently
 22 and look up when you're done.
 23 MR. MORLEY: What page did you say, I'm sorry?
 24 MR. ROTH: Page 26, line 11.
 25 BY MR. ROTH:

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1 Q. Did that refresh your memory?
 2 A. **Yes.**
 3 Q. What color was her hair?
 4 A. **It was blonde and brown with, I think, highlights.**
 5 MR. ROTH: All right.
 6 May I approach the witness, Your Honor?
 7 THE COURT: You may.
 8 BY MR. ROTH:
 9 Q. (Approaching the witness.)
 10 I'm going to show you Proposed Exhibit 87.
 11 Does this look like -- the woman on the left, does that
 12 look like her?
 13 A. **Yes.**
 14 Q. And the gentleman on the right, does that look like the
 15 guy that had the tattoos and the black baseball hat?
 16 A. **Yes, sir.**
 17 Q. So this looks like the Black Hat tab?
 18 A. **Yes.**
 19 Q. Very good. Showing you what's labeled as page 4 of
 20 Exhibit 86. Tab is named John. Do you recall that tab
 21 or the person associated with it?
 22 A. **No, I do not.**
 23 Q. Do you remember how long this group stayed at the Alley
 24 Bar?
 25 A. **They left in between about 9 or 9:30.**

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1 Q. Did they all leave together, separately?
 2 A. **I know -- I think Justin had left first, and then the**
 3 **rest of them had left a little bit after.**
 4 Q. And do you remember what any of them were driving, or did
 5 you even see what any of them were driving?
 6 A. **No, sir.**
 7 MR. ROTH: I have nothing further of this
 8 witness, Your Honor.
 9 THE COURT: Thank you, Mr. Roth.
 10 Mr. Morley, do you wish to cross-examine the
 11 witness?
 12 MR. MORLEY: No questions, Your Honor. Thank
 13 you.
 14 THE COURT: Thank you, Mr. Morley.
 15 You may step down, ma'am. Thank you.
 16 (At 10:57 a.m., the witness
 17 stepped down from the witness
 18 stand.)
 19 THE COURT: Mr. Roth, you may call your next
 20 witness.
 21 MR. ROTH: Thank you, Your Honor. Apologize.
 22 People call Lauri Brooks.
 23 THE COURT: Please raise your right hand.
 24 Do you swear or affirm to tell the truth, the
 25 whole truth, and nothing but the truth?

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1 MS. BROOKS: Yes, sir.
 2 THE COURT: Please be seated.
 3 State your full name for us, and spell it,
 4 please.
 5 THE WITNESS: Lauri Ann Brooks, L-A-U-R-I A-N-N
 6 B-R-O-O-K-S.
 7 THE COURT: Mr. Roth?
 8 MR. ROTH: Thank you, Your Honor.
 9 LAURI A. BROOKS
 10 called by the People at 10:57 a.m., sworn by the Court,
 11 testified:
 12 DIRECT EXAMINATION
 13 BY MR. ROTH:
 14 Q. Good morning, Ms. Brooks.
 15 A. **Morning.**
 16 Q. Where did you work in December of 2014?
 17 A. **The Alley in Dexter.**
 18 Q. Do you still work there?
 19 A. **No.**
 20 Q. When did you quit?
 21 A. **Shortly after the new year.**
 22 Q. All right. So January?
 23 A. **Yes.**
 24 Q. 2015?
 25 A. **Yes, sir.**

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1 Q. When did you start there?
2 A. **October.**
3 Q. Of '14?
4 A. **Yep.**
5 Q. When you worked at the Alley Bar, what did you do there?
6 A. **Bar tend.**
7 Q. In early December of 2014, do you recall seeing in the
8 news that a sheriff's deputy had been killed?
9 A. **Yes, sir.**
10 Q. Did you follow that story a little bit?
11 A. **Not really.**
12 Q. I'm sorry?
13 A. **No, not really. I don't watch TV. I don't read the**
14 **news, but I did see it.**
15 Q. Was there a time when you saw that there was a suspect, a
16 picture of a suspect in that case?
17 A. **Yes.**
18 Q. And when you saw him, did you recognize him?
19 A. **At first, no. And then when I was looking, I said "Wow."**
20 **Yeah, I did then.**
21 Q. What did you recognize him from?
22 A. **The Alley.**
23 MR. MORLEY: I didn't hear that, I'm sorry?
24 THE WITNESS: The Alley.
25 BY MR. ROTH:

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1 Q. What do you mean by that?
2 A. **That's where I recognized him.**
3 Q. Had you seen him at the Alley Bar before?
4 A. **Yes.**
5 Q. On this specific night where the accident had happened?
6 A. **Yes.**
7 Q. Or the night before, I guess I should say.
8 A. **Yes, the night before.**
9 Q. Do you see that man in the courtroom today?
10 A. **Um --**
11 Q. Not sure?
12 A. **No.**
13 Q. All right.
14 MR. ROTH: May I approach the witness,
15 Your Honor?
16 THE COURT: Yes.
17 BY MR. ROTH:
18 Q. (Approaching the witness.)
19 Showing you Proposed Exhibits 94 and 95. Does
20 that look like him?
21 A. **Yes.**
22 Q. All right. At the time, what was his facial hair?
23 A. **That is what I recognize. I recognize him that way, not**
24 **that way (pointing).**
25 Q. Okay. So there is somebody in the courtroom that you're

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1 gesturing to?
2 A. **Yes.**
3 Q. Who is that?
4 A. **The gentleman in the blue shirt --**
5 Q. All right.
6 A. **-- and tie at the table.**
7 MR. ROTH: Your Honor, I'd guess I'd ask that
8 the record reflect that she's referencing the Defendant.
9 THE COURT: Mr. Morley, any objection to that?
10 MR. MORLEY: I'll defer to the Court,
11 Your Honor.
12 THE COURT: The record will reflect that she's
13 referencing the Defendant.
14 BY MR. ROTH:
15 Q. All right. Showing you 94 and 95. That's how he
16 appeared to you that night?
17 A. **Yes.**
18 Q. Had you seen him in the Alley Bar before?
19 A. **Yes.**
20 Q. About how many times?
21 A. **That being the second time.**
22 Q. Thank you. Do you know where he lived at the time?
23 A. **Stockbridge, I thought, because we was talking. My**
24 **family is from Stockbridge, but we got to talking about**
25 **Stockbridge. But as per him that's -- him and the other**

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1 **guy, I don't know which one was from there, but --**
2 Q. Okay.
3 A. **-- that's Stockbridge.**
4 Q. You had spoke to one of them at some length about
5 Stockbridge, though, and living in Stockbridge?
6 A. **Yes.**
7 Q. And you think it was the man in these two pictures that I
8 just showed you as best as you recall?
9 A. **It was him or the other. I can't pinpoint.**
10 Q. That's fair. And in the course of this conversation, do
11 you think you got the name of the person that you were
12 talking to you, whether you remember it now or not?
13 A. **Everybody is Babe because I'm bad with names.**
14 Q. All right. That's fair. So you remember the Defendant
15 being there in the evening -- excuse me, this man with
16 the beard being there in the evening of December 6th,
17 2014, correct?
18 A. **Yes.**
19 Q. You were working that night?
20 A. **Yes.**
21 Q. Do you recall what your hours were?
22 A. **7:45 to close.**
23 Q. And generally when you worked until close, when do you
24 get out?
25 A. **6:45, 7:45.**

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1 Q. All right.

2 A. **2, 3, 3 o'clock, 3:30.**

3 Q. You said it might be 6:45 that you started?

4 A. **Yes. I don't --**

5 Q. Very good. And when you're working at the Alley, where

6 in the bar are you? Are you behind the bar? Are you

7 working tables?

8 A. **Both. Depends. That particular night I was training**

9 **with Megan, and so I'm behind the bar because she don't**

10 **know how to make a drink. I go to the floor. So you're**

11 **just both.**

12 Q. So you're everywhere that night?

13 A. **Yes.**

14 Q. Do you recall the group of people that the man in these

15 pictures was there with that night?

16 A. **Yes.**

17 Q. Could you describe any of them for us?

18 A. **One had tattoos covered -- covered, and there was, I**

19 **don't know. One was tall, slender. I don't pay**

20 **attention to detail like that. The one with the tattoos**

21 **is the one I remembered just because he was covered.**

22 Q. Very good.

23 MR. ROTH: May I approach the witness,

24 Your Honor?

25 THE COURT: Yes.

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1 BY MR. ROTH:

2 Q. (Approaching the witness.)

3 Showing you the left picture of Exhibit 87. Is

4 that the guy with the tattoos?

5 A. **Yes.**

6 Q. Very good. And there was a tall slender guy. Do you

7 remember his name at all?

8 A. **No, I don't.**

9 Q. That's all right. Was there somebody named A. J.?

10 A. **See, no, I don't --**

11 Q. That's fair.

12 A. **See, if they tell me then what their name, I don't -- if,**

13 **like, he tells me his name, but in my mind I put Green --**

14 **Green Shirt or Stocky or -- that's the way I list my**

15 **tabs.**

16 Q. Very good. And showing you 87 again. Picture on the

17 left. Do you recall this young woman being there?

18 A. **Yes.**

19 Q. Do you recall who she was with?

20 A. **The guy with the tattoos.**

21 Q. Very good. I apologize. The man in the pictures that

22 you identified or remembered, do you recall what he was

23 drinking that night? And, again, we're talking about 94

24 and 95.

25 A. **Budweiser.**

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1 Q. Cans or bottles?

2 A. **Bottles.**

3 Q. Do you remember about how many?

4 A. **I want to say -- I mean, I only recall just going back to**

5 **that night a couple beers. They ate. There was, I want**

6 **to say, four -- I know for sure -- I think there was**

7 **four. Not 100 percent.**

8 Q. Four beers?

9 A. **No, four guys. And they each -- they drank Budweiser.**

10 **That's what all of them drank. And they ate food. If**

11 **you asked me a week or a month ago or then, I would have**

12 **told you exactly what they ate, but now I'm just --**

13 Q. As best as you remember, two Budweisers, though, for that

14 particular person?

15 A. **I mean, I put them at the table.**

16 Q. Very good.

17 A. **They ordered them, like, "Get us, you know, some beer,"**

18 **and I don't know whoever's tab said it, it would go on**

19 **their tab.**

20 Q. Very good. And then there would be in addition any

21 drinks that the other woman you were working with put for

22 that person, correct?

23 A. **She should have. If he had one tab running, then it**

24 **should just open it.**

25 Q. Do you recall what, if anything -- let me back up. The

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1 man in those pictures, did he eat as well?

2 A. **Yes.**

3 Q. Do you recall what he ate?

4 A. **It was burgers. There was onion rings. I'm not -- like**

5 **I said --**

6 Q. Not sure?

7 A. **No.**

8 Q. That's fair. Do you recall where the group of people was

9 seated in the bar?

10 A. **In the booth. There -- it's right -- when you walked in**

11 **the front door, you walked straight. There would be a**

12 **pool table.**

13 Q. Is it shown on there?

14 A. **Yeah.**

15 Q. So People's Exhibit 81, if you touch the screen, it will

16 make a mark.

17 A. **Booth?**

18 Q. And this may have changed since then.

19 A. **It has because I'm, like, them were booths.**

20 Q. All right. Show us where the booths were at the time. I

21 apologize.

22 A. **(Illustrating.)**

23 **Straight through the booth. There is the one.**

24 Q. So it's the lower, right-hand corner of 81?

25 A. **It was right across from the pool table.**

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1 Q. So you said there was about four men at that table. Were
 2 they all drinking alcohol?
 3 A. **Yes. As far as -- I mean, they'd order them. I'd put**
 4 **them down, walk away, or whatever.**
 5 Q. Were any of them regulars that you knew?
 6 A. **No. Like I said, it's twice that I've seen them.**
 7 Q. Do you remember how you entered any of them into the
 8 computer for their tabs?
 9 A. **Looks.**
 10 Q. Okay.
 11 A. **Like I said, Black Hat, Blue Hat, Green Shirt if I didn't**
 12 **know them.**
 13 Q. Do you recall how long that group stayed at the bar?
 14 A. **Not long. I didn't -- it wasn't -- they ate. I want to**
 15 **say that they played pool, but I can't remember, I mean,**
 16 **exactly if they did.**
 17 Q. Very good.
 18 A. **But it wasn't -- it's, like, I remember they drank, they**
 19 **ate, and then that's -- that was it. I mean, they was**
 20 **there, maybe, I don't know, I can't pinpoint an exact**
 21 **hour-wise, but I don't say it wasn't that I recall that**
 22 **long.**
 23 Q. Not long?
 24 A. **Hmm-mm.**
 25 Q. Did you see what any of them were driving?

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1 A. **No.**
 2 Q. Did any of them ever come back after they left?
 3 A. **I remember the tattoo guy come back.**
 4 Q. About how long after the initial group left did he
 5 return?
 6 A. **Like, I don't know exactly. I mean, I'm -- it was --**
 7 **they come in. It was later. And she come in, his**
 8 **girlfriend, or the girl came in. There was -- one,**
 9 **two -- two girls and an older guy. They come in, and**
 10 **then the tattoo guy come in, and they got with them, and**
 11 **they just left. They didn't stay. I mean, right after.**
 12 **I don't know what time. I can't say exactly.**
 13 Q. What did they do, this man, woman, and older man. So let
 14 me say that differently, I'm sorry. The man with the
 15 tattoos, younger woman, and then an older man --
 16 A. **And a girl.**
 17 Q. And another girl? So it's four people total?
 18 A. **The three -- the two girls and the older gentleman were**
 19 **there. The tattoo guy came in, and then they left.**
 20 Q. Did the man with the tattoos drink any when he came back
 21 the second time?
 22 A. **No.**
 23 Q. How about the two younger women?
 24 A. **Yes.**
 25 Q. Do you know what they were drinking?

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1 A. **It was a fancy -- I don't know, one of them fancy drinks.**
 2 Q. Do you know about how many?
 3 A. **But they left it. It was full. And that's why --**
 4 **because I made it. They messed it up. I made one. I**
 5 **seen the tattoo guy come in, go to the table. They was**
 6 **sitting there for a minute, and then they just all just**
 7 **got up and left.**
 8 Q. So the two younger women that got the fancy drinks, they
 9 didn't drink very much of them?
 10 A. **Hmm-mm.**
 11 Q. Is that a no?
 12 A. **No, sorry.**
 13 MR. ROTH: No problem. Thank you.
 14 Nothing further Your Honor.
 15 THE COURT: Thank you, Mr. Roth.
 16 Mr. Morley?
 17 MR. MORLEY: Can I see the bar tabs, Mr. Roth?
 18 If they are up there, I can get them.
 19 MR. ROTH: Yeah.
 20 MR. MORLEY: You don't have to do my job.
 21 MR. ROTH: That's okay. Do you want these?
 22 MR. MORLEY: No. Thank you.
 23 CROSS-EXAMINATION
 24 BY MR. MORLEY:
 25 Q. Ma'am, fair to say you don't recall much of this evening?

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1 A. **No, I don't.**
 2 Q. It was December 6th of 2014, right?
 3 A. **Yes, sir.**
 4 Q. And the first time you were interviewed was about
 5 April 2nd of 2015, right?
 6 A. **Yes.**
 7 Q. It sounds to me what you've explained, and please don't
 8 let me put words in your mouth, but this is a group of
 9 people having dinner and a couple of drinks. Is that a
 10 fair representation?
 11 A. **Yes.**
 12 MR. MORLEY: Approach the witness, Your Honor?
 13 THE COURT: Yes.
 14 BY MR. MORLEY:
 15 Q. (Approaching the witness.)
 16 Ma'am, you were shown Exhibit 86 a couple
 17 seconds ago. It was just the bar tabs. Do you recall
 18 these?
 19 A. **I remember --**
 20 Q. Yes.
 21 A. **-- him showing me bar tabs.**
 22 Q. Do you have -- as you sit here today, do you have any
 23 idea of who the people are associated with these bar
 24 tabs?
 25 A. **Not -- no. I mean, I tried for the officer. That --**

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1 **that week I buried my boyfriend. So...**
2 Q. I understand, and I'm sorry about that.
3 **A. I don't --**
4 Q. But there are one, two, three, four, five, six, seven
5 tabs: Booth, Justin M, Black Hat, A. J., Hat, Booth,
6 John. You have no idea as you sit here today who any of
7 those people are, right?
8 **A. I was -- when he asked me, I believe I told him Black Hat**
9 **was him, and then the name was John, and I just got --**
10 **but I know there was just Budweisers and food, and that's**
11 **really all I do know.**
12 Q. And my question of these seven names, you don't know who
13 any of these seven people are, right? Yes or no?
14 **A. No.**
15 MR. MORLEY: Thank you.
16 That's all I have, Judge.
17 THE COURT: Thank you, Mr. Morley.
18 Mr. Roth, do you have any redirect examination?
19 MR. ROTH: Briefly, Your Honor.
20 REDIRECT EXAMINATION
21 BY MR. ROTH:
22 Q. Ms. Brooks, as I understand what you just told
23 Mr. Morley, when the officers showed you these tabs and
24 they asked which one was associated with that suspect
25 person, you said it was either Black Hat or John?

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1 **A. Mm-hmm.**
2 Q. Is that a yes?
3 **A. Yes.**
4 Q. But you couldn't remember beyond narrowing it down to
5 those two?
6 **A. No.**
7 MR. ROTH: Very good.
8 I have nothing further, Your Honor.
9 THE COURT: Thank you, Mr. Roth.
10 You may step down, ma'am. Thank you, very
11 much.
12 THE WITNESS: Jeez-o-Pete. I feel sick.
13 (At 11:11 a.m., the witness
14 stepped down from the witness
15 stand.)
16 THE COURT: Mr. Roth, you may call your next
17 witness.
18 MR. ROTH: People call Sandra Hale.
19 MS. HALE: Hi.
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. HALE: Yes, I do.
24 THE COURT: Please be seated. State your full
25 name for us, and spell your full name, please.

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1 THE WITNESS: My name is Sandie Beach Dropulich
2 Hale. S-A-N-D-I-E B-E-A-C-H D-R-O-P-U-L-I-C-H H-A-L-E.
3 SANDIE B. D. HALE
4 called by the People at 11:12 a.m., sworn by the Court,
5 testified:
6 DIRECT EXAMINATION
7 BY MR. ROTH:
8 Q. All right. Sorry about making you wait there. How old
9 are you, ma'am?
10 **A. I'm twenty-five.**
11 Q. You go by Sandie?
12 **A. Mm-hmm.**
13 Q. Is that a yes?
14 **A. Yes.**
15 Q. Very good. In December of 2014, where were you employed?
16 **A. At the Dexter Pub.**
17 Q. Is that a bar?
18 **A. Yes.**
19 Q. And what did you do there?
20 **A. I was a server.**
21 Q. It's located in Dexter, Michigan?
22 **A. Yes, it is.**
23 Q. You do not work there any more?
24 **A. No, I do not.**
25 Q. Do you know a person by the name of John Kelsey?

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1 **A. I do.**
2 Q. Do you see him in the courtroom today?
3 **A. Yes.**
4 Q. Could you please point him out and identify him for the
5 record?
6 **A. In the blue shirt with the tie.**
7 MR. ROTH: Your Honor, I would ask that the
8 record reflect that the witness has identified the
9 Defendant.
10 MR. MORLEY: Without objection, Your Honor.
11 THE COURT: All right. The record will reflect
12 that the witness has identified Mr. Kelsey.
13 BY MR. ROTH:
14 Q. How is it that you met the Defendant?
15 **A. Through my ex-boyfriend, Tony.**
16 Q. What's Tony's last name?
17 **A. Hildabridle.**
18 Q. When did you begin dating Tony Hildabridle?
19 **A. October. The end of October.**
20 MR. ROTH: May I approach the witness,
21 Your Honor?
22 THE COURT: Yes.
23 BY MR. ROTH:
24 Q. (Approaching the witness.)
25 These are not on the specific night that we're

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1 talking about, but is this a fair and accurate picture of
 2 you?
 3 **A. No. That's actually an old picture, but it's me.**
 4 Q. All right. But near back then?
 5 **A. Yes.**
 6 Q. And on the right-hand side, is that a fair and accurate
 7 picture of Tony?
 8 **A. Yeah.**
 9 Q. All right. And, again, these aren't on the specific
 10 night, but these are the two of you?
 11 **A. Yes.**
 12 MR. ROTH: Your Honor, I'd move for the
 13 admission of Proposed Exhibit 87.
 14 MR. MORLEY: Without objection.
 15 THE COURT: People's Exhibit 87 is admitted and
 16 received.
 17 (At 11:15 a.m., PX#87 is
 18 received.)
 19 MR. ROTH: Thank you.
 20 BY MR. ROTH:
 21 Q. So let's talk for a moment about the picture 87. Fair to
 22 say that you have or had in December of 2014 blonde and
 23 darker hair highlights.
 24 **A. I think I just had dark hair then.**
 25 Q. Approximately how tall are you?

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1 **A. I'm 5' 5".**
 2 Q. And then Tony, about how tall is Tony?
 3 **A. I have no idea.**
 4 Q. Taller than you?
 5 **A. Yeah. I think so.**
 6 Q. And what does he have on his arms?
 7 **A. Tattoos.**
 8 Q. Are they pretty much covered?
 9 **A. For the most part, yeah.**
 10 Q. And how would you describe Tony's body type?
 11 **A. I don't know. Muscular, I guess.**
 12 Q. Stocky?
 13 **A. A little bit, yeah.**
 14 Q. Did you ever know Tony to wear a black baseball hat?
 15 **A. Not that I can remember. I'm not sure.**
 16 MR. ROTH: May I approach the witness,
 17 Your Honor?
 18 THE COURT: Yes.
 19 BY MR. ROTH:
 20 Q. (Approaching the witness.)
 21 I'll show you a couple pictures. Does that
 22 refresh your memory?
 23 **A. Oh, I guess so.**
 24 Q. Do you ever --
 25 **A. That's him.**

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1 Q. -- recall seeing him in that hat?
 2 **A. Not that I can recall, no.**
 3 Q. That's fair. Are you still dating Tony Hildabridle?
 4 **A. No, I'm not.**
 5 Q. Approximately, when did you meet the Defendant,
 6 John Kelsey?
 7 **A. Like, maybe in November, middle of November, maybe.**
 8 Q. 2014?
 9 **A. Yes.**
 10 Q. About how many times do you think you spent time with him
 11 socially?
 12 **A. Only a couple.**
 13 Q. In early December of 2014, when you're dating
 14 Tony Hildabridle and you knew the Defendant, how many
 15 vehicles did you know the Defendant to have?
 16 **A. Two.**
 17 Q. What was the first one?
 18 **A. A gold SUV.**
 19 Q. Do you remember what kind?
 20 **A. No, not exactly.**
 21 Q. Would looking at your prior statement refresh your memory
 22 about the kind of color -- er, excuse me, kind of SUV
 23 that was?
 24 (Approaching the witness.)
 25 Is that a yes?

126

1 **A. Sure, yeah.**
 2 Q. All right. Just take a moment and read that silently to
 3 yourself.
 4 **A. Okay.**
 5 Q. Do you remember what kind of car the gold SUV was?
 6 **A. Blazer.**
 7 Q. A Chevy Trail Blazer?
 8 **A. Just a Blazer. I don't know. Yeah, sure. Trail Blazer.**
 9 **That's fine.**
 10 Q. Well, I don't want to put words in your mouth.
 11 **A. I mean, a Blazer.**
 12 Q. Very good. What was the second kind?
 13 **A. A white SUV.**
 14 Q. Do you remember what kind of SUV it was?
 15 **A. I do not.**
 16 Q. What kind of car did you have at the time?
 17 **A. I had a black Yukon.**
 18 Q. What kind of Yukon?
 19 **A. Just a black Yukon. It's a regular Yukon.**
 20 Q. Is it a Denali?
 21 **A. No.**
 22 Q. All right. Did his car, the Defendant's car, the white
 23 SUV, look kind of like yours?
 24 **A. No. Not that I can remember. I mean, I don't exactly**
 25 **remember.**

127

1 Q. All right. The white SUV that he had, big or small?
 2 A. **I can't really remember exactly.**
 3 Q. All right. Do you know Tony Hildabridle's brother,
 4 Brian?
 5 A. **Yes, I do.**
 6 Q. How do you know Brian?
 7 A. **I've known Brian for a while.**
 8 Q. Longer than you've known Tony?
 9 A. **Yes.**
 10 Q. Do you know their sister, Shannon?
 11 A. **Yes, I do.**
 12 Q. What's Shannon's last name?
 13 A. **Gauthier.**
 14 Q. All right. So she is Tony and Brian's sister but has a
 15 different last name?
 16 A. **Yes.**
 17 Q. How long have you known Shannon?
 18 A. **For a couple of years.**
 19 Q. Have you known her the longest of the family?
 20 A. **No. I've know Brian longer.**
 21 Q. How is it that you know Shannon?
 22 A. **Through Brian.**
 23 Q. Was she a friend of yours as well?
 24 A. **Yes, she is.**
 25 Q. Where did she work?

128

1 A. **The Dexter Pub.**
 2 Q. With you?
 3 A. **Yes.**
 4 Q. Do you know a Sabrina Ware?
 5 A. **No, I do not.**
 6 Q. Do you know an Anthony or A. J. Wynn?
 7 A. **No, I do not.**
 8 Q. Those are people you don't know them by name, at least,
 9 correct?
 10 A. **I don't know if I know them. If I don't know them by
 11 name, I don't know them.**
 12 Q. Let me ask it a different way. I apologize. You don't
 13 recognize those names?
 14 A. **No, I do not.**
 15 Q. Was there a couple, a male and a female, that were out at
 16 the Alley Bar on this night that you did not know by
 17 name?
 18 A. **I can't remember. I was intoxicated.**
 19 MR. ROTH: May I approach the witness,
 20 Your Honor?
 21 THE COURT: Yes.
 22 BY MR. ROTH:
 23 Q. (Approaching the witness.)
 24 I'm going to show you your prior statement
 25 again.

129

1 A. **Okay.**
 2 Q. And this is a statement that you gave March 6th, 2015.
 3 If you could read that silently to yourself and look up
 4 when you're done.
 5 A. **Okay.**
 6 Q. Did that refresh your memory?
 7 A. **I mean, I guess. It was a long time ago. So it's really
 8 hard to think back.**
 9 Q. Are you saying that March was a really long time ago?
 10 A. **I mean, yeah.**
 11 Q. Okay. Ma'am, isn't it true that you told under oath this
 12 Court:
 13 I might know if they're the
 14 couple that was at the bar that
 15 night...
 16 A. **I believe I did.**
 17 Q. All right. So was there a couple at the bar at the --
 18 MR. MORLEY: Well, Your Honor --
 19 THE WITNESS: There was a bunch of couples at
 20 the bar.
 21 MR. MORLEY: Objection, Your Honor.
 22 THE COURT: Hold on a second, ma'am.
 23 Mr. Morley?
 24 MR. MORLEY: Under the rules of evidence, I
 25 believe the whole statement has to be read, Your Honor.

130

1 MR. ROTH: I can do that.
 2 MR. MORLEY: Please.
 3 THE COURT: All right.
 4 BY MR. ROTH:
 5 Q. Ma'am, isn't it true that you told the officers -- excuse
 6 me, that you told this Court:
 7 I might know if they're the
 8 couple that was at the bar that
 9 night, but I only seen them that
 10 night, so I don't know them other
 11 than that.
 12 A. **Okay. Yeah. Then that's the people that I don't know at
 13 the bar.**
 14 Q. All right. But there was a couple, a male and a female,
 15 at the Alley Bar that you did not know?
 16 A. **Yes.**
 17 Q. And they were with your group?
 18 A. **I guess you can say that, yeah.**
 19 Q. Do you know Justin Montgomery?
 20 A. **I do, but not very well.**
 21 Q. How do you know him?
 22 A. **Just in passing. Just seeing him around before.**
 23 Q. Does he have common friends with you?
 24 A. **Yes.**
 25 Q. Particularly back when you were dating Tony, did he have

131

1 common friends?
 2 **A. Yes.**
 3 Q. I want to talk about the evening of December 6, 2014.
 4 Did you go out with friends that evening?
 5 **A. Yes, I did.**
 6 Q. What was the first place that you guys went out to that
 7 evening?
 8 **A. To Katie's in Dexter, which is the Alley.**
 9 Q. Which is the Alley?
 10 **A. Yeah.**
 11 Q. All right. So it's called Katie's or the Alley?
 12 **A. Yeah.**
 13 Q. Where did you come from?
 14 **A. Dexter Pub where I was working.**
 15 Q. So did you drink at all alcohol while you were working?
 16 **A. No, I did not.**
 17 Q. How did you get from the Dexter Pub to the Alley Bar?
 18 **A. I drove my vehicle.**
 19 Q. And this is the Yukon we were talking about?
 20 **A. Yep.**
 21 Q. Was there anybody with you when you drove to the Alley
 22 Bar?
 23 **A. Tony Hildabridle -- er, no, he was not. Sorry. Not that**
 24 **time. We left and came back. I forgot.**
 25 Q. Very good. So you arrived at the Alley the first time by

132

1 yourself?
 2 **A. Yes.**
 3 Q. Around what time did you arrive at the Alley the first
 4 time?
 5 **A. Had to have been around 9:30, 10 o'clock, roughly.**
 6 Q. Who did you meet up with at the Alley Bar that night?
 7 **A. My boyfriend, Tony.**
 8 Q. Was he already at the Alley when you arrived?
 9 **A. Yes.**
 10 Q. Who was he with when you arrived?
 11 **A. His brother, Brian; John --**
 12 Q. The Defendant?
 13 **A. Yes.**
 14 Q. Go ahead.
 15 **A. And Justin, I believe is his name.**
 16 Q. Justin Montgomery. The one we were just talking about?
 17 **A. Yes.**
 18 Q. Anybody else?
 19 **A. And then I guess the other couple that was there too.**
 20 Q. Who did you spend most of the time with at the bar at
 21 that time?
 22 **A. Tony.**
 23 Q. Did you have anything to drink while you were at the
 24 Alley Bar?
 25 **A. Yes, I did.**

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1 Q. What did you do have?
 2 **A. A Long Beach.**
 3 Q. So I want to talk first about the first -- let me back
 4 up. Fair to say you were there a couple times that
 5 night?
 6 **A. Yeah.**
 7 Q. I want to talk now only about the first time that you
 8 were there.
 9 **A. Okay.**
 10 Q. What did you have to drink the first time that you were
 11 there?
 12 **A. I think I had a beer and a Long Island, I believe.**
 13 MR. ROTH: May I approach the witness?
 14 THE COURT: You may.
 15 BY MR. ROTH:
 16 Q. (Approaching the witness.)
 17 I'm going to ask you to read this silently to
 18 yourself again. Again, this is your testimony under
 19 oath, right?
 20 **A. Okay. Yes.**
 21 Q. And when I asked you back in March about what you had to
 22 drink the first time, what did you have to say?
 23 **A. A draft beer.**
 24 Q. All right. So the first time you only had one draft
 25 beer?

134

1 **A. Yeah.**
 2 Q. Do you remember what kind of beer it was?
 3 **A. No, I do not.**
 4 Q. Did you see Tony drink anything while you were there the
 5 first time?
 6 **A. I don't -- I can't remember. I think he might have been**
 7 **drinking beer when I got there.**
 8 Q. Did he also have Long Islands as well?
 9 **A. Not that I know of.**
 10 Q. All right. How many beers did you see Tony drink the
 11 first time?
 12 **A. I only seen one in his hand, I believe.**
 13 Q. Thank you.
 14 **A. Mm-hmm.**
 15 Q. Did you see Brian drink any alcohol at the Alley Bar that
 16 night?
 17 **A. I believe he had -- I believe he was drinking beer also.**
 18 Q. What about the Defendant? Did you see him drinking
 19 anything?
 20 **A. Honestly, I can't remember. I wasn't really around that**
 21 **side of the bar. I was in a different side of the bar**
 22 **for most of the night.**
 23 Q. All right. How long did you stay at the Alley Bar the
 24 first time?
 25 **A. I want to say, like, an hour.**

135

1 Q. What did you and the people you were with do during that
2 time?
3 **A. Played darts.**
4 Q. We have some pictures at the Alley Bar. It's my
5 understanding that it has -- the pictures were taken
6 after it's changed. It's a little different in the
7 pictures than it was in December. I'm going to put them
8 on the screen. If you can tell me to stop when we get to
9 the area where the darts were.
10 **A. Okay. That's where the darts are.**
11 Q. Could you circle them on the screen?
12 **A. (Illustrating.)**
13 Q. All right. And that's People's Exhibit 85, for the
14 record. So who was playing Darts with you?
15 **A. Me, Tony, and I believe the two people that I didn't**
16 **really know.**
17 Q. The couple?
18 **A. Yeah.**
19 Q. You said you're at the Alley Bar for about an hour the
20 first time. Where did you go after that?
21 **A. I left and went back to the Dexter Pub.**
22 Q. Why did you return to the Dexter Pub?
23 **A. Because Shannon was still working, and I was trying to**
24 **see when she was getting off so that she can come with**
25 **us.**

136

1 Q. How did you get from the Alley to the Dexter Pub?
2 **A. I drove my Yukon.**
3 Q. Who was with you?
4 **A. Me and Tony.**
5 Q. How long were you at the Dexter Pub when you came back?
6 **A. I want to say, like, 30 minutes, roughly.**
7 Q. And that's while you're waiting for Shannon?
8 **A. Yes.**
9 Q. What did Tony do while you were waiting for Shannon?
10 **A. Just sitting there waiting for her.**
11 Q. Were you guys drinking?
12 **A. I'm not sure if we were at the time.**
13 Q. So he rode to the Dexter Pub and then waited with you?
14 **A. Yes.**
15 Q. What happened after those 30 minutes?
16 **A. We returned back to the Alley.**
17 Q. How did you get back to the Alley?
18 **A. In my Yukon.**
19 Q. Who rode with you in the Yukon?
20 **A. Tony.**
21 Q. So Shannon drove separately?
22 **A. Yes.**
23 Q. Did she go to the Alley as well?
24 **A. Yes, she did.**
25 Q. She drove separate?

137

1 **A. Mm-hmm.**
2 Q. Is that a yes?
3 **A. Yes, sorry.**
4 Q. When you left the Alley the first time, was Brian still
5 there?
6 **A. Yes.**
7 Q. Was the Defendant still there?
8 **A. Yes.**
9 Q. Do you know about what time you got back to the Alley
10 Bar?
11 **A. Roughly around 11:30, midnight.**
12 Q. And when you get back there, are any of your friends
13 still there?
14 **A. No.**
15 Q. Was Brian still there?
16 **A. No.**
17 Q. Was the Defendant still there?
18 **A. No.**
19 Q. What did you do once you got back to the Alley?
20 **A. Drank.**
21 Q. What did you drink?
22 **A. Long Islands.**
23 Q. What is a Long Island?
24 **A. It's, like, mostly liquor. It's got, like, a splash of**
25 **cranberry juice in it.**

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1 Q. Is it a mixed drink?
2 **A. I guess you would say that, yes.**
3 Q. Does it come with an umbrella in it?
4 **A. No.**
5 Q. Is it a fancy drink?
6 **A. It's a strong one.**
7 Q. Okay. How many did you have when you returned?
8 **A. I had about three or four.**
9 MR. ROTH: May I approach the witness,
10 Your Honor?
11 THE COURT: Yes.
12 BY MR. ROTH:
13 Q. (Approaching the witness.)
14 Ask you to read this silently to yourself, and
15 look up when you're done.
16 Does that refresh your memory?
17 **A. Oh, yes.**
18 Q. Back when you testified under oath in March in this
19 courtroom, how many drinks did you tell us that you had?
20 **A. About three.**
21 Q. I'm sorry, is that what it says?
22 **A. Two or three, sorry.**
23 Q. Is it two to three Long Islands?
24 **A. Yeah.**
25 Q. Does that sound right?

139

1 **A. Yep.**
 2 Q. How long were you there?
 3 **A. I want to say about an hour.**
 4 MR. ROTH: May I approach the witness,
 5 Your Honor?
 6 THE COURT: Yes.
 7 BY MR. ROTH:
 8 Q. (Approaching the witness.)
 9 I'm going to ask you to read this silently to
 10 yourself. Look up when you're done.
 11 Does that refresh your memory?
 12 **A. Yes.**
 13 Q. All right. So when you testified under oath back in
 14 March, how long did you say you were at the Alley the
 15 second time?
 16 **A. Forty-five minutes or so.**
 17 Q. So it's your testimony that in those forty-five minutes,
 18 you drank two or three complete Long Island Ice Teas?
 19 **A. Yes, I did.**
 20 Q. Can you hold up your hand how big a Long Island is?
 21 **A. About that big.**
 22 Q. So you're holding maybe six to eight inches apart?
 23 **A. Yeah.**
 24 Q. Did Tony drink any alcohol at the Alley Bar the second
 25 time?

140

1 **A. I can't really remember if he did or not. I'm pretty
 2 positive that he was.**
 3 Q. (Approaching the witness.)
 4 When you were asked this question last time,
 5 please read that silently to yourself and look up when
 6 you're done.
 7 Did that refresh your memory?
 8 **A. Yes.**
 9 Q. And when I asked you last time under oath "Did Tony drink
 10 alcohol the second time at the Alley," what did you say?
 11 **A. I didn't remember exactly.**
 12 Q. Ma'am, isn't it true you started, and you said:
 13 The second time, I don't believe
 14 so. I'm not sure exactly.
 15 **A. Yes.**
 16 Q. You started with "I don't believe so." Is that right?
 17 **A. Yes.**
 18 Q. Thank you. After 45 minutes or so you leave the Alley
 19 Bar, correct?
 20 **A. Mm-hmm.**
 21 Q. Is that a yes?
 22 **A. Yes.**
 23 Q. Where do you go then?
 24 **A. To Tony's dad's house.**
 25 Q. Who drove?

141

1 **A. I did.**
 2 Q. When you left the Alley Bar, did you feel intoxicated?
 3 **A. Yes.**
 4 Q. When you left the bar?
 5 **A. Mm-hmm.**
 6 Q. Is that a yes?
 7 **A. Yes.**
 8 Q. (Approaching the witness.)
 9 Read that section to yourself silently and look
 10 up when you're done.
 11 Did that refresh your memory?
 12 **A. Yes.**
 13 Q. And when I asked you last time under oath "Did you feel
 14 intoxicated when you left the Alley Bar," isn't it
 15 true that you said:
 16 Not when I left. But, yeah, when
 17 I got home, I was very
 18 intoxicated.
 19 **A. Yes.**
 20 Q. Does that sound right?
 21 **A. Yes.**
 22 Q. So it's your testimony that when you left the Alley Bar,
 23 in that moment you did not feel intoxicated, correct?
 24 **A. Yeah. When I left, no.**
 25 Q. And, in fact, you felt okay to drive home, correct?

142

1 **A. Yes.**
 2 Q. And you did drive?
 3 **A. Yes, I did.**
 4 Q. Was Tony with you?
 5 **A. Yes, he was.**
 6 Q. And did he ride with you?
 7 **A. Yes.**
 8 Q. And how long did it take you to get from the Alley Bar to
 9 Tony's dad's place?
 10 **A. About 15 minutes.**
 11 Q. And it is your testimony that in those 15 minutes, you
 12 went from not feeling intoxicated to very intoxicated?
 13 **A. Yes.**
 14 Q. You did not go to the Dam Site Inn bar that evening,
 15 correct?
 16 **A. No -- er, yes. Correct.**
 17 MR. ROTH: May I approach the witness,
 18 Your Honor?
 19 THE COURT: Yes.
 20 MR. ROTH: I'm not going to move to admit these
 21 pictures at this time but will with a later witness.
 22 BY MR. ROTH:
 23 Q. (Approaching the witness.)
 24 Starting with 89. Does this look like the
 25 white SUV you knew the Defendant to drive?

143

1 **A. It looks similar, yes.**
 2 Q. 91. Do you recognize the people in that picture?
 3 **A. Um --**
 4 Q. Start with this person with the hat.
 5 **A. It's pretty blurry. Yes.**
 6 Q. Who do you recognize that person as being?
 7 **A. John.**
 8 Q. The Defendant?
 9 **A. Yes.**
 10 Q. All right. We see him again throughout these pictures?
 11 **A. Yes.**
 12 Q. All right. How about this picture in 95? Can you tell
 13 this man?
 14 **A. It's blurry, but I don't know.**
 15 Q. Okay. Showing you 97. Who is this young woman here?
 16 **A. I don't know who that is.**
 17 Q. All right. How about the man behind the Defendant in
 18 that picture?
 19 **A. I can't tell.**
 20 Q. All right. 98. Who do we see here with the hat?
 21 **A. It's so blurry, these pictures.**
 22 Q. It's your testimony that you don't recognize this man in
 23 the hat?
 24 **A. It -- I mean, it looks like John, but I can't be for**
 25 **sure. It's blurry.**

144

1 Q. What about the man next to him?
 2 **A. I don't know. Tony -- er, Brian, maybe.**
 3 Q. You can't tell if that's Brian Hildabridge?
 4 **A. I mean, look how blurry that is.**
 5 Q. Okay. Showing you People's Exhibit 100. Do you
 6 recognize this man with the beard in the middle, not the
 7 man with the hat?
 8 **A. No.**
 9 Q. All right.
 10 **A. Sorry.**
 11 Q. What about the man here?
 12 **A. Looks like John. I don't know. I don't know who that**
 13 **is.**
 14 Q. All right. And that was not the person we've been
 15 talking about as John.
 16 I know her back is to the camera here, but do
 17 you recognize who this person is based on what they're
 18 wearing that night?
 19 **A. No.**
 20 Q. And that was in 104, a female.
 21 Then getting to the back again. 112. That
 22 looks like the white SUV that you knew the Defendant to
 23 drive at the time?
 24 **A. It looks like a white SUV, yes.**
 25 Q. Like the one that you knew him to drive?

145

1 **A. I suppose. I don't really remember details about an SUV.**
 2 **So...**
 3 Q. So instead of going to the Dam Site, you and Tony go back
 4 to Tony's dad's house. Is that right?
 5 **A. Yes.**
 6 Q. Did anybody else go back with you?
 7 **A. No.**
 8 Q. Why did you go to Tony's dad's house?
 9 **A. Because we were sleeping there.**
 10 Q. Were you two staying there?
 11 **A. At the time, yes.**
 12 Q. And you said it's about 15 minutes away?
 13 **A. Yes.**
 14 Q. When you arrived at Tony's dad's house, was anybody else
 15 home?
 16 **A. No.**
 17 Q. Where in the house were you two staying?
 18 **A. In the front room by the front door.**
 19 Q. About how big is that room?
 20 **A. I'm not exactly sure.**
 21 Q. Big? Small?
 22 **A. It's -- it's kind of big, I guess you'd say. It's, like,**
 23 **a dining room.**
 24 Q. What did you two do when you got home?
 25 **A. We laid down.**

146

1 Q. What happened next?
 2 **A. We went to sleep. Well, laid there and tried to go to**
 3 **sleep. Tony fell asleep.**
 4 Q. How quickly did Tony go to sleep?
 5 **A. Pretty fast.**
 6 Q. Give me an idea what that means?
 7 **A. Like, ten minutes, I guess.**
 8 Q. All right. And you said tried to go to sleep. Were you
 9 able to go to sleep as fast as Tony?
 10 **A. No. I was laying there.**
 11 Q. And were you two doing anything while you were trying to
 12 go to sleep?
 13 **A. I think we might have been listening to music. I can't**
 14 **really remember exactly.**
 15 Q. Did you remain in that room with Tony?
 16 **A. Yes.**
 17 Q. Was there a time when the phone rang, Tony's phone?
 18 **A. Yes, there was.**
 19 Q. Did it ring out loud or vibrate?
 20 **A. Out loud, I believe. That's what got my attention. I**
 21 **was almost asleep.**
 22 Q. Do you know about what time that was?
 23 **A. Roughly around 2 o'clock, I guess.**
 24 Q. Where was Tony's phone when it rang?
 25 **A. On a little nightstand, I think. I can't really remember**

147

1 **exactly.**

2 Q. What did you do when you heard that phone ring?

3 **A. I answered it.**

4 Q. Before you answered it, did you see who it was?

5 **A. No.**

6 Q. Was there a caller ID on it?

7 **A. I think so, yeah, but I didn't -- I don't know if I**

8 **looked at the phone before I answered it or not.**

9 Q. So this is Tony's phone, not yours. Why did you answer

10 it?

11 **A. Because it was ringing in the middle of the night, and I**

12 **was just wondering who was calling, I guess. I was**

13 **intoxicated. So I just answered it.**

14 Q. (Approaching the witness.)

15 All right. I'm going to ask you to read one

16 section first, and there is a second one both dealing

17 with what we just talked about. All right. Read that

18 part first to yourself silently and look up when you're

19 done.

20 **A. Okay.**

21 Q. Does that refresh your memory?

22 **A. Yes.**

23 Q. So let me ask you again: Is there a caller ID on the

24 phone so you can see who it is before you pick it up?

25 **A. Yes, there was.**

148

1 Q. And did you see who this was before you answered it on

2 Tony's phone?

3 **A. It said John.**

4 Q. And you believe that to be the Defendant?

5 **A. Yes.**

6 Q. I just asked you why you picked up Tony's phone. Could

7 you read that silently to yourself?

8 **A. Because I was -- sorry, yes.**

9 Q. Does that refresh your memory?

10 **A. Yes.**

11 Q. And why did you pick up Tony's phone?

12 **A. Because I didn't want it to wake him up.**

13 Q. To wake Tony up?

14 **A. Yes.**

15 Q. So you answered the phone. Is that correct?

16 **A. Yeah.**

17 Q. What happened when you answered the phone?

18 **A. I picked up the phone, and they asked for Tony.**

19 Q. They?

20 **A. Well, John asked for Tony.**

21 Q. Did you recognize the voice as the Defendant, John

22 Kelsey?

23 **A. I've never spoken to him on the phone before this, so I**

24 **cannot tell you.**

25 Q. Go ahead.

149

1 **A. I answered the phone, and they asked for Tony. I said**

2 **that he was sleeping. And then he said, "Well, I just**

3 **ran from -- er, I just ran from the police," and I**

4 **figured it was just to get Tony awake -- for me to wake**

5 **up Tony. So...**

6 Q. Just one moment.

7 **A. Mm-hmm.**

8 Q. All right. I apologize. Tell me again what is it that

9 you heard the voice say? First of all, it's a male

10 voice?

11 **A. Yes.**

12 Q. It's identified to you as what you believed to be the

13 Defendant based on what shows up, right?

14 **A. I mean, John. So that's a pretty --**

15 Q. And what did this person say to you on the phone?

16 **A. They said that -- they asked for Tony. I told him Tony**

17 **was sleeping. And then they said "I just ran from the**

18 **police" and --**

19 Q. What did you say then?

20 **A. I don't believe I said anything after that.**

21 Q. Did you tell them that you would have Tony call him back

22 when he woke up?

23 **A. Yes, I did say that.**

24 Q. How did this person sound on the phone?

25 **A. I don't know, just sounded like somebody on the phone.**

150

1 Q. Did he sound excited at all?

2 **A. Not that I can recall. I mean, I was half asleep. So...**

3 **and intoxicated. So...**

4 Q. Ma'am, it's your testimony that you had just driven home

5 from the bar. You're telling us that you are now

6 intoxicated to the point that you can't remember what's

7 going on?

8 **A. I mean, I was half asleep, and, yes, I was intoxicated.**

9 **So...**

10 Q. Ma'am, when you drove home from the bar, did you get in

11 any accidents?

12 **A. No, I did not.**

13 Q. Did you get pulled over?

14 **A. No, I did not.**

15 Q. Swerve off the road?

16 **A. No, I did not.**

17 Q. Got home safe and sound, right?

18 **A. Yes.**

19 Q. So at that point you're fine enough. How much time

20 passes between when you get home and when you answer this

21 phone call from John?

22 **A. About 45 minutes, I think.**

23 Q. So in those 45 minutes, it's your testimony that you went

24 to driving just fine to "I can't remember what's going

25 on"?

151

1 **A. I mean, yeah.**
 2 Q. Ma'am, you're aware that phone call lasted almost four
 3 and a half minutes, right?
 4 **A. Yes, I am.**
 5 Q. And it's your testimony that all that happened is this
 6 person says, "I just ran from the police." And you say,
 7 "I'll have Tony call you when he wakes up."
 8 You can't tell us anything else that happened
 9 during that conversation for four and a half minutes?
 10 **A. Except for he asked for Tony, and I told him that Tony**
 11 **was sleeping, and that was all involved in the**
 12 **conversation as well.**
 13 Q. Ma'am, four and a half minutes is a long time. There is
 14 nothing else that happened during that time?
 15 **A. No. Either I didn't hang up the phone, or he did not. I**
 16 **don't know.**
 17 Q. After you hung up the phone, did you wake Tony up?
 18 **A. No, I did not.**
 19 Q. Did you wake him up while you were on the phone at all?
 20 **A. No, I did not.**
 21 Q. When was the first time that you told Tony about that
 22 conversation?
 23 **A. I believe it was the next day later in the evening.**
 24 Q. And later in that week, did the Michigan State Police
 25 come talk to you while you were working at the Dexter

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1 Pub?
 2 **A. Yes, they did.**
 3 Q. Did they tell you about -- excuse me, did they ask you
 4 about that phone call from John Kelsey?
 5 **A. Yes, they did.**
 6 Q. And by that time, were you aware of the case surrounding
 7 the circumstances?
 8 **A. I knew about the case, but I didn't put two and two**
 9 **together. I just never thought.**
 10 Q. But you had heard on that night that this phone call
 11 happened that a deputy was killed in a police pursuit,
 12 correct?
 13 **A. Yes, I did.**
 14 Q. And you knew the Defendant lived in Stockbridge at the
 15 time, right?
 16 **A. Yes, I did.**
 17 Q. And you knew that that deputy was killed in Stockbridge,
 18 right?
 19 **A. Yes, I did.**
 20 Q. And it's your position that -- er, it's your statement to
 21 this jury today you never put those very easy pieces
 22 together?
 23 **A. No, I did not.**
 24 Q. How did you feel when the police showed up at your work
 25 to ask you about this?

153

1 **A. Like, I was busy trying to make money.**
 2 Q. Did you want to speak to them?
 3 **A. No, I did not.**
 4 Q. Did you talk to them briefly anyway?
 5 **A. Yes, I did.**
 6 Q. Where?
 7 **A. In the basement of the Dexter Pub.**
 8 Q. And did you tell them about that phone call from the
 9 Defendant?
 10 **A. Yes, I did.**
 11 Q. One week later, on December 19th, 2014, did the police
 12 personally serve you with a subpoena to testify at a
 13 hearing?
 14 **A. Yes, they did.**
 15 Q. On this case?
 16 **A. Yes, they did.**
 17 Q. And you knew that a subpoena was a court order to appear
 18 and testify, correct?
 19 **A. Yes.**
 20 Q. Did that subpoena tell you when and where to testify?
 21 **A. Yes.**
 22 Q. Did you appear at the Court as ordered?
 23 **A. No, I did not.**
 24 MR. MORLEY: Objection, relevance.
 25 MR. ROTH: Your Honor, it goes to her bias.

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1 THE COURT: Overruled.
 2 BY MR. ROTH:
 3 Q. Where did you go instead of the courthouse?
 4 **A. I went to Florida to visit my family for the holidays,**
 5 **which I had planned.**
 6 Q. Ma'am, when they served you that subpoena, you didn't
 7 say, "I have prearranged travel" that day, did you?
 8 **A. No, I did not.**
 9 Q. And you didn't tell your employer that you'd be gone
 10 either, right?
 11 **A. I was actually fired from there.**
 12 Q. Because you went to Florida and didn't show up, correct?
 13 **A. No. The day after the police came in to speak with me,**
 14 **they fired me because I wouldn't tell them what it was**
 15 **about.**
 16 Q. And you didn't call the police or prosecutor or anybody
 17 to try and reschedule your testimony, correct?
 18 **A. I did not.**
 19 Q. And how long did you stay in Florida?
 20 **A. I was there for about a month.**
 21 Q. And because you failed to appear at court, a bench
 22 warrant was issued for you, correct?
 23 **A. Yes.**
 24 Q. And when you returned to Michigan, were you arrested as
 25 you crossed into the border?

155

1 **A. Yes, I was.**
 2 Q. And you were convicted of contempt of court for that,
 3 correct?
 4 **A. Yes, I was.**
 5 MR. ROTH: Just one moment, Your Honor.
 6 Nothing further of this witness, Your Honor.
 7 THE COURT: Thank you, Mr. Roth.
 8 Mr. Morley, you may question the witness.
 9 MR. MORLEY: Thank you, Judge.
 10 CROSS-EXAMINATION
 11 BY MR. MORLEY:
 12 Q. Ma'am, you were just asked a series of questions about a
 13 prior court hearing. And, in fact, you testified
 14 previously that you weren't avoiding that court hearing.
 15 You had personal issues. True?
 16 **A. Yes, true.**
 17 Q. In fact, you were -- I mean no disrespect by this, but
 18 was that or about the time that you were commemorating
 19 the death of your mom, right?
 20 **A. Yes.**
 21 Q. And when you left the state, it wasn't because anybody
 22 said, "Don't testify in this matter," or "If you testify,
 23 something is going to happen to you." It was wholly
 24 unrelated to this matter, right?
 25 **A. Right.**

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1 Q. And you've come back here today admittedly pursuant to
 2 subpoena but of your own free will, right?
 3 **A. Yes, sir.**
 4 Q. You took some -- er, you were asked some questions about
 5 your level of intoxication.
 6 **A. Yes.**
 7 Q. To be clear, and correct me -- you might know better than
 8 I would, but you were drinking two or three Long Islands.
 9 A Long Island has five shots of liquor, doesn't it?
 10 **A. Yes, sir.**
 11 Q. In fact, most bars have a limitation on how many you can
 12 have because they get you pretty intoxicated, right?
 13 **A. Yes, sir.**
 14 Q. And your testimony previously and I think today is that
 15 maybe you shouldn't have been driving on the way home,
 16 but you were okay enough?
 17 **A. Yes.**
 18 Q. And by the time you got home, you were pretty liquored?
 19 Is that fair?
 20 **A. Yeah, yeah. It is fair to say that. I mean, I drank
 21 them in a pretty quick amount of time. So...**
 22 Q. You've never spoken -- let me step back a little bit.
 23 You had only been dating Tony Hildabridle for a little
 24 while, right?
 25 **A. Yes, sir.**

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1 Q. You didn't know John Kelsey all that well, right?
 2 **A. No.**
 3 Q. Didn't have his phone number?
 4 **A. No.**
 5 Q. Never spoken to him on the phone before that evening?
 6 **A. Never.**
 7 Q. Never texted him?
 8 **A. Never.**
 9 Q. Never anything, right?
 10 **A. Never.**
 11 Q. In fact, when he called you, he was quite calm, wasn't
 12 he?
 13 **A. As far as I can remember, yeah.**
 14 Q. You thought it was a joke, right?
 15 **A. I believed it was, yeah.**
 16 Q. And that's what you testified -- you said, "I thought it
 17 was a joke. I thought he was trying to get me to wake
 18 Tony up," right?
 19 **A. Yes, sir.**
 20 Q. Did he tell you he was the driver of the vehicle?
 21 **A. No.**
 22 Q. Did he tell you where he was?
 23 **A. No.**
 24 Q. Did he tell you if it was a foot chase or a car chase?
 25 **A. None.**

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1 Q. Throughout the course of that evening, December 6th --
 2 well, I guess you went home, what did you say, about 10
 3 or 11 o'clock on December 6th --
 4 **A. When I went home?**
 5 Q. -- or a little bit later?
 6 **A. It was later than that. Probably around 12 -- er, 12:30,
 7 maybe.**
 8 Q. But you never saw Mr. Kelsey drinking any alcohol, right?
 9 **A. Not -- not that I recall, but I was, you know, in a
 10 different room than -- he was at the bar mostly.**
 11 Q. And the person you spoke to on the phone as you sit here
 12 today, are you sure that that was the John Kelsey you
 13 were even talking to?
 14 **A. I cannot be 100 percent positive because I did not see a
 15 last name on the caller ID. So...**
 16 Q. And you didn't recognize the voice?
 17 **A. I mean, I've never spoke to John on the phone. So I
 18 wouldn't know if it was his voice or not.**
 19 MR. MORLEY: That's all I have, Judge. Thank
 20 you.
 21 THE COURT: Thank you, Mr. Morley.
 22 Mr. Roth, you may redirect.
 23 MR. ROTH: Thank you, Your Honor. May I
 24 approach the witness, Your Honor?
 25 THE COURT: Yes.

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1 REDIRECT EXAMINATION
2 BY MR. ROTH:
3 Q. (Approaching the witness.)
4 All right. Take a moment and read this
5 silently to yourself. Look up when you're done.
6 Does that refresh your memory?
7 A. Yes.
8 Q. All right. So let me ask again: The phone -- excuse me,
9 the voice that you heard on the phone call that night
10 that said that they had just run from the police, did
11 that sound like the Defendant?
12 A. I suppose it could, but, I mean, it's very vague. It's
13 on the phone, and I was half asleep. So...
14 Q. Ma'am, when I asked you that under oath last time, your
15 answer was:
16 Yes. I guess you could say that.
17 A. Yeah. I guess you could say that.
18 MR. ROTH: Nothing further, Your Honor.
19 Thank you.
20 THE COURT: All right. Thank you, Mr. Roth.
21 You may step down, ma'am. Thank you.
22 THE WITNESS: Thank you.
23 (At 11:52 a.m., the witness
24 stepped down from the witness
25 stand.)

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1 THE COURT: Could I see counsel at the bench?
2 (At 11:52 a.m., an at-the-bench
3 discussion is held off the
4 record.)
5 THE COURT: Ladies and Gentlemen, I'm going to
6 have you go back in the jury room with Mr. Adkins,
7 please.
8 (At 11:52 a.m., the jury left the
9 courtroom.)
10 THE COURT: Is there anything for the record
11 before we break?
12 MR. ROTH: Preemptively, Your Honor, we
13 attempted to speak to Mr. Hildabridle, Tony Hildabridle,
14 during the last break. He would not speak to us. I
15 don't know if that's going to carry over on to the stand.
16 It might be worth calling him outside of the presence of
17 the jury just to begin with to make sure we're not going
18 to have an issue.
19 THE COURT: All right. Did you want to do that
20 after the break?
21 MR. ROTH: Yes, Your Honor.
22 THE COURT: You'll want to take an opportunity
23 to try to speak with him, and we'll address it at that
24 point if we need to?
25 MR. ROTH: Yes, Your Honor.

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1 THE COURT: Mr. Morley, anything that you want
2 to put on the record, sir?
3 MR. MORLEY: I'll defer to the Court,
4 Your Honor. Thank you.
5 THE COURT: Okay. We'll take a break then.
6 (At 11:54 a.m., recessed;
7 reconvened at 12:08 p.m.)
8 THE COURT: You can be seated.
9 Mr. Roth, so what is the situation?
10 MR. ROTH: So Mr. Hildabridle would not speak
11 to me at any real length in the hallway. All he told me
12 was that he was going to answer all questions with "I
13 don't remember." So I think it would probably be best to
14 bring him in and let the Court inquire about that issue,
15 or we can call him and just let him do that.
16 THE COURT: Mr. Morley?
17 MR. MORLEY: I'm going to defer to the Court,
18 Your Honor. He's under no obligation to necessarily talk
19 to anybody. I'll defer to the Court.
20 THE COURT: But if I understood correctly,
21 Mr. Roth, it's not -- your issue is not that he hasn't
22 talked with you. Your issue is what his testimony may
23 be?
24 MR. ROTH: That's correct. I don't care if he
25 talks to me in the hallway or not. It's my belief he's

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1 going to get up there and say, "I don't remember. I
2 don't remember." Obviously I'm going to seek to admit
3 his prior statement or at least the relevant or at least
4 the relevant parts of it under 803(5), recorded
5 recollection if he persists with that. That's my method
6 of going forward.
7 THE COURT: All right. We'll see then how it
8 proceeds and take it as it comes.
9 MR. ROTH: Thank you, Your Honor.
10 THE COURT: With that, are you ready for the
11 jury?
12 MR. ROTH: We are, Your Honor.
13 THE COURT: Mr. Morley, are you ready for the
14 jury as well, sir?
15 MR. MORLEY: Yes, sir. Thank you.
16 THE COURT: Okay. Let's bring them in.
17 (At 12:11 p.m., the jury entered
18 the courtroom.)
19 THE COURT: Please be seated.
20 Mr. Roth, you may call your next witness.
21 MR. ROTH: People call Tony Hildabridle.
22 THE COURT: Right up here, sir. Please raise
23 your right hand.
24 Do you swear or affirm to tell the truth, the
25 whole truth, and nothing but the truth?

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1 MR. TONY HILDABRIDGE: Yes.
 2 THE COURT: Please be seated. State your full
 3 name for us, and spell your last name, please.
 4 THE WITNESS: Tony Steven Hildabridge,
 5 H-I-L-D-A-B-R-I-D-L-E.
 6 THE COURT: Mr. Roth?
 7 MR. ROTH: Thank you, Your Honor.
 8 TONY S. HILDABRIDGE
 9 called by the People at 12:12 p.m., sworn by the Court,
 10 testified:
 11 DIRECT EXAMINATION
 12 BY MR. ROTH:
 13 Q. Good afternoon, sir. All right. Let's start with this:
 14 Detective Trooper Johnston attempted to talk to
 15 you in the hallway today, and you refused to speak with
 16 him, correct?
 17 A. **That's correct.**
 18 Q. I attempted to speak with you briefly in the hallway
 19 today, and you refused to speak with me, correct?
 20 A. **That's correct.**
 21 Q. How old are you, sir?
 22 A. **Thirty-one.**
 23 Q. Do you know John Kelsey?
 24 A. **Yes, I do.**
 25 Q. How do you know John Kelsey?

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1 A. **He's my friend.**
 2 Q. How long have you been friends with him?
 3 A. **I don't know.**
 4 Q. Give me an idea, sir.
 5 A. **A long time.**
 6 Q. More than ten years?
 7 A. **Yes.**
 8 Q. More than 15 years?
 9 A. **Somewhere in there.**
 10 Q. Do you see him in the courtroom today?
 11 A. **Yep.**
 12 Q. Could you please point him out and identify him for the
 13 record?
 14 A. **Do I have to?**
 15 THE COURT: You do.
 16 THE WITNESS: He's right there.
 17 MR. ROTH: Your Honor, I would ask the record
 18 reflect that the witness has identified the Defendant.
 19 MR. MORLEY: Defer to the Court, Your Honor.
 20 THE COURT: The record will reflect that the
 21 witness has identified Mr. Kelsey.
 22 MR. ROTH: Thank you, Your Honor.
 23 BY MR. ROTH:
 24 Q. You two are extremely close friends, correct?
 25 A. **We're friends.**

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1 Q. Spend a lot of time together?
 2 A. **Average. We talk.**
 3 Q. By phone?
 4 A. **More in person.**
 5 Q. Go out together sometimes?
 6 A. **We have, yes.**
 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 a few pictures. People's
 13 Proposed Exhibit 91. Is that the Defendant?
 14 A. **Yes.**
 15 Q. 93?
 16 A. **Yep.**
 17 Q. 95?
 18 A. **Yep.**
 19 Q. 105?
 20 A. **Mm-hmm.**
 21 Q. Is that a yes?
 22 A. **Yep.**
 23 Q. 103?
 24 A. **Yep.**
 25 Q. Thank you. In December of 2014, he appeared different

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1 than he appears today in court, correct?
 2 A. **According to the pictures, yes.**
 3 Q. Sir, I want to talk about your memory. He had a beard in
 4 December of 2014, correct?
 5 A. **I don't remember that day, but according to the pictures,**
 6 **yes.**
 7 Q. And he had a shaved head, right?
 8 A. **I don't know.**
 9 Q. Do you know Sandie Hale?
 10 A. **Yes, I do.**
 11 Q. What is your relationship to Sandie Hale now?
 12 A. **There is none.**
 13 Q. Did you previously date?
 14 A. **We hung out.**
 15 Q. Was there a romantic and/or sexual component to your
 16 hanging out?
 17 A. **I wouldn't say romantic.**
 18 Q. But sexual?
 19 A. **Yeah.**
 20 Q. And it could be construed by some as dating, correct?
 21 A. **No.**
 22 Q. Okay. When did you start seeing Ms. Hale?
 23 A. **When I -- when I met her at my sister's.**
 24 Q. Could you tell me approximately when that was?
 25 A. **No, I can't.**

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1 Q. Was it in 2014?
 2 A. **Yes.**
 3 Q. Was it --
 4 A. **Er, I -- I don't remember, to be honest with you.**
 5 Q. When did you stop seeing Ms. Hale?
 6 A. **When she went to Florida.**
 7 THE COURT: We have a juror indicating she
 8 cannot hear.
 9 Sir, you're going to need to pull up closer to
 10 the microphone and speak into the microphone so we can
 11 hear you.
 12 BY MR. ROTH:
 13 Q. Sir, I'm going to stand a little bit further back here.
 14 Can you make sure that you're loud enough so I can hear
 15 you back here?
 16 A. **Yes.**
 17 Q. Thank you. So when she left to Florida, you stopped
 18 dating or --
 19 A. **Seeing.**
 20 Q. -- whatever your relationship was?
 21 A. **Yes.**
 22 Q. About how long had you been seeing her?
 23 A. **Probably a month.**
 24 Q. A month or so? Is that a yes?
 25 A. **Yep.**

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1 Q. Thank you. Showing you People's Exhibit 87. Is that
 2 Ms. Hale on the left?
 3 A. **Yep.**
 4 Q. And you on the right?
 5 A. **Yep.**
 6 Q. What do you have on your arms, sir?
 7 A. **Tattoos.**
 8 Q. You sometimes wear a black Under Armour baseball hat?
 9 A. **I don't know.**
 10 MR. ROTH: May I approach the witness,
 11 Your Honor?
 12 THE COURT: You may.
 13 BY MR. ROTH:
 14 Q. (Approaching the witness.)
 15 Do these pictures of yourself refresh your
 16 memory?
 17 A. **Yep.**
 18 Q. Do you have a black Under Armour baseball hat?
 19 A. **Yep.**
 20 Q. It's almost all black, right?
 21 A. **Yep.**
 22 Q. And then there is a brim on the front of it, right?
 23 A. **I don't have it no more, but, yeah.**
 24 Q. Do you know Brian Hildabridle?
 25 A. **Yes, I do.**

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1 Q. How do you know Brian Hildabridle?
 2 A. **He's my little brother.**
 3 Q. I'm sorry?
 4 A. **He's my little brother.**
 5 Q. How old is Brian?
 6 A. **I don't know.**
 7 Q. Could you tell me about how old Brian is?
 8 A. **Probably twenty-nine, thirty.**
 9 Q. Do you know Shannon Hildabridle or Gauthier?
 10 A. **Yes, I do.**
 11 Q. Is she your sister?
 12 A. **Yes, she is.**
 13 Q. How old is she?
 14 A. **Thirty-two.**
 15 Q. Do you know Sabrina Ware?
 16 A. **Yes, I do.**
 17 Q. How do you know Sabrina Ware?
 18 A. **Because she dates a guy I used to work for.**
 19 Q. What is his name?
 20 A. **A. J.**
 21 Q. Anthony?
 22 A. **I don't know.**
 23 Q. What's A. J.'s last name?
 24 A. **I don't know.**
 25 Q. Does Wynn sound right?

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1 A. **That sounds like it might be right.**
 2 Q. Do you know Justin Montgomery?
 3 A. **Yes, I do.**
 4 Q. How do you know Justin Montgomery?
 5 A. **I worked with him.**
 6 Q. Were you friends?
 7 A. **A little bit. Kind of, yeah.**
 8 Q. Spent some time outside of work at the bar together?
 9 A. **We have a couple times.**
 10 Q. On the evening of December 6th, 2014, did you go out with
 11 some of these people?
 12 A. **I don't remember that day.**
 13 Q. Sir, do you know the date that I'm talking about?
 14 A. **Yeah, December 6th.**
 15 Q. All right. Tell me what you remember about that day.
 16 A. **Nothing.**
 17 Q. Nothing at all?
 18 A. **No.**
 19 Q. Did you give a statement to police previously about that
 20 day?
 21 A. **I may have.**
 22 Q. And I asked in the hallway if you wanted to listen to
 23 that, correct?
 24 A. **You did.**
 25 Q. And the trooper asked you the same thing, correct?

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1 **A. No, he did not.**
 2 Q. Did he have the transcript and some disks with him?
 3 **A. The prosecutor, the female prosecutor did.**
 4 Q. There was a young woman as well who had the disks, and
 5 she offered to let you listen to it as well?
 6 **A. Yes, she did.**
 7 Q. And you refused?
 8 **A. Yes.**
 9 Q. You don't want to remember that, correct?
 10 **A. That's correct.**
 11 Q. And you do not want to testify today against your friend,
 12 correct?
 13 **A. That is correct.**
 14 MR. ROTH: May I approach the witness,
 15 Your Honor?
 16 THE COURT: You may.
 17 BY MR. ROTH:
 18 Q. (Approaching the witness.)
 19 I'm going to hand you the transcript of the
 20 interview that you gave to the police. Could you please
 21 flip through this and refresh your memory?
 22 **A. No thanks.**
 23 Q. Why not?
 24 **A. Because I have problem reading and writing and**
 25 **comprehending things.**

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1 Q. I understand. So if we excuse the jury and we played
 2 that interview for you, would that help?
 3 **A. No, it would not.**
 4 Q. Why not?
 5 **A. Because I don't want to be here, and I don't want to talk**
 6 **about it.**
 7 Q. Sir, if we play that interview for you, that will help
 8 refresh your memory, though, won't it?
 9 **A. It will not.**
 10 Q. Why not?
 11 **A. Because it won't.**
 12 Q. Just to be clear, you gave that interview -- you gave
 13 that interview on December 12th, 2014, at 3:45 p.m.,
 14 correct?
 15 **A. I don't know.**
 16 Q. You remember giving an interview, though, correct? And
 17 it was earlier in time than today, correct?
 18 **A. I don't remember.**
 19 Q. Remember going to the Alley Bar that night?
 20 **A. I don't know what night it was, but I have gone to the**
 21 **Alley quite a bit.**
 22 Q. Thank you. December 6th, 2014, is when we're talking
 23 about. Do you remember meeting up with the Defendant at
 24 your dad's house that night?
 25 **A. Which night?**

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1 Q. December 6th, 2014.
 2 **A. I don't remember that night.**
 3 Q. Were you staying with your dad at the time?
 4 **A. Yes, I was.**
 5 Q. Do you remember a night where the Defendant drove you in
 6 his white SUV to the Alley Bar?
 7 **A. No, I do not.**
 8 Q. Do you remember a night when he drove you in his white
 9 SUV to the Alley Bar and he had a dog inside of the
 10 vehicle?
 11 **A. No, I do not.**
 12 Q. You know that he owns a pit bull, correct?
 13 **A. Yes, I do.**
 14 Q. Do you remember a night where that dog stayed in the
 15 vehicle while you were at the bar?
 16 **A. No, I don't.**
 17 Q. Do you remember a night when you were at the Alley Bar
 18 and your girlfriend, Sandie Hale, showed up after work
 19 and met you there?
 20 **A. Which time?**
 21 Q. December 6th, 2014, sir.
 22 **A. I don't remember that night.**
 23 Q. Do you remember drinking Long Island Ice Teas at the bar
 24 that night?
 25 **A. I don't know about that night, but that's what I drink.**

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1 Q. Did you have some beers as well?
 2 **A. I probably did.**
 3 Q. Probably did or did not?
 4 **A. Probably did.**
 5 Q. And onion rings. Do you remember ordering onion rings?
 6 **A. No.**
 7 Q. Do you like onion rings?
 8 **A. It's not one of my favs, no, but...**
 9 Q. Did you ever have any onion rings at the Alley Bar?
 10 **A. What's that got to do with anything?**
 11 Q. Sir, have you ever had onion rings at the Alley Bar?
 12 **A. No, I have not.**
 13 Q. Do you remember the Defendant being at the Alley Bar that
 14 night?
 15 **A. I don't remember that night.**
 16 Q. Sir, do you remember testifying under oath previously in
 17 this case?
 18 **A. Yes, I have.**
 19 Q. And at that time, you remembered, right?
 20 **A. I don't remember.**
 21 Q. Sir, is there any physical reason your memory would stop
 22 like this?
 23 **A. I told you a little bit ago I have that disorder.**
 24 Q. What's the name of this disorder, sir?
 25 **A. I don't know. I can't comprehend to figure it out.**

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1 MR. ROTH: May I approach the witness,
 2 Your Honor?
 3 THE COURT: You may.
 4 BY MR. ROTH:
 5 Q. (Approaching the witness.)
 6 So I'm going to look at your testimony under
 7 oath previously, okay. Do you remember that?
 8 A. **No, I do not.**
 9 Q. December 23rd, 2014, you appeared in front of the 55th
 10 Judicial Court, Judge Allen, swore to tell the truth, and
 11 you gave a statement, correct?
 12 A. **Yes, I did.**
 13 Q. So you do recall doing that?
 14 A. **According to your paper, yes.**
 15 Q. No. A minute ago you said you remembered that. "I did
 16 do that," is what you said. Do you remember it?
 17 A. **No, I don't.**
 18 Q. We're going to start here.
 19 MR. MORLEY: What page, please?
 20 MR. ROTH: Page 54.
 21 BY MR. ROTH:
 22 Q. Could you read that to yourself and look up when you're
 23 done?
 24 A. **I can't read.**
 25 MR. ROTH: Your Honor, I think at this point

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1 the most appropriate thing to do would be to excuse the
 2 jury and play the interview for him.
 3 THE COURT: Mr. Morley, could I see counsel at
 4 the bench here?
 5 (At 12:24 p.m., an at-the-bench
 6 discussion is held off the
 7 record.)
 8 THE COURT: All right. Ladies and Gentlemen,
 9 I'm going to have Mr. Adkins take you back to the jury
 10 room.
 11 (At 12:30 p.m., the jury left the
 12 courtroom.)
 13 THE COURT: All right. You can be seated,
 14 please.
 15 Mr. Roth, is there anything that you want to
 16 put on the record about the procedure we're going to take
 17 at this point?
 18 MR. ROTH: Your Honor, it is my understanding
 19 that what we're going to do, based on conversation at the
 20 bench, is first attempt to refresh his memory by playing
 21 the specific and most relevant pieces. I think we all
 22 agree that playing the entire interview is not the best
 23 use of time right now but the most relevant pieces which
 24 have been marked on -- Proposed Exhibit 1001 is the disk,
 25 and then 1002 is the corresponding transcript. If that

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1 refreshes his memory, then the jury will come back in,
 2 ask questions about that material.
 3 If he insists that it does not refresh his
 4 memory, then those pieces will be replayed for the jury
 5 when they come in under 803(5), a recorded recollection.
 6 THE COURT: All right. And just to confirm
 7 what we discussed at the bench, it's my understanding
 8 that Mr. Morley's objection, just so it's preserved, was
 9 that at this point in time it has not been sufficiently
 10 shown that his memory is exhausted to the point where it
 11 could not be refreshed. Just because he said he wouldn't
 12 read or couldn't read the written statements since we do
 13 have a recording, so that's why we're moving to this
 14 step.
 15 Did I pretty much capture it, Mr. Morley?
 16 MR. MORLEY: I think that's accurate,
 17 Your Honor. We're kind of starting with rule of evidence
 18 addressing refreshing recollection and then, if
 19 necessary, addressing recorded recollection. I probably
 20 don't have an objection on the latter.
 21 On the former, I believe the Court has
 22 accurately paraphrased what I addressed at the bench;
 23 that is, that there is not a showing that listening to
 24 anything would or would not -- excuse me, would assist
 25 his memory. So I think that's all I have.

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1 THE COURT: All right. Thank you, Mr. Morley.
 2 Then, Mr. Roth, you may proceed.
 3 MR. ROTH: Thank you, Your Honor.
 4 THE COURT: I guess technically this is a
 5 separate record.
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1 (At 12:32 p.m., Beginning of
2 Separate Record.)
3 MR. ROTH: This is going to be Proposed
4 Exhibit 1001 and 1002, the disk and transcript,
5 respectfully.
6 BY MR. ROTH:
7 Q. Mr. Hildabridle, it would serve you no purpose to have
8 the transcript to help you while you listen to it,
9 correct?
10 A. Correct.
11 Q. Sir, there are three things I want to ask you about that
12 are on here. The first being, for the record, do you
13 recall a phone call that Ms. Hale took on your phone that
14 morning from the Defendant?
15 A. No, I do not.
16 MR. ROTH: Thank you. I will play the file on
17 1001-01: Morning call.
18 MR. MORLEY: If I could, Counselor, are you
19 reading from a page on the transcript from that?
20 MR. ROTH: (Talking off the record.)
21 I can put it on the screen, at least.
22 MR. MORLEY: Thank you.
23 BY MR. ROTH:
24 Q. Can you hear okay, sir?
25 A. Yes.

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1 MR. ROTH: It won't be on the screen, I
2 apologize.
3 (At 12:35 p.m., playing excerpt
4 of Exhibit 1001.)
5 BY MR. ROTH:
6 Q. Did that refresh your memory, sir?
7 A. No, sir.
8 Q. There was another conversation that Detective Sergeant
9 Bundshuh asked you about in which the Defendant said he
10 thought he was responsible for it. Do you recall that
11 conversation?
12 A. I don't remember nothing.
13 MR. ROTH: Thank you, sir. The transcript will
14 be in front of you.
15 The file on the disk, 02: Understands and
16 responsible.
17 (At 12:36 p.m., playing excerpt
18 of Exhibit 1001.)
19 BY MR. ROTH:
20 Q. Did that refresh your memory, sir?
21 A. No.
22 Q. Final conversation I want to ask you about is when
23 Detective Sergeant Bundshuh asked about riding in the
24 Defendant's truck to the Alley that night. Do you recall
25 that conversation?

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1 A. No.
2 MR. ROTH: All right. On 1001, titled 03:
3 Does the right thing and truck.
4 (At 12:37 p.m., playing excerpt
5 of Exhibit 1001.)
6 BY MR. ROTH:
7 Q. Did that refresh your memory, sir?
8 A. No.
9 Q. I'm sorry?
10 A. No.
11 MR. ROTH: Very good.
12 With that, I think the foundation has been laid
13 for 803(5), Your Honor.
14 THE COURT: Mr. Morley?
15 MR. MORLEY: I don't think I have a good faith
16 objection, Your Honor.
17 THE COURT: All right.
18 So, Mr. Roth, how do you propose to proceed at
19 this point?
20 MR. ROTH: So it would be my position that the
21 appropriate way to proceed is to bring the jury back in.
22 I have some foundational as well as questions that bridge
23 the gap between these three areas and then as appropriate
24 play those three with the transcripts on the screen.
25 I don't believe I moved to admit them. It

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1 sounds like based on our reading of the rule together
2 they're marked as exhibits for the record, 1001/1002,
3 they're played for the jury, but they're not formally
4 admitted, and they certainly don't go back with the jury
5 to deliberate.
6 THE COURT: Mr. Morley, are you in agreement
7 with that?
8 MR. MORLEY: Yes, Your Honor.
9 (At 12:39 p.m., End of Separate
10 Record.)
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1 THE COURT: Okay. Let's bring the jurors in.
 2 (At 12:40 p.m., the jury entered
 3 the courtroom.)
 4 THE COURT: Please be seated.
 5 Mr. Roth, you may proceed.
 6 MR. ROTH: Thank you, Your Honor.
 7 BY MR. ROTH:
 8 Q. Sir, while the jury was out, you had the opportunity to
 9 review a few small portions of a much larger interview,
 10 correct?
 11 A. **That's correct.**
 12 Q. That's an interview that you gave back on December 12th,
 13 2014, to the troopers?
 14 A. **I don't remember that day.**
 15 Q. I apologize. They asked you a number of questions during
 16 that interview about going to the Alley on December 6th
 17 and then going back to your place on December 7th, 2014,
 18 correct?
 19 A. **I don't remember that.**
 20 Q. And you remember that the troopers came and talked to you
 21 that week, correct?
 22 A. **I don't remember nothing.**
 23 Q. Do you recall a phone call that your girlfriend at the
 24 time, Sandie Hale, answered on your phone at the time?
 25 A. **Nope.**

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1 Q. And you listened to a phone -- excuse me, a part of your
 2 interview in which the troopers asked you about that call
 3 from the Defendant on your phone, correct?
 4 A. **I did.**
 5 MR. ROTH: Your Honor, at this time we're going
 6 to move to -- not move, but we're going to play Track 001
 7 on what's marked as Exhibit 1001. And pursuant to the
 8 rules and discussion with defense counsel, it is played
 9 but not admitted as an exhibit.
 10 MR. MORLEY: That's accurate, Your Honor.
 11 Thank you.
 12 MR. ROTH: And the transcript, 1002, is on the
 13 screen.
 14 (At 12:42 p.m., playing excerpt
 15 of Exhibit 1001.)
 16 BY MR. ROTH:
 17 Q. And, again, sir, that does not refresh your memory,
 18 correct?
 19 A. **It does not, no.**
 20 Q. You have no idea about this phone call from the
 21 Defendant?
 22 A. **I don't recall.**
 23 Q. Next you listened to a piece of the interview in which
 24 the troopers asked you about your contact with the
 25 Defendant after the accident, correct?

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1 A. **I did.**
 2 Q. And you know the accident I'm talking about, right? It
 3 was in Stockbridge where a deputy was killed that night,
 4 correct?
 5 A. **I don't know nothing about it.**
 6 Q. Never seen it in the media? Never seen it anywhere?
 7 A. **On the media, I did.**
 8 Q. All right. But you know the date that I'm talking about
 9 and the accident that I talked about, correct?
 10 A. **No. I don't know what date you're talking about.**
 11 Q. And listening to that call did not refresh -- I'm sorry,
 12 listening to that recording on the break did not refresh
 13 your memory?
 14 A. **No, it did not.**
 15 MR. ROTH: At this time we're going to play 02
 16 Track on Exhibit 1001. The transcript's on the screen.
 17 (At 12:43 p.m., playing excerpt
 18 of Exhibit 1001.)
 19 BY MR. ROTH:
 20 Q. Sir, did that refresh your memory?
 21 A. **No, it did not.**
 22 Q. You do not remember a conversation with the Defendant
 23 after that accident in which he told you he thought he
 24 was responsible for the deputy's death?
 25 A. **No, he did not.**

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1 Q. You don't remember.
 2 A. **No.**
 3 Q. Is it that you don't remember, or he didn't say it?
 4 A. **I don't remember.**
 5 Q. Finally, sir, you listened to a portion of that interview
 6 in which you told the troopers about the truck that you
 7 took to the Alley Bar that night, correct?
 8 A. **I don't remember.**
 9 Q. This was, like, three minutes ago. You listened to it
 10 while the jury was out of the room. Do you remember
 11 that?
 12 A. **Yes.**
 13 Q. Did that refresh your memory at all?
 14 A. **No, it did not.**
 15 MR. ROTH: Very good.
 16 Playing Track 03, transcript on the screen.
 17 (At 12:45 p.m., playing excerpt
 18 of Exhibit 1001.)
 19 BY MR. ROTH:
 20 Q. Did that refresh your memory at all, sir?
 21 A. **No.**
 22 Q. Sir, under oath, under the penalty of perjury, it is your
 23 testimony to this jury that you have no idea, no
 24 recollection about any of the things you just heard
 25 yourself talk about?

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1 **A. That is correct.**
 2 **Q.** And it is your testimony that you cannot read at all such
 3 that I could show you any part of your interview,
 4 correct?
 5 **A. Right.**
 6 MR. ROTH: Just one moment, Your Honor.
 7 THE COURT: Sure.
 8 BY MR. ROTH:
 9 **Q.** Sir, there is one other matter that I want to ask you
 10 about testimony at the preliminary examination. Do you
 11 recall testifying about the Defendant, John Kelsey,
 12 drinking at the Alley Bar that night?
 13 **A. No, I don't.**
 14 **Q.** Sir, when you were under oath at that time you were
 15 asked:
 16 You said the Defendant was there
 17 as well.
 18 And you answered:
 19 Yes.
 20 Do you recall that?
 21 **A. I don't recall, no.**
 22 **Q.** Sir, isn't it true that you were then asked:
 23 Was he drinking as well?
 24 **A. I don't recall.**
 25 **Q.** And then you answered:

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1 He had some beers, yes.
 2 **A. I don't remember.**
 3 MR. ROTH: Nothing further, Your Honor.
 4 THE COURT: Thank you, Mr. Roth.
 5 Mr. Morley, do you wish to question the
 6 witness?
 7 MR. MORLEY: Yes, sir.
 8 CROSS-EXAMINATION
 9 BY MR. MORLEY:
 10 **Q.** Within that same series of questions the questioning by
 11 the prosecutor went on to say:
 12 How many beers?
 13 And you responded:
 14 I couldn't tell you.
 15 Do you recall that?
 16 **A. No, I don't recall that.**
 17 **Q.** You and Ms. Sandie Hale were at least having some type of
 18 relationship at about December 6th, 2014, right?
 19 **A. I don't remember that time.**
 20 **Q.** And, yet, she and you never talked about this incident?
 21 **A. No.**
 22 **Q.** Do you recall testifying at the preliminary exam on about
 23 December 23rd of 2014?
 24 **A. No.**
 25 **Q.** Do you recall telling the police that you were positive

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1 that Mr. Kelsey drove you that evening in a gold Blazer?
 2 **A. No.**
 3 **Q.** Do you recall being asked by the prosecutor:
 4 How did you get to the Alley?
 5 Answer: John.
 6 Do you recall that?
 7 **A. I don't remember nothing.**
 8 **Q.** Do you recall the question:
 9 He drove you?
 10 Answer: Yes.
 11 Do you recall that?
 12 **A. No.**
 13 **Q.** Do you recall the question:
 14 In what vehicle?
 15 Answer: It was a Blazer, I
 16 believe.
 17 Do you recall that?
 18 **A. No.**
 19 **Q.** Question -- do you recall:
 20 Question: It was an SUV?
 21 Answer: Yeah.
 22 Do you recall that?
 23 **A. No.**
 24 **Q.** Do you recall the question:
 25 What color was it?

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1 Answer: Gold.
 2 Do you recall that?
 3 **A. No.**
 4 **Q.** How sure are -- do you recall the question:
 5 How sure are you that it was
 6 gold?
 7 Answer: Positive.
 8 Do you recall that?
 9 **A. I don't recall.**
 10 **Q.** Do you recall being asked at the preliminary exam:
 11 Do you know what happened to his
 12 white SUV?
 13 Do you recall answering:
 14 I didn't know he had one.
 15 Do you recall that?
 16 **A. No.**
 17 **Q.** Were you offered any reward money in this matter?
 18 **A. No, I was not.**
 19 **Q.** Do you recall testifying at the preliminary exam,
 20 referencing the interview we just heard, that you lied to
 21 the State Police that day?
 22 **A. I don't recall.**
 23 **Q.** Do you recall being asked:
 24 Question: And are you telling me
 25 that what you told the troopers

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1 that day was not true?
 2 Answer: Yes.
 3 Er, excuse me.
 4 Yeah.
 5 Do you recall that?
 6 **A. I don't remember nothing.**
 7 **Q.** Do you recall a question from the prosecutor:
 8 Question: You lied to the
 9 troopers that day?
 10 Answer: Yes.
 11 Do you recall that?
 12 **A. I don't remember nothing.**
 13 **Q.** Recall the question from the prosecutor:
 14 You understand that they --
 15 excuse me, you understand they
 16 had an investigation, and you
 17 lied to them?
 18 Answer: Yes.
 19 Do you recall that?
 20 **A. I don't recall nothing.**
 21 MR. MORLEY: That's all I have. Thank you.
 22 THE COURT: Thank you, Mr. Morley.
 23 Mr. Roth, any redirect examination?
 24 MR. ROTH: None, Your Honor. Thank you.
 25 THE COURT: And is this witness now excused

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1 from his subpoena, or what is the status?
 2 MR. ROTH: I have no need to recall him. I'll
 3 defer to Mr. Morley.
 4 THE COURT: Mr. Morley?
 5 MR. MORLEY: As we stand here today, I don't
 6 see any need to recall him.
 7 THE COURT: Okay.
 8 MR. MORLEY: I don't need to recall him.
 9 THE COURT: All right.
 10 You may step down, sir. Thank you, very much.
 11 (At 12:50 p.m., the witness
 12 stepped down from the witness
 13 stand.)
 14 MR. ROTH: That's our day, Your Honor.
 15 THE COURT: All right. Ladies and Gentlemen of
 16 the Jury, we are going to adjourn for the afternoon.
 17 Again, I need to remind you not to discuss the case with
 18 anyone, not amongst yourselves or with anyone else. And
 19 that you are not to watch, listen to, read any media
 20 reports, conduct any investigation or look anything up on
 21 the Internet.
 22 And we'll see you tomorrow morning with the
 23 same schedule. Report about 8:15. Mr. Adkins will come
 24 down and get you from downstairs, and then we'll proceed
 25 as soon as we can in the morning.

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1 Thank you.
 2 THE BAILIFF: All rise.
 3 (At 12:51 p.m., the jury left the
 4 courtroom.)
 5 THE COURT: All right. You may be seated.
 6 Mr. Roth, we need to make sure that we're all
 7 on the same page as to how you're going to handle the
 8 exhibits that were not introduced. They're not
 9 introduced for purposes of sending them back with the
 10 jury if they were to ask for the exhibits, but don't we
 11 need to have them as part of the record in some way a
 12 conditional introduction or something?
 13 MR. ROTH: I think we can move to admit them to
 14 a separate record that will not be part of the jury.
 15 THE COURT: I'm just thinking for purposes of
 16 preserving it for review, if needed, Mr. Morley. So...
 17 MR. MORLEY: I understand with the
 18 understanding that the jury doesn't get it. I think
 19 that's a good proposal. I don't have any problem with
 20 it.
 21 MR. ROTH: The only issue becomes if the jurors
 22 don't ask -- if the jurors ask for all of the exhibits,
 23 obviously that does not go back, but if they were to ask
 24 for testimony to be read back of this specific part, I
 25 don't know what the answer is. I think we'd have to

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1 investigate and research that when and if it comes up.
 2 THE COURT: All right. That's probably
 3 correct, Mr. Morley, don't you think?
 4 MR. MORLEY: I don't know is always a correct
 5 answer, Judge.
 6 THE COURT: That's --
 7 MR. MORLEY: I would agree, and I'll try to be
 8 able to answer it better when the time arises or if the
 9 time arises.
 10 THE COURT: All right. So for purposes of the
 11 separate record, Exhibits 1001, that being the disk of
 12 the audio, and 1002, the transcript, which includes the
 13 excerpts that Mr. Roth used in questioning will be
 14 introduced as conditional exhibits, so to speak, or as a
 15 separate record exhibit, not for purposes of jury access.
 16 Sound fair, Mr. Roth?
 17 MR. ROTH: Yes, Your Honor.
 18 THE COURT: Mr. Morley?
 19 MR. MORLEY: Yes, sir.
 20 (At 12:53 p.m., PX#1001 and
 21 PX#1002 are conditionally
 22 admitted and received.)
 23 THE COURT: Is there anything else either of
 24 you want to put on the record before we adjourn?
 25 MR. ROTH: No, Your Honor.

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1 MR. MORLEY: I don't think so, Judge. Thank
2 you.
3 THE COURT: Okay. Thank you, both. We'll see
4 you in the morning.
5 MR. MORLEY: Thanks, Judge.
6 Thank you, Mr. Roth.
7 Thank you, Ms. Dexter.
8 (At 12:54 p.m., the matter is
9 concluded for the day.)

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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 **196 pages** comprise an accurate, true, and complete
9 (Volume 4 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 **Monday, June 1, 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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