

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff/Appellee
v.

MSC No. 157581
COA No. 336598
Circuit Case No. 15-002787-FC

CLIFFORD DURELL McKEE,
Defendant/Appellant.

JERARD M. JARZYNSKA (P35496)
Jackson County Prosecutor's Office
312 S Jackson Street
Jackson, MI 49201-2231
(517) 788-4283

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APPELLANT CLIFFORD McKEE'S APPENDIX

TABLE OF CONTENTS

DOCUMENT	PAGE NUMBER
Judgment of Sentence	1a
Trial Court Register of Actions	2a
Court of Appeals Register of Actions	14a
Court of Appeals Opinion, 2/27/2018	18a
Excerpt, Trial Transcript, Vol. V, 4/1/2016	36a
Trial Transcript, Vol. VI, 4/4/2016	145a
Excerpt, Trial Transcript, Vol. III, 3/30/2016	367a
Trial Transcript, Vol. VII, 4/5/2016	481a
Clifford McKee Motion to Sever	596a
Clifford McKee Answer to Motion to Admit Evidence	601a
Clifford McKee Motion to Suppress Butler's Statements	621a
<i>Walker</i> Hearing Transcript, 2/29/2016	625a
Motion Hearing Transcript, 3/2/2016	641a
Excerpt, Trial Transcript Vol. VIII, 4/6/2016	687a

Original - Court
1st copy - Corrections
2nd copy - Corrections (for return)

3rd copy - Michigan State Police CJIC
4th copy - Defendant
5th copy - Prosecutor

Approved, SCAO

STATE OF MICHIGAN 4th JUDICIAL CIRCUIT JACKSON COUNTY	JUDGMENT OF SENTENCE COMMITMENT TO DEPARTMENT OF CORRECTIONS	CASE NO. 15-2787-FC

ORI Court address Court telephone no.
MI- 312 S. Jackson Street, Jackson, MI 49201 517-788-4380
Police Report No.

THE PEOPLE OF THE STATE OF MICHIGAN

Prosecuting attorney's name Bar no.
MARY-KAY HANNA-REZMIERSKI

Defendant's name, address, and telephone no.
CLIFFORD DURELL McKEE

CTN/TCN 38-15003194-01	SID 1382157L	DOB 6-13-1966

Defendant attorney's name Bar no.
ALFRED BRANDT

THE COURT FINDS:

1. The defendant was found guilty on 4-7-2016 of the crime(s) stated below.

Count	CONVICTED BY Plea* Court Jury	DISMISSED BY*	CRIME	CHARGE CODE(S) MCL citation/PACC Code
1&3 Consolidated	G		Homicide - Murder 1 st Degree (Conspiracy) (Habitual 4 th)	750.316A[C]; 769.12
2	G		Homicide - Solicitation of Murder (Habitual 4 th)	750.157B2; 769.12
4	G		Home Invasion - 1 st Degree (Habitual 4 th)	750.110A2; 769.12

*Insert "G" for guilty plea, "NC" for nolo contendere, or "MI" for guilty but mentally ill, "D" for dismissed by court, or "NP" for dismissed by prosecutor/plaintiff.

- ☐ 2. The conviction is reportable to the Secretary of State under MCL 257.625(21)(b).
☐ 3. HIV testing and sex offender registration are completed.
☐ 4. The defendant has been fingerprinted according to MCL 28.243.
☐ 5. A DNA sample is already on file with the Michigan State Police from a previous case. No assessment is required.

IT IS ORDERED:

- ☐ 6. Probation is revoked.
☐ 7. Participating in a special alternative incarceration unit is ☐ prohibited. ☐ permitted.
☐ 8. The defendant is sentenced to custody of the Michigan Department of Corrections. This sentence shall be executed immediately.

Count	SENTENCE DATE	MINIMUM Years Mos. Days	MAXIMUM Years Mos. Days	DATE SENTENCE BEGINS	JAIL CREDIT Mos. Days	OTHER INFORMATION
1&3	5-26-2016	LIFE	LIFE	5-26-2016	238	WITHOUT PAROLE
2	5-26-2016	LIFE	LIFE	5-26-2016	238	
4	5-26-2016	30	60	5-26-2016	238	

- ☐ 9. Sentence(s) to be served consecutively to (If this item is not checked, the sentence is concurrent.)
☐ each other. ☐ case numbers

10. The defendant shall pay:

State Minimum	Crime Victim	Restitution	DNA Assess.	Court Costs	Attorney Fees	Fine	Other Costs	Total
\$272.00	\$130.00		\$60.00	\$1,000.00		\$500.00		\$1,962.00

The due date for payment is 5-26-2016. Fine, costs, and fees not paid within 56 days of the due date are subject to a 20% late penalty on the amount owed.

- ☐ 11. The concealed weapon board shall ☐ suspend for days ☐ permanently revoke the concealed weapon license, permit number , issued by County.
☐ 12. The defendant is subject to lifetime monitoring under MCL 750.520n.
13. Court recommendation:

5-26-2016
Date

Thomas D. Wilson 42371
Judge Thomas D. Wilson Bar no.
Nadeen Bullinger
Deputy court clerk Nadeen Bullinger

I certify that this is a correct and complete abstract from the original court records. The sheriff shall, without needless delay, deliver the defendant to the Michigan Department of Corrections at a place designated by the department.

(SEAL)

MCL 765.15(2), MCL 769.1k, MCL 769.16a, MCL 775.22,
MCL 780.766, MCR 6.427

CC 219b (6/15) JUDGMENT OF SENTENCE, COMMITMENT TO DEPARTMENT OF CORRECTIONS



CLOSED FOJ
15-002787-FC JUDGE WILSON
JACKSON

CASE REGISTER OF ACTIONS

FILE 10/06/15 ADJ DT 04/07/16 CLOSE 05/26/16
SCAO:SEC B LINE 0

11/13/20 PAGE

D 001 MCKEE, CLIFFORD, DURELL
JACKSON COUNTY JAIL
JACKSON, MI

DOB: 06/13/66 SEX: M RACE:
CTN:381500319401 TCN:
SID:

ATY: APPELLATE DEFENDERS O, STATE, PROSECUTOR: HANNA-REZMIERSKI, MARY K.
P-88888 313-256-9833 P-51926

LOWER DISTRICT: CTY# 38 CASE# 15002787FC PRELIM:

INCARCERATION DATE: DISTRICT ARRAIGNMENT:

Charges

Num	Type	Charge (Pacc)	Asc/Trf	Charge Description	Offense Dt	Dsp	Ev
01	ORG	750.316-A	C	HOMIC MURDER 1ST DEG PREM	08/10/14	GTY	JTW
02	ORG	750.157B2		HOMICIDE - SOLICITATION O	08/10/14	GTY	JTW
03	ORG	750.316-C		HOMICIDE OPEN MURDER SSF	08/10/14	GTY	JTW
04	ORG	750.110A2		HOME INVASION-1ST DEGREE	08/10/14	GTY	JTW
	NTC	769.12		HABITUAL OFFENDER 4TH CON			
	HAB	769.121A		HABITUAL OFF-4TH OFF NOT-			

Assessments

Account	Ordered	Paid	Balance
STATE MINIMUM COSTS	\$272.00	\$272.00	\$.00
CRIME VICTIM RIGHTS	\$130.00	\$130.00	\$.00
DNA SHERIFF DEPT.	\$60.00	\$.00	\$60.00
COURT COSTS	\$1,000.00	\$965.07	\$34.93
FINES	\$500.00	\$.00	\$500.00
TOTAL:	\$1,962.00	\$1,367.07	\$594.93
PAYMENT DUE: 6/09/20	LATE FEE DATE: 8/05/20		

Actions, Judgments, Case Notes

Num	Date	Judge	Chg/Pty	Event Description/Comments	
1	10/06/15	WILSON		INFORMATION	CLK LSA
				NO BOND-CO DFTS RODNEY MCKEE	CLK
				AND CORTEZ BUTLER	CLK
2				ORDER	CLK LSA
				TAKING OF TESTIMONY AND	CLK
				EVIDENCE AND IN THIS MATTER	CLK
				AND HAVING ISSUED FELONY	CLK
				CHARGES ON THREE DFTS, HEREBY	CLK
				ORDERS THE SEAL PREVIOUSLY	CLK
				ORDERED ON ALL PAPERS OR	CLK
				FILINGS RELATED TO THIS	CLK
				INQUIRY SHALL BE LIFTED, AND	CLK
				SUCH PAPERS/FILINGS MAY NOW BE	CLK
				MADE AVAIL TO THE PUBLIC	CLK
3				ORDER	CLK LSA
				HEREBY ORDERS THE PREPARATION	CLK
				OF A TRANSCRIPT OF THE	CLK
				PROCEEDINGS FAXED & RECEIVED	CLK

		AT THERESAS TRANSCRIPT	CLK
		SERVICE	CLK
4	10/07/15	SET NEXT DATE FOR: 10/08/15 9:30 AM	CLK NEM
		MISCELLANEOUS HEARING	
		ARRAIGNMENT	CLK
5	10/08/15	REQ/NOTICE FOR FILM/ELECTRONIC MEDI	CLK NEM
		A COVERAGE OF CT. PROCEEDINGS	CLK
		WLNS TV6	CLK
6		MISCELLANEOUS HEARING	CRT NEM
		ARRAIGNMENT	CRT
		ATTY REZMIERSKI/DICKERSON FOR	CRT
		THE PROS; DFT PRESENT IN	CRT
		CUSTODY; COURT ADVISED THE DFT	CRT
		OF CHARGES AND PENALTIES;	CRT
		NOT GUILTY PLEA ENTERED; DFT	CRT
		STATES HE HAS AN ATTORNEY THAT	CRT
		HE MAY BE RETAINING; REMANDED	CRT
		TO CUSTODY W/O BOND; THE COURT	CRT
		SETS A CONTROL DATE FOR	CRT
		10-20-15 @ 8:30 FOR COUNSEL	CRT
		TO BE PRESENT	CRT
7		NOTICE SENT FOR: 10/20/15 8:30 AM	CLK NEM
		MISCELLANEOUS HEARING	
		FOR CONTROL	CLK
		W/PROOF OF SERVICE	CLK
8	10/09/15	PROOF OF SERVICE FILED	CLK ALE
		REQUEST FOR DISCOVERY	CLK
10		INFORMATION	CLK ALE
		AMENDED INFORMATION	CLK
9	10/12/15	APPEARANCE	CLK LAD
		ATTORNEY: P-38586 BRANDT	CLK
		DEMAND FOR DISCOVERY	CLK
		W/PROOF OF SERVICE	CLK
11	10/20/15	PRE-TRIAL HEARING	CRT NEM
		ATTY REZMIERSKI FOR THE PROS	CRT
		ATTY BRANDT W/DFT IN CUSTODY	CRT
		PRETRIAL IS RESET	CRT
		REMANDED TO CUSTODY	CRT
12	10/26/15	NOTICE SENT FOR: 11/17/15 8:30 AM	CLK NEM
		PRE-TRIAL HEARING	
		W/PROOF OF SERVICE	CLK
13	10/29/15	PROOF OF SERVICE FILED	CLK ALE
		CD'S/REPORTS/PHOTOS UPON	CLK
		A.BRANDT	CLK
14	11/17/15	PRE-TRIAL HEARING	CRT NEM
		ATTY REZMIERSKI FOR THE PROS	CRT
		ATTY BRANDT W/DFT IN CUSTODY	CRT
		PRETRIAL IS RESET	CRT
		REMANDED TO CUSTODY	CRT
15		NOTICE SENT FOR: 12/11/15 8:30 AM	CLK NEM
		PRE-TRIAL HEARING	
		W/PROOF OF SERVICE	CLK
16	11/24/15	MOTION FILED	CLK LAD
		SET NEXT DATE FOR: 12/01/15 8:30 AM	CLK
		MOTION HEARING	
		FOR JOINER	CLK
17	11/25/15	PROOF OF SERVICE FILED	CLK LSA

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		MOTION TO ADJOIN AND NOTICE OF HEARING	CLK	
18	11/30/15	D 001 ANSWER TO MOTION FOR JOINDER	CLK	AMP
		PROOF OF SERVICE	CLK	
		FILED BY AL BRANDT	CLK	
19		ANSWER TO MOTION FOR JOINDER	CLK	NEM
		FILED BY ATTY PERLOS COUNSEL	CLK	
20	12/01/15	FOR DFT IN FILE 15-2788FC	CLK	NEM
		ANSWER TO MOTION FOR JOINDER	CLK	
		FILED BY ATTY HALPERN COUNSEL	CLK	
21		FOR DFT IN FILE 14-4196FC	CLK	
		PRE-TRIAL HEARING	CRT	NEM
		ATTY REZMIERSKI FOR THE PROS	CRT	
		ATTY BRANDT W/DFT IN CUSTODY	CRT	
		MOTION IS DENIED; PROS STATES	CRT	
		IT MAY FILE A 404B MOTION; NEW	CRT	
		PRETRIAL DATE SET; REMANDED TO	CRT	
		CUSTODY	CRT	
22	12/03/15	REMOVE NEXT EVENT: 12/11/15 8:30 AM	CLK	NEM
		PRE-TRIAL HEARING		
23		NOTICE SENT FOR: 01/05/16 8:30 AM	CLK	NEM
		PRE-TRIAL HEARING		
		W/PROOF OF SERVICE	CLK	
24	12/15/15	TRANSCRIPT OF GRAND JURY	CLK	LKK
		HEARING 9/8/15, GRAND JURY	CLK	
		HEARING 10/5/15, GRAND JURY	CLK	
		HEARING 10/6/15-TRANSCRIBED	CLK	
		BY:THERESA'S TRANSCRIPTION	CLK	
		SERVICE	CLK	
25	12/21/15	PROOF OF SERVICE FILED	CLK	ALE
		TRANSCRIPTS	CLK	
26	01/05/16	PRE-TRIAL HEARING	CRT	NEM
		ATTY REZMIERSKI FOR THE PROS	CRT	
		ATTY BRANDT W/DFT IN CUSTODY	CRT	
		PROS/DEFENSE TO FILE MOTIONS	CRT	
		COUNSELS TO MEET W/COURT CLERK	CRT	
		TO SCHEDULE FUTURE HEARINGS	CRT	
		DFT REMANDED TO CUSTODY	CRT	
27	01/12/16	NOTICE SENT FOR: 02/19/16 1:30 PM	CLK	NEM
		MOTION HEARING		
28		NOTICE SENT FOR: 02/26/16 1:30 PM	CLK	NEM
		MOTION HEARING		
		W/PROOF OF SERVICE	CLK	
29	01/28/16	NOTICE OF HEARING	CLK	LAD
		SET NEXT DATE FOR: 02/19/16 1:31 PM	CLK	
		MOTION HEARING		
		SUPPRESS EVIDENCE OF DETROIT	CLK	
		HOMICIDE FILED BY ATTY ENGLE	CLK	
		ON BEHALF OF DFT CORTEZ BUTLER	CLK	
30	01/29/16	PROOF OF SERVICE FILED	CLK	ALE
		ALL DISCOVERY UPON A.BRANDT	CLK	
31	02/02/16	PROOF OF SERVICE FILED	CLK	ALE
		NOTES,REPORTS,RECORDS UPON	CLK	
		A.BRANDT	CLK	
32	02/05/16	MOTION FILED	CLK	LSA
		TO SUPPRESS EVIDENCE W/PROOF	CLK	

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	OF SERVICE	CLK
33	MOTION FILED	CLK LSA
	TO SUPPRESS GRAND JURY	CLK
	STATEMENTS & REQUEST FOR	CLK
	REMAND W/PROOF OF SERVICE	CLK
34	MOTION FILED	CLK LSA
	TO SUPPRESS DFT CORTEZ BUTLERS	CLK
	STATEMENTS W/PROOF OF SERVICE	CLK
35	MOTION FILED	CLK LSA
	FOR BILL OF PARTICULARS W/	CLK
	PROOF OF SERVICE	CLK
36	MOTION FILED	CLK LSA
	TO SEVER W/PROOF OF SERVICE	CLK
37 02/08/16	PROOF OF SERVICE FILED	CLK ALE
	CD'S, REPORTS, WARRANTS UPON	CLK
	A. BRANDT	CLK
38	PROOF OF SERVICE FILED	CLK ALE
	MOTION TO ADMIT EVIDENCE	CLK
39	PROOF OF SERVICE FILED	CLK ALE
	BILL OF PARTICULARS UPON	CLK
	A. BRANDT	CLK
40	MOTION FILED	CLK ALE
	MOTION TO ADMIT EVIDENCE	CLK
41	PROOF OF SERVICE FILED	CLK ALE
	DOCUMENTS UPON A. BRANDT	CLK
42 02/12/16	PEOPLE'S ANSWER TO MCKEES'	CLK AMP
	MOTIONS TO SEVER & SUPPRESS	CLK
	CORTEZ BUTLER'S STATEMENTS	CLK
	PROOF OF SERVICE	CLK
43	PEOPLE'S ANSWER TO CLIFFORD	CLK AMP
	MCKEE'S MOTION TO SUPPRESS	CLK
	EVIDENCE	CLK
	PROOF OF SERVICE	CLK
44	PEOPLE'S ANSWER TO CLIFFORD	CLK AMP
	MCKEE'S MOTION TO SUPPRESS	CLK
	GRAND JURY STATEMENTS & REMAND	CLK
	PROOF OF SERVICE	CLK
45	ANSWER TO MOTION TO ADMIT	CLK LSA
	EVIDENCE W/PROOF OF SERVICE	CLK
46	PROOF OF SERVICE FILED	CLK ALE
	JPD AND CUSTODY REPORTS UPON	CLK
	A. BRANDT	CLK
47	PROOF OF SERVICE FILED	CLK ALE
	WARRANT AND REPORTS UPON	CLK
	C. PERLOS	CLK
48	PROOF OF SERVICE FILED	CLK ALE
	DVDS UPON A. BRANDT	CLK
49 02/16/16	PROOF OF SERVICE FILED	CLK LSA
	MISC RECORDS, TEXT, ETC	CLK
52	PROOF OF SERVICE FILED	CLK AMP
	RE: CLIFFORD MCKEE INTERVIEW	CLK
	@ JSO 12/16/14, PHONE REPORTS 1	CLK
	MSP & PHONE REPORTS 2 MSP	CLK
50 02/17/16	PROOF OF SERVICE FILED	CLK LSA
	CLIFFORD MCKEE PHONE RECORDS	CLK
51 02/18/16	PROOF OF SERVICE FILED	CLK LSA
	MISC RECORDS	CLK

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54	PROOF OF SERVICE FILED	CLK LSA
	DHHS REPORT	CLK
53 02/19/16	MOTION HEARING	CRT NEM
	ATTY REZMIERSKI/MCKINNIE PROS	CRT
	ATTY BRANDT W/DFT IN CUSTODY	CRT
	MOTION TO CONTINUE 2-26-16 @	CRT
	1:30; REMANDED TO CUSTODY	CRT
55 02/23/16	REMOVE NEXT EVENT: 02/26/16 1:30 PM	CLK NEM
	MOTION HEARING	
	MOVED TO 10:30	CLK
56	SET NEXT DATE FOR: 02/26/16 10:30 AM	CLK NEM
	MOTION HEARING	
57 02/25/16	PROOF OF SERVICE FILED	CLK AMP
	RE:SUPPLEMENTAL REPORT DATED	CLK
	2/23/16	CLK
58 02/26/16	MOTION HEARING	CRT NEM
	ATTY REZMIERSKI/MCKINNIE PROS	CRT
	ATTY BRANDT W/DFT	CRT
	SWORN TESTIMONY/ARGUMENT	CRT
	COURT RULING 2-29-16 @ 10:30	CRT
	REMANDED TO CUSTODY	CRT
59	SET NEXT DATE FOR: 02/29/16 10:30 AM	CLK NEM
	MISCELLANEOUS HEARING	
	COURT RULING	CLK
60 02/29/16	MISCELLANEOUS HEARING	CRT NEM
	ATTY REZMIERSKI/MCKINNIE FOR	CRT
	THE PROS; ATTY BRANDT W/DFT IN	CRT
	CUSTODY; COURT RULING PLACED	CRT
	ON THE RECORD; MOTIONS TO	CRT
	CONTINUE 3-2-16 @ 1:30;	CRT
	REMANDED TO CUSTODY	CRT
61	NOTICE SENT FOR: 03/02/16 1:30 PM	CLK NEM
	MOTION HEARING	
	CONTINUED	CLK
	W/PROOF OF SERVICE	CLK
62 03/02/16	MOTION HEARING	CRT NEM
	CONTINUED	CRT
	ATTY REZMIERSKI/MCKINNIE FOR	CRT
	THE PROS; ATTY BRANDT W/DFT IN	CRT
	CUSTODY; TO CONTINUE 3-4-16 @	CRT
	11AM; JURY TRIAL DATE IS SET	CRT
	FOR 3-28-16 @ 8:30; REMANDED	CRT
	TO CUSTODY	CRT
63	NOTICE SENT FOR: 03/04/16 11:00 AM	CLK NEM
	MOTION HEARING	
	CONTINUED	CLK
64	NOTICE SENT FOR: 03/28/16 8:30 AM	CLK NEM
	JURY TRIAL	
	W/PROOF OF SERVICE	CLK
65 03/03/16	PEOPLE'S WITNESS LIST	CLK LKK
	W/PROOF OF SERVICE	CLK
66 03/04/16	MOTION HEARING	CRT NEM
	ATTY REZMIERSKI/MCKINNIE FOR	CRT
	THE PROS; ATTY BRANDT W/DFT IN	CRT
	CUSTODY; SWORN TESTIMONY HEARD	CRT
	COUNSELS TO EMAIL BRIEFS TO	CRT
	THE COURT, RULING WILL BE	CRT

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		PLACED ON THE RECORD 3-7-16	CRT
		REMANDED TO CUSTODY	CRT
67		SET NEXT DATE FOR: 03/07/16 1:30 PM	CLK NEM
		MISCELLANEOUS HEARING	
		COURT RULING	CLK
68		PROOF OF SERVICE FILED	CLK LSA
		MISC REPORTS	CLK
69	03/07/16	AMENDED ANSWER TO CLIFFORD	CLK AMP
		MCKEE'S MOTION TO SUPPRESS	CLK
		EVIDENCE	CLK
		PROOF OF SERVICE	CLK
70		SECOND AMENDED ANSWER TO	CLK AMP
		CLIFFORD MCKEE'S MOTION TO	CLK
		SUPPRESS EVIDENCE	CLK
		PROOF OF SERVICE	CLK
71		MOTION HEARING	CRT NEM
		CONTINUED; ATTY REZMIERSKI/	CRT
		MCKINNIE FOR THE PROS; ATTY	CRT
		BRANDT W/DFT IN CUSTODY;	CRT
		SWORN TESTIMONY HEARD; COURT	CRT
		RULING PLACED ON THE RECORD;	CRT
		REMANDED TO CUSTODY	CRT
72	03/08/16	MOTION FILED	CLK AMP
		SUPPLEMENTAL MOTION TO	CLK
		SUPPRESS EVIDENCE	CLK
73	03/09/16	WRIT OF HABEAS CORPUS	CLK AMP
		PROOF OF SERVICE	CLK
74	03/10/16	PROOF OF SERVICE FILED	CLK AMP
		RE:SEARCH WARRANTS,DVD'S,	CLK
		INTERPRETING CALL DETAIL,EXCEL	CLK
		SHEET OF CALL DETAILS W/CELL	CLK
		CITES & ALEXUS WOLFE LETTER	CLK
75		PROOF OF SERVICE FILED	CLK AMP
		RE:SEARCH WARRANTS & MCKEE	CLK
		ARSON PHOTOS	CLK
76		PROOF OF SERVICE FILED	CLK LSA
		SUPPLEMENTAL MOTION TO	CLK
		SUPPRESS EVIDENCE	CLK
77		WRIT OF HABEAS CORPUS	CLK AMP
		PROOF OF SERVICE	CLK
78	03/11/16	PROOF OF SERVICE FILED	CLK AMP
		RE:CD,FLASH DRIVE,EXTRACTION	CLK
		REPORT & MSP REPORT	CLK
79		PROOF OF SERVICE FILED	CLK LSA
		REPORT & SEARCH WARRANT RETURN	CLK
83	03/15/16	TRANSCRIPT OF WALKER HEARING	CLK LKK
		RE:STATMENTS 2/19/16, 2/26/16,	CLK
		& 2/29/16	CLK
		TRANSCRIBED BY:THERESA	CLK
		TRANSCRIPTION SERVICE	CLK
84		TRANSCRIPT OF MOTION TO ADMIT	CLK LKK
		EVIDENCE 3/2/16	CLK
		TRANSCRIBED BY:THERESA	CLK
		TRANSCRIPTION SERVICE	CLK
85		TRANSCRIPT OF MOTION/	CLK LKK
		EVIDENTIARY HEARING 3/4/16	CLK
		TRANSCRIBED BY:THERESA	CLK

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	TRANSCRIPTION SERVICE	CLK	
80 03/16/16	STIPULATION TO UTILIZE A	CLK AMP	
	SUPPORT PERSON	CLK	
81	INFORMATION	CLK AMP	
	AMENDED	CLK	
82	PROOF OF SERVICE FILED	CLK AMP	
	RE:STIP TO UTILIZE SUPPORT	CLK	
	PERSON,SUPPLEMENTAL REPORT #31	CLK	
	MCKEE ARSON SPRINT SW INST,	CLK	
	CHAIN OF CUSTODY ARSON REPORT,	CLK	
	CHAIN OF CUSTODY REPORT DATED	CLK	
	3/14/16,RETURN & TABULATIONS &	CLK	
	AMENDED INFORMATION	CLK	
86 03/18/16	MOTION FILED	CLK AMP	
	SET NEXT DATE FOR: 03/25/16 8:30 AM	CLK	
	MOTION HEARING		
	RE:TO ADMIT PHOTOGRAPHS	CLK	
	PROOF OF SERVICE	CLK	
87	PROOF OF SERVICE FILED	CLK LKK	
	RE:TROY ERNEST, SCOTT HRCKA &	CLK	
	CASSANDRA DERUITER CIRRICULUM	CLK	
	VITAE & LS14-20000 RECORD 1	CLK	
	SCENE REPORT-AMENDED 4 PAGES	CLK	
88 03/22/16	PROOF OF SERVICE FILED	CLK LKK	
	RE:COPY OF COURT FILE	CLK	
89 03/23/16	WRIT OF HABEAS CORPUS	CLK LKK	
	W/PROOF OF SERVICE	CLK	
90	PROOF OF SERVICE FILED	CLK AMP	
	RE:MISC	CLK	
91 03/24/16	BENCH WARRANT FOR MATERIAL	CLK LKK	
	WITNESS:BREIN MICHELLE	CLK	
	SMITH	CLK	
92	MISCELLANOUS HEARING	CRT NEM	
	REQUEST FOR MATERIAL WITNESS	CRT	
	SUBPOENA; ATTY REZMIERSKI/ATTY	CRT	
	MCKINNIE FOR THE PROS; SWORN	CRT	
	TESTIMONY SGNT PITTMAN; BENCH	CRT	
	WARRANT SIGNED FOR BREIN SMITH	CRT	
93	PEOPLE'S WITNESS LIST	CLK LSA	
	AMENDED W/PROOF OF SERVICE	CLK	
94 03/25/16	MOTION HEARING	CRT NEM	
	ATTY REZMIERSKI/MCKINNIE FOR	CRT	
	THE PROS; ATTY BRANDT FOR DFT	CRT	
	DFT DID NOT WANT TO BE PRESENT	CRT	
	MOTIONS ADDRESSED AND RULED ON	CRT	
95	BENCH WARRANT FOR MATERIAL	CLK LKK	
	WITNESS-BREIN MICHELLE SMITH	CLK	
	BENCH WARRENT REDONE FOR	CLK	
	SHERIFF'S OFFICE	CLK	
96	PROOF OF SERVICE FILED	CLK LKK	
	RE:2 CD'S FROM MEDICAL	CLK	
	EXAMINER'S OFFICE, 1 PAGE	CLK	
	MCKEE STICKY NOTE REFERENCE	CLK	
	FORFEITURE, 10 PAGE MCKEE	CLK	
	FORFEITURE PAPERWORK &	CLK	
	DAVID WOODEN CV 2 PAGES	CLK	
97	REQ/NOTICE FOR FILM/ELECTRONIC MEDI	CLK NEM	

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	A COVERAGE OF CT. PROCEEDINGS	CLK
	WILX	CLK
98 03/28/16	JURY TRIAL WHOLE DAY	CRT NEM
	ATTY REZMIERSKI/MCKINNIE PROS	CRT
	ATTY BRANDT W/DFT IN CUSTODY	CRT
	JURY PANEL CHOSEN/SWORN	CRT
	TO CONTINUE 3-29-16	CRT
	DFT REMANDED TO CUSTODY	CRT
99	SET NEXT DATE FOR: 03/29/16 9:30 AM	CLK NEM
	JURY TRIAL	
	CONTINUED	CLK
100 03/29/16	JURY TRIAL WHOLE DAY	CRT NEM
	CONTINUED	CRT
	ATTY REZMIERSKI/MCKINNIE PROS	CRT
	ATTY BRANDT W/DFT IN CUSTODY	CRT
	PROS OPENING STATEMENT	CRT
	ATTY BRANDT RESERVES OPENING	CRT
	SWORN TESTIMONY BEGUN	CRT
	CONTINUE 3-30-16 @ 8:30	CRT
	REMANDED TO CUSTODY	CRT
101	SET NEXT DATE FOR: 03/30/16 8:30 AM	CLK NEM
	JURY TRIAL	
	CONTINUED	CLK
102 03/30/16	JURY TRIAL WHOLE DAY	CRT NEM
	CONTINUED	CRT
	ATTY REZMIERSKI/MCKINNIE PROS	CRT
	ATTY BRANDT W/DFT IN CUSTODY	CRT
	SWORN TESTIMONY	CRT
	JURY TRIAL TO CONTINUE	CRT
	REMANDED TO CUSTODY	CRT
103	SET NEXT DATE FOR: 03/31/16 9:30 AM	CLK NEM
	JURY TRIAL	
	CONTINUED	CLK
104	REQ/NOTICE FOR FILM/ELECTRONIC MEDI	CLK NEM
	A COVERAGE OF CT. PROCEEDINGS	CLK
	WLNS	CLK
105 03/31/16	JURY TRIAL WHOLE DAY	CRT NEM
	CONTINUED	CRT
	ATTY REZMIERSKI/MCKINNIE PROS	CRT
	ATTY BRANDT W/DFT IN CUSTODY	CRT
	SWORN TESTIMONY	CRT
	CONTINUE 4-1-16 @ 10AM	CRT
	REMANDED TO CUSTODY	CRT
106	SET NEXT DATE FOR: 04/01/16 10:00 AM	CLK NEM
	JURY TRIAL	
	CONTINUED	CLK
107 04/01/16	JURY TRIAL WHOLE DAY	CRT NEM
	CONTINUED	CRT
	ATTY REZMIERSKI/MCKINNIE PROS	CRT
	ATTY BRANDT W/DFT IN CUSTODY	CRT
	SWORN TESTIMONY	CRT
	TO CONTINUE 4-4-16 @ 8:30	CRT
	REMANDED TO CUSTODY	CRT
108	SET NEXT DATE FOR: 04/04/16 8:30 AM	CLK NEM
	JURY TRIAL	
	CONTINUED	CLK
109 04/04/16	JURY TRIAL WHOLE DAY	CRT NEM

		CONTINUED	CRT
		ATTY REZMIERSKI/MCKINNIE PROS	CRT
		ATTY BRANDT W/DFT IN CUSTODY	CRT
		SWORN TESTIMONY	CRT
		PEOPLE REST	CRT
		TO CONINUE 4-5-16 @ 10AM	CRT
		REMANDED TO CUSTODY	CRT
110		SET NEXT DATE FOR: 04/05/16 10:00 AM	CLK NEM
		JURY TRIAL	
		CONTINUED	CLK
111	04/05/16	JURY TRIAL WHOLE DAY	CRT NEM
		CONTINUED	CRT
		ATTY REZMIERSKI/MCKINNIE PROS	CRT
		ATTY BRANDT W/DFT IN CUSTODY	CRT
		SWORN TESTIMONY	CRT
		TO CONTINUE 4-6-16 @ 9AM	CRT
		REMANDED TO CUSTODY	CRT
112		SET NEXT DATE FOR: 04/06/16 9:00 AM	CLK NEM
		JURY TRIAL	
		CONTINUED	CLK
113	04/06/16	JURY TRIAL WHOLE DAY	CRT NEM
		CONTINUED	CRT
		ATTY REZMIERSKI/MCKINNIE PROS	CRT
		DETECTIVE SULLIVAN	CRT
		ATTY BRANDT W/DFT IN CUSTODY	CRT
		DEFENSE RESTS; CLOSING	CRT
		ARGUMENTS; JURY INSTRUCTIONS;	CRT
		COURT OFFICER SWORN; EXTRA	CRT
		JURORS RELEASED; DELIBERATION	CRT
		BEGUN; REMANDED TO CUSTODY	CRT
114		JURY INSTRUCTIONS	CLK NEM
115		JURY QUESTIONS/REQUESTS	CLK NEM
116	04/07/16	JURY QUESTIONS/REQUESTS	CLK NEM
117		JURY TRIAL WHOLE DAY	CRT NEM
	00001	FOUND GUILTY	CRT
		DELIBERATION/VERDICT REACHED	CRT
		ATTY REZMIERSKI/MCKINNIE PROS	CRT
		ATTY BRANDT W/DFT IN CUSTODY	CRT
		DETECTIVE SULLIVAN	CRT
		VERDICT READ/JURY SWORN/POLLED	CRT
		JURORS RELEASED; SENTENCING	CRT
		DATE SET; REMANDED TO CUSTODY	CRT
118		JURY TRIAL WHOLE DAY	CRT NEM
	00002	FOUND GUILTY	CRT
119		JURY TRIAL WHOLE DAY	CRT NEM
	00003	FOUND GUILTY	CRT
120		JURY TRIAL WHOLE DAY	CRT NEM
	00004	FOUND GUILTY	CRT
121		VERDICT FORM	CLK NEM
122		EXHIBIT LOG	CLK NEM
137		ORDER	CLK NEM
		FOR DNA SAMPLE	CLK
123	04/11/16	NOTICE SENT FOR: 05/26/16 8:30 AM	CLK NEM
		SENTENCING	
		W/PROOF OF SERVICE	CLK
124	04/14/16	ORDER	CLK AMP
		RE:MATERIAL WITNESS BENCH	CLK

125	04/15/16		WARRANT-CANCELLED	CLK
			ORIGINAL BENCH WARRANT FOR	CLK NEM
			WITNESS BREIN MICHELLE SMITH	CLK
			RECEIVED - CANCELED	CLK
126			ORDER	CLK NEM
			FOR FINGERPRINTS	CLK
			(COPY SENT TO JAIL)	CLK
127	04/19/16		CERTIFICATION OF FINGERPRINTS	CLK LKK
			RE:ORDER FOR FINGERPRINTS	CLK
128	05/25/16		REQ/NOTICE FOR FILM/ELECTRONIC MEDI	CLK NEM
			A COVERAGE OF CT. PROCEEDINGS	CLK
			WLNS TV6	CLK
129	05/26/16	00001	SENTENCING	CRT NEM
			ATTYS REZMIERSKI/MCKINNIE FOR	CRT
			THE PROS; ATTY BRANDT FOR THE	CRT
			DFT; SINCLAIR FOR PROBATION;	CRT
			ATTY BRANDT PLACES ON THE	CRT
			RECORD REASONS THE DFT IS NOT	CRT
			PRESENT IN COURT, ALSO SWORN	CRT
			TESTIMONY IS TAKEN FROM	CRT
			DEPUTY ALSO; VICTIM IMPACT	CRT
			STATEMENTS HEARD; SENTENCED TO	CRT
			THE MDOC ON ALL COUNTS: CTS	CRT
			1,3 LIFE W/O PAROLE, CT 2 LIFE	CRT
			CTS 1 & 3 ARE CONSOLIDATED;	CRT
			CT 4 TO 30 YEARS TO 60 YEARS,	CRT
			EACH W/238 DAYS CREDIT; COSTS	CRT
			ASSESSED; NOTICE OF APPEAL	CRT
			RIGHTS GIVEN TO ATTY BRANDT TO	CRT
			GIVE TO THE DFT IN CUSTODY	CRT
	SENTENCE PRISON:	MINIMUM	MAXIMUM	CREDIT
	LIFE	YYY-MMM-DDD	YYY-MMM-DDD	YYY-MMM-238
	BEGIN 05/26/16			
	\$272.00	STATE MINIMUM COSTS	130.00	CRIME VICTIM RIGHTS
	\$60.00	DNA SHERIFF DEPT.	1,000.00	COURT COSTS
	\$500.00	FINES		
130		00002	SENTENCING	CRT NEM
	SENTENCE PRISON:	MINIMUM	MAXIMUM	CREDIT
	LIFE	YYY-MMM-DDD	YYY-MMM-DDD	YYY-MMM-238
	BEGIN 05/26/16			
131		00003	SENTENCING	CRT NEM
	SENTENCE PRISON:	MINIMUM	MAXIMUM	CREDIT
	LIFE	YYY-MMM-DDD	YYY-MMM-DDD	YYY-MMM-238
	BEGIN 05/26/16			
132		00004	SENTENCING	CRT NEM
	SENTENCE PRISON:	MINIMUM	MAXIMUM	CREDIT
	CONCURRENT	30-MMM-DDD	60-MMM-DDD	YYY-MMM-238
	BEGIN 05/26/16			
133			FINAL ORDER OR JUDGEMENT FILED	CLK NEM
			JUDGMENT OF SENTENCE	CLK
			COMMITMENT TO DEPARTMENT	CLK
			OF CORRECTIONS	CLK
134			ORDER TO REMIT PRISONER FUNDS	CLK NEM
135			NOTICE OF APPEAL OF RIGHTS	CLK NEM
136		D 001	FROM: BRANDT,ALFRED P.,	CLK NEM
			TO: PRO-PER	CLK
138			WARRANT FOR REMOVAL OF PRISONER TO	CLK NEM

139		ANY PRISON	CLK
		CERTIFICATION AND RETURN	CLK NEM
		DNA SAMPLE	CLK
140 07/20/16		NOTICE OF RIGHT TO APPELLATE	CLK RAD
		REVIEW & REQUEST FOR APPT OF	CLK
		ATTY	CLK
141 08/11/16		COURT ORDERED PAYABLES	CLK CSI
		RECEIPT# 00388446 AMT \$186.39	
		COURT ORDERED	CLK
143 08/16/16	D 001	ORDER	CLK CSI
		ATTORNEY: P-88888 APPELLATE DE	CLK
		ORDER REGARDING APPOINTMENT OF	CLK
		APPELLATE COUNSEL AND	CLK
		TRANSCRIPT	CLK
144	D 001	FROM: BREMER, DANIEL D.,	CLK CSI
		TO: APPELLATE DEFENDERS O,S	CLK
145 08/25/16		ENTIRE FILE MAILED TO THE	CLK CSI
		STATE APPELLATE DEFENDER	CLK
		OFFICE	CLK
		PENOBSCOT BLDG. STE 3300	CLK
		645 GRISWOLD	CLK
		DETROIT MI 48226-4281	CLK
146 09/01/16		REPORTER/RECORDER CERTIFICATE	CLK AMP
		OF ORDERING OF TRANSCRIPT ON	CLK
		APPEAL TO COURT OF APPEALS	CLK
147 09/09/16		COURT ORDERED PAYABLES	CLK CSI
		RECEIPT# 00389248 AMT \$210.00	
		COURT ORDERED	CLK
148 11/16/16		NOTICE OF FILING OF TRANSCRIPT	CLK CSI
		& AFFIDAVIT OF MAILING	CLK
149		TRANSCRIPT OF ARRIAGNMENT	CLK CSI
		10/8/15, PRETRIAL 10/20/15,	CLK
		PRETRAIL 11/17/15, MOTION FOR	CLK
		JOINDER 12/1/15, PRETRIAL	CLK
		1/5/16, WALKER HEARING 3/7/16,	CLK
		MOTION, ADMITTANCE OF PHOTOS,	CLK
		SENTENCING 5/26/16, TRANSCRIBED	CLK
		BY THERESEA'S TRANSCRIPTS	CLK
150		TRANSCRIPTS: JURY TRIAL VOL I	CLK CSI
		OF IX 03/28/16, VOL II OF IX	CLK
		03/29/16, VOL III OF IX 3/30/16	CLK
		VOL IV OF IX 03/31/16, VOL V OF	CLK
		IX 4/1/16, VOL VI OF IX 4/4/16,	CLK
		VOL VII OF IX 4/5/16, VOL VIII	CLK
		OF IX 4/6/16, VOL IX OF IX	CLK
		4/7/16, TRANSCRIBED BY	CLK
		THERESEA'S TRASCRIPTS	CLK
151 12/05/16		STIPULATION REGARDING CLAIM OF	CLK AMP
		APPEAL	CLK
152 12/12/16		COURT ORDERED PAYABLES	CLK CSI
		RECEIPT# 00391784 AMT \$110.00	
		COURT ORDERED	CLK
153 12/28/16		ORDER	CLK AMP
		DFT'S RIGHT TO APPEAL IS	CLK
		REINSTATED & A CLAIM OF	CLK
		APPEAL IS TO BE FILED	CLK
154 01/12/17	D 001	ORDER	CLK AMP

	ATTORNEY: P-88888 APPELLATE DE	CLK
	CLAIM OF APPEAL & ORDER	CLK
	APPOINTING COUNSEL-AMENDED	CLK
155 03/06/17	COURT ORDERED PAYABLES	CLK CST
	RECEIPT# 00393907 AMT \$133.38	
	COURT ORDERED	CLK
156 07/05/17	ENTIRE FILE MAILED TO APPELATE	CLK KMC
	COURT IN GRAND RAPIDS	CLK
157	COURT ORDERED PAYABLES	CLK KMC
	RECEIPT# 00397099 AMT \$133.73	
	COSTS & FINES	CLK
158 08/18/17	COURT ORDERED PAYABLES	CLK KMC
	RECEIPT# 00398350 AMT \$102.03	
	COSTS & FINES	CLK
159 02/27/18	STATE OF MICHIGAN COURT OF	CLK LSA
	APPEALS UNPUBLISHED/AFFIRMED	CLK
160 04/09/18	ORDER	CLK KMC
	ST OF MI CRT OF APPEALS -	CLK
	MOTION FOR RECONSIDERATION IS	CLK
	DENIED	CLK
161 04/24/18	COURT ORDERED PAYABLES	CLK LMC
	RECEIPT# 00404716 AMT \$137.35	
	COSTS/FINES/OTHER	CLK
162 04/16/19	COURT ORDERED PAYABLES	CLK LMC
	RECEIPT# 00413251 AMT \$135.38	
	COSTS/FINES	CLK
163 07/15/19	ORDER	CLK NEM
	REGARDING TRANSCRIPTS/VIDEO	CLK
	FOR OUR HOUSE MEDIA	CLK
164 01/27/20	COURT ORDERED PAYABLES	CLK LMC
	RECEIPT# 00419483 AMT \$103.76	
	COSTS/FINES	CLK
165 06/09/20	COURT ORDERED PAYABLES	CLK CVD
	RECEIPT# 00421608 AMT \$115.05	
	CC	CLK
166 11/12/20	ORDER	CLK LMC
	MICHIGAN SUPREME COURT	CLK
	ORDER TO DETERMINE WHETHER	CLK
	DFT CLIFFORD MCKEE IS	CLK
	INDIGENT TO APPOINT STATE	CLK
	APPELLATE DEFENDER	CLK
.....	END OF SUMMARY	

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Case Search

Case Docket Number Search Results - 157581

Appellate Docket Sheet

COA Case Number: 336598**MSC Case Number: 157581**

PEOPLE OF MI V CLIFFORD DURELL MCKEE

1	PEOPLE OF MI Oral Argument: Y Timely: Y	PL-AE	PRS	(33223) SCHROTENBOER JERROLD
2	MCKEE CLIFFORD DURELL Oral Argument: Y Timely: Y	DF-AT	SAD	(26615) VANHOEK PETER JON

COA Status: Case Concluded; File Open**MSC Status:** Pending on Application**Consolidations:**

333720 PEOPLE OF MI V RODNEY JAMAR MCKEE (Case Concluded; File Open)

335767 PEOPLE OF MI V CORTEZ ANTONIO BUTLER (Case Concluded; File Open)

01/17/2017 1 Claim of Appeal - Criminal

Proof of Service Date: 01/11/2017

Register of Actions: Y

Fee Code: PI

Attorney: 1284 - STATE APPELLATE DEFENDER

05/26/2016 2 Order Appealed From

From: JACKSON CIRCUIT COURT

Case Number: 15-002787-FC

Trial Court Judge: 42371 WILSON THOMAS D

Nature of Case:

Murder One

Criminal Miscellaneous

Conspiracy

Home Invasion 1st

Habitual Offender 4th or higher, 769.12

01/17/2017 3 Transcript Ordered By Trial Court

Date: 01/09/2017

Reporter: 7201 - THERESA'S TRANSCRIPTION SRVCE

Hearings:

03/28/2016 jury trial

03/29/2016 jury trial

03/30/2016 jury trial

03/31/2016 jury trial

04/01/2016 jury trial

04/04/2016 jury trial

04/05/2016 jury trial

04/06/2016 jury trial

04/07/2016 jury trial

05/26/2016 sentence

01/17/2017 4 Notice Of Filing Transcript

Date: 11/16/2016

Reporter: 7201 - THERESA'S TRANSCRIPTION SRVCE

Hearings:

03/28/2016 jury trial

03/29/2016 jury trial

03/30/2016 jury trial

03/31/2016 jury trial

04/01/2016 jury trial

04/04/2016 jury trial

04/05/2016 jury trial

04/06/2016 jury trial

04/07/2016 jury trial

05/26/2016 sentence

Comments: per claim & register of actions these transcripts previously filed

02/08/2017 5 Motion: Extend Time - Appellant

Proof of Service Date: 02/08/2017

Filed By Attorney: 26615 - VANHOEK PETER JON

For Party: 2 MCKEE CLIFFORD DURELL DF-AT

Fee Code: I

Requested Extension: 05/31/2017

Answer Due: 02/15/2017

Comments: for use in Criminal Appellate Practice clinical program

02/21/2017 8 Submitted on Special Motion Docket

Event: 5 Extend Time - Appellant

District: T

Item #: 15

02/21/2017 9 Order: Extend Time - Appellant Brief - Grant

View document in PDF format

Event: 5 Extend Time - Appellant

Panel: MJT

Attorney: 26615 - VANHOEK PETER JON

Extension Date: 05/31/2017

05/25/2017 11 Brief: Appellant

Proof of Service Date: 05/25/2017

Oral Argument Requested: Y

Timely Filed: Y

Filed By Attorney: 26615 - VANHOEK PETER JON

For Party: 2 MCKEE CLIFFORD DURELL DF-AT

06/29/2017 12 Brief: Appellee

Proof of Service Date: 06/29/2017

Oral Argument Requested: Y

Timely Filed: Y

Filed By Attorney: 33223 - SCHROTENBOER JERROLD

For Party: 1 PEOPLE OF MI PL-AE

06/29/2017 13 Brief: Appendices in Support of Brief

Proof of Service Date: 06/29/2017

Filed By Attorney: 33223 - SCHROTENBOER JERROLD

For Party: 1 PEOPLE OF MI PL-AE

Comments: appendices to AE bf which are duplicate to those attached to AE bf in dkt no 333720

06/30/2017 14 Noticed

Record: REQST

Mail Date: 07/03/2017

07/07/2017 15 Record Filed
Comments: FILE; 26 TRNS

07/11/2017 17 Submitted on Administrative Motion Docket
District: G

07/11/2017 19 Order: Consolidate - Administrative
View document in PDF format
Event: 17 Submitted on Administrative Motion Docket
Panel: JPH
Comments: Consl: 333720, 335767, 336598

11/17/2017 24 Pleadings Returned
Date: 11/13/2017
For Party: 2 MCKEE CLIFFORD DURELL DF-AT
Comments: return Std 4 motn to remand - not accompanied by bf & untimely

02/13/2018 26 Submitted on Case Call
District: L
Item #: 2
Panel: MJC,JPH,JMB

02/13/2018 33 Oral Argument Audio

02/27/2018 38 Opinion - Per Curiam - Unpublished
View document in PDF format
Pages: 18
Panel: MJC,JPH,JMB
Result: L/Ct Judgment/Order Affirmed

03/19/2018 39 Motion: Reconsideration of Opinion
Proof of Service Date: 03/15/2018
Fee Code: PI
Answer Due: 03/29/2018
Comments: Motion filed by DF-AT in pro per.

04/03/2018 40 Submitted on Reconsideration Docket
Event: 39 Reconsideration of Opinion
District: C
Item #: 1

04/05/2018 41 Order: Reconsideration - Deny - Appeal Remains Closed
View document in PDF format
Event: 39 Reconsideration of Opinion
Panel: MJC,JPH,JMB

04/20/2018 42 SCt: Application for Leave to SCt
Supreme Court No: 157581
Answer Due: 05/18/2018
Fee: Indigent Person
For Party: 2
Filed By Pro Per

04/26/2018 43 SCt Notice Letter Sent
Proof Of Service Date: 04/26/2018

05/18/2018 44 SCt: Answer - SCt Application/Complaint
Filing Date: 05/18/2018
For Party: 1 PEOPLE OF MI PL-AE
Filed By Attorney: 33223 - SCHROTENBOER JERROLD

05/22/2018 45 Supreme Court - Record Sent To
File Location:

Comments: sc#157581 box case** lcf;26 tr

05/22/2018 46 SCt: Trial Court Record Received
26 tr; 1 files

06/08/2018 47 SCt: Reply - SCt Application/Complaint
Filing Date: 06/08/2018
For Party: 2 MCKEE CLIFFORD DURELL DF-AT
Filed By Pro Per

05/22/2019 50 SCt Order: Abeyance - Grant
View document in PDF format
Comments: Hold in abeyance pending decisions in MSC No. 158296, People v Furline, and MSC No. 158298, People v Jenkins.

10/28/2020 51 SCt Order: MOAA -Oral Argument on Lv Appl
View document in PDF format
Comments: To be argued with MSC No. 157646. TC to determine if DFAT Clifford McKee (#157581) is indigent and appoint SADO if so. 20-min arguments per side. Invited AC=CDAM, PAAM.

11/30/2020 52 SCt Motion: Housekeeping
Party: 2
Filed by Attorney: 68782 - SHARON ALONA
Comments: Motion to extend time to 02-23-2020 to file AT supplemental brief

12/04/2020 53 SCt Correspondence Received
Proof Of Service Date: 12/04/2020
Comments: Trial Ct order appointing counsel (S Alona); erroneously filed with CoA 11-25-2020

12/08/2020 54 Correspondence Sent
Proof Of Service Date: 12/08/2020
Comments: SC letter informing DF-AT that counsel has been appointed; copy of appointment order included

12/08/2020 55 SCt Order: Chief Justice - Grant
View document in PDF format
Comments: Grant DFAT mtn to extend time for filing supp brf to 2-23-2021.

02/08/2021 56 SCt Motion: Housekeeping
Party: 2
Filed by Attorney: 68782 - SHARON ALONA
Comments: Motion (2nd) to extend time, now to 04-06-2021, to file AT Supplemental Brief

02/10/2021 57 SCt Order: Chief Justice - Grant
View document in PDF format
Comments: Grant DFAT Clifford McKee second motion to extend time for filing supp brf to 4-6-2021.

Case Listing Complete

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

RODNEY JAMAR McKEE,
Defendant-Appellant.

UNPUBLISHED
February 27, 2018

No. 333720
Jackson Circuit Court
LC No. 15-002788-FC

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

CORTEZ ANTONIO BUTLER,
Defendant-Appellant.

No. 335767
Jackson Circuit Court
LC No. 15-002789-FC

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

CLIFFORD DURELL McKEE,
Defendant-Appellant.

No. 336598
Jackson Circuit Court
LC No. 15-002787-FC

Before: CAVANAGH, P.J., and HOEKSTRA and BECKERING, JJ.

PER CURIAM.

Defendants Rodney Jamar McKee (Rodney), Cortez Antonio Butler, and Clifford Durell McKee (Clifford), were tried jointly, before a single jury. The jury convicted each defendant of first-degree murder, MCL 750.316(1), conspiracy to commit first-degree murder, MCL

750.157a, and first-degree home invasion, MCL 750.110a(2). The jury also convicted Rodney and Clifford of solicitation of murder, MCL 750.157b(2). The trial court sentenced Rodney to life without parole for the first-degree murder and conspiracy convictions, life imprisonment for the solicitation of murder conviction, and 12 to 20 years' imprisonment for the home invasion conviction. The court sentenced Butler as a fourth-offense habitual offender, MCL 769.12, to life without parole for the first-degree murder and conspiracy convictions, and 50 to 75 years' imprisonment for the home invasion conviction. Lastly, the court sentenced Clifford as a fourth-offense habitual offender to life without parole for the first-degree murder and conspiracy convictions, life imprisonment for the solicitation of murder conviction, and 30 to 60 years' imprisonment for the home invasion conviction. Rodney appeals as of right in Docket No. 333720, Butler appeals as of right in Docket No. 335767, and Clifford appeals as of right in Docket No. 336598. For the reasons explained in this opinion, we affirm in each appeal.

Defendants' convictions arise from the stabbing death of Frances Craig, who was killed inside her home in Jackson, Michigan. The victim's body was discovered in her bedroom on the morning of August 10, 2014. The victim shared the home with her two young daughters, her fiancé Eric Wolfe, and Wolfe's young daughter. Before the victim and Wolfe moved to the home in June 2014, they had been living in an apartment at the Oaks Apartment Complex in Jackson. In March 2014, Wolfe's friend, Ryan Marshall, moved into the apartment with Eric and the victim after a fire destroyed the apartment that Ryan and his mother, Donna Marshall, were living in. Donna sold drugs for Rodney, who she knew as "Neffue," but she wanted to stop selling. On the day of the fire, Ryan saw Rodney sneaking around outside the house, and Rodney was charged with first-degree arson in connection with the fire. Ryan intended to testify against Rodney in the arson case. When the victim and Wolfe moved to their new residence, Ryan did not move with them.

The evidence presented at trial showed that the victim suffered 20 deep stab wounds, including wounds to her neck. Her wrists were confined with zip ties and she was gagged with a scarf that had been wrapped around her neck. Wolfe was initially considered the prime suspect in the homicide. However, Wolfe claimed that he was at work at the time the victim was killed and a review of the cameras at his place of employment provided no indication that he had left work during that time frame.

DNA testing revealed that the zip ties from the victim's hands contained DNA from a male donor. In November 2014, this DNA was matched to Butler's DNA in the Combined DNA Index System (CODIS). A forensic analysis of Butler's cell phone records revealed that Butler's phone was in the Jackson area on August 6, 8 and 10, and that the Jackson area was outside that phone's "pattern of life." On those dates, Butler's phone communicated frequently with several phone numbers, including a number that was registered under the name "Dorito Johnson," a street name for Clifford. On December 11, 2014, real-time GPS tracking located Clifford's phone at a mall in Jackson, where Clifford was arrested and police seized three cell phones from him. Clifford admitted knowing Butler and phone mapping data showed that Butler's phone and Clifford's phone had traveled together on I-94.

On December 11, 2014, detectives interviewed Butler at the Detroit Detention Center. The interview was recorded and Butler denied knowledge of the Jackson homicide. Detectives interviewed Butler again on December 16 in Detroit, when they went to obtain a buccal swab to

confirm the DNA match. After being assured that his interview was not being recorded, Butler confessed to the detectives that “Dorito Johnson” had contacted him to “perform a hit” on a person who was going to testify against Rodney¹ in an upcoming criminal case. Butler told detectives that he had traveled with Dorito Johnson from Detroit to Jackson and that Rodney, who was driving a white SUV, paid \$5,000 of the agreed \$10,000 fee up front. Butler said that he entered the victim’s residence and was unable to locate the intended target in the home, so he went into the master bedroom where he woke up the victim to interrogate her about the individual’s location. He explained that he ultimately killed the victim because he believed she saw his face. Butler told detectives that he “damn near cut the Bitch’s head off.” Another witness, Dale Morgan, testified that he and Butler had an argument in December 2014 about a cell phone and that Butler told him to “shut the f**k up, I know what I’m doing,” “I just chopped a Bitch up in Jackson.” At trial, Butler denied killing the victim and denied making statements to the police and to Morgan.

I. *BATSON* CHALLENGES

Rodney argues that the prosecutor improperly used peremptory challenges to excuse prospective African-American jurors. Butler similarly argues that the trial court erred in denying his motion for a mistrial due to the prosecutor’s use of peremptory challenges to excuse African-American jurors. These arguments implicate *Batson v Kentucky*, 476 US 79; 106 S Ct 1712; 90 L Ed 2d 69 (1986), in which the United States Supreme Court held that the Equal Protection Clause prohibits the use of peremptory challenges to exclude members of a jury venire because of their race.

Preliminarily, we note that neither Rodney nor Butler timely raised a *Batson* challenge. A *Batson* challenge is timely if it is made before the jury is sworn. *People v Knight*, 473 Mich 324, 348; 701 NW2d 715 (2005). Rodney and Butler did not make their *Batson* challenges until after the jury was sworn. Therefore, their challenges were untimely and, as such, could be considered waived. *Id.* at 346 n 14, 348. Waiver extinguishes any error. *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000). Even if we consider this issue under the plain-error standard applicable to unpreserved claims, *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999), Rodney and Butler would not be entitled to appellate relief.

Assuming that Rodney and Butler satisfied the first step of *Batson* by making a prima facie case of purposeful discrimination, *Batson*, 476 US at 93-94, the prosecutor would have had the burden of providing race-neutral explanations for the peremptory challenges. *Id.* at 97. At this step, “the issue is whether the . . . explanation is facially valid as a matter of law. . . . ‘A neutral explanation in the context of our analysis here means an explanation based on something other than the race of the juror Unless a discriminatory intent is inherent in the prosecutor’s explanation, the reason offered will be deemed race neutral.’ ” *Knight*, 473 Mich at 337 (citation omitted). After a race-neutral reason is proffered, “the trial court must then determine whether

¹ Butler used a street name for Rodney and described him as a “very, very large man, 6’6”, 6’7” and about 400 pounds.”

the race-neutral explanation is a pretext” and whether the defendant “has proved purposeful discrimination.” *Id.* at 337-338.

Despite the lack of a timely objection, when the issue was raised, the prosecutor provided her reasons for using peremptory challenges to dismiss the jurors in question.² Those reasons were race-neutral and the trial court was satisfied that the reasons were valid. Citing *People v Tennille*, 315 Mich App 51; 888 NW2d 278 (2016), Rodney argues that the trial court erred by failing to make findings of fact and rulings addressing the nature of the prosecutor’s reasons. However, unlike in *Tennille*, where the trial court merely stated that the prosecutor had articulated a valid, race-neutral reason for the strikes, *id.* at 62, the trial court in this case assessed the prosecutor’s proffered reasons and made findings of fact regarding the prosecutor’s justification for the strikes under the circumstances. Neither Rodney nor Butler has provided any basis for concluding that the prosecutor’s race-neutral reasons were a pretext for discrimination. Accordingly, they have failed to demonstrate plain error in the trial court’s denial of the *Batson* challenges or denial of a mistrial with respect to this issue.

II. MOTION TO SEVER TRIAL

Rodney argues that the trial court erred by denying his motion to sever his trial from that of the codefendants. We review a trial court’s decision regarding severance for an abuse of discretion. *People v Bosca*, 310 Mich App 1, 43; 871 NW2d 307 (2015), appeal held in abeyance 872 NW2d 492 (2015).

MCR 6.121 governs the joinder and severance of charges for multiple defendants. In general, a defendant does not have a right to a separate trial. *People v Hurst*, 396 Mich 1, 6; 238 NW2d 6 (1976). A strong policy favors joint trials in the interest of justice, judicial economy, and administration. *People v Etheridge*, 196 Mich App 43, 52; 492 NW2d 490 (1992). Severance is mandated under MCR 6.121(C)³ only when a defendant demonstrates that his substantial rights will be prejudiced and that severance is the necessary means of rectifying the potential prejudice. *People v Hana*, 447 Mich 325, 345; 524 NW2d 682 (1994), amended 447 Mich 1203 (1994). “The failure to make this showing in the trial court, absent any significant

² Specifically, one juror was dismissed because he admitted that, when he was a juror in a previous criminal case, he believed that the defendant was guilty but agreed to just “go along with everybody else” to reach “the wrong verdict” and find the defendant not guilty “because of what was going on in the jury room.” The second juror acknowledged that she had a previous bad experience with a lawyer and would be “more concerned” about, and “more critical” of, the attorneys involved in this case. And, the final juror, who stated that she had previously been the victim of a crime when she was shot in the leg during a home invasion, demonstrated a notable lack of ability to pay attention to details when she could not recall who committed the crime, what charges were brought, if the matter proceeded to trial, whether anyone was convicted, etc.

³ MCR 6.121(C) states that “[o]n a defendant’s motion, the court must sever the trial of defendants on related offenses on a showing that severance is necessary to avoid prejudice to substantial rights of defendant.”

indication on appeal that the requisite prejudice in fact occurred at trial, will preclude reversal of a joinder decision.” *Id.* at 346-347. Neither the existence of inconsistent defenses nor incidental spillover prejudice is sufficient to require severance; “rather, the defenses must be ‘mutually exclusive’ or ‘irreconcilable.’” *Id.* at 349 (citations omitted).

Rodney argued below that severance was necessary under MCR 6.121(C) because Butler’s confession implicated Rodney in the crimes. Rodney submitted with his motion to sever an affidavit asserting that he had pleaded not guilty to all charges and he denied Butler’s statements as untrue. In other words, the prejudice that Rodney alleged would occur was premised on Butler incriminating Rodney in crimes in which Rodney denied participating. Rodney maintained that there was “no way for one jury . . . to believe both men.” However, Butler testified at trial. He denied having confessed to detectives and he did not attempt to incriminate Rodney. There was thus nothing inconsistent, and certainly nothing mutually exclusive or irreconcilable, between Butler’s defense and Rodney’s defense. See *Hana*, 447 Mich at 349. Consequently, the purported prejudice on which Rodney relied to justify severance did not occur.

Nevertheless, Rodney contends that he can make a showing of prejudice based on evidence that was introduced against Butler at trial. In this regard, Rodney argues that the requisite prejudice occurred at trial when the prosecutor cross-examined Butler about his involvement in unrelated homicides.⁴ Although these other acts did not pertain to Rodney and thus would not have been introduced at a separate trial, we reject Rodney’s argument that he is

⁴ In making this argument, Rodney also contends that the prosecutor’s cross-examination violated a pretrial ruling that evidence of Butler’s involvement in other, unrelated homicides was inadmissible. The matter was raised again during trial, however, when questions arose regarding whether the prosecutor would be permitted to cross-examine Butler about statements he made relative to other homicides if he chose to testify and accused the detectives or Morgan of lying in their testimony concerning Butler’s alleged statements. The trial court ruled that the prosecutor would be permitted to cross-examine Butler about other homicides if Butler chose to testify and he opened the door to such questioning. During direct examination, Butler denied the statements attributed to him by the detectives and Morgan, and he asserted that he told them that “they won’t be able to hook this one on me.” The prosecutor, in accordance with the trial court’s ruling, then cross-examined Butler about his involvement in other homicides. In particular, the prosecutor asked what Butler meant by “hook this one on me,” and Butler asserted that Morgan falsely implicated him in another murder. Despite this assertion that Morgan falsely implicated him, Butler acknowledged that he pleaded guilty to murder in the other case. Thus, the prosecutor’s cross-examination of Butler with respect to other homicides did not violate the trial court’s ruling, and we find no error in this questioning given that Butler opened the door by asserting that the police and Morgan had previously tried to “hook” him. Cf. *People v Mullins*, __ Mich App __, __; __ NW2d __ (2017) (Docket No. 334098) (finding no error when a defendant opens the door to otherwise improper questioning), p 7.

entitled to reversal based on this questioning.⁵ The evidence relating to Butler’s involvement in other homicides did not implicate Rodney in those other crimes, and the evidence of other homicides was only used against Butler. Cf. *People v Moore*, 78 Mich App 294, 299; 259 NW2d 351 (1977). Further, the trial court determined that any potential prejudice resulting from admission of the evidence could be alleviated by a limiting instruction. The trial court instructed the jury, in relevant part, as follows:

You must judge each defendant on the evidence presented against that particular defendant, thus, for example, you – should you find that the evidence shows one defendant to be guilty you should not thereby automatically find the others guilty as well. Judge each defendant based on the evidence against him. Just because some evidence may tend to implicate one defendant does not automatically mean that it implicates the other defendants as well.

Certain information has been presented to you showing that Cortez Butler may have been involved in certain crimes in the past. Because this evidence has nothing to do with either Rodney or Clifford McKee you are not to consider it against either of them.

A limiting instruction will often suffice “to enable the jury to compartmentalize evidence and consider it only for its proper purpose.” *People v Mardlin*, 487 Mich 609, 629; 790 NW2d 607 (2010) (quotation marks and citation omitted). Jurors are presumed to follow their instructions. *People v Unger*, 278 Mich App 210, 235; 749 NW2d 272 (2008). Rodney has not provided any basis for overcoming the presumption that the jurors followed the court’s instructions, and he has not shown the prejudice necessary to reverse the trial court’s joinder decision. See *Hana*, 447 Mich at 346-347.

Rodney also argues that the requisite prejudice occurred during trial when the prosecutor “introduced inadmissible evidence” in front of the jury when responding to an objection by Butler’s counsel.⁶ Rodney has provided no basis for concluding that he was prejudiced by the prosecutor’s brief argument regarding the relevance of the evidence.

In sum, the trial court did not abuse its discretion by denying Rodney’s motion for severance, and Rodney has failed to show that the requisite prejudice occurred at trial.

III. PROSECUTOR’S CONDUCT

Rodney argues that the prosecutor’s conduct denied him a fair trial. Preserved claims of prosecutorial misconduct are evaluated on a case-by-case basis to determine whether the prosecutor’s conduct denied the defendant a fair and impartial trial. *People v Rice (On Remand)*,

⁵ Clifford also raises this issue in his argument that the trial court erred in denying his motion for a mistrial based on the prosecutor’s cross-examination of Butler. That argument is addressed in section VIII, *infra*.

⁶ The evidence at issue is further discussed in section III, *infra*.

235 Mich App 429, 434-435; 597 NW2d 843 (1999). In this case, however, Rodney failed to preserve most of his claims with an appropriate objection at trial. See *People v Bennett*, 290 Mich App 465, 475; 802 NW2d 627 (2010). Unpreserved claims of prosecutorial misconduct are reviewed for plain error affecting substantial rights. *Id.* “On plain-error review, the burden is on the defendant to establish (1) error; (2) that was plain, meaning clear or obvious; and (3) that the plain error caused prejudice, meaning that the error affected the outcome of the lower court proceedings.” *People v Jones*, 317 Mich App 416, 420; 894 NW2d 723 (2016) (citation and quotation marks omitted). This Court will only reverse if a defendant establishes plain error and the error resulted in the conviction of an innocent defendant or it “seriously affected the fairness, integrity or public reputation of judicial proceedings independent of the defendant’s innocence.” *Id.* (citation and quotation marks omitted). “[T]his Court cannot find error requiring reversal where a curative instruction could have alleviated any prejudicial effect.” *Bennett*, 290 Mich App at 476 (citation and quotation marks omitted).

Rodney first argues that the prosecutor elicited perjured testimony when Detective Andrew Sullivan testified that Butler confessed to his involvement in a “triple” homicide in Detroit. The court was later informed that the unrelated offense involved a “double” homicide and injury to a third individual, and that a different person had pleaded guilty to that offense.

A prosecutor may not knowingly use false testimony to obtain a conviction. *People v Smith*, 498 Mich 466, 475-476; 870 NW2d 299 (2015). “[A] conviction obtained through the knowing use of perjured testimony offends a defendant’s due process protections guaranteed under the Fourteenth Amendment.” *People v Aceval*, 282 Mich App 379, 389; 764 NW2d 285 (2009). A conviction must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury. *Smith*, 498 Mich at 476. The entire focus of this Court’s analysis must be on the fairness of the trial, not on the prosecutor’s or the court’s culpability. *Aceval*, 282 Mich App at 390.

Assuming that Detective Sullivan’s testimony regarding the number of homicide victims was false, Rodney has not shown how the fact that the other case involved a double homicide, rather than a triple homicide, had any effect on Rodney’s trial. The trial court corrected the false testimony by complying with Butler’s attorney’s request that the jury be informed that there were only two victims and that someone else had pleaded guilty. Rodney has not shown plain error.

Second, Rodney argues that the prosecutor improperly argued facts not in evidence when she characterized the victim as a hero during closing arguments, and when she referred to Butler as a “hitman” when offering a rebuttal witness for Butler’s testimony. We disagree. A prosecutor may argue all the facts in evidence and reasonable inferences as they relate to the prosecutor’s theory of the case. *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995). Detective Joseph Merritt testified that Butler stated that he had been hired to perform a hit or a homicide on an individual, and this evidence supports the characterization of Butler as a “hitman.” Butler also told Detective Merritt that he woke up the victim and interrogated her to determine the location of the other individual, and that he killed her because she kept moving in a manner that allowed her to see his face. The prosecutor argued as follows:

And the only reason to stay in that room in that house any longer at that point is to try to get information about Ryan Marshall. It’s the only reason. He

has already been all the way through that house by that time and knows Ryan isn't there. He's in that room with Frannie and clearly knows she's not Ryan. He could have left. She is bound, she is gagged, she is at least stunned or dazed or knocked out, probably has barely had a chance to look at him at that point, could have gotten away. Had her phone, she couldn't even have easily or readily called 911 or anybody else for help. He could have left.

The only reason to stay is to get information about Ryan Marshall, and clearly, she wouldn't give him what he wanted. Clearly, she wouldn't tell him, clearly she struggled, and as we now know from his statement, she kept trying to look at him so he had to take her out.

I told you in opening that Frannie died as collateral damage, but Frannie, more importantly, died a hero. Wouldn't give him what he wanted and fought as best she could.

The prosecutor's characterization of the victim as a hero was a reasonable inference based on the evidence and the conduct that resulted in the victim's death. The prosecutor was not required to state her argument in the blandest possible terms. *People v Dobek*, 274 Mich App 58, 66; 732 NW2d 546 (2007).

Third, Rodney argues that the prosecutor improperly told the jury during her rebuttal argument that *Miranda*⁷ is a legal issue and that Butler's statement would not have been admissible if it was obtained in violation of Butler's *Miranda* rights. The prosecutor's argument was responsive to Butler's counsel's suggestion during his closing argument that Butler's statement was obtained in violation of *Miranda*. See *People v Watson*, 245 Mich App 572, 593; 629 NW2d 411 (2011) (a prosecutor's otherwise improper remark may not require reversal when given in response to defense counsel's argument). Contrary to what Rodney asserts, the prosecutor's remark did not vouch for the veracity of the confession or the credibility of the detective's testimony. Indeed, the prosecutor told the jury that they could consider whether the statement was voluntary, and the prosecutor did not attempt to prevent the jury from considering the credibility of the confession or whether such a confession was made. See *People v Gilbert*, 55 Mich App 168, 173; 222 NW2d 305 (1974); see also *People v Pierson*, __ Mich App __, __; __ NW2d __ (2017) (Docket No. 332500), p 2. Moreover, the trial court instructed the jury that the lawyers' arguments were not evidence, and the trial court instructed the jury regarding their ability to weigh and consider Butler's statement. In these circumstances, reference to there being nothing legally amiss with regard to *Miranda* does not require reversal. See *People v Kincaid*, 136 Mich App 209, 215-216; 356 NW2d 4 (1984).

Fourth, Rodney asserts that the prosecutor misled the jury by presenting "unadmitted evidence." It appears that Rodney is referring to a PowerPoint that was made by the prosecutor that outlined various text messages, including a communication between Rodney and an unidentified third party, referred to as "D." Butler's counsel objected to testimony regarding the

⁷ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

phone call, challenging the relevance “of a conversation with a third party who’s yet to be identified as having anything [to do] with this case.” The court asked the prosecutor why the communication was relevant, and, in front of the jury, the prosecutor replied, “Because this whole thing starts with Rodney trying to stay out of jail from the arson” “[s]o D’s telling him how to” and Rodney replied, “He’s got it under control.” Rodney’s counsel objected on the ground that the prosecutor’s reasoning “called for speculation.” After additional discussion outside the presence of the jury, the trial court concluded that the communication was not relevant and was inadmissible. Rodney now argues it was improper for the jury to see the PowerPoint prepared by the prosecutor and for the prosecutor to discuss the text message in front of the jury.⁸ However, Rodney has not provided any basis for concluding that he was prejudiced as a result of the jury viewing the PowerPoint and the prosecutor’s brief argument regarding the relevance of the evidence. Thus, he has not shown plain error and he is not entitled to relief on appeal.

Fifth, Rodney argues that the prosecutor had a duty to correct Morgan’s testimony, which Rodney maintains was false. However, Rodney has offered no support, other than his own belief, for his assertion that Morgan’s testimony was false or that the prosecutor knew the testimony to be false. Cf. *People v Herndon*, 246 Mich App 371, 417; 633 NW2d 376 (2001). Further, he has presented no argument explaining how Morgan’s statement pertaining to Butler was material in Rodney’s case. See *Aceval*, 282 Mich App at 389. Consequently, Rodney has failed to show that the prosecutor knowingly used perjured testimony. See *id.* at 389-390.

Lastly, Rodney and Butler both argue that the prosecutor knowingly violated the trial court’s evidentiary ruling when she cross-examined Butler with respect to other homicides in which he was involved. As discussed in section II, *supra*, the trial court ruled that the prosecutor could cross-examine Butler about other homicides if Butler opened the door on direct examination. Because Butler opened the door to the challenged testimony, the prosecutor did not elicit “prohibited testimony” by cross-examining Butler regarding other homicides. See *People v Mullins*, __ Mich App __, __; __ NW2d __ (2017) (Docket No. 334098). The premise of this argument is factually flawed, and thus does not support the argument that the prosecutor improperly cross-examined Butler about other homicides.

In sum, Rodney has failed to show plain error with respect to any of his unpreserved allegations of prosecutorial misconduct, and the prosecutor’s cross-examination of Butler did not violate the trial court’s ruling or deprive Rodney and Butler of a fair trial.

IV. JURY INSTRUCTIONS

⁸ Butler moved for a mistrial on this basis, arguing that Butler was prejudiced when the prosecutor began to discuss the “statements that were in Rodney’s phone” in the presence of the jury. The prosecutor responded that the argument was not improper and that any prejudice could be alleviated by a curative instruction, which the trial court was willing to give. However, none of defendants requested a special instruction, and there was no objection to the failure to provide an instruction.

Rodney and Clifford argue that the trial court erred by instructing the jury to reread the instructions on transferred intent and conspiracy in response to a jury question seeking clarification on the intent required for the murder charge. However, counsel for both Rodney and Clifford expressed satisfaction with the jury instructions that were given, thereby extinguishing any error and waiving review of this claim. See *People v Kowalski*, 489 Mich 488, 504; 803 NW2d 200 (2011). In particular, both Rodney and Clifford expressed satisfaction with the trial court's final instructions, which included instructions on transferred intent and conspiracy. Then, in response to the jury's question regarding the intent for murder, Rodney's counsel suggested that the court instruct the jury to "follow the law," and then approved the trial court's suggestion that it instruct the jury to reread the instructions on transferred intent and conspiracy. Clifford's counsel also agreed that it would be "correct" for the court to instruct the jury to reread the instruction on transferred intent. See *id.* By approving the trial court's response, Rodney and Clifford waived this claim. Their waivers extinguished any error, leaving no error to review. See *Carter*, 462 Mich at 216.

V. INEFFECTIVE ASSISTANCE OF COUNSEL

Rodney argues that trial counsel was ineffective for (1) not properly preparing to cross-examine the prosecution's arson expert, (2) not challenging the qualifications of the arson expert, (3) failing to consult with an expert to provide data showing the location of Rodney's phone at the time of the fire and that he was texting with his girlfriend at the time of the fire, (4) failing to object to the prosecutor's conduct discussed in section III, (5) failing to object to the jury instruction on transferred intent, (6) failing to object to Detective Sullivan's testimony that none of Butler's four statements were recorded when, in fact, only one statement was not recorded, and (7) failing to object to Morgan testifying in prison clothing. Both Rodney and Butler also argue that their counsel was ineffective by failing to request an instruction under MCL 763.9 with respect to the failure to record Butler's statement. Butler also argues that his counsel failed to effectively cross-examine Wolfe with respect to why the police considered him to be a prime suspect.

A *Ginther*⁹ hearing was not held in this case, meaning that our review is limited to mistakes apparent on the record. *People v Riley (After Remand)*, 468 Mich 135, 139; 659 NW2d 611 (2003). "To establish a claim of ineffective assistance of counsel, a defendant must show both that counsel's performance was deficient and that counsel's deficient performance prejudiced the defense." *Id.* at 140. "[T]he defendant must overcome a strong presumption that counsel's performance constituted sound trial strategy." *Id.* The burden is on the defendant to show the factual predicate for a claim of ineffective assistance of counsel. *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999).

The record is devoid of evidence regarding Rodney's counsel's preparation for questioning the expert and the alleged evidence in support of the defense theory. Rodney has not produced any factual support for his claim that his attorney was unprepared or that evidence showed that Rodney was not in the area of the fire at the time it was set. Further, regardless of

⁹ *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

whether Rodney actually committed the underlying arson, it was undisputed that Rodney was criminally charged with that offense. Thus, Rodney had a motive to kill Ryan because Ryan intended to testify that Rodney was involved in that offense.

Rodney also announces, without argument, that counsel was ineffective for failing to object to the prosecutor's conduct addressed in section III, *supra*. Given our conclusion that the prosecutor's conduct was not improper, counsel was not ineffective by failing to object. Counsel is not required to make a meritless argument or raise a futile objection. *People v Ericksen*, 288 Mich App 192, 201; 793 NW2d 120 (2010).

Rodney also argues that counsel was ineffective for failing to "object to the handling of the jury instructions." Presumably, Rodney is referring to counsel's agreement with the trial court's response to the jury's question regarding the requisite intent for murder, in which the court instructed the jury to reread the jury instructions on conspiracy and transferred intent. Rodney's argument that the trial court's response only further confused the jury is not supported by the record. Indeed, the court advised the jury that if its response did not resolve the jury's question, the jury should send out another question. The jury did not send out any additional questions regarding the instruction. On this record, Rodney has not shown that counsel performed unreasonably or that counsel's failure to object to the jury instructions affected the outcome of the trial.

Rodney also complains that counsel failed to object when Detective Sullivan "lied to the jury" and told them that none of Butler's four statements had been recorded. The record does not factually support this argument. Detective Sullivan testified that Butler's December 16 statement was not recorded, but Sullivan did not testify that all of Butler's statements were not recorded. To the contrary, Detective Sullivan testified that Butler's December 11 statement was recorded. Rodney has not established that Detective Sullivan lied to the jury and, in any event, Rodney has not explained how this purported lie affected the outcome of the proceedings.

Next, Rodney complains that counsel failed to object when Morgan testified while wearing prison clothes. Rodney makes no attempt to explain why such an objection would have had merit, much less explain how it would have changed the outcome of his trial. Indeed, assuming that Morgan did indeed testify while wearing prison clothing, Rodney has not overcome the presumption that counsel's failure to object was reasonable trial strategy considering that Morgan was a prosecution witness.

Rodney and Butler both maintain that their respective attorneys were ineffective for failing to request that the trial court instruct the jury that interrogations for major felonies must be recorded, MCL 763.8, and that the jury could consider the failure to record Butler's December 16 statement when evaluating the evidence in this case, MCL 763.9.

MCL 763.9 provides:

Any failure to record a statement as required under section 8 of this chapter or to preserve a recorded statement does not prevent any law enforcement official present during the taking of the statement from testifying in court as to the circumstances and content of the individual's statement if the court determines

that the statement is otherwise admissible. However, unless the individual objected to having the interrogation recorded and that objection was properly documented under section 8(3), the jury shall be instructed that it is the law of this state to record statements of an individual in custodial detention who is under interrogation for a major felony and that the jury may consider the absence of a recording in evaluating the evidence relating to the individual's statement.

Section 8, MCL 763.8, provides, in relevant part:

(1) This section applies if the law enforcement agency has audiovisual recording equipment that is operational or accessible as provided in section 11(3) or (4) or upon the expiration of the relevant time periods set forth in section 11(3) or (4), whichever occurs first.

(2) A law enforcement official interrogating an individual in custodial detention regarding the individual's involvement in the commission of a major felony shall make a time-stamped, audiovisual recording of the entire interrogation. A major felony recording shall include the law enforcement official's notification to the individual of the individual's Miranda rights.

(3) An individual who believes the individual's interrogation is being recorded may object to having the interrogation recorded. The individual's objection shall be documented either by the individual's objection stated on the recording or the individual's signature on a document stating the objection. If the individual refuses to document the objection either by recording or signature, a law enforcement official shall document the objection by a recording or signed document. A major felony recording may be made without the consent or knowledge of, or despite the objection of, the individual being interrogated.

Rodney's and Butler's argument fails because MCL 763.9 provides an exception when the individual being interrogated objects to having the interrogation recorded and the objection is properly noted. The record discloses that Butler did not want the December 16 statement recorded. Rodney does not claim that Butler's objection was not properly noted. Although Butler asserts that the detectives did not properly document his objection, the record is silent on this issue. Because the absence of proper documentation is not apparent from the record, this claim of ineffective assistance of counsel cannot succeed. Moreover, even assuming counsel could have succeeded on a request for such an instruction, we are not persuaded that the absence of this instruction affected the outcome of the proceedings.

Lastly, Butler argues that his counsel failed to effectively cross-examine Wolfe about his statements and behavior that caused the police to initially consider him a suspect. However, the fact that Wolfe was initially a suspect, and the reasons supporting that suspicion, were thoroughly explored at trial. Butler fails to explain how additional cross-examination of Wolfe would have affected the outcome, especially in light of the other evidence of Butler's guilt, including DNA evidence. Because the jury was clearly apprised of Wolfe's initial status as a primary suspect and the reasons for that suspicion, Butler has failed to demonstrate that counsel

performed below an objective standard of reasonableness and that there was a reasonable probability that cross-examination on this subject was reasonably likely to change the outcome.

VI. ADMISSION OF BUTLER'S STATEMENT

Butler argues that the trial court erred by denying his motion to suppress his December 16 statement. During this interview, police assured Butler that the interview was not being recorded and one of the detectives expressly told Butler: "I'm not intending to use anything you say against you." After receiving these assurances, Butler provided a detailed confession to the murder. On appeal, Butler argues that police cannot advise someone of their rights but then offer false assurances that what the person says will not be used against him because this type of "subterfuge makes a mockery out of the Fifth Amendment and *Miranda*." According to Butler, his statement was obtained in violation of *Miranda* and his statement was involuntary because it was given based on false assurances that it would not be used against him.

We review the trial court's ultimate decision on a motion to suppress de novo. *People v Roberts*, 292 Mich App 492, 502; 808 NW2d 290 (2011). Likewise, voluntariness and whether an accused has knowingly and intelligently waived his rights are reviewed de novo. *People v Tierney*, 266 Mich App 687, 707; 703 NW2d 204 (2005). However, the trial court's factual findings are reviewed for clear error. *People v Elliott*, 494 Mich 292, 300; 833 NW2d 284 (2013). "A finding is clearly erroneous if, after reviewing the entire record, an appellate court is left with a definite and firm conviction that a mistake has been made." *People v Coomer*, 245 Mich App 206, 219; 627 NW2d 612 (2001). "To the extent we find that constitutional error has occurred, we review preserved issues of constitutional error to determine whether they are harmless beyond a reasonable doubt." *People v Henry (After Remand)*, 305 Mich App 127, 144; 854 NW2d 114 (2014) (quotation marks, citation and alteration omitted). "A constitutional error is harmless if [it is] clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error." *Id.* (quotation marks and citation omitted).

"In *Miranda*, the United States Supreme Court held that the Fifth Amendment's prohibition against compelled self-incrimination requires that the accused be given a series of warnings before being subjected to custodial interrogation."¹⁰ *Elliott*, 494 Mich at 301 (quotation marks omitted).

The now-familiar *Miranda* warnings require the police, before a custodial interrogation, to inform a suspect (1) that he has the right to remain silent, (2) that anything he says can and will be used against him in court, (3) that he has a right to the presence of an attorney during any questioning, and (4) that if he cannot afford an attorney one will be appointed for him. [*People v Daoud*, 462 Mich 621, 625 n 1; 614 NW2d 152, 154 (2000).]

¹⁰ In the trial court, there was debate about whether Butler was "in custody" on December 16 so as to require *Miranda* warnings. See generally *Elliott*, 494 Mich at 302. However, the trial court did not address this question, and the prosecutor makes no argument on appeal that *Miranda* did not apply to the December 16 interrogation.

The aim of *Miranda* “is to assure that the individual's right to choose between silence and speech remains unfettered throughout the interrogation process.” *Miranda v Arizona*, 384 US 436, 469; 86 S Ct 1602; 16 L Ed 2d 694 (1966). If the custodial interrogation is not preceded by an adequate warning, statements made during the custodial interrogation may not be introduced into evidence at the accused's criminal trial.” *Elliott*, 494 Mich at 301. A defendant may waive his or her rights, “provided the waiver is made voluntarily, knowingly and intelligently.” *Daoud*, 462 Mich at 633 (citation and quotation marks omitted).

First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the “totality of the circumstances surrounding the interrogation” reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived. [*Id.* (citation omitted).]

In this case, on December 16, at the beginning of the interview, police brought out a waiver card and were going to inform Butler of his *Miranda* rights, but Butler said “Bro, I know my rights.” The *Miranda* rights were not read at that time and Butler did not sign the waiver card.¹¹ Troublingly, it is undisputed that, during this interview, one of the detectives told Butler that “I’m not intending to use anything you say against you.” The detectives also assured Butler that the interview was not being recorded, and one of the detectives stated a second time that “it’s not my intent to use anything you say against you.” After being given these assurances, Butler confessed and described the crime in detail.

Considering the record as a whole, in our judgment, while Butler had previously been informed of his *Miranda* rights and appeared to understand those warnings, the detective vitiated the warnings, and invalidated any waiver of Butler’s rights, by expressly contradicting the advice required by *Miranda* and instead telling Butler that he was not intending to use what Butler said against him.

The warning of the right to remain silent must be accompanied by the explanation that anything said can and will be used against the individual in court. This warning is needed in order to make him aware not only of the privilege, but also of the consequences of forgoing it. It is only through an awareness of these consequences that there can be any assurance of real understanding and intelligent exercise of the privilege. Moreover, this warning may serve to make the individual more acutely aware that he is faced with a phase of the adversary

¹¹ Butler had been read his rights at a previous interview a few days before. In these circumstances, given Butler’s insistence that he knew his rights, we see no need for the police to have re-read *Miranda* on December 16. See *People v Littlejohn*, 197 Mich App 220, 223; 495 NW2d 171 (1992); *People v Godboldo*, 158 Mich App 603, 606; 405 NW2d 114 (1986).

system—that he is not in the presence of persons acting solely in his interest. [*Miranda*, 384 US at 469.]

Police are not required to provide warnings “in the exact form” set forth in *Miranda*; but, they are required to provide “a fully effective equivalent.” *Duckworth v Eagan*, 492 US 195, 202; 109 S Ct 2875; 106 L Ed 2d 166 (1989). Clearly, this requirement is not satisfied when police offer express assurances that vitiate the warnings required by *Miranda*. In other words, “[a] police officer cannot directly contradict, out of one side of his mouth, the *Miranda* warnings just given out of the other.” *State v Pillar*, 359 NJ Super 249, 268; 820 A2d 1 (2003).

We recognize that police are not categorically prohibited from lying to a suspect by, for example, falsely stating that they have evidence he committed the crime. See, e.g., *People v Hicks*, 185 Mich App 107, 113; 460 NW2d 569 (1990). But, there is a grave difference between this sort of lying and when police engage in trickery that wholly undermines the validity of a waiver by depriving “a defendant of knowledge essential to his ability to understand the nature of his rights and the consequences of abandoning them.” *Moran v Burbine*, 475 US 412, 424; 106 S Ct 1135; 89 L Ed 2d 410 (1986). See also 2 LaFave et al, *Criminal Procedure*, § 6.9(c) n 65 (4th ed.). For example, with regard to the necessity of informing a suspect that anything he or she says can and will be used against the individual, courts have found this advice is vitiated by subsequent police statements indicating that the conversation is “off-the-record,” *Pillar*, 359 NJ Super at 268, “confidential,” *Spence v State*, 281 Ga 697, 698-700; 642 SE2d 856 (2007), “between us,” *Leger v Com*, 400 SW3d 745, 749 (Ky 2013), “between you and me,” *Lee v State*, 418 Md 136, 156; 12 A3d 1238, 1250 (2011); *State v Stanga*, 617 NW2d 486, 489, 491 (SD 2000), or that giving a statement will not “hurt” the suspect, *Hart v Attorney Gen of Florida*, 323 F3d 884, 894 (CA 11 2003); *State v Puryear*, 441 NJ Super 280, 298; 117 A3d 1255 (2015). In contrast to the warnings required by *Miranda*, an assurance that the suspect’s statements will not be used against him “purports to remove the specter of proving one’s own guilt by making a statement.” *Pillar*, 359 NJ Super at 273 (quotation marks and citation omitted). See also *Hart*, 323 F3d at 894; *United States v Walton*, 10 F3d 1024, 1030 (CA 3 1993). Thus, these types of misleading assurances that an individual’s statement will not be used against him undermine the suspect’s ability to knowingly and voluntarily waive his rights because this type of trickery deprives the defendant of the “knowledge essential to his ability to understand the nature of his rights and the consequences of abandoning them.” *Hopkins v Cockrell*, 325 F3d 579, 584 (CA 5 2003).

Here, even more expressly than in other cases, the detective countermanded *Miranda* and assured Butler on December 16 that he was not “intending to use anything you say against you.” Such an overt contradiction of *Miranda* has no place in the interrogation of Butler, and in the face of such a statement we cannot conclude that Butler’s subsequent confession following this assurance was a product of a knowing and intelligent waiver of his rights. Cf. *Lee*, 418 Md at 157. In reaching this conclusion, we note that at the *Walker* hearing before trial the detective emphasized his use of the word “intending” and he asserted that he was not trying to make any “definitive black and white” promises about the future, but was instead talking in “real time, right then as we sit there.” This seems to suggest that the detective was not misleading Butler because the detective had no immediate intention to use Butler’s statements against him and that the detective’s statement was therefore permissible because it implicitly acknowledged the possibility that Butler’s statements *could* be used against him in the future. However, the clear-

cut reality underlying *Miranda* is that “anything said can *and will* be used against the individual.” *Miranda*, 384 US at 469 (emphasis added). To affirmatively represent there is no intention to use the statements against the individual is a derogation of *Miranda* which undermines a suspect’s ability to understand his rights and the consequences of abandoning them. Moreover, regardless of how the detective thought his statement should be interpreted, “whether intentional or inadvertent, the state of mind of the police is irrelevant to the question of the intelligence and voluntariness of respondent’s election to abandon his rights.” *Moran*, 475 US at 423. In short, whatever the detective’s motives or internal thought processes, his express assurances gave Butler every reason to think that his statements made during the December 16 interview would not be used against him.¹² Such assurances are not in keeping with *Miranda*, and Butler’s waiver of his rights following this statement cannot be considered a knowing and intelligent waiver. Cf. *Lee*, 418 Md at 157. Because Butler’s December 16 statement was obtained in violation of *Miranda*, it was not admissible against him at trial as substantive evidence. See *Elliott*, 494 Mich at 301.

Although we conclude that Butler’s statement was obtained in violation of *Miranda*, reversal of his convictions is not required because any error in admitting his December 16 confession as substantive evidence against Butler was harmless beyond a reasonable doubt given the untainted evidence of Butler’s guilt. See *Henry*, 305 Mich App at 148. First, Butler’s DNA was found on the ties used to restrain the victim. Second, Butler told Dale Morgan that he had “just chopped a Bitch up in Jackson.” Third, after the interview on January 6, during which Butler was properly mirandized, Butler asked a detective whether the detective thought Butler “was gonna admit to killing her on the record.” And, fourth, there were cell phone records placing Butler in Jackson on August 10, though he denied being in Jackson and the Jackson location was outside the phone’s “pattern of life.” Considered as a whole, this evidence, even without Butler’s December 16 confession, was more than enough to allow a rational jury to find beyond a reasonable doubt that Butler killed the victim. Consequently, Butler is not entitled to reversal of his conviction because it is clear beyond a reasonable doubt that a rational jury would have found Butler guilty absent any error in admitting his statement.

VII. BUTLER’S MOTIONS FOR A MISTRIAL

Butler argues that the trial court abused its discretion by denying his motions for a mistrial on four separate occasions. We review a trial court’s decision denying a motion for a mistrial for an abuse of discretion. *People v Haywood*, 209 Mich App 217, 228; 530 NW2d 497 (1995). To the extent that Butler’s claims may be deemed unpreserved because he failed to make a timely request for a mistrial, our review is limited to plain error affecting Butler’s substantial rights. *Carines*, 460 Mich at 763.

¹² Indeed, Butler was told that the police were interested in finding out about the involvement of the victim’s fiancé, Eric Wolfe, because Wolfe had a daughter and they were concerned about the daughter’s safety. Coupled with the assurances that the detective did not intend to use his statements against him, Butler had ample reason to believe that the sole purpose of the interview was simply to ensure the safety of Wolfe’s daughter.

“A mistrial should be granted only for an irregularity that is prejudicial to the rights of the defendant . . . and impairs his ability to get a fair trial.” *Haywood*, 209 Mich App at 228 (citation omitted). Butler simply asserts that error occurred and provides a citation to the record in each instance. He fails to adequately brief his arguments and fails to cite any authority in support of his arguments. These arguments are not properly presented for appellate review. *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). Even if we considered his arguments, we would conclude that he is not entitled to relief.

First, as explained earlier, the prosecutor provided race-neutral reasons for using peremptory challenges to excuse African-American jurors, which the trial court found were valid, and Butler has not provided any reason for disturbing the trial court’s findings on this issue. Second, Butler has not demonstrated that a mistrial was required because of the prosecutor’s brief argument on an objection in the presence of the jury. As explained earlier, the prosecutor was responding to the trial court’s request to explain the relevance of evidence relating to a phone call between Rodney and a third party, and there is no basis for concluding that the prosecutor’s brief argument was prejudicial. Moreover, the trial court offered to provide a curative instruction if requested, but there is no indication that any defendant requested an instruction. Third, Butler was not entitled to a mistrial based on Morgan’s allegedly “perjured testimony.” As discussed earlier, there has been no showing that Morgan’s testimony was false, let alone that the prosecutor knowingly presented false testimony.

Fourth, with respect to Butler’s preserved argument that the trial court abused its discretion by denying his motion for a mistrial after an officer, while establishing the chain of evidence for a cell phone seized from Butler, described the evidence tag as including the case type “HOM,” it is not apparent that the jury would have understood those letters as referring to a homicide case, and the prosecutor did not attempt to explore the meaning of “HOM.” *People v Waclawski*, 286 Mich App 634, 709; 780 NW2d 321 (2009). Moreover, the officer’s brief mention of “HOM” involved an unresponsive, volunteered remark. *Id.* at 709-710. We also note that the trial court offered to provide a curative instruction if requested, but Butler’s counsel did not request an instruction. Under these circumstances, reference to “HOM” did not impair Butler’s ability to get a fair trial, and the trial court did not abuse its discretion by denying Butler’s motion for a mistrial.

VIII. CLIFFORD’S MOTION FOR A MISTRIAL

Clifford argues that the trial court abused its discretion by denying his motion for a mistrial after the prosecution cross-examined Butler about his involvement in other, unrelated homicides that did not involve Clifford. As previously discussed, the risk of prejudice from the admission of this evidence was alleviated by a proper cautionary instruction. There is no reason to conclude that the jury was not capable of following the trial court’s instruction that this evidence could not be considered against Clifford, especially considering that this evidence did not implicate Clifford in the other homicides and the trial court specifically advised the jury that

the evidence had nothing to do with Clifford. Given these circumstances, the trial court's denial of Clifford's motion for a mistrial was not an abuse of discretion.¹³

Affirmed.

/s/ Mark J. Cavanagh

/s/ Joel P. Hoekstra

/s/ Jane M. Beckering

¹³ In asserting that the trial court erred by denying his request for a mistrial, Clifford challenges, in a roundabout way, the trial court's pre-trial rulings regarding the admissibility of Butler's statement as substantive evidence against Clifford and Rodney. As an evidentiary matter, the trial court relied on MRE 804(b)(3), and Clifford does not challenge the trial court's evidentiary decision on appeal. Instead, Clifford argues that the trial court erred by admitting Butler's confession because the detectives failed to provide Butler with an effective *Miranda* warning. Further, Clifford argues that the trial court erred by finding that Butler's confession was nontestimonial and admitting it as evidence against Clifford despite Clifford's confrontation clause objections. Clifford argues that these erroneous pre-trial rulings prompted Butler to take the stand and that Butler's decision to take the stand led to the admission of the evidence of other homicides committed by Butler. Thus, Clifford claims that these erroneous rulings should somehow be considered when assessing the trial court's refusal to grant a mistrial based on the evidence relating to Butler's involvement in other crimes. However, Clifford also expressly concedes that these arguments do not entitle him to relief because Butler testified at trial, thereby alleviating any confrontation clause concerns, *People v Pipes*, 475 Mich 267, 275; 715 NW2d 290 (2006), and because Clifford cannot seek to have Butler's confession suppressed based on a violation of Butler's rights, see *People v Wood*, 447 Mich 80, 89; 523 NW2d 477 (1994) ("As a general rule, criminal defendants do not have standing to assert the rights of third parties."); *Paramount Pictures Corp v Miskinis*, 418 Mich 708, 715; 344 NW2d 788 (1984) ("The Fifth Amendment privilege against self-incrimination is a personal privilege and cannot be asserted on behalf of another."). Given Clifford's concession on these issues, we need not consider them further and we see no basis for granting relief to Clifford (or Rodney) based on the admission of Butler's confession.

STATE OF MICHIGAN

4TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF JACKSON

PEOPLE OF THE STATE OF MICHIGAN

v

CORTEZ ANTONIO BUTLER	File No, 2015-2789-FC
and	
CLIFFORD DURELL MCKEE	File No. 2015-2787-FC
and	
RODNEY JAMAR MCKEE,	File No. 2015-2788-FC

Defendants.

_____ /

JURY TRIAL - VOLUME V of IX

BEFORE THE HONORABLE THOMAS D. WILSON, CIRCUIT COURT JUDGE

Jackson, Michigan - Friday, April 1, 2016

APPEARANCES:

For the People:	MARY K. HANNA-REZMIERSKI (P51926)
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APPEARANCES, Continued:

For Defendant Rodney CHARLES A. PERLOS (P37963)
McKee: 154 W. Michigan Avenue
 Jackson, MI 49201
 (517) 787-4744

For Cortez Butler: JERRY M. ENGLE (P13194)
 1104 W. Michigan Avenue
 Jackson, MI 49202
 (517) 782-9459

1 (At 10:50:34 a.m., witness sworn, testified as follows):

2 THE COURT: Will you state your name and
3 spell your last name for the record?

4 THE WITNESS: Ryan Alan Marshall, M-A-R-S-H
5 A-L-L.

6 THE COURT: Whenever you're ready.

7 MS. REZMIERSKI: Thank you, your Honor.

8 DIRECT EXAMINATION

9 BY MS. REZMIERSKI:

10 Q Ryan, do you know Donna Marshall?

11 A Yes.

12 Q How do you know her?

13 A Mother.

14 Q I know this is not in any way comfortable, I just want to
15 make sure everybody can hear you while we're doing this.
16 Fantastic. Thank you, Ryan, I appreciate it. Donna is
17 your mother?

18 A Correct.

19 Q Okay. Are you aware that your mother has had a drug
20 problem?

21 A Yes.

22 Q Any idea how long she's had a drug problem?

23 A My entire life.

24 Q How about you, Ryan, have you struggled with drugs as well?

25 A Yes.

1 Q What kind of drugs are we talking about for both of you?

2 A Opiates.

3 Q Is heroin an opiate?

4 A Yes.

5 Q Do you currently struggle with drugs?

6 A No.

7 Q Does that mean you're sober?

8 A Correct.

9 Q For how long?

10 A Six years I guess, roughly.

11 Q How did that happen?

12 A Just decided to make a change in my life.

13 Q Good for you. Did you go to treatment for that?

14 A Yes.

15 Q Ryan, do you also know someone named Rodney McKee?

16 A I do.

17 Q How do you know him?

18 A Through my mother.

19 Q What was your relationship or what was his relationship to

20 you and your mother?

21 A He was a drug runner, drug dealer.

22 Q Does that mean that both of you bought drugs from him?

23 A Yes.

24 Q What kind of drugs?

25 A Heroin.

1 Q Do you know whether or not your mother also sold drugs for
2 him?

3 A Yes.

4 Q Ryan, was there a time in March 2014 when a house you and
5 your mother were living in burned down?

6 A Yes.

7 Q The day before that happened did the two of you call the
8 police?

9 A Yes.

10 Q Why?

11 A He was threatening my mother.

12 Q And who's "he"?

13 A Rodney.

14 Q Did you guys know him at that time as Rodney McKee?

15 A No.

16 Q What name or names did the two of you know him by at that
17 point?

18 A "Neffue" or "Rock."

19 Q How do you know that he was threatening your mother?

20 A From what my mother told me.

21 Q You were not present when that was happening?

22 A I was present but not during the threatening, no.

23 Q Okay.

24 A I was in the house.

25 Q Okay. Do you know how he was threatening her?

1 MR. ENGLE: Well, your Honor, I guess if his
2 mother told him that's just hearsay.

3 MS. REZMIERSKI: I -- I can move on, that's
4 fine.

5 BY MS. REZMIERSKI:

6 Q Did you see Rodney McKee at all that day? That day before
7 the house burned down?

8 A I might have. Might. Mighta glanced down and seen him
9 from the window, if I remember correctly.

10 Q Let me ask you this, where were the two of you living at
11 that point?

12 A On Steward Ave.

13 Q Is it 705 Steward?

14 A Yeah.

15 Q What kind of a structure is 705 Steward, or was 705
16 Steward?

17 A Duplex.

18 Q Is it a house broken down in different apartments?

19 A Correct.

20 Q Any idea how many apartments?

21 A Four.

22 Q What number were you to living in?

23 A Four.

24 Q Where in the structure was apartment 4 located?

25 A It was on the east far and, back end at the top floor.

1 Q Back of the house, top floor?

2 A Correct.

3 Q Okay. So at some point that day before the house burns
4 down somebody calls the police about Rodney?

5 A Correct.

6 Q Was that you or your mom or both?

7 A I believe it was both of us.

8 Q And what was the purpose of calling the police, what did
9 you tell the police?

10 A That somebody was threatening my mother.

11 Q Did that stop those threats when you called the police?

12 A No.

13 Q Did some --

14 A Well --

15 Q Go ahead.

16 A -- he still made -- he still text my mother after that, so.

17 Q So no?

18 A No.

19 Q Something happened the next day?

20 A Yeah.

21 Q Tell us about that.

22 A Early in the morning we got a text from Rodney stating,

23 "Good morning." I took that as a threat of some type. I

24 didn't know what, but that -- that morning our house caught
25 on fire.

1 Q Did you see him at the house at all that day?

2 A Yes.

3 Q Tell us about that.

4 A Well, I got home that morning, I went inside and I seen

5 Rodney sneaking around the house and --

6 Q How did you see him?

7 A How did I see him?

8 Q Yeah.

9 A We have windows all the way around our house, very clear to
10 see anybody that pulls up or drives away, even to our
11 neighbor's side too.

12 Q Did you see his car that day too?

13 A Yeah.

14 Q What does he drive, or what did he drive?

15 A He drove a white -- a white Explorer, I believe.

16 Q So like a big SUV?

17 A Yeah. Yep.

18 Q Tell us what you mean when you say you saw him sneaking
19 around your house.

20 A Well, when somebody walks around my house they'll usually
21 walk up a path, you know, right in the middle of the drive.
22 Somebody wouldn't be walking on -- right near the house
23 going around, you know, so you can't see them out the
24 window, but you can visually see straight down our window,
25 so you can see everything.

1 Q So does that mean he was walking up close to the house?

2 A Yeah.

3 Q You said that's in the morning?

4 A Yeah.

5 Q Did he knock on the door or come inside?

6 A No.

7 Q Did you interact with him at all?

8 A No.

9 Q Did he interact with you at all?

10 A No.

11 Q Did anybody from, as far as you know, from 705 interact
12 with him at that point?

13 A No.

14 Q Is that the only time that you saw him that day?

15 A Yeah.

16 Q Okay. Did -- did you see him leave?

17 A Did I see him leave after the incident, scurry off, yeah.

18 Q Okay.

19 A Yeah.

20 Q Did you see anything in his hands?

21 A Oh, yeah.

22 MR. PERLOS: Judge, he's leading the witness.

23 She, I mean.

24 THE COURT: That question wasn't.

25 MS. REZMIERSKI: I don't think I've --

1 obviously, it's up to you, but --

2 THE COURT: No, that question -- no, that
3 question --

4 MS. REZMIERSKI: Okay.

5 THE COURT: -- was fine.

6 BY MS. REZMIERSKI:

7 Q Did you see anything in his hands?

8 A Absolutely.

9 Q What did you see?

10 A I seen a McDonald's cup, or a white cup.

11 Q And is this while he's up close to the house?

12 A Yep.

13 Q Could you smell anything?

14 A Oh, absolutely. I smelled gasoline.

15 Q Now, your upstairs, he's downstairs?

16 A Yes.

17 Q How could you smell?

18 A We had the windows cracked open.

19 Q It was March 4th, it would have been cold, is that fair to
20 say?

21 A It was very cold, given the fact we are living in a duplex,
22 we are upstairs and it's very hot up there so we leave our
23 windows open for circulation.

24 Q You remember smelling gasoline?

25 A No doubt, yes.

1 Q And then what happens?

2 A And then I witnessed Rodney bend down for a quick second
3 and then when he got back up I seen flames, I seen flames
4 rolling up the house.

5 Q So what did you do?

6 A Called 911.

7 Q Were you and your mom both up in the apartment at that
8 point?

9 A Yes.

10 Q Did you get out?

11 A Yes.

12 Q How quickly did fire or police or both respond?

13 A I'd say they responded pretty quick. Everything happened
14 so fast. It went up in flames very quickly. Very quickly.

15 Q I mean, and it burned to the ground.

16 A It burnt quick and our half burnt faster than any other
17 half, you notice from the pictures.

18 Q Were you able to get anything out of the house?

19 A I tried to grab, you know, stuff I needed, wallet, you
20 know, some of my main stuff I needed because, you know, I
21 didn't know if it was going to go all the way up, I didn't
22 know the severity of it.

23 Q Before your house was burned that day had you ever been
24 threatened by Rodney McKee?

25 A Not that I can think of.

1 Q Did you -- did you feel threatened by him at all?

2 A Oh, yeah. Oh, yes.

3 Q Why?

4 A He carries a pistol around with him. He -- he's a bigger
5 man, he's 6 foot 7, roughly, you know, he's just way
6 bigger, you know. He is --

7 Q Is there -- I'm sorry, go ahead.

8 A Oh, I'm just saying he has a frightening demeanor about
9 him, you know, the way he talks and the way he handles
10 things, it's just his nature.

11 Q Was there ever a time when he threatened you with that
12 pistol you're telling us about?

13 A No, but I have seen it on occasions, him pull it out.

14 Q That before the arson or after the arson, or both?

15 A Both.

16 Q Did you ever make a police report about him pulling that
17 gun out around you?

18 A Yeah. Yep.

19 Q One time or more than one time?

20 A It should have been more than one time.

21 Q Was there one time in specific that you recall?

22 A That I recall, yeah, it was after the fire when I was
23 jogging down the street and I -- I seen him in a different
24 vehicle I never seen him in, he pulled up and he was trying
25 to get me to come to his vehicle, and then I kinda seen him

1 -- or saw him put it in the dash real fast, up in the top
2 compartment of the vehicle.

3 Q Did you go over to the car?

4 A Oh, no. Oh, no.

5 Q What did you do?

6 A I took off running down to the police station and told the
7 police.

8 Q Do you remember when that was?

9 A Exact date, no.

10 Q If I told you that there was a police report pertaining to
11 that made on April 21st of 2014 does that sound about right
12 to you?

13 A It does. It does.

14 Q So maybe about six weeks after the house got burned down?

15 A Yes. Yes.

16 Q Where did you go live after your house burned down?

17 A Well, Eric, my -- being a good friend of mine, offered me
18 to live with them for a little while til I got back on my
19 feet.

20 Q And that's Eric Wolfe?

21 A That's correct.

22 Q And does that mean you also know Frannie Craig?

23 A That's correct.

24 Q Did you know her before you moved in with the two of them?

25 A Yes.

1 Q Where were they living when you moved in with them?

2 A They were living in the Oaks complex.

3 Q Is that like an apartment/townhouse kind of a complex?

4 A That's correct.

5 Q Street name was Tanbark, does that sound right to you?

6 A Yes, it is. Yep.

7 Q How long did you live there with them?

8 A I'm going to say roughly four months. Roughly.

9 Q Would that have been until they bought the house at 5220

10 Timbercrest?

11 A Maybe a week before they moved I probably moved out, yes.

12 Q Did you help them move?

13 A I did.

14 Q Ryan, how do you feel about being here today?

15 A Horrible. Horrible.

16 Q Ryan, the guy that you knew as "Neffue" or "Rock," is he

17 here in court today?

18 A He is.

19 Q Where is he?

20 A With the blue tie.

21 Q Over here around the side of counsel table sitting next to

22 his lawyer?

23 A That's correct.

24 Q Black shirt?

25 A That's correct.

1 MS. REZMIERSKI: Your Honor, would the record
2 reflect the witness has pointed to and identified Rodney
3 McKee?

4 THE COURT: The record will so reflect.

5 MS. REZMIERSKI: Thank you.

6 Ryan, thank you very much. I don't have any
7 further questions but the defense attorneys do have the
8 opportunity to ask you questions.

9 Thank you, Judge.

10 THE WITNESS: Okay.

11 CROSS-EXAMINATION

12 BY MR. PERLOS:

13 Q Ryan, how old are you?

14 A Thirty-one.

15 Q How far'd you go in school?

16 A My high school diploma.

17 Q How long you been abusing heroin?

18 A When I was, about three years.

19 Q Still using it?

20 A No.

21 Q Do you sell it?

22 A Do I sell it? No.

23 Q Yes. No?

24 A No.

25 Q You -- the prosecutor asked you whether or not you'd ever

1 -- he'd ever threatened you, he's never threatened you, ha
2 he?
3 A Rodney?
4 Q He's never threatened to hurt you?
5 A Rodney?
6 Q Yeah.
7 A No.
8 Q And so you recall an incident back in March, it would have
9 been of 2014, sometime around the 3rd or the 4th, correct?
10 You didn't see him on the 3rd of the month -- the day before
11 the fire?
12 A Down in the car talking to my mother I think -- oh, the day
13 he pulled out of the driveway?
14 Q I don't know, you just -- the prosecutor asked you whether
15 or not you had saw -- whether or not you saw Mr. McKee --
16 A Yeah --
17 Q -- the day before and you said no, you hadn't seen him.
18 A The day he pulled out of the driveway --
19 Q I don't --
20 A -- he was in the drive, I just remembered it. I just
21 remembered, yeah.
22 Q So when she asked you whether or not you had seen him the
23 day before you said no?
24 A Right.
25 Q You -- you're telling me you did see him?

1 A Yeah. Yeah, I did. I just remembered, yeah. Yep.

2 Q All right, so the day before you saw him, correct?

3 A Yeah.

4 Q And on the next day is when you're telling us that somebody

5 called your mom's phone, or text your mom's phone?

6 A The day of the fire he did.

7 Q He didn't text your phone?

8 A No.

9 Q All right, so what you're talking about is what your mom

10 told you, right?

11 A As far as what? What do you mean?

12 Q Who texted the phone that said, "Good morning"?

13 A He text my mother's phone --

14 Q Right, so --

15 A -- the day of the fire.

16 Q -- it wasn't your phone, right?

17 A No.

18 Q No, so she told you that, right?

19 A Right. She showed me her phone, yeah.

20 Q All right, and so -- and so what was it that you saw that

21 day?

22 A Of the fire?

23 Q Yeah, I think you just said that you saw him in the yard

24 sneaking around in the yard?

25 A Yes.

1 Q So what time of day was it?

2 A I know it was early, it had to be about 10:00 a.m., 11:00
3 a.m., around there.

4 Q And so when you said you just got home, where had you come
5 from?

6 A I think I was with a friend eating breakfast.

7 Q And so you're eating breakfast, you come home and then --
8 and then you're in the apartment building up on the second
9 floor, right?

10 A Yes.

11 Q And so where do you see Mr. McKee?

12 A I see him out the south window.

13 Q When you say south window, what does that mean, back of the
14 house, the side of the house?

15 A Side of the house --

16 Q Which side?

17 A The neighbor's side.

18 Q Would it be to the north or to the south?

19 A South.

20 Q Okay, you see him out there, is that where the driveway is?

21 A That is -- we have two driveways on either side, yes.

22 Q Okay. He's in the driveway?

23 A He is walking on the outskirts of the driveway.

24 Q What's he wearing?

25 A He was wearing a blue shirt, striped, white, blue shirt.

1 Q And was he walking with a cane?

2 A Was he walking with a cane?

3 Q Did you know Rodney to have problems with his heel and to

4 walk with a cane?

5 A Never.

6 Q You never saw him with a cane?

7 A Never.

8 Q How big is he? Back then.

9 A Back then as in height or weight?

10 Q Weight, height, weight.

11 A I'd say 6'6", about 325, 350.

12 Q Or more?

13 A Or more.

14 Q And he's sneak --(inaudible)?

15 A Well --

16 Q When you say sneaking, what's --(multiple speakers)--

17 A When I say sneaking I mean not casually walking up.

18 Q Like what? So how do you -- he's over 6'5", 6'6", right?

19 A Mm-hmm.

20 Q Four hundred pounds and he's sneaking, what's that mean?

21 A Crouched down, leaning up against the house, walking down

22 the house.

23 Q At 10:00 o'clock in the morning?

24 A Yes.

25 Q Okay, and so then you're on the second store (sic) window

1 and -- I think it was your testimony that you saw him with
2 a cup, a McDonald's cup?

3 A Yeah.

4 Q So from the second story you could see what the cup was?

5 A I stated it was a white cup, preferably McDonald's,
6 McDonald's cup. That was just the description I gave.

7 Q A white plastic cup?

8 A Yeah.

9 Q Right? Like a 16 ounce cup? Twelve? How big was it?

10 A Just a large cup.

11 Q Was it a 20 ounce cup, 16 ounce, I don't know, this big,
12 this big, this big?

13 A I can't really -- white cup. This big.

14 Q Kay, so he's got a cup from McDonald's and he's walking
15 down the driveway, right?

16 A Mm-hmm.

17 Q And you're on the second floor and then you see him do
18 what?

19 A I see him bend down --

20 Q Bend down where?

21 A Near the basement door.

22 Q What did you do, open the window and stick your head out?

23 A The window was already open.

24 Q Did you stick your head out the window?

25 A Don't need to.

1 Q All right, so you're just looking out and you can see the
2 basement?

3 A Yeah.

4 Q So is there an overhang?

5 A No. I can see straight down to the basement door.

6 Q From -- without sticking your head out?

7 A Yeah, I can see rate down. Anybody that comes -- steps up
8 to the basement door you can see.

9 Q All right, so you're looking out and what's he do?

10 A He bends down.

11 Q Okay. And what's he do?

12 A He lights -- ignites fire, ignites the gasoline.

13 Q Well, so before -- before you see him walking up there
14 apparently you said -- in your -- in your responses to the
15 prosecutor that you could smell gasoline?

16 A Oh, yeah.

17 Q So that cup is what you said the gasoline was in?

18 A Yes, I believe so, yes.

19 Q But you don't know what was in the cup?

20 A I'm not a hundred percent positive.

21 Q But somehow you smelled gasoline coming from somewhere?

22 A I smelled gas when he poured it. You got a strong smell of
23 gas.

24 Q So he had a McDonald's cup and you're on the second floor
25 and the window's cracked or the window's open?

1 A The window's open.

2 Q And then you can smell gas from that cup?

3 A I could smell gas.

4 Q Was the wind blowing that day? It's March, right? It's
5 like the weather's like today?

6 A Yeah.

7 Q Was it a sunny day, rainy day, do you remember?

8 A I believe it was a rainy day.

9 Q It was raining?

10 A It wasn't raining, it was a cloudy day.

11 Q Was it snowing?

12 A I don't believe so.

13 Q But be it as it may, you can smell the gas coming from a
14 cup up on the second floor, right?

15 A Oh, yeah.

16 Q Okay. And so then you see him bend down?

17 A Yeah.

18 Q And you're just looking out the window, you didn't have to
19 stick your head out --

20 A Nope.

21 Q -- you see him bend down?

22 A Mm-hmm.

23 Q And then what happens?

24 A As soon as he arises I see flames.

25 Q Where's your mom at?

1 A My mom is right next to me.

2 Q So you're both up on the second floor?

3 A Yeah.

4 Q Right?

5 A Mm-hmm.

6 Q And so when Rodney's walking down the walk and he comes
7 around by the back door and he's sneaking, this big giant
8 of a man sneaking with a cup --

9 A Mm-hmm.

10 Q -- and then you and your mom are standing there together
11 looking out the window, right?

12 A Mm-hmm.

13 Q Both of you together, right?

14 A Mm-hmm.

15 Q And that's when he pours it and then you see flames and
16 then what?

17 A He took off running.

18 Q And then he took off running?

19 A Yeah.

20 Q So that's all there was to it, right?

21 A He fell while he was running.

22 Q How did he fall?

23 A How'd he fall?

24 Q You mean like he tripped?

25 A He just kinda stumbled and fell, yeah.

1 Q And so there's no misunderstanding, you two are looking out
2 the window, you and your mom together, same window, you see
3 Rodney with a McDonald's cup --

4 A My mom wasn't looking out the window.

5 Q What was she doing?

6 A She was behind me, I was looking out the window.

7 Q The whole time he's -- he's sneaking --

8 A Well, I was looking at the side watch -- following him
9 around from one window to the second window.

10 Q And then your mom's with you up there?

11 A Yeah.

12 Q Right?

13 A Yeah.

14 Q And then he sneaks around and you can smell the gas coming
15 from a cup, he pours it while your mom's still there?

16 A Uh-huh.

17 Q And then -- and then you see flames?

18 A Then I see flames.

19 Q And then -- and then what does he do?

20 A Takes off running.

21 Q Takes off running, where's he go?

22 A I believe he runs back to his truck because there's no
23 window to the front of the house.

24 Q Was anybody with him?

25 A As far as I know I think there was somebody with him.

1 Q Wait a minute --

2 A I couldn't tell if it was may be a neighbor or somebody
3 that was with him.

4 Q Wait a minute, wait a minute, wait a minute. When you say
5 "as far as you know," what does that mean, you mean either
6 there was or there wasn't somebody with him?

7 A I don't know.

8 Q Did you see somebody with him?

9 A I didn't -- I don't know if they were with him. I just
10 seen somebody else that could have been with him, I don't
11 know if they were with him or not. I don't know.

12 MR. BRANDT: Seventy, seventy-one.

13 BY MR. PERLOS:

14 Q Do you remember testifying back in September before Judge
15 McBain about what happened?

16 A Do I remember? Yeah.

17 Q do you remember telling the court back then you saw him and
18 his partner creeping around the side of the building?

19 A Mm-hmm.

20 MS. REZMIERSKI: What page are you on, Chuck?

21 MR. PERLOS: Seventy and seventy-one.

22 BY MR. PERLOS:

23 Q Do you remember that?

24 A Right.

25 Q Because back then it was a partner --

1 A Yeah.

2 Q -- creeping around with him?

3 A Right.

4 Q Right?

5 A Right.

6 Q And so I'll let you read this and see if it refreshes your
7 memory.

8 MS. REZMIERSKI: He just said that that's
9 what he testified to, it doesn't sound like he needs his
10 memory refreshed.

11 BY MR. PERLOS:

12 Q So what is it, did he have a partner or was it some
13 neighbor?

14 A I don't know, it was never clarified to me.

15 Q But back then it was a partner?

16 A That's what I -- that's the only way I took it, yes.

17 Q All right, so did you see his car?

18 A When?

19 Q On that day when you said that he was creeping around with
20 the neighbor or the partner, whoever it was.

21 A He parked around the corner, no.

22 Q So you didn't see the car?

23 A I didn't see his car.

24 Q So you know what he -- do you know that day whether or not
25 he drove there?

1 A Do I know whether he drove there?

2 Q Right.

3 A He was there earlier that day. Yes, he was driving that

4 car that day.

5 Q What do you mean when you say he was there earlier that

6 day?

7 A Well, we saw his car earlier that day with nobody in it.

8 We didn't see him but then --(multiple speakers)--

9 Q Let's just talk about what you saw.

10 A Okay.

11 Q When did you see his car earlier that day?

12 A That was earlier in the day.

13 Q When earlier in the day?

14 A Well, his car was --(multiple speakers)-- just abandoned

15 sitting there with nobody in it and then it was gone. I

16 don't know what --(multiple speakers)--

17 Q All right --(multiple speakers)-- let me back up. What

18 time was it?

19 A What time was what?

20 Q When you saw the car that -- earlier in the day.

21 A I don't know.

22 Q Well, he -- you said you saw him creeping around around

23 10:00 o'clock, right?

24 A Right.

25 Q And so would it have been like at 9:30? Or 9:00?

1 A It had to be way earlier than that.

2 Q Eight o'clock? You don't know, do you?

3 A I don't know. I mean --

4 Q You know what, did you see any of this or did your mom tell

5 you this?

6 A Of his car being there?

7 Q No, I'm talking about the story, about --

8 A No, I seen this.

9 Q -- him sneaking around.

10 A I seen this. I'm just -- I've seen him so many times over

11 there it's hard to remember --(multiple speakers)-- this

12 was two years ago. You got to understand, this was two

13 years ago, I'm trying to recall two years ago.

14 Q He's never threatened you, right?

15 A Right.

16 Q And didn't you kinda think of him as being a friend, a big

17 gentle giant?

18 A Did I?

19 Q Yeah.

20 A Never.

21 Q When you are using heroin was it a daily thing?

22 A Yeah.

23 Q And so how many times a day would you do it?

24 A Twice maybe.

25 Q Three times a day?

1 A Two times, minimum, yeah.

2 Q Okay, so how long did that go on?

3 A I'd say about a year and a half, two years.

4 Q Do you think that -- have you had any problems with your
5 memory as a result you think of doing heroin?

6 A Have I had any problems with my memory?

7 Q Memory. Hard to remember?

8 A No.

9 Q You talk to anybody about testifying or what's going on
10 today?

11 A Have I? No.

12 Q Yeah. Did you talk to your mom about what you're going to
13 say today?

14 A No.

15 Q Talk to anybody from the Prosecutor's Office about what
16 you're going to say today?

17 A No.

18 Q So you're telling me that in the last -- since you
19 testified back in September nobody has said a word to you
20 about coming here and testifying about what you saw -- or
21 you say you saw --

22 A Well --

23 Q -- with Mr. McKee creeping around your house?

24 A Katie, she -- she talked to me about two weeks ago.

25 Q What'd you talk about?

1 A Oh, just -- I went up there, we just kinda discussed the
2 case a little bit.

3 Q Did you remember what happened then?

4 A Yeah, it brought a lot back and --

5 Q What do you mean, how did it bring it back?

6 A It brought a lot back, a lot of stuff I did forget during
7 the course of two years.

8 Q So after you talked with her then you started remembering
9 it?

10 A Yes.

11 Q Did you read the police report or read your transcript, or
12 was it just you guys were having a nice conversation?

13 A Well, we were just having a conversation.

14 Q Nice conversation.

15 A Yeah, I had the -- I had the reports and forgot to read
16 them.

17 Q Okay. Did they promised you anything to come here and say
18 what you're saying?

19 A Did they promised me anything?

20 Q Did they promised you anything?

21 A No.

22 Q (Inaudible)-- say what you're saying?

23 A No.

24 Q Like maybe -- so that you don't get in trouble for
25 something?

1 A No.

2 Q You ever sold heroin?

3 A No.

4 Q You didn't go take -- get on your moped and deliver heroin
5 for your mom?

6 A No.

7 Q Nobody said anything to you about you're not going to get
8 in trouble for anything if you come here and say -- talk
9 today?

10 A No.

11 Q Is your mom still using heroin?

12 A As far as I know.

13 Q Yes?

14 A Yes.

15 Q Yep, and who -- is she selling heroin for anyone else now?

16 A No.

17 Q So where's she getting her heroin?

18 A I don't know. My relationship with my mother is not the
19 best now.

20 Q How did you get here today?

21 A A police officer.

22 Q Picked you up?

23 A Escorted me here, yes.

24 Q Was your mother in the car too?

25 A She was.

1 Q And so did you talk to her on the way here?

2 A Yeah.

3 Q What'd you talk about?

4 A How much I loved her.

5 Q And anything else about Mr. McKee and what you're gonna say
6 today?

7 A No.

8 Q You remember calling 911 the day before?

9 A Day before the fire?

10 Q Yeah. You didn't bring it up but do you remember calling
11 911 the day before?

12 A Mm-hmm.

13 MS. REZMIERSKI: Did bring it up. Objection.
14 That misstates the evidence.

15 THE COURT: That's true, mm-hmm.

16 MS. REZMIERSKI: Thank you.

17 BY MR. PERLOS:

18 Q What happened the day before?

19 A He threatened my mother.

20 Q And that was it?

21 A Yes.

22 Q Anything else happen?

23 A Mm-mm, no.

24 Q Did you call 911, tell 911 that somebody was throwing ice
25 cubes at the windows?

1 A No.

2 Q You never said that?

3 A No.

4 Q Never -- you never called 911 and told them that somebody,
5 throwing ice cubes at the window and threatening your
6 mother?

7 A I believe my mother did that, if I remember right.

8 Q But you didn't do it?

9 A I don't think I did.

10 Q Were you taking heroin back then?

11 A No.

12 Q Well, when did you stop taking heroin?

13 A 2011.

14 Q So for three years, up til the time that this happened,
15 while your mom's selling heroin out of that building, all
16 the neighbors around the -- the north side of town there on
17 Steward Street, you weren't using it and you're living with
18 her?

19 A No. I was working.

20 Q What's that have to do with using heroin?

21 A What does my mom using heroin have to do with me using
22 heroin?

23 Q Did you ever sell heroin for your mother, or deliver it?

24 A Never.

25 MS. REZMIERSKI: This has been asked and

1 answered. I've let him go on, I get it, but every question
2 he's asked now he's asked him about five times. I think
3 we're -- we're past the point of trying to get information

4 BY MR. PERLOS:

5 Q After that house burned did you ever hear or talk to Mr.
6 McKee?

7 A I received phone calls on my phone from his number.

8 Q How many times?

9 A I'm gonna guess and say three.

10 Q Was there a conversation?

11 A There was conversation.

12 Q And did he say anything to you?

13 A It wasn't him, it was a female.

14 Q Well then how do you know that -- you know the number but
15 you -- you said somebody else was on the phone?

16 A Yes.

17 Q And so it was someone you know, or not?

18 A No, know when I recognized.

19 Q And did they give their name?

20 A No.

21 Q So some anonymous phone call?

22 A Yeah -- not, it wasn't anonymous, no, but it was somebody I
23 didn't know.

24 Q Anonymous caller.

25 A Yeah.

1 Q Nobody gave their name?

2 A No.

3 Q But not from my -- you never heard from my client?

4 A No.

5 MR. PERLOS: I don't have anything further,

6 Judge.

7 THE COURT: Any other cross?

8 MR. ENGLE: I do, your Honor.

9 CROSS-EXAMINATION

10 BY MR. ENGLE:

11 Q Ryan, prior to this fire did you know Mr. Butler, or even
12 know of him?

13 A This is the first time I've seen him.

14 Q Excuse me?

15 A This is the first time I've ever seen him.

16 Q First time you've ever seen him?

17 A Face to face.

18 Q What about Mr. McKee over on the far end, have you seen him
19 before?

20 A Yes.

21 Q Where at?

22 MS. REZMIERSKI: You got to be careful and
23 clarify, there's two Mr. McKees. I think the record will
24 be unclear --

25 THE WITNESS: Yeah.

1 MS. REZMIERSKI: -- if we don't know who he
2 talking about.

3 BY MR. ENGLE:

4 Q Let me go down the list of witnesses that are left and see
5 if you know any of them. Do you know Craig Edmondson, Brad
6 Elston, Chris Simpson are all police officers, do you know
7 them?

8 A No.

9 Q Do you know Detective Rose?

10 A Yes.

11 Q Holly Rose. Yep. Is that as a result of the arson itself?

12 A Yes, it is.

13 Q Do you know Rita McMillen?

14 A Yes.

15 Q How do you know her?

16 A She's a friend of my mother's.

17 Q And do you know Dale Morgan?

18 A Dale Morgan?

19 Q Yes.

20 A No.

21 Q Do you know detective Sullivan or Detective Merritt?

22 A Detective Sullivan.

23 Q How many exits were there to this apartment you lived in at
24 the time of the fire?

25 A Total exits, including everybody's house, or just my own?

1 Q Yeah, was there -- was there a back exit?

2 A We had one exit for our apartment, but altogether there's

3 four units, so there was for exits for every -- you know,

4 unit -- one -- one exit for each unit.

5 Q I would ask how that passed city code but I guess you don't

6 know. There's just one exit for an apartment on the second

7 floor?

8 A Yes.

9 Q Was there an emergency exit of any sort?

10 A For our apartment, no.

11 Q When you ran out the door -- you ran out a door, is that

12 correct, when you left?

13 A Right.

14 Q You didn't jump out the window or anything --

15 A No.

16 Q -- of that nature? When you left was there a fire that you

17 could see?

18 A Yes.

19 Q Where was that at?

20 A Actually, it was in the yard at the time so I jumped over

21 the fire, actually, and my feet --

22 (Multiple speakers).

23 A -- when I opened the door.

24 Q It was not against the house right then, or on the house?

25 A Yes, it was at that moment.

1 Q Was it in front of your exit or --

2 A Yes.

3 Q -- any other exit?

4 A Our exit.

5 Q How far from your exit?

6 A Right at the door.

7 Q Right at the door. You didn't have any problem leaving --

8 (inaudible)?

9 A Well, we had to jump over flames. I don't know if that's

10 considered a problem.

11 Q Where were the flames, on the porch at that point in time?

12 A It was right beyond the door, the door -- right down at the

13 door.

14 Q Did you have any steps from your apartment to the ground?

15 A Yes.

16 Q So it was just on the steps at that point?

17 A No.

18 Q It was on the side of the house?

19 A It was on the side of the house.

20 Q But you opened the door and you are able to get out --

21 A Yeah.

22 Q -- and your mother was able to get out?

23 A Yeah.

24 Q Were all -- were there any other neighbors at home at that

25 point in time?

1 A Yes.

2 Q Were they all able to get out?

3 A Yes.

4 Q And was that well before the whole place was engulfed in
5 flames?

6 A Yes.

7 Q Was Ms. McMillen there at that point?

8 A No.

9 Q Prior to 2011 when you quit using heroin were you also
10 dealing heroin?

11 A No.

12 Q Never did?

13 A No.

14 Q Was your mother still dealing heroin when this fire
15 occurred, if you know?

16 A Was she still deal -- repeat it again.

17 Q Was she -- the fire occurred in 2014, had your mother sold
18 heroin before that?

19 A Prior to my knowledge, no.

20 Q Okay. You're not home all the time though?

21 A No.

22 Q How much longer after you first smelled the gas was it
23 before you left the house?

24 A It was -- let's see, we called the police, roughly, roughly
25 12, 15 minutes, roughly, at the max.

1 Q Had you actually smelled smoke prior to that, or just the
2 gas?

3 A Oh, I smelled the gas before I smelled the smoke.

4 Q Did you smell smoke before you left the house?

5 A Yeah. Yeah.

6 MR. ENGLE: I have no further questions, your
7 Honor.

8 CROSS-EXAMINATION

9 BY MR. BRANDT:

10 Q Ryan, the cup you've described, it's not a coffee cup is
11 it?

12 A I don't know what kind of cup it was. Did it look like a
13 coffee cup do you mean?

14 Q Yes.

15 A No, it didn't look like a coffee cup.

16 Q It looked more like a soda cup, a pop cup, would that be
17 fair?

18 A Soda cup.

19 Q Okay. Where do you first see Mr. McKee with the cup, is he
20 right next to the house?

21 A Yes.

22 Q Did you see where he had come from?

23 A No. I can't see that far from my house.

24 Q You would agree with me that you have described under oath
25 before that he, Mr. McKee, was with a partner?

1 A Yes.

2 Q Can you describe that person for us?

3 A No.

4 Q Could you tell if it was male or female?

5 A No.

6 Q Could you tell if they were white, black, Hispanic?

7 A Black.

8 Q Do you have any idea age?

9 A No.

10 Q What they were wearing?

11 A No.

12 Q Is it your recollection they were walking near one another?

13 A No, they wasn't.

14 Q So when you see Mr. McKee out the window where's this

15 person you've described as a partner?

16 A I seen him on the south window at the edge of the driveway

17 just before -- when Rodney McKee was coming up I just seen

18 a glimpse of him.

19 Q And that was it?

20 A That was it.

21 Q When you met with the prosecuting attorney a couple weeks

22 ago was it just the two of you or was there someone else

23 there?

24 A There was somebody else there.

25 Q Who was that?

1 A This lady here, I forgot her name, and the red.

2 Q Okay. So it was the two prosecutors and yourself?

3 A And another lady, I believe, but yeah.

4 Q Do you know if that conversation was recorded?

5 A As far as I know, no.

6 Q Do you know how long it was?

7 A How long our conversation was?

8 Q Yes.

9 A Forty-five minutes.

10 Q You were shown during the interview documents to review?

11 A Yes.

12 Q Did you, in fact, review them?

13 A I skimmed through them.

14 Q Are you testifying today from your memory or from the

15 documents you reviewed?

16 A Mostly from memory.

17 Q But some from the documents?

18 A Some from the documents, correct.

19 Q Were those documents transcripts or reports?

20 A Transcripts.

21 Q You made a comment that I couldn't quite catch, you were

22 supposed to have read some reports but didn't?

23 A I was supposed to read them so that to refresh my knowledge

24 for the case because it's been two years.

25 Q And when were you supposed to do that?

1 A Well, two weeks ago. I wasn't supposed to do it, but I
2 wanted to do it.

3 Q So did you have those documents?

4 A Yes, I have those documents.

5 Q Where and when did you get them?

6 A Where and when? Two weeks ago.

7 Q So you were given them when you left?

8 A Her office, yes.

9 Q Have you read those?

10 A I skimmed through them, yes.

11 Q You testified that after the fire you got telephone calls,
12 initially you said from Rodney and then you changed and set
13 a female, is that correct?

14 A That is correct. Rodney's number.

15 Q What was the number?

16 A It was a 313 number and --

17 Q Do you remember the rest?

18 A No, I don't know.

19 Q And how many of those calls did you get?

20 A I believe I got three of them.

21 Q And your testimony is that after the fire you saw Rodney
22 McKee one time, and this is when you're out running, and
23 he's in a vehicle and there's a gun on the dash?

24 A That's correct.

25 Q You did not see him any other times?

1 A No.

2 Q You ever ride in a vehicle with him after April 21st of
3 2014?

4 A No.

5 MR. BRANDT: Thank you. Nothing further.

6 MR. ENGLE: If I may?

7 RECROSS-EXAMINATION

8 BY MR. ENGLE:

9 Q Mr. Marshall, for several months afterwards you lived with
10 Mr. Wolfe and Ms. Craig, is that correct?

11 A That's correct.

12 Q I don't -- and obviously you moved somewhere after that
13 other than where they lived?

14 A Correct.

15 Q All right, do you still -- you don't -- do you still live
16 where you moved to or do you live somewhere else?

17 A I live somewhere else.

18 Q I just don't want to ask anything too much here, but where
19 did you move to after you lived with the two of them?

20 A I was on my way of buying a house so I needed a few more --
21 two weeks more to live somewhere so I moved in with my
22 friend, Josh, for two weeks before I bought a house.

23 Q So you lived with another friend for a couple of weeks and
24 then moved in to what I assume is the house you live in
25 now?

1 A Correct.

2 MR. ENGLE: I have no further --

3 BY MR. ENGLE:

4 Q Where did Josh live?

5 A He lived on Thrush Road.

6 Q Thrush Road?

7 MR. ENGLE: I have no further questions, your
8 Honor.

9 MR. PERLOS: Judge, I just have one last
10 question.

11 THE COURT: Go ahead.

12 RECROSS-EXAMINATION

13 BY MR. PERLOS:

14 Q When Mr. McKee was leaving or running away, as you put it,
15 what'd he do with the cup?

16 A I didn't see what he did with the cup after that. I was --

17 Q So you saw him running away, did he still have the cup in
18 his hand?

19 A From behind, I don't know.

20 THE COURT: Any redirect?

21 MS. REZMIERSKI: Sure, if I could?

22 REDIRECT EXAMINATION

23 BY MS. REZMIERSKI:

24 Q Ryan, have you held a job for a period of time?

25 A Yes.

1 Q Specifically, were you working in October of 2014?

2 A Yes.

3 Q What hours were you working then?

4 A I was working -- my hours vary --

5 Q So it's been the same job for a while hasn't it?

6 A Yeah. Yeah.

7 Q Yeah?

8 A Yeah.

9 Q When you say your hours vary, does that mean it's different

10 every day that you go in or is it different every day that

11 you get off?

12 A Both.

13 Q Okay.

14 A I -- normally, it's supposed to be 7:30 to 4:00, but I

15 could work past 4:00 o'clock and I'm on call too, so I

16 could work Saturday and Sundays.

17 Q What's the range of time at the end of the day that you

18 could be done with work?

19 A I'd say about 4:00 o'clock is normally quitting time.

20 Q But it could be after that, right?

21 A Absolutely.

22 Q Could be as late as?

23 A The job takes.

24 Q Hour, couple hours?

25 A It's heating and cooling, can't leave people without heat,

1 you know, so.

2 Q No, you cannot.

3 A Yeah, so.

4 Q And thank you for being that guy.

5 A Yeah.

6 Q The calls from Rodney's phone number, female talking, when
7 they threats?

8 A Yeah, they were kinda threatening sounding. She was -- she
9 sounded African American.

10 Q Not anybody you knew?

11 A Not anybody I knew, definitely not.

12 Q What was your telephone number in the time range that we're
13 talking about?

14 A My telephone number?

15 Q Was it different than what it is now?

16 A I had my number for so long, I think it was the same.

17 Q Okay.

18 A I want to say yeah, it was the same.

19 Q I got you.

20 A Yeah.

21 Q So the number that you have right now is one that you've
22 had for a while?

23 A Yes.

24 Q But you're not positive exactly how long?

25 A Not positive, but yes.

1 Q But you think it might have been the same in March and
2 April, May, June?
3 A Yeah.
4 Q Okay. Of 2014?
5 A Yes.
6 Q And what is that phone number?
7 A 240-8684, area code 517.
8 Q Ryan, did any police officer tell you what to say here?
9 A No.
10 Q Has any police officer ever told you what to say here?
11 A Never.
12 Q Did I tell you what to say here?
13 A Never.
14 Q Did I shove any words or thoughts or ideas down your
15 throat?
16 A Never, ever.
17 Q Did we meet so that we could talk about this case?
18 A Yes.
19 Q Did you ask questions about the case?
20 A Yes.
21 Q Okay. Did I make you take copies of the statements that
22 you've made before?
23 A No.
24 Q Did I tell you you have to read them?
25 A Never, no.

1 Q It was Ms. McKinnie that met with us, right?

2 A That's correct.

3 Q And if I tell you that it was also Sue Vogt from the Victim
4 Rights Unit, was that the other person --

5 A That was the --

6 Q -- that was there?

7 A -- other person, yes. Yep.

8 Q Okay.

9 A Yep.

10 Q Thank you very much. Thank you, Ryan.

11 MS. REZMIERSKI: Nothing further, Judge.

12 MR. PERLOS: Just briefly.

13 RECROSS-EXAMINATION

14 BY MR. PERLOS:

15 Q When you say you got an anonymous phone call, you got a
16 phone call from a 313 number, do you know the rest of the
17 numbers?

18 A Not off the top of my head, no.

19 Q Do you still have the phone that you were using back then?

20 A No.

21 Q Do you -- do you know whether or not my client ever had a
22 313 number back then?

23 A Yes, he did.

24 Q He did?

25 A Correct.

1 Q But you don't know the rest of the numbers?

2 A Not off the top of my head, no.

3 Q Was that saved in your phone?

4 A At the time, no.

5 Q Then how did you know that it was his number?

6 A Because I don't get no calls from 313 numbers.

7 Q So you mean you got a 313 call and you just assumed,
8 because you don't get any other 313 calls, that it came
9 from somebody that he put up to call and it was an Af --
10 African American female, correct?

11 A Correct. Yeah, that's correct.

12 Q Okay. So then did you ever, after you moved out of that
13 house on Steward Street, did you ever move to Reed Manor?

14 A No.

15 Q Okay.

16 THE COURT: Anything further from anyone?

17 UNIDENTIFIED SPEAKER: Nope.

18 THE COURT: You can step down. Thank you for
19 your time, Sir.

20 THE WITNESS: Thanks.

21 (At 11:42:45 a.m., witness excused)

22 MS. REZMIERSKI: May he be released from his
23 subpoena?

24 THE COURT: Yes.

25 MS. REZMIERSKI: Thank you.

1 THE COURT: How long is your next witness?

2 It's quarter to 12:00 is why I'm asking.

3 MS. REZMIERSKI: He's actually pretty short

4 THE COURT: Okay.

5 MS. MCKINNIE: People call Officer Edmondson

6 THE COURT: Do you swear to tell the truth,
7 the whole truth and nothing but the truth so help you God?

8 MR. EDMONDSON: I do, Judge.

9 CRAIG EDMONDSON

10 (At 11:43:24 a.m., witness sworn, testified as follows):

11 THE COURT: Would you state your name and
12 spell your last name for the record.

13 THE WITNESS: Craig Edmondson, E-D-M-O-N-D-S-
14 O-N.

15 DIRECT EXAMINATION

16 BY MS. MCKINNIE:

17 Q Officer, were are you employed?

18 A Jackson City Police Department.

19 Q How long have you been there?

20 A Approximately 22 years.

21 Q I said officer, are you a road officer?

22 A I am, patrol.

23 Q And you're with the city so you just patrol the city of
24 Jackson?

25 A I do.

1 Q All right, were you working on March 3rd of 2014?

2 A I was.

3 Q Did you get dispatched out to a address on Steward Street
4 for a threat complaint?

5 A I did.

6 Q Who did you meet with when you got there?

7 A When I met -- when I arrived there I met with two
8 complainants, a Donna and Ryan Marshall.

9 Q Were they living in that home there on Steward?

10 A Yes.

11 Q And because you patrol the city that 705 Steward address
12 was in the city of Jackson?

13 A It is.

14 Q And Jackson County, Michigan?

15 A It is.

16 Q Okay. Did you also get dispatched out to that exact same
17 address the next day on March 4th?

18 A I did.

19 Q And what was that dispatch for?

20 A A fire.

21 Q Okay, and did the dispatch actually come in as an
22 intentional fire set?

23 A Yes.

24 Q All right, when you arrived did you meet again with Donna
25 and Ryan Marshall?

1 A I did.

2 Q Do you know approximately what time you got that dispatch
3 for?

4 A It was approximately 11:04 in the morning.

5 Q Okay. Officer, after you were there to investigate that
6 arson did that become your case or did a detective get
7 assigned to that case?

8 A Well, it originally was my case, yes.

9 Q Okay, and at some point Detective Rose was also assigned to
10 that case?

11 A Yes.

12 Q You did kinda the first investigating of it?

13 A Yes.

14 Q As part of that investigating did you take some phones --
15 or, excuse me, a phone from Rodney McKee?

16 A I did.

17 Q Okay, and did you at least take photographs of a phone from
18 Donna Marshall?

19 A I did.

20 Q All right.

21 MS. MCKINNIE: Your Honor, may I approach?

22 THE COURT: (Inaudible).

23 BY MS. MCKINNIE:

24 Q I'm handing you People's proposed Exhibits 157 through 179.

25 Would you look through those and tell me if they are a fair

1 THE COURT: Right up here. Stop and face me
2 raise your right hand. Do you swear to tell the truth, the
3 whole truth and nothing but the truth so help you God?

4 MS. MARSHALL: So help me God.

5 DONNA MARSHALL

6 (At 2:12:24 p.m., witness sworn, testified as follows):

7 THE COURT: Please state your name, spell
8 your last name for the record.

9 THE WITNESS: My name's Donna Marshall, M-A-
10 R-S-H-A-L-L.

11 THE COURT: Thank you.

12 Whenever you're ready.

13 MS. REZMIERSKI: Thank you very much.

14 DIRECT EXAMINATION

15 BY MS. REZMIERSKI:

16 Q Donna, do you know Ryan Marshall?

17 A Yes.

18 Q How do you know him?

19 A He's my son.

20 Q Do you also know someone named Rodney McKee?

21 A Yes, I do.

22 Q And how do you know him?

23 A I know him from doing things, selling things.

24 Q Doing things and selling things?

25 A Yes.

1 Q What kinda things are we talking about?

2 A Heroin.

3 Q Have you had a problem with heroin?

4 A No.

5 Q Have you used heroin?

6 A No, I haven't.

7 Q I'm sorry, you've never used heroin?

8 A Oh, I used heroin, yes.

9 Q Yes.

10 A Yes.

11 Q Does that mean that you also sold heroin?

12 A Yes, I did.

13 Q What was your relationship with Rodney McKee?

14 A Well, he wanted me to sell his heroin.

15 Q Did you buy heroin from him?

16 A I didn't have to. I did buy some when I had the money,

17 yes.

18 Q So when you had money he was somebody you would buy from?

19 A Yes.

20 Q Okay. And I'm sorry, did you say that he had you sell for

21 him too?

22 A Yes.

23 Q Where were you living when you sold heroin for Rodney

24 McKee?

25 A I was living at 705 Steward Street.

1 Q That's here in Jackson, right?

2 A Yes.

3 Q Was that a big house that was kinda broken down into

4 apartments?

5 A Yes, Ma'am. Yes.

6 Q Who -- who lived there with you?

7 A Me and my son, Ryan.

8 Q Did he pay you to sell heroin?

9 A He would give me the heroin.

10 Q So not money but heroin?

11 A Right.

12 Q Are you still using heroin?

13 A No. Not like I was.

14 Q Not like you were.

15 A No.

16 Q Are you on heroin right now?

17 A No.

18 Q Any idea how much money you made for him daily selling

19 heroin?

20 A Between 500 and 1,000 daily.

21 Q Did you want to sell heroin for him?

22 A No.

23 Q Then why did you?

24 A I felt I couldn't get out of it.

25 Q Why not?

1 A He would take my phone away from me, he would send people
2 over to my house. I told him I wanted to stop and he
3 wouldn't let me.

4 Q Any idea how many times you told him you wanted to stop?

5 A Oh, a lot of times. A lot of times. Probably -- I mean,
6 this was going on for a month or two.

7 Q It was going on for a while?

8 A Couple months that I didn't want to do it.

9 Q Did you feel threatened by him?

10 A Yes.

11 Q Why?

12 A He had a gun. He had a gun and he would have -- he said if
13 this girl couldn't bring me over that he would come over
14 and get me his self.

15 Q How often did you see him with a gun?

16 A Every time.

17 Q Donna, was there a time in March of 2014 when 705 Steward
18 got burned down?

19 A What the -- what's the date on that?

20 Q In March of 2014 did 705 Steward Avenue burn down to the
21 ground?

22 A Yes, it did.

23 Q Okay. Do you remember that day it burned down?

24 A Yes, I do.

25 Q All right, what about the day before, do you remember the

1 day before?

2 A The day before? Yes.

3 Q Okay, what was going on the day before?

4 A Well, I was trying to get out of it and he wanted me to get
5 in his truck and I seen that gun, I said, "I'm not getting
6 in your truck, I'm not gonna get in your truck."

7 Q Why did he want you to get in his truck?

8 A He wanted me to take it.

9 Q Take what?

10 A Take the drugs.

11 Q What kinda truck are we talking about?

12 A It was a SUV. Van -- some kinda van.

13 Q So you said no?

14 A I wouldn't do it, I was scared.

15 Q So how did he respond to that?

16 A He talked to me for about 15 minutes trying to get me in
17 that truck, you know, that SUV. I told him, "No, I'm not
18 getting in. I'm not getting in your truck." The gun was
19 laying there.

20 Q At some point that day did you call the police?

21 A Yes, I did.

22 Q Why?

23 A I felt threatened.

24 Q Why did you feel threatened?

25 A I felt he was gonna shoot me.

1 Q Did he call you after he left and you said no?

2 A Yes.

3 Q Did he text you after he left and you said no?

4 A Yes. All of it.

5 Q Any -- I'm sorry?

6 A He text me and he called me and he said, you know, things
7 that scared me.

8 Q Like what?

9 A That if I didn't answer the phone that he -- he's gonna
10 come.

11 Q Any idea how many times he called you and texted you that
12 day?

13 A I can't tell you exactly how many but at least 15, 20
14 times.

15 Q Certainly a lot?

16 A A lot.

17 MS. REZMIERSKI: Your Honor, may I approach
18 the witness?

19 THE COURT: Yes.

20 BY MS. REZMIERSKI:

21 Q Donna, I've got some pictures in my hands, is that a
22 picture of your phone?

23 A Yes, it is.

24 Q All right, you show that to the police the next day when
25 the house burned down, correct?

1 A Yes.

2 Q All right, what about this? And that was 160, now I'm
3 looking at 161, is that a picture of your phone too on the
4 inside?

5 A Yes, it is.

6 Q All right, so we see somebody named, it looks like
7 "Neffue," N-E-F-F-U-E, is that right?

8 A Yes.

9 Q Phone number 586-804-1440, is that also right?

10 A Yes, it is.

11 Q That's a contact in your phone, correct?

12 A Yes.

13 Q Who is that to?

14 A That's Rodney McKee.

15 Q Did you receive texts from him over the time that you knew
16 him from that number?

17 A Yes.

18 Q Did you also talk to him on the phone through that contact
19 at that phone number?

20 A Yes, I did.

21 Q And when you talked to him at that phone number did you
22 recognize that as his voice?

23 A Yes.

24 Q Okay. And did you show your phone to the officer the day
25 of the arson because of all the texts that were in there

1 that he had sent you?

2 A Yes, I did. Yep.

3 Q So when you called the police the day before the arson did
4 that stop him from calling and texting and coming over?

5 A No, it didn't.

6 Q Did something happen the next day?

7 A Yes.

8 Q What happened?

9 A He burnt my house down. He burned it down.

10 Q Donna, do you want to be here?

11 A Do I want to be here?

12 Q Right.

13 A Not really.

14 Q How are you feeling about being here?

15 A Well, I want justice. Everybody wants justice.

16 Q Are you afraid?

17 A No, I'm not afraid.

18 Q Good for you.

19 A I'm not.

20 Q Tell us about the day the house burned down. What did you
21 see?

22 A I seen him kinda tiptoeing around the house doing something
23 and then I seen him with a cup, some kind of a cup, and
24 Ryan was there too and we were upstairs, you know, watching
25 him go around the house and I went downstairs and opened

1 the door and I seen him walking away in the other driveway
2 to the -- to his truck across the street.

3 Q Which truck are we talking about? That same big SUV.

4 A SUV.

5 Q And then what happened at that point?

6 A After that I went down and -- we went down and looked and
7 there was fire all over the place. There was fire and it
8 was coming out fast.

9 Q How could you smell the gasoline? Did I hear you say you
10 could smell gasoline?

11 A I could smell the gas so good, yes. I smelled gas.

12 Q How? Was the window open?

13 A The windows were open.

14 Q And why were the windows open on March 4th?

15 A Because it's hot upstairs.

16 Q And that's where you guys lived, was in the apartment
17 upstairs, right?

18 A Yes.

19 Q Front of the house, side of the house or the back of the
20 house?

21 A The back of the house, that's where I slept.

22 Q So you came downstairs and checked and the house was on
23 fire?

24 A Yes.

25 Q So what did you do then?

1 A Then I ran to tell everybody the house is on fire and it
2 was coming out so fast that we didn't have time to get
3 nothing. It was just gone.

4 Q You lost everything?

5 A Lost everything.

6 Q But you got out?

7 A Yes, we got out alive. Everybody did.

8 Q Did you call the police?

9 A Yes, I did.

10 Q Talk to them that day?

11 A Yes.

12 Q Did you talk to a detective later on as well?

13 A Yes, I did.

14 Q What name did you know Rodney McKee by?

15 A "Neffue" and "Rock."

16 Q At the time you didn't know his name was Rodney McKee, is
17 that correct?

18 A No. No. Didn't know his name.

19 Q Is that guy that you knew as Rock or Neffue here in court
20 today?

21 A I don't know.

22 Q Can you look around?

23 A Yes, he is.

24 Q Tell us what he has on.

25 A He has a blue tie on.

1 Q Okay, what color shirt?

2 A A black shirt.

3 Q Right over here?

4 A Yes.

5 Q At the end of the table?

6 A Yes.

7 MS. REZMIERSKI: Your Honor, the record
8 reflect the witness has identified the defendant?

9 THE COURT: It'll so reflect.

10 MS. REZMIERSKI: Donna, thank you very much.
11 I don't have any further questions but the other lawyers do
12 get a chance to ask you.

13 Thank you, Judge. Nothing further.

14 THE COURT: Cross?

15 CROSS-EXAMINATION

16 BY MR. PERLOS:

17 Q Ma'am, how long have you been doing heroin?

18 A Pardon me?

19 Q How long you been doing heroin?

20 A A few years.

21 Q What's that mean?

22 A Couple years.

23 Q How old are you?

24 A I'm 58.

25 Q And so you just started doing heroin when you were 56 years

1 old?

2 A No.

3 Q How long have you been doing heroin?

4 A Off and on --

5 Q Ten years? Twenty years?

6 A No.

7 Q How long?

8 A Probably -- I don't know, it has been about maybe three

9 years. I used it for pain.

10 Q And so when you would do heroin how many times a day would

11 you take and shoot it out? Or did you snort it?

12 A No, I shot it.

13 Q How long -- how much do you think you were using?

14 A Tell you the truth, I couldn't even get it in because I was

15 so busy for him. I never even used it.

16 Q That's not the question. The question is, how many times a

17 day would you shoot up heroin?

18 A Maybe two times a day.

19 Q Seven days a week, correct?

20 A Some days I didn't do it.

21 Q About six, maybe seven days a week and some days you didn't

22 to do it, right?

23 A Some days I didn't do it.

24 Q You didn't do it on Christmas or Easter, I don't know.

25 A No.

1 Q Most of the time you're doing heroin, correct?

2 A Not really, no.

3 Q Isn't it true that you begged him to give you heroin? And

4 that you were supplying it to everyone in the neighborhood?

5 A No.

6 Q And that you are making money off it, yes?

7 A No.

8 Q You weren't making money off it?

9 A No.

10 Q Were you doing heroin for free?

11 A Fifty dollars worth.

12 Q Well, you were doing heroin, he was helping you to support

13 your habit, wasn't he? Wasn't he?

14 A I -- I had money, I had money then.

15 Q I didn't ask you that, I asked you was he giving you heroin

16 --

17 A No.

18 Q -- and you were helping him to support your habit?

19 A No.

20 Q Correct?

21 A No, Sir.

22 Q So you were just doing it because you liked him?

23 A No.

24 Q You were using heroin for three years most of the time,

25 correct?

1 A (No audible response).

2 Q Are you still using heroin today?

3 A No.

4 Q When did you quit?

5 A I quit probably months ago, I mean, since I --(multiple
6 speakers)--

7 Q How many months ago?

8 A -- no, it wasn't even months ago, it was a year ago.

9 Q Do you remember the date?

10 A Since after that fire--(multiple speakers)--

11 Q You haven't used heroin since the fire?

12 A I haven't wanted any, no.

13 Q I didn't ask you if you wanted it, have you used it?

14 A I have used it, yes.

15 Q And so how often since the fire have you used it?

16 A Not much.

17 Q But how often?

18 A Maybe once --

19 Q You've used it once --

20 A -- twice.

21 Q -- in the last -- twice in the last two years?

22 A Yes.

23 Q You've been using Methadone?

24 A No.

25 Q Taken any benxies?

1 A Yes, I do.

2 Q How many of those -- what do you do with that?

3 A My doctors give me that.

4 Q What, Xanax?

5 A Klonopin.

6 Q Klonopin? How much of that are you selling?

7 A I don't sell it.

8 Q You're not selling pills?

9 A No, I get one a day.

10 Q Have you been selling pills?

11 A No.

12 Q Do you remember the day before?

13 A Yes.

14 Q Do you remember the date?

15 A Yes, I do.

16 Q What's the date?

17 A Today's the 1st.

18 Q No, the date when -- was the day before the fire, which

19 would have been what date?

20 A The -- the 3rd.

21 Q Of March?

22 A Yes.

23 Q You remember ever telling anyone else that he tried to get

24 you in the truck that day?

25 A Yes.

1 Q Who did you tell?

2 A I tried to talk to a lot of people, nobody would listen.

3 Q But did you ever tell a police officer that he tried to get

4 you in his truck that day?

5 A During the fire or --

6 Q No, the day before the fire.

7 A The day before the fire, yes, I did.

8 Q Who'd you tell?

9 A I told the policeman that he was trying to get me to get in

10 the truck.

11 Q Who was that, do you remember?

12 A No, I don't.

13 Q Did you call the police?

14 A Yes, I did.

15 Q And what'd you tell them?

16 A I tell -- told him that he was -- he was threatening me,

17 threatening he was going to hurt me.

18 Q (Multiple speakers). How did he threaten you?

19 A On my text messages.

20 Q He texted you on the 3rd and said he was gonna hurt you?

21 A He was gonna come and do something to me.

22 Q Did he text you and say -- what did he say he was gonna

23 come and do?

24 A There's many times he's threatened me.

25 Q Wait a minute, let's just stick to the 3rd, okay?

1 A Yes.

2 Q On the 3rd what -- how did he threaten you?

3 A He threatened if I didn't take the drugs that he was gonna

4 come and do something to me and my son.

5 Q Where was the truck parked on the 3rd?

6 A In the back of the -- oh, on the 3rd?

7 Q The day before when you said that he tried to get you in

8 the truck.

9 A In the back of -- I think on the side of the house.

10 Q What side?

11 A The front of my door.

12 Q What side?

13 A What side of the house? It would be the right hand, or in

14 the back.

15 Q You don't know?

16 A When he threatened -- when he wanted me to get in the truck

17 he was parked in the back.

18 Q That was the day before, he was in the back of the house?

19 A Yes. He was in back of the house.

20 Q He just drove into the back --

21 A Yes.

22 Q -- into the back of the house and he was in the back of the

23 house and he said, "Get in the truck"?

24 A Yes.

25 Q And you told the police officers that?

1 A I don't know if I told them that. I don't know.

2 Q You know, since you've been doing these drugs and doing

3 heroin are you having problems with your memory?

4 A Been two years.

5 Q It'll be two years, I'm not asking you that, I'm asking

6 have you been having problems with your memory?

7 A Not at all.

8 Q Do you know who the vice president is?

9 A Probably not, but.

10 Q Do you know?

11 A A lot of people don't know.

12 Q You don't know do you?

13 A Probably not.

14 Q Do you remember whether or not you called the police the

15 day before, or your son, Ryan, called the police?

16 A He could have called. I called too.

17 Q He could have or you called?

18 A I called too.

19 Q Did anything else happen the day before?

20 A That was the worst thing that happened. I mean, when he

21 tried to get me --(multiple speakers)--

22 Q You mean him parked in the back yard?

23 A Yes.

24 Q But you don't remember which -- do you remember if an

25 officer came to the house?

1 A Yes.

2 Q What'd he look like?

3 A He was a black man.

4 Q He was a black man?

5 A Yeah.

6 Q So do you think it was Edmondson?

7 A There was -- no, there was two of them so I don't know his
8 name.

9 Q So the next day you -- you saw him tiptoed around, right?

10 A Yes, I did.

11 Q Now, you've known him, correct, for some time? Was he
12 walking with a cane back then?

13 A Not that I'm aware of.

14 Q You ever seen him walk with a cane?

15 A Not that I can remember.

16 Q Where did he tiptoe, down the road, down the sidewalk,
17 where was he tiptoeing?

18 A Around the house.

19 Q Around the house, like --

20 A Yes.

21 Q -- in the back or on the side?

22 A Sides, in back.

23 Q And so -- and you said --

24 A By my door.

25 Q Where?

1 A By my door.

2 Q By the door, which door is yours?

3 A Mine's facing his family's house.

4 Q So that would be on the side of the house?

5 A Yes. And in the back.

6 Q M-kay, and so you were looking out the window and you saw

7 him tiptoeing around?

8 A Yes, I did.

9 Q Was his truck in your driveway?

10 A The day the fire broke out?

11 Q That's the day we're talking about, yeah.

12 A Okay, no, the truck was across the street.

13 Q Where?

14 A On Webb Street.

15 Q Did you see it on Webb Street or you just think it was

16 there?

17 A I did see it. No, I seen it.

18 Q What color was it?

19 A It was a SUV, same truck.

20 Q What color was it?

21 A A light tan.

22 Q Tan?

23 A Or a beige.

24 Q Beige color truck?

25 A I can't remember even his truck.

1 Q You can't remember a lot can you?

2 A No. Not that.

3 Q Did somebody tell you to say this today?

4 A No.

5 Q Was anybody with him that day when he was tiptoeing around?

6 A Nobody was with me or with --

7 Q No, was anybody with him when he was tiptoeing around?

8 A No.

9 Q He's a pretty big guy isn't he?

10 A Yes, you can --(multiple speakers)--

11 Q Back then he was like maybe 400, 450 pounds wasn't he?

12 A Mm-hmm.

13 Q And so he's tiptoeing around the house, right?

14 A Yeah, but --(multiple speakers)--

15 Q You didn't see anybody with him did you?

16 A The house was straight up and big.

17 Q Your house was straight up and big?

18 A Yes.

19 Q So did you have a good view from upstairs?

20 A Sure did.

21 Q Okay, so you and you son, Ryan, are you both upstairs

22 looking out the windows?

23 A We're both -- yes, we were.

24 Q And so you see him tiptoeing around but you don't see

25 anybody else out there do you?

1 A We didn't see anybody else, we was focused on him, what he
2 was doing.

3 Q Right, but it's not a very big yard and you're up in -- and
4 you're on Steward Street and those houses are big, and
5 you're up and looking out the windows and -- and you could
6 see the whole yard from the window, right?

7 A Yes.

8 Q You didn't see anybody else out there but this big guy
9 tiptoeing around, right?

10 A I seen him, yes.

11 Q Yeah, you seen him, but you didn't see anybody else, right?
12 Right?

13 A No.

14 Q Okay. So, what was he wearing?

15 A He was wearing -- it was a striped shirt.

16 Q Striped shirt?

17 A Yes.

18 Q It was Mark's (ph), right?

19 A No, but I can remember the striped shirt.

20 Q Wait a minute, I said March, that's a month. A month of
21 the year.

22 A Yes, March.

23 Q It was March, right?

24 A Yes.

25 Q Okay, so it was cold, right?

1 A It wasn't cold.

2 Q It wasn't?

3 A No.

4 Q Was there snow on --

5 A Oh, yeah, it was --

6 Q Oh, yeah.

7 A -- still -- it's still hot up there in that apartment. I

8 live upstairs.

9 Q Oh, I mean outside.

10 A Yeah, it was still cold.

11 Q Yeah, there was snow on the ground too --

12 A Right.

13 Q Yeah, and he's walking around with a striped shirt?

14 A (No audible response).

15 Q No coat, right?

16 A He still had a striped shirt and white -- white and blue

17 striped shirt.

18 Q Did he have a black coat on?

19 A I think he did.

20 Q Well, then how'd you see the striped shirt?

21 A You could see when it's open.

22 Q Oh, it was opened like that?

23 A (Multiple speakers)-- close it.

24 Q So did you see the coat?

25 A Yes, I seen --(multiple speakers)--

1 Q Can you even describe it?

2 A -- just the shirt and what he had.

3 Q What'd the coat look like?

4 A I don't know what the coat looked like.

5 Q Okay, but you saw the shirt?

6 A Yes.

7 Q Okay, and so when did you first see him tiptoeing?

8 A When he was walking around the house.

9 Q Yeah, I know, what time was it?

10 A It was about 10:00 o'clock in the morning.

11 Q Okay.

12 A I'm up at 5:30.

13 Q You got up at 5:30?

14 A I'm always up.

15 Q What, so you can get a fix?

16 A No, I'm up even now.

17 Q You're up? Like now?

18 A I'm up now, I'm up every morning. I can't help it, I get

19 up early. I'm not out at night.

20 Q Right, so what you're telling me is, you're up and it's

21 10:00 o'clock, right?

22 A Yes.

23 Q And so he's tiptoeing around the house, does he have

24 anything in his hands?

25 A Yes, he had a cup.

1 Q What'd it look like?

2 A It's a white cup. It was a cup, there was liquid in it.
3 could see it.

4 Q Did it have a label on it?

5 A No.

6 Q Okay, so how did you see the liquid?

7 A I just could smell gasoline so bad.

8 Q Wait a minute, wait a minute, wait a minute, wait a minute
9 He's tiptoeing around the house, right, and he's got a cup
10 in his hands, it's wintertime and you can see inside the
11 cup?

12 A I can see something wiggling, unless it was coffee.

13 Q Where you at, on the sixth floor -- up on the second floor
14 of the house and --

15 A Yes, and I can see.

16 Q -- you're looking down and you can see him with a cup and
17 you can see something in the cup, right?

18 A I could smell that gas.

19 Q Wait a minute, wait a minute, let's just take it one step
20 at a time. You're up on the second floor, you're looking
21 down and you see this guy who used to be your friend, or
22 your friend, and he's got a cup and there's something in
23 it, right?

24 A (No audible response).

25 Q Your turn.

1 A Well, who would bring a cup with nothing in it?

2 Q Oh, so you didn't see anything in the cup?

3 A Yes, I did, I seen something in the cup.

4 Q Okay, you see the stuff in the cup from the second floor,

5 right?

6 A Yes.

7 Q And then what does he do with it?

8 A I seen him go on by the house throwing it against the

9 house.

10 Q You saw what?

11 A I seen him sneaking around the house.

12 Q Yeah, and then what did he do with it?

13 A I don't know what he did with it after that, then I seen

14 him walking --(multiple speakers)--

15 Q Wait, wait, wait, wait, wait.

16 A -- down the driveway.

17 Q Wait, so you saw him sneaking around the house, right?

18 A Yes.

19 Q And you are with Ryan, right?

20 A He was upstairs and I was upstairs, yes.

21 Q Right, so you're both upstairs and this guy is outside,

22 right, sneaking around the house, right?

23 A (No audible response).

24 Q And so are you watching him?

25 A Yeah, we were.

1 Q And you both are watching him, right?

2 A Yes.

3 Q Okay, and you don't see him do anything with the cup, do
4 you?

5 A I didn't see what he did with the cup, no.

6 Q And so where was Ryan when you're watching?

7 A I was in back of him, I was scared.

8 Q So you're both looking out the window at the same time,
9 right?

10 A (No audible response).

11 Q Is it the same window or two different windows?

12 A (Multiple speakers)

13 Q So you're standing there --

14 A I had -- I had a window all the way around.

15 Q Right, so both of you can see everything that's going on,
16 right?

17 A Yes.

18 Q Okay, and so Ryan's with you but you don't see what he does
19 with the cup, do you?

20 A I thought he threw it, but.

21 Q You don't -- I'm asking you what you saw. You didn't see
22 him do anything with the cup did you?

23 A No, I didn't.

24 Q Okay, so how did you smell the gasoline from the second
25 floor coming from the cup out there in the yard in the

1 middle of the Winter? Is that what he (ph) did?

2 A I still had the windows open, I could smell it. It was

3 like --(multiple speakers)--

4 Q How far away was he from you?

5 A Not very far.

6 Q So, would it be like maybe --

7 A You're too far.

8 Q This far?

9 A No. Not that far.

10 Q This far?

11 A About --

12 Q This far, and you're up there, right?

13 A I could smell it --

14 Q Wait a minute, wait a minute, you're up there, right?

15 A Yeah.

16 Q You're up there, right?

17 A Yes.

18 Q And you could smell the gas?

19 A Coming up, yes.

20 Q Yeah? And then -- and then you saw him walk somewhere but

21 you didn't see what he did with the cup, did you?

22 A I seen him running.

23 Q Right --

24 A Kinda run pulling up his pants.

25 Q -- running where?

1 A Across the street.

2 Q Well, then what happened to the cup?

3 A I didn't see what he did with the cup.

4 MS. REZMIERSKI: It's been about twenty
5 times. Tried to be lenient, I get he's got a job to do.
6 It's asked and answered, what happened with it.

7 THE COURT: Move on.

8 MS. REZMIERSKI: Thank you.

9 BY MR. PERLOS:

10 Q You didn't see what happened to the cup?

11 THE COURT: Mr. Perlos? She's already said

12 --

13 MR. PERLOS: I see it.

14 BY MR. PERLOS:

15 Q Where'd he go?

16 A Where'd he go, down the driveway and across the street. I
17 didn't -- I seen him cross into the street, that's it. I
18 seen his truck parked over there and that's it, that's all I
19 seem.

20 Q The tan -- the tan truck?

21 A The SUV.

22 Q The tan SUV?

23 A Whatever color that was.

24 Q Ma'am, did you meet with anybody prior to today to talk
25 about what was going to happen today in court?

1 A No.

2 Q So did you never review your testimony from the prior
3 hearing that --(undecipherable)-- and you never looked at
4 any police reports?

5 A No.

6 Q And no one's talk to you since then?

7 A No.

8 Q So, everything you're testifying to today is from your
9 memory, correct?

10 A Yes.

11 Q And so did you ever meet with anybody from the police
12 department to talk about this?

13 A No, I didn't.

14 Q Anybody from the Prosecutor's Office?

15 A No.

16 Q So, you never met with anyone in the Prosecutor's Office to
17 go over what you are gonna testify to today?

18 A No.

19 Q How often do you talk to your bro -- or your son, Ryan?

20 A Not very often.

21 Q When's the last time you talked to him?

22 A He left up here but he left right away.

23 Q He left where?

24 A He went back home -- or went back to work.

25 Q I know, but when's the last time you talked to him?

1 A Wow, I talked to him this morning when he -- before he come
2 to court.

3 Q Where?

4 A Coming here, that's it. He --(multiple speakers)--

5 Q What'd you talk about?

6 A -- he went right to court.

7 Q Did you talk about what you were going to say today?

8 A No. Not at all.

9 Q He's never threatened to kill you, has he?

10 A Yes, he has.

11 Q He has? You remember testifying the last time you came to
12 court?

13 A I don't remember last time I come to court, so.

14 Q If I show you the testimony from the last time and ask you
15 to read it and see if it refreshes your memory what you said
16 last time. Same question.

17 A I can't remember. I don't remember. Yeah.

18 Q So when you just told us today that yes, he has, that means
19 I can't remember, right?

20 A No.

21 Q Then what is it?

22 A He carried that gun with him every time --(multiple
23 speakers)--

24 Q Wait a minute, wait a minute, we have one simple question I
25 asked you.

1 A Okay.

2 Q You give me two different answers, one was, "I don't
3 remember," and the other was, "Yes, he had." Which one
4 wasn't?

5 A I know he's threatened me before.

6 Q That's not the question. It's a simple question.

7 A What? I don't remember, is that what you want to hear?

8 Q Is that the truth?

9 A No, he has threatened me with that gun.

10 Q So let -- so what you testified to before when you said you
11 don't remember, that wasn't true, but what you're saying
12 today is true?

13 A Yes.

14 Q Did anybody promise you anything to come here and testify?

15 A No.

16 Q So did anybody promise you that if you came here and
17 testified that you sold heroin for years and made 500 to
18 1,000 dollars a day that you wouldn't be prosecuted for
19 delivering heroin, anybody ever give you a promise like
20 that?

21 A No.

22 Q You understand that that's a crime?

23 A Yes, I do.

24 Q And you understand that you're admitting to that crime under
25 oath, correct?

1 A Yes.

2 Q Did you ever tell a police officer prior to today's date
3 that you only sold four to six hundred dollars a day for
4 him?

5 A It was --

6 Q Detective Rose, did you ever tell her that?

7 A That's what I was supposed to sell.

8 Q That's what you're supposed to sell and that's what you're
9 supposed to say?

10 A No, that's what he wanted me to sell.

11 Q You don't remember what -- what happened, do you?

12 A Yes, I do.

13 MR. PERLOS: I don't have anything further.

14 THE COURT: Any questions from either of you?

15 MR. ENGLE: I do, yeah.

16 CROSS-EXAMINATION

17 BY MR. ENGLE:

18 Q Mrs. Marshall, you indicated that you had wanted to quit
19 selling and using heroin on numerous occasions prior to
20 this.

21 A Yes, I did.

22 Q How many times did you call the police and say, "I'm selling
23 heroin and I want to quit"?

24 A You don't call the police and tell them. I had nowhere to
25 tell people, just my friend, so called friends.

1 Q Simply put, you'd be admitting to a very serious crime, is
2 that true?

3 A (No audible response).

4 Q How many times did you go to a drug counselor and say, "Get
5 me off this, help me get away from this guy"? Any?

6 A No, because you don't -- I don't know where to go. I didn't
7 know where to go.

8 Q Do you know Clifford McKee?

9 A Yes, I do.

10 Q Do you know Cortez Butler?

11 A No, I don't. I just -- no, I don't.

12 Q Let me go down a list of the witnesses. Did you --
13 obviously, you knew your son, Ryan?

14 A Yes.

15 Q Did you know Officer Edmondson, Officer Elston, Sergeant
16 Simpson, people who came to the fire?

17 A Yes.

18 Q You've dealt with them before?

19 A (No audible response).

20 Q Did you know Holly Rose, the Detective from the City?

21 A I didn't hear you.

22 THE COURT: She didn't hear ya.

23 MS. REZMIERSKI: She didn't hear you, Jerry.

24 MR. ENGLE: (Inaudible)?

25 MS. REZMIERSKI: She didn't hear you.

1 MR. ENGLE: Oh, I'm sorry.

2 BY MR. ENGLE:

3 Q Did you know a Holly Rose, the Detective from the City?

4 A Yes, I do.

5 Q Who is -- do you know Rita McMillen -- or McMillen?

6 A Yes, I do.

7 Q Who is she?

8 A She's a girl that I've known for seven years or so, just off
9 and on.

10 Q Did she witness anything that day?

11 A No. I don't think she did.

12 Q Did you know Dale Morgan?

13 A No.

14 Q Do you know Detective Sullivan or Detective Merritt?

15 A Yes.

16 Q Did you know them before the fire?

17 A No, I don't think so.

18 Q Did you know Eric Wolfe?

19 A Yes, I did.

20 Q Did you know him before the fire?

21 A Yes.

22 Q He was a friend of your son's?

23 A I know.

24 Q You were dealing heroin for Rodney, did you deal heroin for
25 any other suppliers?

1 A Never.

2 Q There wasn't anybody out there, for lack of a better term,
3 any supplier that you stiffed who was mad at you, was there?

4 A No.

5 MR. ENGLE: I have no further questions, your
6 Honor.

7 THE COURT: Mr. Brandt?

8 MR. BRANDT: Thank you.

9 CROSS-EXAMINATION

10 BY MR. BRANDT:

11 Q Donna, on the day of the fire you get up at 5:30 in the
12 morning, correct?

13 A Yes, I do.

14 Q And your son is there with you at the apartment?

15 A Yes.

16 Q Did he spend the night?

17 A He stayed with me.

18 Q Did he stay that night?

19 A Yes, he did.

20 Q Okay. I'm assuming you got up first?

21 A Yes.

22 Q At some point in the morning you're looking outside, the
23 windows are open and you see Rodney McKee?

24 A What morning?

25 Q The morning of the fire.

1 A The morning of the fire. Not at that early.

2 Q At sometime that morning you saw him?

3 A Yes, I did.

4 Q Okay. Do you tell your son, "Hey, Rodney's" -- or whatever
5 name you knew him by then, do you go get your son up and
6 say, "Hey, come here, look at him"?

7 A I think I did scream, I was scared.

8 Q Okay. You're telling your son Rodney's out here, or
9 whatever name you knew him by, correct?

10 A Yeah. Yes.

11 Q Okay. Now, he is going around the house, walking around, is
12 that correct?

13 A That's what we seen.

14 Q Okay, are you moving from window to window to see him?

15 A I did. I did.

16 Q Okay, and where did your son stay while you're going from
17 window to window watching what he's doing?

18 A My son?

19 Q Yes.

20 A I don't know. I mean, I was more worried about something
21 happening.

22 Q Okay.

23 A I --

24 Q But he's somewhere behind you. You don't know where he's
25 at.

1 A Yes.

2 Q Thank you. Now, you look out and you see this man with a
3 cup or a bottle, something, he's holding something in his
4 hand, do you tell your son that?

5 A No, I didn't.

6 Q Okay, so he doesn't know because he's not watching him, you
7 are.

8 MS. REZMIERSKI: Objection as to what he
9 knows or doesn't know. That's speculative.

10 MR. BRANDT: Sure enough.

11 MS. REZMIERSKI: She said, "I don't know what
12 he's doing, I'm watching."

13 MR. BRANDT: All right, I'll live with that.

14 THE COURT: Sustained.

15 BY MR. BRANDT:

16 Q He's not at the window with you, you're seeing the cup, do
17 you turn and tell him that? Your son.

18 A He seen the cup too.

19 Q Oh, so where is he at at that point? Your son.

20 A We're in the middle of the floor talk -- you know, screaming
21 and I'm scared.

22 Q Okay, but is your son at the window with you or do you turn
23 and tell him that?

24 A He was at a window. He was at the window still.

25 Q Okay.

1 A He seen.

2 Q So you're moving window to window as you see him with this
3 cup walking around the house, do you say anything to him?

4 A He didn't say anything.

5 Q Did you call the police when you saw him come over there
6 with --

7 A Yes, I did.

8 Q -- the cup? But that's some time later.

9 A I just -- I wondered if there was a bomb out there, what he
10 left, but -- what he had. I didn't know if it was a bomb or
11 what it was, you know, but I smelled that gas.

12 Q Did you call the police when you smelled the gas?

13 A Yes, I did. I smelled it, yes.

14 Q Or did you wait until there was actually a fire?

15 A No.

16 Q You called when you smelled the gas?

17 A Yes.

18 Q Are you the one who called, or did your son?

19 A I think we both called.

20 Q Who is T-Bone?

21 A Who?

22 Q T-Bone.

23 A I don't know.

24 Q Do you know somebody, P?

25 A P? No.

1 Q You said you know a Clifford McKee.

2 A It wasn't Clifford, I didn't mean -- Rodney, no, that I know
3 his name. No, I don't know Clifford.

4 Q Okay. There were either phone calls or text messages
5 between you and Rodney about him wanting some phone numbers?

6 A (No audible response).

7 Q Is that a yes?

8 A Yes.

9 Q Okay. Did you give him those numbers?

10 A I tried to.

11 Q How did you try to?

12 A By writing them down.

13 Q Okay. Could you just text them to him?

14 A Actually, I didn't know what numbers he wanted. He sent the
15 people over to my house.

16 Q Did you see another person outside when you saw Rodney?

17 A I didn't see anybody but Rodney cuz he's big.

18 MR. BRANDT: Thank you, nothing further.

19 MR. PERLOS: Just briefly.

20 RECROSS-EXAMINATION

21 BY MR. PERLOS:

22 Q You know the day before you -- you remember the day before?

23 A Yeah.

24 Q That was the day that you said that he tried to get you in
25 the truck?

1 A Yes.

2 Q And we had talked to you about what officer you told that
3 to.

4 A Yes.

5 Q Do you remember whether or not you told your son to call the
6 police the day before about somebody throwing icicles at the
7 house?

8 A Yes.

9 Q Is that what you got that mixed up with, or did he actually
10 try to get you into a truck?

11 A He tried to get me into his truck.

12 Q Yeah? What about the icicles?

13 A He was kicking them off. I mean, he was around my house.

14 Q Kicking them off? What do you mean?

15 A Yeah, going around my house. He was --(multiple speakers)--

16 Q What -- so did you call the police about icicles, throwing
17 icicles at the house?

18 A He was doing that.

19 Q I didn't ask you if he was doing it, I asked you --(multiple
20 speakers)--

21 A No, I didn't.

22 Q And so was that at the same time he tried to get you in the
23 truck?

24 A I don't think it was.

25 Q So he came two times that day, right?

1 A I ran in the house -- yeah, he did.

2 Q Two times that day, right?

3 A Yes.

4 Q And you called the police both times?

5 A One time.

6 Q All right, but then was it for the truck or was it for the
7 icicles?

8 A My son has a phone too, he -- he called.

9 Q I didn't ask your son, I'm asking you. Or you don't
10 remember?

11 A I don't remember.

12 Q That's the easy way out of that.

13 A I really don't.

14 Q Who's --

15 MS. REZMIERSKI: Is that a question?

16 BY MR. PERLOS:

17 Q -- P?

18 THE COURT: Comment.

19 MR. PERLOS: I'll withdraw it.

20 MS. REZMIERSKI: Thank you.

21 BY MR. PERLOS:

22 Q Who is P?

23 MS. REZMIERSKI: She said she didn't know.

24 THE WITNESS: I don't know.

25 MS. REZMIERSKI: It's been asked and

1 answered.

2 THE WITNESS: I don't know.

3 THE COURT: She doesn't know.

4 MR. PERLOS: I didn't hear that.

5 MS. MCKINNIE: He asked.

6 THE WITNESS: No, I don't know.

7 BY MR. PERLOS:

8 Q So you don't have a drug dealer's name stored in your phone
9 under the name Pete (ph)?

10 A Not that I remember. I don't remember--(multiple speakers)
11 --

12 Q There's nothing in your contacts for T-Bone?

13 A No. No.

14 MR. PERLOS: I'm done.

15 THE COURT: Redirect?

16 MS. REZMIERSKI: Thank you.

17 REDIRECT EXAMINATION

18 BY MS. REZMIERSKI:

19 Q Donna, we -- we have met before, right?

20 A Yes.

21 Q You and I have talked before?

22 A Yes, we have.

23 Q Okay. I didn't give you papers to read over or anything
24 like that, right?

25 A No.

1 Q Okay.

2 A No.

3 Q I didn't -- didn't tell you what to say here today, did I?

4 A No, you didn't.

5 Q Donna, I forgot to ask you, where did you go after 705
6 Steward burned down?

7 A Where'd I go? Red Cross. I mean, I had nowhere to go.

8 Q Did you eventually move someplace else?

9 A Yes, I did.

10 Q Back here in the city?

11 A No, outside of town.

12 Q Okay. Sometime after that did you move back to the city?

13 A Yes, I did.

14 Q Okay, and where did you move back in the city?

15 A Where did I move? Now?

16 Q Yes.

17 A In Jackson, I mean.

18 Q Donna, in October of 2014, the year the house got burned
19 down, were you living in Reed Manor?

20 A No. Oh, in October?

21 Q Yes.

22 A After the house burnt down -- I don't think I was.

23 Q When you moved back to the city did you move to Reed Manor?

24 MR. PERLOS: Asked and answered.

25 MR. BRANDT: Objection, asked and answered.

1 THE WITNESS: Yes, I did.

2 MR. ENGLE: It's been answered and it's
3 leading too. The one before was --

4 MR. BUTLER: This is --

5 MR. PERLOS: She said, "No, I don't think I
6 was."

7 MS. REZMIERSKI: Okay.

8 MR. ENGLE: She said, "No, I wasn't."

9 THE COURT: Well, she was trying to figure
10 out the date.

11 MS. REZMIERSKI: The timeline is the issue,
12 and I'm --

13 MR. PERLOS: She asked it twice.

14 MS. REZMIERSKI: -- asking it mucked up.
15 She's answered it, can --

16 THE COURT: That's all right, let her ask the
17 question again.

18 BY MS. REZMIERSKI:

19 Q When you moved back to the city did you move to Reed Manor?

20 A Yes.

21 Q Okay. Is that where you still live?

22 A Yes, I do.

23 Q Do you remember when you moved back to the city?

24 A I stayed with my cousin for six months so it was six months
25 after that I moved back.

1 Q What apartment did you move into?

2 A E-21.

3 Q And you're still in E-21?

4 A Yes.

5 Q Donna, what's your phone number?

6 A It's the same number, 517-395-7563.

7 Q The same number it's been?

8 A Same number.

9 MS. REZMIERSKI: Nothing further.

10 MR. PERLOS: I don't have anything further.

11 THE COURT: Any --

12 MR. BRANDT: I do.

13 RECROSS-EXAMINATION

14 BY MR. BRANDT:

15 Q Donna, when did you meet with the prosecutor?

16 A Today. I mean, yesterday, today. I mean, we didn't see
17 each other too much, just like now.

18 Q You remember testifying at another hearing?

19 A I don't remember too much of that.

20 Q Between that date and this week did you meet with the
21 prosecutor?

22 A Yes, I did.

23 Q Okay, within the last month?

24 A Yes. Yes.

25 Q Okay, and you came to this building, yes?

1 A Yes.

2 Q And who was at that meeting?

3 A At the meeting?

4 Q Yes, Ma'am.

5 A There was two prosecutors.

6 Q Okay, anyone else?

7 A One more lady.

8 Q Okay. Do you know if any of that was tape recorded,
9 recorded at all?

10 A I don't know.

11 Q Okay. Were you given documents to look at?

12 A No, I wasn't.

13 Q Were you given police reports to read?

14 A No, I didn't.

15 Q Were you given transcripts to look at?

16 A No.

17 Q Were you asked questions by the two prosecutors?

18 A (No audible response).

19 Q Did they ask you questions?

20 A Just about my text messages, if they were mine.

21 Q Anything else that you recall?

22 A No.

23 Q How long was the meeting?

24 A About 20 minutes.

25 Q When you left were you given any instructions?

1 A No.

2 Q Were you given any paperwork, police reports or transcript?

3 A No.

4 RECROSS-EXAMINATION

5 BY MR. PERLOS:

6 Q When I asked you those questions why did you tell me no?

7 You're under oath.

8 A Yes, I'm trying --(multiple speakers)--

9 Q Why did you tell me no, that you didn't meet with them?

10 A Well, he said within a time period.

11 Q I asked you before you came to court today and you said no,
12 you didn't meet with anyone.

13 A Oh, well they're the prosecutors though.

14 Q Oh, you know what, you've made some real serious allegations
15 against my client and this isn't just a game.

16 THE COURT: Is this a question?

17 MR. PERLOS: Not now. I'm done.

18 THE COURT: Anything further?

19 Ma'am, you can step down.

20 THE WITNESS: Okay. Thank you.

21 THE COURT: You're all set.

22 MS. REZMIERSKI: May she be released from her
23 subpoena?

24 THE COURT: Any objection to releasing her
25 from her subpoena?

1 MR. PERLOS: I don't -- I don't have any use
2 for her.

3 MR. BRANDT: That's fine, your Honor.

4 THE COURT: Okay, she's released.

5 (At 3:00:38 p.m., witness excused)

6 THE COURT: A great time to take a break.

7 THE CLERK: All rise for the jury.

8 (At 3:00:49 p.m., jury excused)

9 (At 3:00:57 p.m., hearing recessed)

10 (At 3:29:10 p.m., hearing resumed)

11 MR. ENGLE: Your Honor, just for the --

12 MR. BUTLER: You don't have to --(inaudible).

13 We're good.

14 MR. ENGLE: You want me to put the thing on
15 the record? Okay. Forget it. Nothing.

16 THE COURT: Next witness.

17 MS. REZMIERSKI: Do you want the jury?

18 THE COURT: Oh, yeah. That's twice I've done
19 that.

20 You guys weren't here, I had somebody plead
21 today to something real simple and I said, "Deputies, take
22 her away, she's going to jail." I said nah, April fool.

23 UNIDENTIFIED SPEAKER: The poor girl's face
24 was --(undecipherable).

25 THE COURT: Well, Dungan got it right away.

1 THE COURT: Please be seated.

2 Okay, whenever you're ready.

3 MS. REZMIERSKI: Want me to just bring him
4 in?

5 THE COURT: Sit right there. Face me, raise
6 your right the best you can. Do you swear to tell the
7 truth, the whole truth and nothing but the truth so help you
8 God?

9 MR. MORGAN: Yes.

10 DALE MORGAN

11 (At 4:05:50 p.m., witness sworn, testified as follows):

12 THE COURT: Will you state your name for the
13 record?

14 THE WITNESS: Dale Morgan.

15 THE COURT: And spell your last name.

16 THE WITNESS: M-O-R-G-A-N.

17 THE COURT: Okay. Mr. Engle?

18 MR. ENGLE: You know, We just wanted to
19 straighten out something ahead of time. You testified here
20 at the grand jury proceedings last year?

21 THE WITNESS: Yes.

22 MR. ENGLE: Did you also make a written
23 statement on March 6th of 2015 to the Detroit City Police?

24 THE WITNESS: I believe so.

25 MR. ENGLE: I'll show you the two statements.

1 There is a difference. On --(undecipherable)-- on the
2 statement at the grand jury proceeding you say that Cortez
3 said, "Shut the fuck up, I know what I'm doing, I just
4 chopped the Bitch up in Jackson."

5 THE WITNESS: Yes.

6 MR. ENGLE: In your written statement -- does
7 this appear to be your written statement or a copy thereof?

8 THE WITNESS: That's --

9 MR. ENGLE: You indicate in there, "I know
10 what I'm" -- that Cortez said, "I know what I'm doing, I
11 just chopped the Bitch up a week before."

12 THE WITNESS: This isn't my written
13 statement, that's a officer's statement of what he thought I
14 said.

15 MR. ENGLE: So -- but you signed that --
16 (inaudible)?

17 THE WITNESS: Yes, I did sign it.

18 MR. ENGLE: And which -- which is correct, or
19 are they both correct what's --

20 THE WITNESS: That's correct. That's what he
21 said. This is what he interpreted I said. That ain't what
22 I said.

23 MR. ENGLE: Did you say something about the
24 week before to the officer in Detroit?

25 THE WITNESS: No.

1 MR. ENGLE: So this is the statement you made
2 and this is what you remember being said?

3 THE WITNESS: Yes.

4 THE COURT: Okay, bring in the jury.

5 MS. REZMIERSKI: Can he just remain there,
6 your Honor?

7 THE COURT: Yeah, just --

8 MS. REZMIERSKI: Thank you.

9 MR. BRANDT: Is he staying with the
10 transcript?

11 MS. MCKINNIE: Yeah.

12 MR. PERLOS: I got it.

13 MS. MCKINNIE: Al, yes, he's staying with the
14 transcript.

15 MS. REZMIERSKI: Yes.

16 THE CLERK: All rise for the jury.

17 (At 4:10:08 p.m., jury returned)

18 THE COURT: Please be seated.

19 Okay, Sir, if you'd state your name and spell
20 your last name for the record?

21 THE WITNESS: Dale Morgan, M-O-R-G-A-N.

22 THE COURT: Okay. Ms. Rezmierski?

23 MS. REZMIERSKI: Thank you, your Honor.

24 DIRECT EXAMINATION

25 BY MS. REZMIERSKI:

1 Q Mr. Morgan, do you know Cortez Butler?

2 A Yes.

3 Q How do you know him?

4 A I grew up with him.

5 Q So you've known him a long time?

6 A Yes.

7 Q In December of 2014 did the two of you get into an argument
8 about a cell phone?

9 A Yes.

10 Q Did you tell him something along the lines of, "When we're
11 done talking take the battery out of the cell phone"?

12 A No, I told him to take the cell -- battery out of my cell
13 phone.

14 Q And how did he respond to you when you said that?

15 A He told me to shut the fuck up, he knew what he was doing,
16 he had just got done chopping the Bitch up in Jackson.

17 Q All right, so I'm having a little bit of a hard time hearing
18 ya. Can I trouble you to lean forward a little bit?

19 A He said, "Shut the fuck up, I know what I'm doing, I just
20 got through chopping the Bitch up in Jackson."

21 Q Cortez Butler here in court?

22 A Yes.

23 Q Where is he?

24 A Sitting next to his attorney.

25 Q Okay, right here?

1 A Yes.

2 MS. REZMIERSKI: Your Honor, the record
3 reflect the witness has identified the defendant, Cortez
4 Butler.

5 THE COURT: It'll so reflect.

6 MS. REZMIERSKI: Thank you. Nothing further.
7 Thank you, Mr. Morgan.

8 THE COURT: Any questions?

9 CROSS-EXAMINATION

10 BY MR. ENGLE:

11 Q I believed you indicated to the prosecutor this was December
12 of 2014?

13 A Yes.

14 Q And the statement was, "Shut the fuck up, I know what I'm
15 doing, I just chopped the Bitch up in Jackson"?

16 A No, "I just chopped a Bitch up in Jackson."

17 Q "A Bitch in Jackson."

18 THE COURT: Anything?

19 MR. PERLOS: No, Judge.

20 THE COURT: Okay. You can take him out.

21 (At 4:12:37 p.m., witness excused)

22 THE COURT: Okay --

23 THE DEPUTY: Your Honor, is he released from
24 his subpoena?

25 THE COURT: Yes.

1 THE DEPUTY: Thank you.

2 MS. REZMIERSKI: Thank you for asking that.
3 Sorry.

4 THE DEPUTY: Yep.

5 THE COURT: The next witness is -- the next
6 two witnesses are gonna be quite lengthy. It's been a long
7 week so we're gonna break. 8:30 Monday a problem for
8 anybody? Go home, try and relax. Don't read the paper,
9 don't talk to anyone about the case and we'll see you back
10 here -- oh, keep an open mind too because you haven't heard
11 everything yet and we'll see you back here at 8:30 Monday.

12 THE CLERK: All rise for the jury.

13 (At 4:13:38 p.m., jury excused)

14 THE COURT: (Inaudible)-- for the day, folks.

15 (At 4:14:13 p.m., hearing concluded)
16

CERTIFICATION

This is to certify that the attached electronically recorded proceeding, consisting of one hundred and ninety-four (194) pages, before the 4th Judicial Circuit Court, Jackson County, Michigan:

PEOPLE OF THE STATE OF MICHIGAN

v

CORTEZ ANTONIO BUTLER and
CLIFFORD DURELL MCKEE and
RODNEY JAMAR MCKEE

_____ /

Location: Circuit Court

Date: Friday, April 1, 2016

was held as herein appeared and that this is testimony from the original transcript of the electronic recording thereof, to the best of my ability.

I further state that I assume no responsibility for any events that occurred during the above proceedings or any inaudible responses by any party or parties that are not discernible on the electronic recording of the proceedings.

\s/ Sally Fritz
Sally Fritz, CER #7594
Certified Electronic Recorder

Dated: November 6, 2016

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STATE OF MICHIGAN

4TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF JACKSON

PEOPLE OF THE STATE OF MICHIGAN

v

CORTEZ ANTONIO BUTLER
and
CLIFFORD DURELL MCKEE
and
RODNEY JAMAR MCKEE,

File No. 2015-2789-FC

File No. 2015-2787-FC

File No. 2015-2789-FC

Defendants.

JURY TRIAL - VOLUME VI of IX

BEFORE THE HONORABLE THOMAS D. WILSON, CIRCUIT COURT JUDGE

Jackson, Michigan - Monday, April 4, 2016

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TABLE OF CONTENTS

WITNESSES: PEOPLE

DET. JOSEPH MERRITT	
Direct Examination by Ms. Rezmierski	16
Cross-Examination by Mr. Engle	41
Cross-Examination by Mr. Perlos	64
Cross-Examination by Mr. Brandt	73
Redirect Examination by Ms. Rezmierski	85
Recross-Examination by Mr. Engle	100
DET. ANDREW SULLIVAN	
Direct Examination by Ms. Rezmierski	105
Cross-Examination by Mr. Engle	181
Cross-Examination by Mr. Perlos	205
Cross-Examination by Mr. Brandt	207
Redirect Examination by Ms. Rezmierski	215
Recross-Examination by Mr. Brandt	216

WITNESSES: DEFENDANT

None

OTHER MATERIAL IN TRANSCRIPT

Motions For Directed Verdict	162

<u>EXHIBITS:</u>	<u>INTRODUCED</u>	<u>ADMITTED</u>
PX-2 Timeline	109	---
PX-3 Defendant Photo Chart	110	---
PX-190 Victim's Front Phone Case	156	156
PX-191 Victim's Front of Cell Phone	156	156
PX-192 Victim's Back of Phone Case	156	156
PX-193 Victim's Back of Cell Phone	156	156
PX-195 Zip Ties	156	156
PX-214 Rodney McKee Cell Phone	157	157
PX-215 Rodney McKee Cell Phone	157	157
PX-226 Overlay of Timbercrest Trail	119	119
PX-227 Zip Ties Found Under Bed	157	159
PX-228 Scarf Found in Victim's Mouth	159	159
PX-229 Donna Marshall Phone Report	159	160

1 Jackson, Michigan

2 Monday, April 4, 2016 - 9:03:08 a.m.

3 THE COURT: Please be seated.

4 Mr. Engle, whenever you're ready.

5 MR. ENGLE: Your Honor, a few things have
6 come up that I think I have to make motions in regard to.
7 At the time of the grand jury hearing Ms. Rezmierski, at
8 page 19, said -- addressing the court she said, "I
9 specifically avoided previously getting into this area of
10 the detective's testimony and I did it because at the time I
11 wasn't convinced it would be admissible." And she's talking
12 about where, prior to that on page 19 she says, "And, your
13 Honor, before I questioned the witness I just want to play
14 something on the record for the court." And then gets into,
15 I specifically avoided previously getting into this area of
16 the detective's investigation and his testimony and I did it
17 because at the time I wasn't convinced it would be
18 admissible in evidence against anybody. I have had the
19 opportunity to do some research," and she goes through the
20 research and says, "So the guy who's DNA was found on the
21 zip strip and that you heard from previously who's already
22 gone back to prison for his second murder conviction now,
23 it's an interview with him. And my opinion -- my position
24 is that it will be a statement against interest." And she
25 goes through some legal issues.

1 "I have been concerned previously that it
2 would violate the confrontation clause," and again go
3 through legal issues.

4 But the statement is that she's playing
5 something for the court as to this interview on the 16th,
6 which, at the testimony on the hearings that we had, the
7 testimony was that there was no tape of that statement on
8 alleged statement on the 16th. If there is a tape,
9 certainly it's something we should have had well before this
10 situation, and her statement at the grand jury is that there
11 is a tape of that.

12 I'm at a loss. And if -- I certainly, as our
13 first motion, want a copy of what -- not only a copy, but we
14 have to have that and I think I have to have it before
15 proceeding any further since it is the alleged confession of
16 my client.

17 THE COURT: Response?

18 MS. REZMIERSKI: I truly have absolutely no
19 idea what he's talking about. If I ever referenced there
20 being a tape, it was in complete and utter error. If he
21 could perhaps point me to where I referenced there was a
22 tape?

23 MR. BRANDT: Katie, the October 5th, it's the
24 second day of grand jury.

25 MS. REZMIERSKI: Right, I know.

1 MR. BRANDT: Okay. You recall Sullivan to
2 the stand.

3 MS. REZMIERSKI: What page?

4 MR. BRANDT: Page 19 --

5 MS. REZMIERSKI: Yeah. I specifically
6 avoided previously getting into this area of the detective's
7 investigation and his testimony --

8 MR. BRANDT: No, the paragraph above.

9 MS. REZMIERSKI: And, your Honor, before I
10 question the witness I just want to play something -- place
11 --

12 MS. MCKINNIE: Place --

13 MR. BRANDT: That's what it says --

14 MS. REZMIERSKI: -- that's what it should be.

15 MR. BRANDT: -- "play."

16 MS. MCKINNIE: Yeah, she said place.

17 MS. REZMIERSKI: That's what it says, but --

18 MR. BRANDT: It says "play" --

19 MS. REZMIERSKI: -- there is no -- no playing
20 of anything anywhere.

21 MR. BRANDT: But you understand what --

22 MS. REZMIERSKI: That's a transcriptionist
23 error.

24 MR. BRANDT: But you understand why it looks
25 -- it's -- because what we get is "play".

1 MS. REZMIERSKI: Okay, fair enough. There is
2 no recording, Judge.

3 MR. ENGLE: Your Honor, how the statement
4 goes on to say, however, it seems to, throughout the rest of
5 that argument of putting that in, it seems to indicate that
6 there is some sort of recorded statement of December 16th,
7 which would present a real problem.

8 THE COURT: Yes, it would. But you're saying
9 that you want to "place" something on the record?

10 MS. REZMIERSKI: Indeed. That's what I was
11 saying. I suppose if we absolutely have to we could re-play
12 that portion of that hearing from Judge McBain's recorded
13 system. I mean, I don't know what to tell you, Judge.
14 There is no recording. Never has been a recording.
15 Honestly, I kinda wish there was a recording, make my job a
16 little bit easier. Probably make everybody's jobs a little
17 bit easier. I mean, unless you're willing --

18 THE COURT: And they typed it as "play"
19 instead of "place"?

20 MS. REZMIERSKI: Apparently so. I've never
21 even paid attention to that portion of the transcript. I
22 did not play anything for the record.

23 Close to the bottom. I mean, Judge, you
24 could read the whole rest of the transcript, and obviously,
25 nowhere on the transcript does it say I stuck a disk into

1 something and turned it on and it played. The use of the
2 preposition is illustrative, it says "play something on the
3 record." If I were going to play something I would play it
4 for the record. If I were going to place something, I would
5 place it on the record, which is what it says on the record.

6 MR. ENGLE: I see the court is reading that
7 your Honor, but my copy of the grand jury statement says
8 "play," P-L-A-Y something on the record.

9 MS. REZMIERSKI: So I mean, here's the deal
10 unless you're willing to find that I am lying to the court,
11 as an officer of the court, then there wasn't anything to
12 play.

13 MR. ENGLE: It also refers to, it's an
14 interview with Cortez Butler, it's an interview with him and
15 it does refer to the fact that Cortez has already been sent
16 back to Wayne County, or prison, I forget which, and the
17 statement unfolds on page 21, they literally tell him during
18 their interview with him, "Well, we're not going to use this
19 against you, okay?" But it just seems to go on that there
20 is something played, or will be something played for the
21 court. That's one of the problems with the grand jury
22 rather than a preliminary examination.

23 I'd just note, your Honor, that it certainly
24 is there and certainly the rest of that sentence indicates
25 there is something to play, or play. One of the two.

1 I do also indicate, your Honor, at the top of
2 page 21 it says, "I argue it's non-testimonial because
3 you'll hear the statement unfold. They literally tell him
4 during the interview that we are not going to use this
5 against you."

6 THE COURT: Well --

7 MS. REZMIERSKI: From the testimony of the
8 detective, which followed all of which I placed on the
9 record.

10 THE COURT: Okay, I went through the rest of
11 it, there was no tape played.

12 MR. ENGLE: Then I have a couple other
13 motions, your Honor, but that's all --

14 THE COURT: So your motion as far as that,
15 there's -- it appears that "place on the record" instead of
16 "play," and it was typed out "play," and I agree with you,
17 if you read that page or so it looks like something was
18 going to be played, but then I read through the rest of it
19 and it's all testimony. There's nothing ever played.

20 MR. ENGLE: Well, I can only indicate that
21 that --(multiple speakers)--

22 THE COURT: So if you're referencing avoiding
23 --(multiple speakers)--

24 MR. ENGLE: -- that's what was there, your
25 Honor, and certainly --

1 THE COURT: Well, I understand, Mr. Engle,
2 you have to make the motion because it does say "play"
3 instead of "placed" on the record, but that appears to be
4 typo, because as I read the next 20-something -- 26 pages
5 til he's done, there's no reference of a --(multiple
6 speakers)--

7 MR. ENGLE: Your Honor, my client wants to
8 make --

9 THE COURT: -- tape after that.

10 MR. ENGLE: My client wants to make sure that
11 we place on the record that all of page 20, 21, 19, all of
12 those pages from the grand jury testimony go to that issue.

13 THE COURT: Okay. It's noted but I don't see
14 anything about a tape after that reading it.

15 MR. ENGLE: My client also wanted me to place
16 on the record, your Honor, continuing motion for mistrial --
17 or second motion for mistrial. Mr. Morgan testified, and he
18 -- we had that separate hearing but one of the other places
19 he testified was under oath in Detroit at the preliminary
20 examination, and when asked about the phone and about
21 talking to Mr. Butler, he says Mr. Butler answered the
22 phone, he does answer the phone, I asked where my phone was
23 and he says, "In your truck. I took the battery out of it,"
24 and this is what they were arguing about at the time. And
25 he says, "Okay." It's not like you said in the second

1 statement when you asked him about the phone and your claim
2 was that Mr. Butler said, "I've already got the phone out,
3 and he says, "Wrong." Both things, both statements, "I told
4 him to take the battery out, where's the phone?" "The phone
5 is in the car, I took the battery out." He never, when
6 mentioned -- when asked about directly and indirectly on
7 what was said, he never mentions in Detroit that he says
8 anything -- or my client says anything about, "Shut up, I
9 just about took that Bitch's head off in Jackson."

10 We would note that I did not ask about this
11 because I think it may have brought in the second degree
12 murder, but it is again a problem with Mr. Morgan. We think
13 Mr. Morgan was lying and we think that -- my client believes
14 the prosecutor even knew he was lying. This sworn testimony
15 in Detroit differs dramatically from what it is here. And
16 again, it was -- we are kind of hamstrung by the issue that
17 the testimony in Detroit is about a murder case that has
18 nothing to do with this case.

19 THE COURT: Right.

20 MR. ENGLE: But it again is a problem in
21 cross-examining Mr. Morgan and we would ask for a mistrial.
22 I'm not so sure that all of that shouldn't have been brought
23 out, but I don't know how to do it without opening the door
24 to the issues --(inaudible)-- the issue of murder --

25 THE COURT: Response?

1 MS. REZMIERSKI: Judge, my assumption, the
2 reason that Mr. Morgan didn't testify about him saying,
3 "Man, shut the fuck up, I know what I'm doing, I just got
4 done chopping a Bitch up in Jackson," in the prelim for the
5 Detroit murder case is because he was likely under the same
6 order in that case as he was under here, which is to not
7 have information about either one muddy up the record when
8 you're on the record for the other one.

9 You've already ruled on the issue. He was
10 allowed to testify, that piece is done. Certainly no
11 grounds for a mistrial.

12 And as a matter of fact, one of the things
13 that I wanted to make sure that we placed on the record here
14 this morning was just to make it clear that the court has
15 been, I feel, more than fair to Mr. Butler. And I get that
16 -- that you have the -- the legal reasons behind your
17 rulings, but I was not allowed to ask Dale Morgan some other
18 things that Mr. Butler said to him, including when they were
19 in court for the preliminary examination on the Detroit
20 murder and Dale Morgan says to Cortez, "You know, I just got
21 talked to by some Jackson detectives, you know, what's going
22 on with that?" And then Mr. Butler says to Mr. Morgan,
23 "Man, I got bodies in Grand Rapids, Flint, Ohio and Jackson.
24 They ain't got shit on me." I wasn't allowed to use that
25 because the court found that to be too prejudicial, as well

1 as I was not allowed to follow up with Mr. Morgan on his
2 beliefs and opinions that Mr. Butler is, indeed, a hitman,
3 and the reasons why.

4 So I think the court has been more than fair
5 with Mr. Butler regarding all of the things we could have
6 gotten into with Mr. Morgan. Thank you.

7 MR. ENGLE: Your Honor, I think this is an
8 ongoing issue. I think that Mr. Morgan didn't belong in
9 this case to begin with. What he had to say can't be
10 trusted. The problem is, he can't be cross-examined
11 properly, and what he had to say and the other stuff he has
12 to say all would wind up with a different murder charge
13 coming in. I know it would wind up with us trying three or
14 four other alleged murders that they were going to say, or
15 -- and still want to say, if my client takes the stand, and
16 that's another motion we are gonna have to argue before I
17 even make an opening statement as to what cross-examination
18 is going to be allowed.

19 And I -- you know, it's an issue that is
20 creating a real hamstring here that makes it almost
21 impossible, because I can see now that Ms. Rezmierski's
22 gonna want to raise in any way she can the idea that Mr.
23 Butler had something to do with murders elsewhere. Again,
24 we do not have the detectives to verify that. We don't have
25 anything to verify that. And without that, I don't think it

1 can be raised, period.

2 I think that we are at the point where there
3 is a issue as to whether this jury has already been
4 prejudiced by Mr. Morgan's testimony in a way that it is
5 just not something we can get rid of.

6 Yeah, he's -- my client was also worried that
7 he had -- obviously was in prison garb when he got here with
8 the appearance that apparently he got convicted of something
9 that was -- also my client was part of, although his
10 conviction was never raised, I don't think it was brought up
11 time or ever anything of that nature.

12 But we do object. We do think there has been
13 a mistrial in this matter and would ask for a mistrial at
14 this point in time.

15 THE COURT: Go ahead.

16 MS. REZMIERSKI: Anytime a defendant
17 confesses it's going to be prejudicial. That's the whole
18 point of bringing it in. You know, and the fact that --

19 THE COURT: That -- that issue goes to
20 weight, not admissibility.

21 MS. REZMIERSKI: Which issue?

22 THE COURT: When he testified.

23 MS. REZMIERSKI: I agree. And the fact that
24 they have to tippy toe around other things that you have
25 ruled to be inadmissible is one guy's fault. One guy in

1 here has so many murders and so many bodies that it's
2 difficult to keep track of. That's not my fault, that's not
3 your fault, that's not Mr. Engle's fault, that's Mr.
4 Butler's fault. We are doing our level best to navigate
5 through this and keep it fair and not unduly prejudicial.
6 Thank you.

7 THE COURT: Well, with regard to his
8 statements, I ruled they were coming in. I limited it, I
9 gave Mr. Engle a chance to check for the inconsistency ahead
10 of time, nobody here, your motion's denied.

11 MS. REZMIERSKI: Thank you.

12 MR. BRANDT: Can I approach, your Honor, just
13 briefly? It has nothing to do with --(inaudible).

14 (Bench Conference held from 9:30:32 a.m. to
15 9:30:57 a.m.)

16 THE COURT: Anybody has any -- gentlemen --
17 (inaudible)-- go use the restroom? Oh, he's back. Okay,
18 might as -- anybody that's got to use the bathroom you
19 better use it quick because we're gonna go for an hour and a
20 half or so and...

21 THE CLERK: All rise.

22 (At 9:31:16 a.m., hearing recessed)

23 (At 9:38:28 a.m., hearing resumed)

24 THE COURT: Okay, bring in the jury.

25 THE CLERK: All rise for the jury.

(At 9:40:16 a.m., jury returned)

THE COURT: Please be seated.

Next witness.

MS. REZMIERSKI: Call Detective Merritt.

THE COURT: Do you swear to tell the truth,
the whole truth and nothing but the truth so help you God?

MR. MERRITT: I do, your Honor.

JOSEPH MERRITT

(At 9:41:00 a.m., witness sworn, testified as follows):

THE COURT: Please state your name, spell
your last name for --(inaudible).

THE WITNESS: Detective Joseph Merritt, M-E-
R-R-I-T-T.

THE COURT: (Inaudible).

MS. REZMIERSKI: Thank you, your Honor.

DIRECT EXAMINATION

BY MS. REZMIERSKI:

Q Detective, where do you work?

A Blackman Township Department of Public Safety. I'm a
detective there. I've been a detective for about four
years.

Q How long have you been with Blackman?

A About 13 years, 13, 14 years, right in there.

Q Are you a member of what we call the Jackson County Major
Crimes Task Force?

1 A I am.

2 Q Your department is -- is a member of that task force,

3 correct?

4 A Yes.

5 Q Did you become involved in the investigation into the murder

6 of Frances Craig?

7 A I did.

8 Q As part of your role in that investigation did you have

9 occasion to interview somebody named Clifford McKee?

10 A Yes.

11 Q Is he here in court?

12 A He is.

13 Q Where is he?

14 A He's seated at defense counsel table wearing a plaid tie and

15 a white button-down shirt.

16 Q All the way around the end here?

17 A Yes.

18 Q Okay.

19 MS. REZMIERSKI: Your Honor, the record

20 reflect that the witness has pointed to and identified the

21 defendant, Clifford McKee.

22 THE COURT: It'll reflect.

23 MS. REZMIERSKI: Thank you.

24 BY MS. REZMIERSKI:

25 Q That was on December 11th, 2014, does that sound right?

1 A Yes.

2 Q Okay, where did that take place?

3 A That interview took place at Jackson County Sheriff's Office
4 in their interview room.

5 Q Was anybody else with you when you conducted that interview?

6 A Yes, Detective/Sergeant Bryan Huttenlocker was there for the
7 majority of that interview.

8 Q Detective, did you advise Mr. McKee of anything prior to
9 speaking to him?

10 A I apologize.

11 Q Did you advise him of anything prior to talk to him?

12 A I read him his Miranda rights, advised him of those rights
13 and ultimately he waived those rights and agreed to speak
14 with me.

15 Q (Inaudible).

16 A Thank you.

17 Q You're welcome. As a part of that interview and that
18 interaction did you ask Mr. McKee if he knew someone named
19 Cortez Butler?

20 A Yes.

21 Q And at that point the task force had Mr. Butler's first set
22 of thumb records, correct?

23 A Yes.

24 Q Just this sort of call detail log that talked about what
25 numbers he'd been in contact with and enabled somebody to

1 say where that phone was at certain times, correct?

2 A Yes.

3 Q And did we also as a part of the task force at that point

4 have Clifford McKee's very first set of call detail logs as

5 well?

6 A I'm not -- I'm not a hundred percent sure exactly what

7 detail of his call logs or records we had, but we had some

8 information back regarding Clifford McKee's phone as well.

9 Q So when you asked him if he knew Cortez Butler what did he

10 say to you?

11 A "No."

12 Q Is that surprising to you?

13 A Yes.

14 Q Why?

15 A Because there were a plethora of contacts going back and

16 forth between Mr. Butler and Mr. Clifford McKee.

17 Q So did you follow up on that at all?

18 A Yes.

19 Q How so?

20 A Once we got to the point where there was no acknowledgment

21 of whom Mr. Butler was I asked, and ultimately showed, Mr.

22 McKee a photograph of Mr. Butler and Mr. McKee took a look

23 at the photograph and was able to identify that he did, in

24 fact, know him prior to when I was speaking with Mr. McKee.

25 Q And did you ask him if he knew him well or not well, if he

1 spent time with him?

2 A He indicated that they had spent time together.

3 Q Did you talk to him about traveling back and forth to
4 Jackson at all?

5 A I did. Well, I talked with Mr. McKee very broadly about
6 whether or not he had come to Jackson, about how many times
7 he had come to Jackson in the months prior to the interview.
8 I included the time frame of the homicide of Frances Craig.
9 Mr. McKee indicated that he had, excuse me, come to Jackson.
10 We settled on a number of around 10 times within the time
11 frame from the date of my interview back to a time that
12 preceded the homicide. I asked Mr. McKee if he had traveled
13 with -- or whom he had traveled to Jackson with, if anybody.
14 He indicated that he had traveled with a female and I
15 believe it was a child at one point. I asked Mr. McKee if
16 had ever traveled with any males, Mr. McKee indicated that
17 he did not like to spend time with men and he did not travel
18 with any men to Jackson at any time.

19 Once Mr. McKee had indicated that he had not
20 traveled to Jackson with any men and once he had, excuse me,
21 once he had indicated that he had no knowledge of whom Mr.
22 Butler was, the first step was, I had shown him a picture of
23 Mr. Butler and he indicated that he did know Mr. Butler and
24 that he and Mr. Butler had spent time together, and after
25 that I showed Mr. McKee kind of a video mapping where Mr.

1 McKee's phone and Mr. Butler's phone traveled down the
2 highway together on at least one occasion indicating that
3 they were clearly together traveling down I-94 at one time

4 Mr. McKee quickly decided that he did not
5 want to continue talking on that day. He indicated that he
6 would come back and talk to me the next day, however, he did
7 not wish to continue to be interviewed and we ultimately
8 ended the interview on that particular day.

9 Q And he was free to leave and he left at that point --

10 A Yep.

11 Q -- fair to say?

12 A Yes.

13 Q Did he come back to talk to you the next day?

14 A No, he did not.

15 Q Now let's move to someone named Cortez Butler. Did you
16 interact with and interview someone named Cortez Butler as
17 part of your role in this case?

18 A I did.

19 Q Did that happen on December 16th, 2014?

20 A Yes. It -- there were two different interviews.

21 Q Fair enough. You were a part of more than one interaction
22 with him?

23 A Yes.

24 Q Was the first time that you interacted with him on December
25 16th, 2014?

1 A Yes.

2 Q Sorry to not have been specific. I appreciate that.

3 A That's okay.

4 Q Is Mr. Butler here in court?

5 A He is.

6 Q Where is he?

7 A He's seated in about the middle of the defense table wearing
8 a striped multi-colored blue short sleeve Polo shirt with a
9 undershirt, long sleeved white undershirt.

10 MS. REZMIERSKI: Your Honor, the record
11 reflect the witness has pointed to and identified the
12 defendant, Cortez Butler.

13 THE COURT: It'll so reflect (ph).

14 MS. REZMIERSKI: Thank you.

15 BY MS. REZMIERSKI:

16 Q Where was he when you interviewed him on December 16th,
17 2014?

18 A He was in jail.

19 Q That was in Wayne County, correct?

20 A Yes.

21 Q Was anyone with you when you interacted with him that day?

22 A Detective Andrew Sullivan.

23 Q What was the purpose for the two of you going to interact
24 with him that day?

25 A In the time very recent prior to the interview we had

1 learned and had confirmation that Mr. Butler's DNA was
2 located on zip ties that were found at the scene of the
3 homicide of Frances Craig. Our information at that time
4 obviously told us one thing, that in some facet, in some
5 way, somehow Mr. Butler was connected to the zip ties that
6 were connected to the homicide.

7 We had primarily two reasons for going and
8 having contact with Mr. Butler on that day. One was as part
9 of procedure, we have to collect a confirmation swab from
10 Mr. Butler to compare to the DNA hit that was located on the
11 zip ties. That was reason number one.

12 Reason number two, excuse me, was at the time
13 of our contact with Mr. Butler, Mr. Butler was still -- none
14 of these individuals were the focus of our investigation.
15 The focus of our investigation still was the fiancé of
16 Frances Craig being Eric Wolfe. Mr. Wolfe was having some
17 communication and some contact and it was clearly gearing up
18 to go in the direction of there was a child that was
19 potentially a witness in some facet to the homicide that was
20 going to come back into contact with Mr. Wolfe.

21 We were very motivated to try and keep Mr.
22 Wolfe away from this child as he was our prime suspect in
23 the homicide. The information that Mr. Butler would
24 hopefully have would potentially shed some light on some
25 further circumstances and hopefully give us some information

1 that would be helpful in us potentially keeping that child
2 in a safe environment.

3 Q So you guys are there still think Eric Wolfe is prime
4 suspect?

5 A Absolutely.

6 Q Did you advise him of anything prior to talking to him?

7 A He was advised of the reason we were there, which was to
8 collect his DNA, and there was a time that Detective
9 Sullivan attempted to read Miranda to Mr. Butler. Mr.
10 Butler was not interested in having us read Miranda to him,
11 he advised us -- he said something to the effect of, "Bro, I
12 know my rights, Bro," and kinda leaned back away from the
13 table. Kinda disengaged a little bit as well as indicated
14 to us that he was very clear on what his Miranda rights were
15 and I took that to be an accurate statement.

16 MR. ENGLE: Your Honor, for the record, I
17 would just have it reflect that we still reserve the
18 objections we have made --

19 THE COURT: Noted.

20 MR. ENGLE: -- in this regard.

21 MS. REZMIERSKI: Thank you.

22 BY MS. REZMIERSKI:

23 Q Did you follow up and say anything else to him before he
24 started to talk to you?

25 A Yeah, there were a couple of issues that we had discussed

1 prior. The first issue was, we had advised -- well, I had
2 advised Mr. Butler that we were there -- basically I had
3 discussed with him, to paraphrase, about the child, about
4 keeping the child safe, about us needing information to try
5 and continue to keep this child in a safe environment.

6 And the next thing that we had talked about
7 was the fact that it became obvious to me that Mr. Butler
8 was concerned with whether or not we were recording the
9 interview.

10 Q Why do you say that? Why was that obvious?

11 A Well, as I was talking to Mr. Butler about telling him some
12 of the reasons or what the reasons were we were there, he
13 broke eye contact with me and he, at one point, looked at
14 Detective Sullivan's phone and then he was looking around
15 kinda looking me up and down and then I actually had a
16 backpack with me at the time, he was very focused on the
17 backpack, and I was able to conclude that what he was doing
18 was looking to determine whether or not we were
19 memorializing what his testimony was through a recording,
20 say an audio recording. So I indicated to him that we were
21 not in any way recording the interview and that I was not
22 intending to use anything that he had to say against him.

23 Q Now why would you say that?

24 A Well, we were there to talk with him about this little girl.
25 I had no information when I walked in, I had no -- none of

1 the information that Mr. Butler gave us when I walked out.
2 I didn't walk in with any of that information. We were
3 there intending to talk with him about the DNA on the zip
4 the zip ties, because we did know that was there, and we
5 were there to talk with him about the -- any facet that we
6 could pursue to keep this little girl away from our prime
7 suspect.

8 Having said that, I didn't know what he was
9 gonna tell me so I told him I wasn't intending to use
10 anything he said against him because I had no idea what he
11 was going to say.

12 Q And then when you said that were you lying to him? Did you
13 lie?

14 A No.

15 Q In your mind how is that not a lie?

16 A Well, if I said, "I'm not going to use anything you say
17 against you," or, "I don't intend to use anything you say
18 against you," or, "I will not use anything you say against
19 you," that's a direct definitive black and white statement.
20 "I'm not intending to use anything you say against you" is
21 real time, right then as we sit there. It was very
22 methodically selected what it was exactly that I was gonna
23 say to him, because I wanted to portray to him that I didn't
24 know what he was gonna say but as I sat there I wasn't
25 intending to use anything that he had said against him based

1 on what we were there for.

2 Q I mean, and let's break it down, are you allowed to lie to
3 suspects when you interview them?

4 A Yes.

5 Q I mean, the law allows you to do that, right?

6 A Yes.

7 Q Do you make a habit of doing that?

8 A No.

9 Q You personally?

10 A No.

11 Q Why not?

12 A I'm not gonna say I never have, but it's not something that
13 I make a habit of. It's, frankly, two-fold: number one, I
14 -- I feel like when you lie it looks bad. I feel like it --
15 it looks bad when you tell a lie to get to a certain place,
16 number one. Number two, the other reason is because if I
17 tell a lie to an individual in an interview, say, for
18 instance, I say, well, I have your fingerprints on that bag
19 and the individual knows that they wore gloves and they just
20 caught me in a lie, I have absolutely no credibility with
21 them whatsoever.

22 Just like when they lie to me they have no
23 credibility with me as well. So, telling a lie in an
24 interview is very high risk, so it's really a cost benefit
25 analysis. However, it's just not something that I regularly

1 do.

2 Q What about the whole issue of recording, were you, in fact
3 recording, or -- no?

4 A No. I offered to open my bag and show Mr. Butler that I did
5 have a recording device in my bag, however, it was not on
6 and it wasn't activated and we were in no way recording the
7 interview.

8 Q Did he, at some point, start to talk to you?

9 A Yes, he did.

10 Q Tell us about that.

11 A Mr. Butler, once we got past whether or not we were
12 recording Mr. Butler, basically started right off by telling
13 us we had it all wrong. He told us that Mr. Wolfe didn't
14 have anything to do with it, meaning the homicide, he told
15 us that that was the reason that he didn't say anything when
16 Detective Sullivan and Detective Boulter had previously
17 talked with him about trying to keep this young child safe,
18 was because he knew there was no reason for the child not to
19 be safe because the person we were looking at for the
20 homicide, in fact, did not commit it. Mr. Butler advised us
21 that he committed it.

22 Q Did he go on to describe that?

23 A Absolutely.

24 Q What'd he say?

25 A He described the fact that he had been hired to perform a

1 hit or a homicide on an individual. He did not provide the
2 name for us, he simply advised us the individual that he was
3 hired to commit a homicide on looked like a cross between
4 Ellen Degeneres and Puck from Real World on M-TV. Which I
5 was familiar with both of the individuals that Mr. Butler
6 had referenced, and he explained to us that he had been paid
7 what he called ten racks, which he further described to be
8 10,000 dollars, was the agreement. He had only been paid
9 5,000 of the 10,000 dollars, meaning half prior to the
10 homicide.

11 The problem was, excuse me, on the day
12 Frances Craig was murdered Mr. Butler responded to Frances
13 Craig's residence to kill Ryan Marshall, however, once he
14 entered the residence he was unable to locate Ryan Marshall.
15 He was -- he did very vividly describe the inside of the
16 residence and he described people that were inside the
17 residence, as well as animals that were inside the residence
18 that only an individual who, in fact, was inside the
19 residence would have known about.

20 Mr. Butler advised that he searched the
21 residence and was unable to locate Mr. Marshall and
22 ultimately went into the master bedroom where he woke
23 Frances Craig up and was interrogating her about where Mr.
24 Marshall was. He, meaning Mr. Butler, tried to restrain her
25 as well as cover her face, however, Mr. Butler said she kept

1 moving in a manner that he felt that she was able to see
2 him, so he murdered her.

3 Q Did he tell you who hired him and who contacted him?

4 A He -- he did tell us who it was that contacted him. He did
5 tell us -- or describe to us whom he had been hired by and
6 he did describe instances where he had met with both
7 individuals in Jackson prior to the homicide.

8 Q So tell us about that, who was he contacted by, who was he
9 hired by, what'd he say?

10 A Well, he indicated that he was contacted by Clifford McKee
11 who needed a hit performed for Rodney McKee on an individual
12 who was going to be testifying against Rodney in an upcoming
13 criminal case.

14 Q So let me stop you for a moment. Did he use those names,
15 Clifford McKee and Rodney McKee?

16 A No, he did not.

17 Q What -- what identifiers did he use to describe these
18 people?

19 A He described -- he described Clifford, I believe it was by
20 the name Dorito Johnson, I believe, which is an alias, and
21 he described Rodney McKee -- I can't recall what the
22 nickname was or what the street name was that he used for
23 him. I was not familiar with whom Rodney McKee was, so I
24 asked for some clarification by a physical identifier. I
25 was not aware that Mr. -- or that Detective Sullivan was

1 aware with who -- aware of who Rodney McKee was, so I was
2 trying to see if there could potentially be a little bit
3 more of a physical description. Mr. Butler described Mr.
4 McKee as being a very, very large man, 6'6", 6'7" and about
5 400 pounds.

6 Q Did he tell you whether or not there was any kind of a
7 relationship between Dorito Johnson and this guy who needed
8 the hit for a witness in his case?

9 A I believe he talked about them being related but I don't
10 remember if he knew exactly what the relation between the
11 two was or not. I can't recall.

12 Q Okay.

13 A Excuse me.

14 Q I believe you said he talked to you about traveling to
15 Jackson or meeting with them in Jackson, did I hear that
16 right?

17 A Yes.

18 Q Tell us what he said about that.

19 A He had said that initially, when he was contracted to
20 perform the hit or the homicide that he traveled with
21 Clifford McKee to Jackson and met with Rodney McKee. He
22 didn't -- he wasn't familiar with streets or particular area
23 of Jackson that they met in, but he described them being
24 near a factory, which there are a lot of factories in
25 Jackson, so it didn't really narrow down an area, but he did

1 offer up some very important information and he described
2 that the subject that he met with and was ultimately paid
3 the 5,000 dollars up front by had traveled in a white SUV.
4 Again, not knowing who Rodney McKee was at the time, the
5 information really didn't matter a whole lot to me because
6 didn't know whom Mr. Rodney McKee was. Afterwards, once I
7 had found out who Mr. McKee was, it made more sense because
8 Rodney McKee owned a white SUV. So, it was just a small
9 detail that was able to help us confirm whom exactly it was
10 that Mr. Butler had met with.

11 Q So you didn't know Rodney McKee at the point that you're
12 getting all this information or real time?

13 A No.

14 Q No idea who he was?

15 A No, none.

16 Q Any idea about any kind of a case pending against him, an
17 arson, anything like that at all?

18 A Well, at the time that Mr. Butler gave the information, yes
19 and no. I happened to be at work on the day that the case
20 that Mr. -- on the day of the incident that took place,
21 meaning the arson, I was actually at work and recalled
22 afterwards -- this is after we leave the interview and
23 Detective Sullivan fills me in on whom all of the people are
24 that Mr. Butler was referencing, I told Detective Sullivan
25 that I actually recalled that incident and it's kinda

1 getting ahead of ourselves, but it -- once it started to
2 come together it was very surreal, I suppose, to try and
3 wrap your head around all of these connected cases and the
4 individuals, so on and so forth.

5 Q You didn't investigate that arson though, did you?

6 A No, I did not.

7 Q Did he talk to you at all about dates when he came to
8 Jackson?

9 A He -- he didn't say on this specific date and on this
10 specific date, he referenced a couple of times in the week
11 leading up to the homicide that he had come to Jackson,
12 which was accurate because we could place him -- well, I'm
13 -- I apologize, we could place his phone here in Jackson on
14 -- on a couple of specific dates leading up to the homicide.

15 Q And forgive me if you said this already, but did he say he
16 traveled to Jackson by himself or with somebody else?

17 A There was one point that he had told us that he had traveled
18 with Clifford McKee and there was another point that he had
19 told us that he had come to Jackson to do some
20 reconnaissance, so to speak, to do some surveillance, so on
21 and so forth.

22 Q Now, when you're talking to him did you show him phone
23 records?

24 A I never showed him anything. And, in fact, I never wrote
25 anything down during the interview.

1 Q Didn't show him an arson police report?

2 A No. I didn't -- at the time of the interview I didn't --

3 was unclear about the connection that Mr. Butler was making.

4 Q Did he talk to you about how he got into that house that

5 night?

6 A Yes.

7 Q Tell us about that.

8 A One of the things that we had wanted to go over with Mr.

9 Butler was point of entry and ring out any details we could

10 that would further indicate to us not only, excuse me, that

11 he was there, but that he was, in fact the individual who

12 committed the crime. Mr. Butler advised he entered through

13 a side door of the garage and that he entered into the

14 residence and he described that there were children

15 sleeping, he described -- I can't remember which child, but

16 he described one was actually sleeping in a place outside of

17 the bedroom, outside of their bedroom, and he was -- when

18 asked, because I was aware that there was a dog, I asked

19 about the dog barking and Mr. Butler was almost kind of

20 offended that we would have thought that he would have been

21 clumsy or loud to disturb the dog and he advised us and kind

22 of scoffed at the idea that the dog woke up and let us know

23 that he was better than that, that the dog never even

24 barked.

25 Q Sorry, you said he referenced a child that was sleeping

1 outside of the child's bedroom, did I get that right?

2 A That there was a child sleeping, I believe it was in the
3 living room.

4 Q Did he talk about other children?

5 A I don't recall exactly which child was in what area of the
6 residence. I specifically recall him referencing that there
7 was a child sleeping in the living room.

8 Q Did he ever reference time, time of day, time of night?

9 A He did. Mr. Butler referenced did that when we asked him if
10 he had any idea -- I'm paraphrasing, when we had talked with
11 him about time of day, time of night, he referenced that he
12 remembered looking in the kitchen and seeing that the time
13 on the clock was 1:42 in the morning, which was very
14 important to us because that would have been directly in
15 line with being -- I want to say about a half an hour before
16 Mr. Butler's phone was back on its way to Detroit, meaning
17 his phone pinged off a tower after that 1:42 time, about a
18 half an hour after it back on 94 back towards Detroit.

19 Q I mean, did you show him that record while you were talking
20 to him?

21 A No.

22 Q Did you feed him that information in any way?

23 A No. I -- I took nothing out, had nothing I was reading
24 from, had nothing that I was showing Mr. Butler, was not
25 feeding him information. We were primarily -- it was -- it

1 was truly an interview. He was doing 80 percent of the
2 talking, I was doing 20 percent of the talking. My
3 questions were open ended, they were not closed questions.
4 Closed question, for instance, I didn't say, "Did you murder
5 Frances Craig?" That they closed question. You can only
6 answer it one of three ways: yes, no, or I don't know.

7 The information he give all just to us came
8 in they way of a free narrative. That means he's not fed
9 information, he's just freely diverging information and
10 disclosing events to us. We were asking question and
11 clarification type questions, such as time of day, time of
12 night, where did you enter the residence? We didn't say,
13 for instance, "Did you enter at the side door of the
14 garage?" We asked, "Where did you enter the residence?"
15 And he told us where it was, we didn't give him, "Did you
16 enter here, here or here, was it this time, this time or
17 this time?" It was, "What was the time, where did you
18 enter?" Those are the free narrative type questions. That
19 allows Mr. Butler to answer and respond in his own words.
20 That's not us giving him options to choose from.

21 Q Did he seem sad or remorseful, sorry when he was talking to
22 you?

23 A No, he -- quite the contrary. He almost seemed to me like
24 he wanted us to know that he had a value in society and that
25 his value was as a hitman. He wanted us to know that Eric

1 Wolfe didn't have anything to do with this, that he was
2 responsible for it, that he was the one that did it, that he
3 was paid, that he was contracted and that he was the one
4 that ultimately committed this murder and was so good at
5 doing it that the dog --(multiple speakers)--

6 MR. ENGLE: Your Honor, I'm going to object.
7 At this point this is --(inaudible)-- not an answer, this is
8 a lengthy narrative that I think --

9 THE COURT: Sustained. Go ahead.

10 MR. ENGLE: -- has to go back as question and
11 answer, not --

12 THE COURT: Next question.

13 BY MS. REZMIERSKI:

14 Q You talked a moment ago about his phone, did he talk to you
15 at all about his phone and what he did or didn't do with his
16 phone when he was there --

17 A Yes.

18 Q -- in Jackson to kill her?

19 A Yes. He had turned his phone off prior to arriving at the
20 Timbercrest residence where he committed the murder of
21 Frances Craig.

22 Q What, if anything, did he say about turning the phone back
23 on?

24 A That he had turned the phone back on on his way back to
25 Detroit and that he had, in fact, made a phone call. I want

1 to say he called his girlfriend, I believe.

2 Q Just so that we're clear, who did he say paid him?

3 A He was paid by Rodney McKee.

4 Q Did he say where Dorito Johnson was when that happened?

5 A It was the day that they had traveled there together. That
6 was the day that he was introduced to Rodney McKee, was the
7 day that he and Clifford traveled from Detroit to Jackson.
8 Clifford introduced Mr. Butler to Mr. Rodney McKee.

9 Q Did he tell you anything that he had learned from doing his
10 recon on the house?

11 A He had learned that Mr. Wolfe worked the graveyard shift and
12 I don't recall if he talked about recognizing there were
13 animals there are not, I don't recall.

14 Q Did he -- forgive me if you've said this already, did he
15 talk about binding and gagging her?

16 A He did. He talked about restraining her and he talked about
17 that he had put something over her face so that she wouldn't
18 be able to see him and that she had continued to, excuse me,
19 move and kept trying to, what he felt was look at him. He
20 also did reference the zip ties and did reference that he
21 did use those to restrain her. And Detective Sullivan asked
22 him how it was that his DNA got on them and Mr. Butler
23 seemed a little -- kinda taken back by the fact that we did
24 have the DNA on the zip ties, because he had indicated that
25 he wore gloves.

1 MR. ENGLE: Your Honor, he can testify to
2 what he said. I think the statements --

3 MR. BRANDT: Characterization.

4 MR. ENGLE: -- like "taken back," is just an
5 opinion.

6 THE COURT: Sustained.

7 THE WITNESS: He indicated that he wore
8 gloves at the time of the homicide. Detective Sullivan
9 asked him, "him" being Mr. Butler, if he was wearing gloves
10 when he put the zip ties in his pocket and Mr. Butler at
11 that point said no, that he did not have gloves on at that
12 point.

13 BY MS. REZMIERSKI:

14 Q Did he tell you what it was that he had tied around her
15 face?

16 A I don't recall what he specifically said the item was that
17 he had tied around her face.

18 Q You said he talked about his phone, did he, at any point,
19 talk about Frances Craig's phone?

20 A Yes, he did. He had told us that he took her phone with him
21 and, at some point in his travels from leaving the
22 residence, that he had discarded her phone out the window.
23 He told us -- he didn't know streets but he had told us that
24 it was relatively close to the -- to the house but it wasn't
25 like say a yard over or something like that, which ended up

1 being a key piece of information because we ultimately did
2 -- the phone was ultimately recovered in that neighborhood
3 there.

4 Q And did he tell you if he started it in one piece or if he
5 had done anything else with it?

6 A I don't recall.

7 Q Okay. As he's talking to you are you attempting to get
8 details from him to determine whether or not he's telling
9 you the truth?

10 A Oh, absolutely. One of the things that often happens when
11 we have a crime occur and media is involved is, we will only
12 -- we will hold back several details of the crime, such as,
13 in a bank robbery will hold back how much money it was that
14 was actually taken. Those are details that once an
15 interview is conducted we will try to confirm various
16 details that were never released that nobody knows about
17 through the individual who committed the crime to show as
18 confirmation this is a detail that only an individual that
19 was involved in this particular crime would have knowledge
20 of.

21 For instance, Mrs. -- or Ms. Craig's manner
22 of death or cause of death was never released to the public,
23 so we knew that she had been stabbed and we knew that she
24 had been stabbed multiple times in the neck area. That was
25 a detail which was her cause of death that was held back.

1 When we asked Mr. Butler how exactly it was that he killed
2 her, I'll never forget it, he indicated to us that he damn
3 near cut the Bitch's head off.

4 Q Thank you very much, Detective.

5 MS. REZMIERSKI: I have nothing further.

6 THE COURT: Cross?

7 CROSS-EXAMINATION

8 BY MR. ENGLE:

9 Q Detective Merritt, before this whole thing begins you
10 indicated detective Sullivan tried to read him his Miranda
11 rights.

12 A He took the form out in a manner that he was going to read
13 him the Miranda rights, yes.

14 Q Did Mr. Butler, in fact, say he was not waving his Miranda
15 rights?

16 A There was a point in time that he did tell us that he wasn't
17 waving his Miranda rights.

18 Q Did he ever change that?

19 A No.

20 Q Prior to his making any statement had you said to him,
21 "We're not going to use anything you say -- or don't
22 intend," I guess is your term, "to use anything you say
23 against you"?

24 A No, I did not say that.

25 Q What did you say exactly?

1 A I said, "I'm not intending to use anything you say against
2 you."
3 Q How many times did you tell him that?
4 A Maybe twice.
5 Q This is before his making any statements that are
6 incriminatory?
7 A Yes.
8 Q Once he starts to make statements do you ever stop him and
9 say, "Look, we better read you your Miranda rights"?
10 A No, he had already indicated that he knew them, as well as
11 he had, in fact, exercised his Miranda rights. He picked
12 and chose questions that would answer and picked and chose
13 questions that he wouldn't answer, which indicated that he
14 clearly did know his Miranda rights and he clearly was
15 exercising them.
16 Q According to you he -- was the interview recorded?
17 A I'm sorry, I did hear the first part of that.
18 Q Was the interview recorded?
19 A No, the interview was not recorded.
20 Q And were you at any other interviews with Mr. Butler?
21 A Yes.
22 Q Were any of those recorded?
23 A One was.
24 Q And would I be correct one of them was very short and just
25 boom, boom, boom, not recorded but not much was talked

1 about?

2 A Mr. Butler made the conscious decision not to talk when he
3 was being recorded.

4 Q Was there also another interview that occurred prior to this
5 --(coughing)?

6 A What do you mean by "this interview"? Can you give me a
7 date?

8 Q The -- were you present at a December 11th interview with
9 him?

10 A I was present at three interviews, I was present at the
11 interview that he confessed to the homicide, I was present
12 at a second interview where he had an attorney present where
13 he told us -- the attorney told us he didn't want to talk to
14 us, meaning Mr. Butler, and then Mr. Butler ultimately told
15 his attorney he did want to talk to us, so we talked with
16 him, and then I was at the, I believe it was January 6th
17 interview which was here in Jackson County which was the
18 recorded interview, which was the interview that Mr. Butler
19 told us that he wasn't going to talk.

20 Q At either of the other two interviews did he make any
21 statements of any great note one way or the other about this
22 crime?

23 A I guess other than when he confessed to and gave us details
24 of the homicide he committed.

25 Q No, I'm talking about December --

1 A I'm confused.

2 Q -- and the other two interviews, other than December 16th,
3 did he make any other statements about this crime?

4 A The interview that we did -- and when we went and talked
5 with him in Detroit when his attorney was there, when he
6 told us that he did want to talk to us after his attorney
7 told us he didn't, the only thing that he said was -- to us
8 that was of any value was, he indicated to us that he wanted
9 to know if either of the McKee's were aware that he had told
10 us what had happened, because his girlfriend would be killed
11 if, in fact, they knew about it.

12 Q That was -- he didn't say anything directly about what had
13 happened or what was done in the crime itself?

14 A Well, he referenced the confession and wanted to know if we
15 had, in fact, told the McKee's about it, so I guess the
16 answer to that would be yes.

17 Q Was that the recorded interview?

18 A No.

19 Q No recording was done of this interview on December 16th?

20 A No.

21 Q And you, Detective Sullivan and the defendant are the ones
22 present at that time?

23 A Which interview?

24 Q The defendant, Mr. Butler.

25 A Which interview, Sir?

1 Q December 16th.

2 A Yes.

3 Q Anybody else there?

4 A No, Sir. In fact, anytime anybody would come around Mr.

5 Butler would stop talking.

6 Q When you indicate you don't ever lie in any of these

7 interviews, would it be more appropriate to say you don't

8 ever lie about things the defendant would -- might know

9 better than you about?

10 A Well, I don't think that's accurate as to what I said.

11 Q Have you ever said that your co-defendant has told us what

12 happened, when, in fact, they haven't?

13 A You lost me.

14 Q Have you ever said -- if there's more than one defendant

15 have you ever said to them, "Your co-defendant has already

16 made a statement," when, in fact, the co-defendant may not

17 have already made the statement?

18 A I can't say that I never have. I can't think of a specific

19 instance where I have, but I wouldn't say that I never have.

20 Q You indicated you also interviewed Clifford McKee.

21 A Yes.

22 Q And that was on December 11th, so five days before the

23 principal interview with Mr. Butler?

24 A Yes.

25 Q Would I be safe to say that you also have telephone records

1 from Mr. McKee and Mr. Butler at that point in time?

2 A Yes.

3 Q Had those telephone -- you indicated you were part of a task
4 force, is that correct?

5 A Yes.

6 Q Had the task force had meetings about all of this?

7 A Yes.

8 Q In fact, was there really anything -- had any investigators
9 work been done since the CODIS hit on Mr. Butler in regard
10 to Mr. Wolfe?

11 A Yes.

12 Q What had been done in regard to Mr. Wolfe?

13 A I --

14 Q If you know.

15 A -- wouldn't be able to give you an accurate amount of time
16 but there was a concerted effort to try and determine if
17 there was a connection, if any connection at all, to -- from
18 Mr. Butler to Mr. Wolfe to Frances Craig to Jackson, for
19 that matter. The only connection we could find was to
20 Clifford McKee.

21 Q Was Mr. Wolfe's DNA also on that tie strap?

22 A No.

23 Q I believe the DNA person has already testified it was.

24 MS. REZMIERSKI: Your Honor, that's
25 absolutely a misstatement of the evidence. He specifically

1 excluded. It's on the lab report. Thank you.

2 THE COURT: That was my recollection.

3 THE WITNESS: (Coughing). Excuse me.

4 BY MR. ENGLE:

5 Q Apparently both -- apparently both Mr. McKee, and eventually
6 Mr. Butler, indicated that they knew the other person, this
7 is Clifford McKee and Mr. Butler.

8 A Yes.

9 Q How did they knew each other by nicknames or the names they
10 may have used on the internet?

11 A No.

12 Q How did they know each other by their actual names? If you
13 know.

14 A There was a point in time where Mr. McKee referenced that he
15 knew who Mr. Butler was.

16 Q By the last name Butler?

17 A He referenced that he knew who he was and he referenced that
18 they had spent time together.

19 Q Would I be correct that by the time you got to this
20 interview with Mr. Butler there was a true issue of whether
21 he was involved in the case?

22 A Are you asking me if we felt that he had been -- if he was
23 connected?

24 Q Well, you had -- you've already taken the time to interview
25 Mr. McKee before you interview Mr. Butler on the 16th, is

1 that correct?

2 A Yes.

3 Q And so you have reason to believe Mr. Butler, beyond the
4 DNA, may be involved in this case?

5 A We really didn't know how he was involved. We knew that his
6 DNA was connected to a zip strip. We had theorized about
7 multitude of reasons why his DNA would be on that zip strip.
8 For instance, he could have --

9 Q Well, I didn't ask you for instance.

10 A -- come into contact with it --

11 Q I just asked --

12 A -- in another way.

13 Q -- you -- you knew that he was involved. Had you -- but
14 you've already interviewed Mr. McKee prior to Mr. Butler?

15 A Yes.

16 Q You've already gotten the phone records, as I understand it?

17 A We had some form of records. There's a lot of records now
18 but we -- we had this much compared to now this much.

19 Q The -- what I be correct to say the interview with Mr. McKee
20 amounts to him saying that he knew Mr. Butler, that's about
21 the only thing with any evidentiary value out of the first
22 interview with Mr. McKee?

23 A No, I would not say that's correct. The fact that he denied
24 any knowledge of him when we knew there was a connection,
25 and then once we showed him a photograph, he all of a sudden

1 was tired, wished to come back the next day and never came
2 back, was probably more important than the fact that he told
3 us what we already knew.

4 Q Well, I thought you said that when you showed him the
5 photograph he said, "Oh, I know him"?

6 A I'm sorry?

7 Q I thought you said on direct that when you showed him the
8 photograph he said, "Yes, I do know him"?

9 A Showed him the photograph and he sat there and tried to
10 figure out what he was gonna do. He said, "Yes, I know
11 him."

12 MR. BRANDT: Objection.

13 MR. ENGLE: Objection, your Honor.

14 MR. BRANDT: Come on, he can't say tried.

15 MR. ENGLE: It's non-responsive.

16 BY MR. ENGLE:

17 Q I asked when you showed him the photograph did he say "I
18 know him," or something to that effect?

19 A No, that's not immediately what -- no, he did not
20 immediately say, "Oh, yeah, I know who that guy is."

21 Q How long did it take him to say it?

22 A Maybe five seconds, six seconds.

23 Q Would I be correct that you had also interviewed Dale
24 Morgan, the person that testified the other day, as early as
25 December 11th?

1 A Yes.

2 Q At the first interview on December 11th did he mention
3 anything about the statement that he gave on the stand the
4 other day?

5 A Who's "he"?

6 Q Mr. Morgan.

7 A Did he mention anything about the statement he gave on the
8 stand? I don't know what the statement was, I wasn't here

9 Q Mr. Wolfe was originally the primary suspect, is that
10 correct?

11 A Yes.

12 Q Would I be correct that even -- even into January of 2015
13 there was some dispute among members of the task force
14 whether Mr. Wolfe should be eliminated as a suspect?

15 A I'll answer that, I -- I don't know if I can give you a
16 specific date, but I can tell you, after the interview with
17 Mr. Butler there were still members of the task force that
18 felt that Mr. Wolfe was still connected in some manner to
19 this, yes.

20 Q Some things were suspicious about Mr. Wolfe immediately,
21 would that be fair to say?

22 A Yes.

23 Q He had indicated that he had -- if I'm correct, one of the
24 things that was suspect was the fact that he did not have
25 any blood on him when he was first seen by the first deputy

1 on the scene.

2 A I would not be able to testify to that. I was not at the
3 scene, I didn't observe him, I -- I apologize.

4 Q Were -- when did you become involved in the task force?

5 A In 2012.

6 Q Before the homicide?

7 A Yes.

8 Q Okay. When did you become involved in the task force --
9 task forces, for lack of a better term, dealing with this
10 crime?

11 A I don't know that I could give you a specific date.

12 Q Was it immediately or sometime down the line?

13 A Sometime down the line.

14 Q The CODIS is -- requires -- the CODIS hit requires that
15 there be an eventual second DNA taken from the suspect, is
16 that correct?

17 A Yes.

18 Q And then all you can -- would I be correct that all you get
19 at the time of the CODIS hit is really a name for a suspect,
20 if you've seen the actual CODIS hit?

21 A I can say one of the things that we get is information
22 regarding whom the profile belongs to.

23 Q The -- do you remember what time it was that you went to
24 Detroit on the 16th? Approximately.

25 A What time we left or what time the interview took place?

1 Q Time the interview occurred.

2 A I wouldn't be able to give you a specific time but I would
3 say -- I believe it was between 11:00 and 1:00. 11:00 a.m.
4 1:00 p.m., I believe.

5 Q When was -- there was an indication -- I think you indicated
6 there was a task force meeting regarding the return of the
7 first witness, Alexis Wolfe, to her father, sometime prior
8 to going to Detroit. Do you remember when that meeting was?

9 A I -- I do not remember when exactly that meeting was.

10 Q Did you collect the DNA at the time of the meeting with Mr.
11 Butler?

12 A Yes, Detective Sullivan did.

13 Q Would I be correct there was -- Detective Sullivan must have
14 started the interview with Mr. Butler then if he read him
15 his rights?

16 A There wasn't -- I don't really know that I can say there was
17 like an official, this individual started. The interview --
18 I don't even know if I can say who introduced themselves
19 first. I don't really think there was like a -- I conducted
20 the majority of the interview, I can tell you that, and
21 Detective Sullivan collected the DNA.

22 Q Was there a point at which it appeared to you that Mr.
23 Butler was starting to disengage with the two of you?

24 A No, there was not a point where he was starting to disengage
25 with the two of us. There was a point in which, when

1 Detective Sullivan took out the Miranda form that he -- he
2 kind of moved back away from the table and said, "Bro, I
3 know my rights, Bro." Like he was not interested in going
4 through Miranda.

5 Q You didn't feel like he was disengaging from the
6 conversation at that point?

7 A I felt like he was disengaging from the portion about us
8 reading him Miranda, so I guess you could say he was
9 disengaging from the conversation as it pertained to that.

10 Q Is that the point at which you intervened and told him that
11 you didn't intend to use anything he said against him?

12 A That's not exactly what I said to him.

13 Q Is that the point of which you made the comment to him about
14 not intending -- well, about -- however you want to phrase
15 it --

16 A I think -- I think how it's phrased is very important, so I
17 think that's the part that I'm gonna disagree with you on.

18 Q What are the Miranda rights? Do you remember them?

19 A Verbatim?

20 Q Yeah. Or at least --

21 A I read them from a sheet. I'm sure I could probably --

22 Q Do you have the sheet with you?

23 A No, I do not.

24 Q The first Miranda rights is, if I remember correctly, that
25 you have a right not to speak to us.

1 A You have a right to remain silent.

2 Q Remain silent. The second one being that you have the right
3 to speak to an attorney before you speak to us and if one is
4 not available or you can't retain one, the court can appoint
5 one for you. Something to that effect.

6 A Yes.

7 Q And the third one is that anything you say can and will be
8 used against you. Am I correct?

9 A Yes.

10 Q At -- Mr. Butler says he knows his rights and you indicate
11 to him that -- what was the exact statement again?

12 A I told him that I wasn't intending to utilize -- to use
13 anything he said against him.

14 Q And prior to you saying that he doesn't say anything about
15 the crime to the two of you?

16 A No.

17 Q And you said you indicated that a couple times, was it after
18 the second time you had indicated before he started to make
19 comments to the two of you?

20 A No.

21 Q When was it?

22 A It was after he had determined that I wasn't recording the
23 conversation.

24 Q Okay, and was that after you had told him you didn't intend
25 to use anything against him, whatever the exact statement

1 was?

2 A It -- it -- he finally started talking at some point after
3 that but it wasn't --(multiple speakers)-- after the part
4 where I told him that I wasn't intending to. It was after
5 the part where he was satisfied that we weren't recording.

6 Q At any point did you stop the interview and say, "Look,
7 we're gonna have to start recording this"?

8 A No.

9 Q This is -- did you offer to read him the Miranda rights
10 again?

11 A No.

12 Q Did you tell him that what you had said, frankly, was going
13 to change because you might have to use what he said against
14 him?

15 A No.

16 Q It's -- if I understand what you've testified to previously,
17 it's at the point where you say you're concerned about this
18 little girl going back to her father, or something to that
19 effect, that he starts to make a statement to you.

20 A Yes.

21 Q In the course of that statement he indicates that -- maybe
22 not using these terms, but he indicates he's supposed to get
23 10,000 dollars to do this?

24 A Yes.

25 Q But he only got paid 5,000 up front?

1 A Yes.

2 Q And he never did get -- he got another -- additional 2,500
3 at some point but he never did get the total 10,000?

4 A Yes. He was not happy about that.

5 Q But at least during the course of the statement he made
6 those statements to you?

7 A Yes. As well as he indicated he was not happy about the
8 fact that he felt like he got stiffed.

9 Q Would I be correct there was never any link between Mr.
10 Butler and either Mr. Wolfe or the decedent to establish
11 that it was any kind of social link or persona connection
12 prior to the murder?

13 A No.

14 Q There was never any link established at all between he and
15 Mr. Wolfe either?

16 A No. The only -- the only link between Mr. Butler, Mr. Wolfe
17 and Mrs. Craig, the only link is that he murdered Frances
18 Craig. That's the only link.

19 Q Was there any -- ever any check for bank accounts to see if
20 there was any evidence to show that this money -- other than
21 his statement to show that this money was actually paid?

22 A No. The indication was, it was paid in cash. It wasn't
23 like he PayPal'd him money or transferred from one account
24 to the other.

25 Q But there was apparently no checking to see if Rodney had

1 money in the bank that he took out or that he did anything
2 of that nature, it was just -- it was paid in cash so there
3 was no further investigation of that issue, would that be
4 correct?

5 A Yes.

6 Q There was no investigation to show whether Mr. Butler had
7 deposited the money in any bank account, that be correct?

8 A Yes.

9 Q And was there any investigation to see if Mr. Butler had
10 done any extravagant spending after that?

11 A No.

12 Q (Coughing)-- 6th interview, did part of that consist of the
13 fact that he wanted to see that the vehicle that was taken
14 up to the Crime Lab was returned to Pam, his girlfriend?

15 A I apol -- I couldn't -- I couldn't hear the very beginning.

16 Q Oh, I'm sorry. As part of the January 6th interview was
17 part of that the fact that he wanted to see that his vehicle
18 -- or her vehicle, his girlfriend, Pam's, vehicle was
19 returned to her?

20 A I don't recall that being a part of the interview. I don't
21 -- I don't -- I'm not gonna say it's -- it wasn't, I don't
22 recall specifically that being a focal point of it. You
23 said January 6th, correct?

24 Q I believe that was January 6th. It could have been at an
25 earlier time also.

1 A Well, I think that's important what time you're talking
2 about, there were three interviews.

3 Q Was -- was -- was that an issue in the interview af -- there
4 was an interview between January 6th and December 16th, is
5 that correct? Or you went to see him between January -- o
6 --

7 A There were three interviews. There was the confession
8 interview, there was the recorded interview, there was an
9 between interview. The in between interview we did respond
10 to Detroit. Mr. Butler was meeting with his attorney at the
11 time. His attorney told us he will not be speaking with
12 you. Mr. Butler told his attorney that he, in fact, did
13 want to speak with us --

14 Q But you need to -- but you talked to him, was there a
15 conversation that time about the return of the vehicle to
16 his girlfriend?

17 A There was a conversation about -- the vehicle was one aspect
18 of the conversation. At the conclusion --(multiple
19 speakers)--

20 Q Well, I just got through asking what -- that was one aspect
21 of it?

22 A That's not the only thing -- you're -- it sounds like --

23 Q I'm not asking --(multiple speakers)--

24 A -- that's the only thing that...

25 Q It doesn't have to be the only thing, that was part of the

1 conversation on --(inaudible)?

2 A There was a part of the conversation that had to do with a
3 vehicle that belonged to Mr. Butler and his girlfriend.

4 Q And did -- was that in any way a part of the conversation on
5 January 6th?

6 A I don't recall if it was or wasn't.

7 Q That in between interview, was that the day after the 16th,
8 or was it further along?

9 A See, I -- I believe -- I don't recall the exact date of that
10 interview.

11 Q It was sometime between the December 16th interview and the
12 January 6th interview?

13 A I -- it was between -- it was the second interview, it was
14 the middle interview.

15 Q It was the second interview. Did you write a report in
16 regard to that interview -- in regard to the 16th, first of
17 all?

18 A No, I did not write a report, Detective Sullivan wrote a
19 report.

20 Q Did you eventually write a report?

21 A No, I did not. There was one report written about the
22 interview.

23 Q Was the first report on that, if you know, actually typed up
24 about six months later?

25 A No, it was not.

1 Q The last interview was in the Jackson County Jail?

2 A It was at the Detective Bureau in the interview room was

3 where he was actually interviewed.

4 Q And that -- that one was being recorded, was it, or --

5 A Yes.

6 Q Yes. And was anything said at that interview, or did he

7 just refuse to talk to you at that time?

8 A Yes, there was something said at that interview.

9 Q Anything said that was a statement about this case or was

10 more -- what was it?

11 A I wasn't present for the statement that was made.

12 Q Okay.

13 A But it was a very important statement, Sir.

14 Q The homicide occurred on August 10th, is that the correct

15 date?

16 A Yes.

17 Q And when you interviewed my client it was a little more than

18 four months later, you interviewed him where a statement --

19 in fact, the first time you interviewed him is a little more

20 than four months later?

21 A Yes.

22 Q I guess I'm at a loss, why is Mr. Wolfe still a primary

23 suspect at that point in time?

24 A At what point in time, Sir?

25 Q December 16th. You said you went down there and Mr. Wolfe

1 was the primary suspect, why is he still the primary
2 suspect?

3 A Well, nothing had changed from day one up until the day that
4 Mr. Butler gave us all of the information as to how, in
5 fact, the homicide occurred and who had committed it and why
6 it had been committed. The only real major change where Mr.
7 Butler even was ever a part or brought into this is because
8 his DNA was on the zip ties. Which was a major change, I'll
9 give you that one, however, that was the only thing that led
10 us to making contact with Mr. Butler.

11 Q Would I be correct short -- short of that DNA hit there
12 still, as of today, would not be any reason to interview Mr.
13 Butler?

14 A I couldn't hear the end of that, I apologize.

15 Q (Inaudible)-- that DNA hit, that CODIS yet, would there be
16 any reason even today to interview Mr. Butler?

17 A I wouldn't to be able to rebuild the last X amount of months
18 since that December 16th interview to know what would have
19 turned up, so I don't think I could fairly answer that
20 question.

21 Q When you went to see him on December 16th was there any
22 reason to interview him other than the DNA hit?

23 A I mean, finding out why his DNA was on the zip tie was
24 pretty important. Like I said, there could have been --
25 there was more than one hypothesis as to how that DNA could

1 have ended up on that zip tie.

2 Q Prior to the time that Mr. Butler looked around and asked
3 you and Detective Sullivan regarding recording of the
4 interview, was anything being recorded on December 16th?

5 A No.

6 Q So it -- it was not your intent to record that interview any
7 way to start with, would that be correct?

8 A No.

9 Q You indicated that Mr. Butler said that you -- he had put
10 these DNA straps in his pocket prior to coming there and
11 that was how he thought you might have gotten his DNA on the
12 tie straps?

13 A Yes.

14 Q And was that in Detroit that he said he had put those in his
15 pocket, if you know?

16 A I didn't ask him where he was standing, and what city or
17 county when he put them in his pocket.

18 Q It was prior to going into the house?

19 A It was prior to putting gloves on was the -- kind of the
20 focal point.

21 Q Did he indicate that he had put the gloves on prior to going
22 into the house? Or did you take it that way?

23 A I took it that he didn't have gloves on when he had handled
24 the zip ties at one point, and then he did have gloves on
25 when he handled the zip ties inside the house. When he put

1 the gloves on, didn't ask.

2 Q Did you assume that prior to touching anything, even like

3 door knob, that he had put the gloves on?

4 A Yes.

5 Q And as far as you know would the door to the inside -- did

6 he come in through the garage or what was -- where did he

7 come in?

8 A He said he came in through a side door to the garage.

9 Q And the side door, as far as you know, would have been

10 closed prior to him opening it?

11 A Yes.

12 Q Were any fingerprints found on the side door?

13 A Again, I wasn't on the scene and I didn't process the scene,

14 however, to my knowledge no, there were not any fingerprints

15 belonging to Mr. Butler located on the door knob or in the

16 residence.

17 Q And I suspect there weren't any on the scene or that he

18 would have been a suspect long before this?

19 A Yes.

20 Q And you -- you obtained that evidence from the -- about the

21 DNA -- or about where the DNA came from, from my client, you

22 didn't obtain that from Dale Morgan, did you? You obtained

23 no information about the tie straps or the DNA from Mr.

24 Morgan?

25 A No. No.

1 Q At any point did you discuss with Mr. Morgan after December
2 16th what Mr. Butler had said in the interview?

3 A I've never seen Dale Morgan other than one time in my entire
4 life, so no, I have not discussed with him --(multiple
5 speakers)--

6 Q Was that --

7 A -- I haven't seen him --

8 Q -- in your -- you saw him before you saw Mr. Butler?

9 A Yes.

10 MR. ENGLE: I have no further -- well, I have
11 no further questions of this witness, your Honor.

12 THE COURT: Mr. Perlos or Mr. Brandt?

13 CROSS-EXAMINATION

14 BY MR. PERLOS:

15 Q Without being repetitive, Detective, let's just go back
16 through some of this. When you interviewed Mr. Butler on
17 the 16th it wasn't recorded.

18 A (No audible response).

19 Q Oh, you can't hear?

20 A Not -- not very well.

21 Q When you interviewed Mr. Butler on the 16th it wasn't
22 recorded, correct?

23 A No.

24 Q And did you take any notes?

25 A No.

1 Q Kay, so you're there I think -- it was the ninth floor of
2 the Detroit Jail?

3 A Could have been.

4 Q You were in the Detroit Jail, correct?

5 A That's correct, yes.

6 Q And there's an interview room?

7 A Yes, Sir.

8 Q All right, so if you are going to record it would you tell
9 one of the Detroit officers to turn the recorder on?

10 A No, there wasn't a recording device. It was -- it's --
11 we're not in an interview room, we're in like a visitation
12 area for like visit day with family members or a spouse or
13 something along those lines. We were seated in a room like
14 that, it wasn't a -- it wasn't in an area that was --
15 (multiple speakers)--

16 Q Was there a way to record in that room?

17 A No, Sir.

18 Q You have ways of recording interviews though if you wish to
19 do so, correct?

20 A Yes, Sir.

21 Q And so do you know whether or not Detective Sullivan was
22 taking notes?

23 A Yes, I do.

24 Q Okay, so he's taking notes?

25 A No, you asked if I knew if he was or wasn't.

1 Q Was he? Was he?

2 A No, he was not.

3 Q The two of you talked about what was said on the way back?

4 A We both immediately, when we left, took notes and then yes

5 we discussed at length the interview and where the

6 investigation was gonna go from there.

7 Q At some point he --(coughing)-- what he recalled Mr. Butler

8 saying to writing, which became a report, correct?

9 A I apologize.

10 Q Detective Sullivan at some point reduced what Mr. Butler had

11 said to a report, correct?

12 A Yes.

13 Q And so that report was dated -- dated that it was reported

14 to him on the 16th but I think Mr. Engle asked you when it

15 was -- when it was typed. It was never -- it was never

16 published or -- or printed until July 29th of 2015, correct?

17 A No. I think that what you're talking about is the day that

18 it was actually put into the computer system itself. There

19 were over a hundred people that -- that attempted to access

20 details about this report county-wide, the information

21 wasn't put into a computer system until long after the

22 information was obtained. I think that's what you're asking

23 about. The report was completed --

24 Q So when it was put into AJIS, is that the name of the

25 system?

1 A Yes.

2 Q It was put into AJIS sometime in December maybe?

3 A No, it was put into AJIS long after the report was

4 completed. It was withheld because of the sensitive nature

5 of the information --(multiple speakers)--

6 Q Okay, I gotcha.

7 A -- and there were over, again, over a hundred individuals

8 within our county that attempted to access --

9 Q I gotcha.

10 A -- this obviously very important information.

11 Q So -- so the point that I'm getting at is, is the

12 information contained in this report was -- was done when it

13 was fresh in Detective Sullivan's mind, correct? I mean, it

14 wasn't done six months later?

15 A No, it was not done six months later.

16 Q So it was done when it was fresh in his mind, correct?

17 A You'd have to ask him about the freshness of his mind, but I

18 mean, it was done quickly after the report -- or after the

19 interview was done.

20 Q That's -- that response -- so if he put in the report that

21 Mr. Butler said, "Take care of a witness," was that an

22 accurate statement?

23 A What? You're -- I guess you're reading me an excerpt from

24 a report, if you want --(multiple speakers)--

25 Q I didn't read it, I'll just tell you again, if Detective

1 Sullivan put in his report, "Take care of a witness," would
2 that be accurate as to what Mr. Butler said that day?

3 A It would be accurate as to what Mr. Sullivan put in a
4 report.

5 Q Is that what he said?

6 A Is what -- is that what Mr. Butler said?

7 Q (Multiple speakers)--

8 A You're saying "he," Sir. I mean, who's "he"?

9 Q Okay, let me finish. Detective Sullivan put in the report
10 quote, "Butler said take care of a witness." Do you recall
11 whether or not Mr. Butler said that to Detective Sullivan on
12 the 16th of December in 2014?

13 A I don't recall him saying whether he -- I don't recall him
14 saying that he said take care of. I -- I do recall him
15 talking about --

16 Q Wait a minute --

17 A -- that he was --

18 Q -- yes or no? Do you know whether or not he said that?

19 MS. REZMIERSKI: It's not a yes or no, Judge,
20 he's trying to answer the question. He doesn't get to cut
21 them off.

22 MR. BRANDT: It's a yes or no.

23 THE COURT: It's a yes or no. (Inaudible-
24 Judge's Microphone is Off).

25 MR. PERLOS: I'll rephrase it, make it

1 simple.

2 THE WITNESS: No, I don't recall him
3 specifically saying take care of a witness. I don't
4 specifically recall those specific words having been said by
5 Mr. Butler. I don't -- I don't recall that. It's not to
6 say that it wasn't, I just don't recall it.

7 BY MR. PERLOS:

8 Q And in your mind, "take care of" could mean a lot of things
9 couldn't it?

10 A Well, I guess it would depend on the context that those
11 particular words were used.

12 Q On the 11th Mr. Butler was also interviewed at the Detroit
13 Jail, correct?

14 A Yes.

15 Q And -- and Detective Boulter and Detective Sullivan were
16 there and interviewed him?

17 A Yes.

18 Q And wouldn't it be fair to say that -- that at that time
19 Detective Boulter took out a Miranda card and read Mr.
20 Butler his Miranda rights?

21 A I don't know, I wasn't there.

22 Q You haven't reviewed the report?

23 A No.

24 Q And you didn't speak to Boulter about what was said on the
25 --

1 A I didn't ask him if he read him Miranda.

2 Q The CODIS hit was on November 17th, correct?

3 A Around there, yes. I believe that was the date.

4 Q And so can you tell us what you or anyone else, if you know,
5 from the task force did as it related to the time of the
6 CODIS that when you found out that Mr. Butler's DNA is on
7 the zip strips til up til December 16th when you're going to
8 go swab his mouth, did they do anything else as it related
9 to the CODIS hit and Eric Wolfe?

10 A Yes.

11 Q What?

12 A As I said before, we spent hours, days, weeks trying to find
13 some sort of a connection between Mr. Butler and anyone that
14 was connected to our investigation at this point.

15 Q Did you find any physical evidence or any kind of evidence
16 that had any useful nature between the time of the CODIS hit
17 and the 16th as it related to Mr. Wolfe in this
18 investigation?

19 A Not to my knowledge.

20 Q All right, so then you didn't go -- between November 17th
21 and December 16th go --(undecipherable)-- re-interview Eric
22 Wolfe?

23 A No, I did not.

24 Q Did you ever interview my client, Rodney McKee?

25 A I never knew who your client was.

1 Q So the answer would be no?

2 A No, I did not interview him.

3 Q You told the prosecutor, and I think you told Mr. Engle

4 also, that it's okay to lie. Okay to lie?

5 A It's permitted, it's legal, it's an accepted practice.

6 Q So in this practice did you do it to try and chum up to Mr.

7 Butler to get information out of him?

8 A Did I do what?

9 Q Lie?

10 A Well, I testified that I didn't to lie to Mr. Butler.

11 Q Well, you told him you weren't going to use anything that he

12 said against him, correct?

13 A That is not what I said to him.

14 Q Well, you said anything you say we're not going to use it

15 against you?

16 A No, that is not what I said to him.

17 Q So if Detective Sullivan put in his wrote -- in his report

18 that, quote, "We won't us anything he said against him,"

19 that's not the same words?

20 A Can I see it?

21 Q I'll show it to you. It's all marked up with Magic Marker.

22 A This is Detective Sullivan paraphrasing a statement. This

23 is not a direct quote.

24 Q So what did you actually say to him?

25 MS. REZMIERSKI: Judge, that's been asked and

1 answered and I guess at this point I'll --(multiple
2 speakers)--

3 MR. PERLOS: I don't want to be --

4 MS. REZMIERSKI: -- object.

5 MR. PERLOS: -- repetitive.

6 MS. REZMIERSKI: Perhaps I can lay my
7 objection on the record? That might help things. I didn'
8 object when Mr. Engle was asking questions because in my
9 humble legal opinion he does get to argue voluntariness or
10 lack of voluntariness to the jury. However, I take issue
11 with the McKees have any issue with the voluntariness
12 because they don't have standing. We've had extensive
13 hearings about these legal issues in advance of trial,
14 you've made your rulings, statements get to come in. He
15 shouldn't be allowed to go any further, Judge --

16 MR. PERLOS: Judge, I --

17 MS. REZMIERSKI: -- it's not his issue.

18 MR. PERLOS: -- she just wanted to say he
19 didn't lack standing, I'll move on.

20 THE COURT: Let him answer the question
21 though.

22 MR. PERLOS: Okay.

23 THE COURT: Just -- he'll tell you once and
24 we're done with it again.

25 What did you say?

1 THE WITNESS: I said, "I'm not intending to
2 use anything you say against you." That's real time as we
3 were there to talk to him about what we were there to talk
4 to him regarding. I did not say, "I will not use, I promise
5 not to use, I'm not going to use," those are definitive.
6 is not what I said.

7 BY MR. PERLOS:

8 Q When you interviewed Mr. Butler did he tell you specifically
9 that he had met with my client, Rodney McKee?

10 A Did he tell me that he had met with them? Yes, he told me
11 that he and Clifford McKee --

12 Q Right, it's yes or no, that he had met with Mr. McKee?

13 A Yes.

14 Q Did he tell you where?

15 A Told us that it was near a factory.

16 Q But he tell you where?

17 A I already told you, he didn't know the area very well, he
18 told us it was near a factory.

19 Q Did he tell you when?

20 A He did not tell us a specific date. He told us that it was
21 about a week leading up to the homicide.

22 MR. PERLOS: I don't have anything further.

23 THE COURT: Mr. Brandt?

24 MR. BRANDT: Thank you, your Honor.

25 CROSS-EXAMINATION

BY MR. BRANDT:

Q Need something more to drink?

A No. I've got a respiratory infection, but thanks.

Q Sinuses, allergies are about to pop, so. I want to go back to December 11th.

A Okay.

Q Okay. You arrive -- and help me connect -- I'm not positive, is it at the sheriff's department where you met my client?

A Yes. The first time, yes.

Q Okay. Now, we -- he's -- I think Clifford McKee's in handcuffs when you first see him, yes?

A Yeah. As I come in the room he comes out of the handcuffs.

Q Okay. He was not under arrest to the best of your knowledge?

A No.

Q You conduct an interview with him there and it's recorded?

A Yes.

Q Okay. You ask him a series of questions having to do with Mr. Butler, correct?

A There were questions that did pertain to Mr. Butler but --

Q Some of them were?

A Yes. Yes, some did pertain to Mr. Butler.

Q Sure. And at this point part of what you have, if I understand correctly, as a result of the CODIS hit you have

1 some -- maybe not you, somebody has some phone records from
2 Mr. Butler that ties to Clifford McKee, correct?

3 A Yes. It showed that there was a connection.

4 Q Yes.

5 A That was it.

6 Q And --

7 A It was showed that there was a relation between the phones
8 that belonged --

9 Q The phones.

10 A -- to the people.

11 Q Right. And so you're asking him some questions about would
12 he come -- did he come to Jackson, you asked Clifford --

13 A Yes.

14 Q Okay, and initially he says, I think, according to your
15 report, he said, "Oh, I've been here maybe six to nine
16 times."

17 A Yes.

18 Q Okay, and then there's some more discussions and then it
19 gets to 10, give or take a couple of times.

20 A Well, we talked about -- we didn't talk about his entire
21 life how many times he had --

22 Q No.

23 A -- to Jackson.

24 Q And I understand that that's -- --

25 A But I wanted to make sure that --

1 Q Right.

2 A -- I answered that correctly.

3 Q You said about four once, your report says about four --

4 A Yes. Yes. It encompassed the time prior to the homicide up
5 to the interview.

6 Q And so you ask him and he goes, "Six to nine times."

7 A Yes.

8 Q And then there's some more discussions and you go -- I think
9 your report actually says Mr. McKee and I agreed it's about
10 10 times, give or take a couple -- (inaudible)?

11 A Yes. I tried to settle on a square number.

12 Q Yep. I get that. Did he -- did Cliff give you exact dates
13 as you ask him?

14 A About his times that he traveled here?

15 Q Yeah, or was he just --

16 A No.

17 Q -- generally --

18 A No, it was --

19 Q -- six to nine times?

20 A It started out very, very broad --

21 Q Yep.

22 A -- for a purpose.

23 Q Okay. Okay. You then ask him spec -- you used the name
24 Cortez Butler.

25 A Mm-hmm.

1 Q Correct?

2 A Yes.

3 Q Okay. And asked him if he knew Cortez Butler?

4 A Yes.

5 Q And initially, Cliff said no.

6 A Yes.

7 Q Okay. I think this is correct, I don't know, I wasn't
8 there, the sequence is that you asked him if you were to
9 show a picture of Mr. Butler to Mr. McKee it might help him
10 remember if he had a contact with a person by the name of
11 Cortez Butler.

12 A Yes.

13 Q Okay. Do you then go get a photo or does somebody have it
14 there?

15 A I obtained a packet of paperwork that had a photograph of
16 Mr. Butler on it.

17 Q Right, so -- so I'm -- I'm asking, did you have to leave the
18 interview room and go get it?

19 A I believe I left the room for a minute or two and -- and got
20 the packet.

21 Q All right --

22 A It wasn't something that I --

23 Q Right.

24 A -- had intended to show him.

25 Q All right. So you go and you get a --(cleared throat)-- of

1 the person -- of Cortez Butler?

2 A Yes.

3 Q Give that to Mr. McKee?

4 A Yes. I showed it to him, yes.

5 Q Yep, showed it to him. Your report indicates that you then

6 leave the room.

7 A Okay.

8 Q I wasn't there, did you leave the room at that point?

9 A I do believe that I did leave the room for a short time.

10 Q Yep, came back in and what does he say?

11 A At -- at the point that I came back in he did identify that

12 he knew who he was. I didn't --

13 Q Yeah --(multiple speakers)--

14 A -- walk in and drop the paperwork down and walk right back

15 out.

16 Q Yep.

17 A He had an opportunity to say, "Yeah, I know who he is."

18 Q Yep, and he gave you a nickname he knew him by?

19 A He did give me a nickname, yes.

20 Q Okay. You then -- during the interview then you take a

21 break?

22 A Yes.

23 Q You have Detective Gonyeau from the Michigan State -- you

24 have a discussion with Detective Gonyeau about the number of

25 contacts between a phone number attributable to Mr. Butler

1 and a phone number attributed to Mr. McKee, correct?

2 A We talked about -- that is one of the aspects that we talked
3 about, yes.

4 Q And he talked about, help me here, like 200 contacts, is
5 that correct?

6 A I think that in the neighborhood. I wouldn't -- don't quote
7 me on that exactly, but yeah, there were a lot.

8 Q Because that -- right, and that's Gonyeau's investigation.

9 A Yes, that's his part, yes. Thank you.

10 Q He's the phone guy.

11 A Yes.

12 Q You talk to Mr. McKee about it, he says he was tired and
13 wished to leave and would come back the next day?

14 A Yes, that's accurate.

15 Q Do you have recollection of Cliff calling you the next day?

16 A He never contacted me.

17 Q If the phone records from his phone says he called you --

18 A I would know anything about any of that. I guess my
19 question would be, from what phone?

20 Q That's --

21 A We collected his phones.

22 Q You've asked and answered it, that -- thank you. You don't
23 recall it. December 16th in Detroit to see Mr. Butler?

24 A Yes.

25 Q Buccal swab -- and for the jury, this is a -- lack of a

1 better term, like a Q-tip that we put -- that's put in
2 somebody's mouth, you get a swab and then it's sent to the
3 lab, with that be close?

4 A Yeah.

5 Q Okay.

6 A Yes.

7 Q You and Detective Sullivan are going there to get that?

8 A That was one of the reasons we went there, yes.

9 Q Yep. There's going to be an interview of -- of some kind,
10 so somebody starts out with Miranda. I wasn't there, I
11 don't know.

12 A Yes.

13 Q Okay. Standard procedure, not out of the ordinary.

14 A Yes.

15 Q Okay. The expectation is, there will be some kind of
16 conversation between yourselves and Mr. Butler?

17 A Yes.

18 Q And the conversations are, and only are, about the homicide
19 in Jackson? I mean, you're not going to ask him about his
20 childhood, you're not going to ask him about what grade
21 school he went to?

22 A We did know what he was gonna say, so --

23 Q But you're there to ask about that?

24 A We were there to talk with him about his DNA on the zip
25 strip.

1 Q That's about the homicide in Jackson, correct?

2 A Well --

3 Q Correct?

4 A -- it could be.

5 Q Yes.

6 A That was one of the theories that it was going to

7 potentially be about.

8 Q But that's what you're there for? This is what the

9 conversation's going to be about, correct? You're not gonna

10 talk about the Tigers starting pitching or whether the

11 Redwings are going to make it to the playoffs?

12 A We're there to talk about this DNA that's on the zip strips.

13 Q Okay. Part of a police investigation.

14 A I'm sorry?

15 Q Part of --

16 A Yes, we were there about a police investigation.

17 Q This isn't a casual conversation and for that reason you are

18 going to start it with Miranda?

19 A Yes.

20 Q As you begin -- and -- and we have this, "I know my rights,

21 Bro," you say a specific series of words to Mr. Butler to

22 indicate these statements aren't gonna be used against you,

23 very specific words you picked out, correct?

24 A It was not, again, that --

25 Q They are what you said they are.

1 A -- I was --

2 Q I don't remember.

3 A But you're -- the way that you are painting the statement
4 that I told him I wasn't going to use what he said against
5 him, which --

6 Q I'm not --

7 A -- is inaccurate.

8 Q No, but you -- whatever you said, whatever it was, specific
9 words, correct?

10 A Yes. Very specific.

11 Q The question I have is, did you tell Detective Sullivan
12 prior to saying that what you are about to say?

13 A No, I don't believe that I did.

14 Q Did you tell Detective Sullivan prior to the interview that
15 was your intent?

16 A What was my intent?

17 Q To say what you said.

18 A I don't believe I did.

19 Q You have used the term, "I made that statement for real
20 time." What does "real time" mean?

21 A As we sat there, as I made the statement I had no idea what
22 he was going to say, told him I wasn't there with the intent
23 of obtaining something to use against him, however, I had no
24 clue what was gonna come out of this guy's mouth.

25 Q Right, so -- but at some point you go, "Oh, my" --

1 A Yes, I did. At some point I -- yes, I was very -- very much
2 surprised at what he said.

3 Q Do you and Detective Sullivan have a discussion at that
4 point that perhaps we should Mirandize him, do something
5 with that statement?

6 A No.

7 Q Okay, so just continued on with the statement, correct?

8 A Yes.

9 Q And when you said to Mr. Butler, "I'm not intending to use
10 anything you say against you," cracked, that's what you
11 said?

12 A Yes.

13 Q What exactly did Mr. Butler say to you?

14 A Nothing.

15 Q What did you say then next?

16 A We talked to him about the fact that we were there to talk
17 about the little girl. I talked to him about the fact that
18 we were there to talk about this little girl.

19 Q You specifically say with absolute perfect recollection,
20 "I'm not intending to use anything you say against you"?

21 A Yes.

22 Q He's -- he, Mr. Butler says nothing?

23 A Are you asking me what specific word came out of his mouth,
24 what the exact sentence was, or are you asking me --
25 (multiple speakers)--

1 Q What did he say --

2 A -- if that's when he then started to confess?

3 Q Exactly what did he say after you said?

4 A I don't remember exactly what he said verbatim, word for

5 word.

6 Q He then makes the statement that you've testified to,

7 correct? "He," Mr. Butler made the statement?

8 A What statement are you --(multiple speakers)--

9 Q (Multiple speakers)-- statement as you --

10 A -- he made lots of statements.

11 Q Whatever you testified to under oath here today is what he,

12 Mr. Butler, said on that date?

13 A Yes.

14 Q How long were you there, if you recall?

15 A I would say 45 minutes to an hour maybe.

16 Q Did I understand you to say in response to questions from

17 the prosecutor that Mr. Butler told you he was hired by and

18 paid by Rodney McKee? I'm sorry. I'm sorry, I'm sorry. We

19 have the overhead. Did I understand you to say that Mr.

20 Butler said he was hired by and paid by Rodney McKee?

21 A Yes.

22 Q And you don't know the specifics of what happened at the

23 meeting they had because you weren't there?

24 A That is correct.

25 MR. BRANDT: Thank you, I have nothing

1 further, your Honor.

2 THE COURT: Redirect?

3 REDIRECT EXAMINATION

4 BY MS. REZMIERSKI:

5 Q One detail I for sure want to take care of, and perhaps it's
6 clear by now to the jury, you reference three interviews
7 with Mr. Butler, correct?

8 A Yes.

9 Q Those are three interactions with him that you were directly
10 involved with, fair to say?

11 A Yes.

12 Q There is an additional one that pre-dated December 16th that
13 you are not a part of, correct?

14 A Yes.

15 Q So there's December 11th, which is Detective Sullivan and
16 Detective/Sergeant Chris Boulter, correct?

17 A Yes.

18 Q December 16th, which is yourself and Detective Sullivan,
19 correct?

20 A Yes.

21 Q Sometime very soon after December 16th, still at the Wayne
22 County Jail when Mr. Butler's lawyer is there and you have a
23 minimal interaction with Cortez Butler, correct?

24 A Yes.

25 Q And then there's a time when he's actually brought here to

1 Jackson County on January 6th and he's -- there was gonna be
2 an interview on the record at the Sheriff's Department and
3 he essentially said nothing on the record, fair to say?

4 A Yes.

5 Q Okay.

6 A On the record he said nothing.

7 Q Indeed. You referenced a statement that was made that you
8 weren't present for, correct?

9 A Yes.

10 Q Kay. We've done a lot of talking about phone records, would
11 you agree with me that there is an awful lot of phone
12 records in this case?

13 A From what I understand, yes. I have not seen -- I probably
14 -- I have not seen a tenth of the phone records.

15 Q You've seen a 3,247 page extraction for Rodney -- one of
16 Rodney McKee's telephones?

17 A I have not seen any of Rodney -- Rodney McKee's records for
18 his phone.

19 Q Have you seen -- usually I have a good head for numbers,
20 it's a little --(undecipherable)-- so forgive me that I
21 don't remember it off the top of my head, but it's in the
22 ball park of five to six hundred dollars page extraction
23 from only one of Clifford McKee's telephones.

24 A I have not -- I have not seen -- I've seen about 20 text
25 messages that took place between Clifford and Cortez Butler,

1 so how many pages that accounts for I have no idea, but I've
2 seen about 20 text messages.

3 Q So let's talk about those text messages for a second. Have
4 you testified before this court about these issues, meaning
5 the confession that Cortez Butler made to you and Detective
6 Sullivan before today?

7 A At length.

8 Q We had a motion hearing that spanned several dates
9 throughout February, is that fair to say?

10 A Yes.

11 Q If memory serves, you testified on Friday, February 26th,
12 does that sound right to you?

13 A Yes.

14 Q Did you also testify, again, briefly the following Friday,
15 forgive me, March 4th, March --

16 A I testified for about half a day both times.

17 Q At the point in time that you testified about all these
18 exact same issues, that confession, what was said to Mr.
19 Butler, what wasn't said Mr. Butler, had you --

20 MR. PERLOS: Judge, I guess I'm gonna object
21 at this point. I don't know what's relevant about previous
22 evidentiary hearings.

23 THE COURT: Response?

24 MS. REZMIERSKI: Judge, there's a question of
25 what information he knew from cell phone records or didn't

1 know from cell phone records at the point that they made
2 their -- your interview, at the point that the police report
3 was finally authored, and at the point that both of them
4 testified before this court under oath, what they did and
5 did not know from phone records is critical.

6 MR. ENGLE: Well, your Honor, I believe
7 that's -- (multiple speakers) --

8 MR. PERLOS: Well, he can say yes or no, I
9 know or I don't know, if he has personal knowledge of it,
10 but what she's got in those books, who knows.

11 MR. ENGLE: I believe it's asked and
12 answered. He said he saw about --

13 THE COURT: Twenty-two pages.

14 MR. ENGLE: -- 20 pages of it. He didn't see
15 the rest of --

16 MR. BUTLER: No. No, I -- (inaudible).

17 THE COURT: He said he saw 22 pages.

18 MS. REZMIERSKI: Twenty-two text messages --

19 THE COURT: Texts, I'm sorry, yeah.

20 BY MS. REZMIERSKI:

21 Q Did I hear that correctly?

22 A Yes, but that was not at the time of my testimony.

23 Q You hadn't seen any of that before you testified?

24 A No. Nothing.

25 Q One of the attorneys asked you, and I apologize, I don't

1 remember which one it was, something about Mr. Butler didn't
2 get paid everything he was supposed to be paid for this hit
3 and he was upset about that, did I hear the gist of that
4 right?

5 A Yes.

6 Q How does that come up in that interview on December 16th?

7 A Well, Mr. Butler originally told us about the money, that he
8 did get paid and he let us know that he didn't collect the
9 rest of it, however, did meet with Mr. McKee again and was
10 paid another 2,500 dollars because there was still the
11 active hit for Ryan Marshall that he was still supposed to
12 perform, however, he blew it off and didn't -- according to
13 Mr. Butler at the time of the interview, he didn't follow
14 through with attempting to perform that hit.

15 Q So he tells you that he met with Mr. McKee again to collect
16 a little bit more money, did I get that right?

17 A Yes.

18 Q Did he tell you when that took place?

19 A I don't recall the specific date. I know it was after he
20 had committed the homicide for them on Frances Craig.

21 Q Did he tell you that he met with one Mr. McKee, or both Mr.
22 McKees again?

23 A I believe it was both.

24 Q He collects more money and then, I'm sorry, he was supposed
25 to be still doing this hit on Ryan Marshall?

1 A He was supposed to -- well, he was paid another 2,500
2 dollars, which was half of the remainder of what he was
3 supposed to get and he was paid that 2,500 dollars to still
4 carry out the hit that still existed, meaning he killed the
5 wrong person so he still needed to go kill the right person.
6 However, he, Mr. Butler, advised us that he, in essence,
7 blew it off and didn't attempt to go do that.

8 Q On December 16th who ended the interview?

9 A I did.

10 Q Why?

11 A So as I'm taking the information about how, why and who is
12 involved in this hired hit, it's all very new information to
13 me and I'm trying to absorb it, I'm trying to understand it,
14 I'm trying to recognize who's who. Detective Sullivan -- it
15 was clear to me, I've worked with Detective Sullivan for a
16 decade, may be more or less, I've worked directly with --

17 MR. ENGLE: Your Honor, I think -- I would
18 object, your Honor. He can testify as to what he has to
19 say. He can testify as to what they did but now he's making
20 interpretations of Detective Sullivan. I guess I object. I
21 don't see that there's a basis for this, or need for it, for
22 that matter.

23 THE COURT: Overruled.

24 MS. REZMIERSKI: Thank you.

25 THE COURT: He's laying a foundation for why

1 he --(inaudible-Judge's microphone off).

2 MS. REZMIERSKI: Thank you.

3 THE WITNESS: Detective Sullivan's non-verbal
4 communication was clear and obvious to me that there was
5 something more important that Detective Sullivan had
6 understood from this interview based on his wealth of
7 knowledge regarding this case. I know a lot about this case
8 but I don't know every detail, Detective Sullivan knows
9 every detail. There was something I was picking up on
10 through Detective Sullivan's non-verbal communication that
11 he wanted to get out of there, that there was something that
12 he knew that I didn't know. I was still trying to gather
13 information about what was evident to me was a homicide that
14 was intended for an individual that -- the hitman missed the
15 mark and there was still an active hit on this individual.

16 Now this individual that we were interviewing
17 was obviously not free, however, the hit still existed. So
18 I was trying to gather as much information regarding that as
19 I could, but it was clear to me that Detective Sullivan was
20 ready to go, so I came up with a reason to come back and see
21 Mr. Butler again, asked him if there were anything that I
22 could do for him, anything that I could take care of for
23 him, any questions that he had, and he wanted to know some
24 things about some money. I want to say it was about a phone
25 and he wanted to know about a vehicle that we had impounded.

1 And I told him that I wasn't sure but I would
2 get the information and I would personally get back with him
3 regarding the information, which gave me a reason to come
4 back and talk to Mr. Butler at a later date, because I
5 still, in my mind, had a lot of questions.

6 There were other things that Mr. Butler
7 disclosed to me. There were --

8 MR. ENGLE: Well, your Honor, I guess I would
9 object to wherever this is going because it doesn't make any
10 difference. He wanted to come back --

11 THE COURT: Yeah, the question was why --
12 (inaudible).

13 THE WITNESS: So in the -- in the end I ended
14 the interview because it was relatively obvious to me that
15 Detective Sullivan was ready to go, so once the interview
16 was ended we left and had a good reason to come back and
17 talk to Mr. Butler again. It was at that time -- well, I'll
18 stop there.

19 BY MS. REZMIERSKI:

20 Q I believe it was Mr. Perlos who asked you something about
21 Detective Sullivan's report says that Rodney said something
22 about, "Take care of a witness," you remember that line of
23 questioning?

24 A I do --

25 Q That's all right, do you remember that line of questioning?

1 A I do remember it, yes.

2 Q Was it clear to you, based on Mr. Butler's confession, what
3 he was supposed to do with this witness and Rodney McKee's
4 case?

5 MR. BRANDT: Objection as to if it's clear to
6 him, it's what Mr. Butler had in his mind --

7 MR. PERLOS: Calls for speculation --

8 MR. BRANDT: -- not --

9 MR. PERLOS: -- too, Judge.

10 MR. BRANDT: -- what the detective thinks Mr.
11 Butler was thinking.

12 MS. REZMIERSKI: Well, certainly I cannot ask
13 him that so I can only ask him --(multiple speakers)--

14 MR. BRANDT: That's exactly what you were.

15 MS. REZMIERSKI: -- what was clear in his
16 mind, and then --

17 MR. PERLOS: Calls for speculation, Judge.

18 MS. REZMIERSKI: -- what -- no, I
19 specifically avoided speculation. Could have asked him what
20 he thought was in Mr. Butler's mind --(multiple speakers).

21 MR. BRANDT: What he thought. That's
22 speculation.

23 THE COURT: And why is that --

24 MS. REZMIERSKI: Because Mr. Perlos asked
25 about did Rodney say --

1 MR. PERLOS: I don't think I asked did Rodney
2 say, I said, did it say in the report, quote, "Take care of
3 a witness."

4 MS. REZMIERSKI: So I'm just following up.

5 MR. PERLOS: "Take care of a witness."

6 MR. BRANDT: (Multiple speakers)-- the report
7 says yes --(multiple speakers)--

8 MS. REZMIERSKI: Was it clear in Detective
9 Merritt's mind --

10 MR. BRANDT: -- or the report says no.

11 MS. REZMIERSKI: The report is not under oath
12 and in evidence.

13 MR. PERLOS: He said he didn't know.

14 MS. REZMIERSKI: I'm asking him what his
15 understanding was based on what Mr. Butler told him that he
16 was supposed to do with the witness.

17 MR. BRANDT: His understanding isn't at
18 issue. The issue is what Mr. Butler, if he made the
19 statement, was thinking, not what some -- unless he's
20 qualified as an expert in psychic readings --

21 THE COURT: Well, that would call for
22 speculation also --

23 MS. REZMIERSKI: Thank you.

24 THE COURT: -- was to what he was thinking.

25 MS. REZMIERSKI: That's why I didn't ask it.

1 Thank you.

2 MR. BRANDT: I'm sorry?

3 THE COURT: For him to get up here and say
4 what Mr. Butler was thinking would cause -- call for
5 speculation.

6 MR. BRANDT: Right, so he can testify as to
7 what Mr. Butler was thinking, which is what he's speculating
8 on.

9 THE COURT: She could ask him how he
10 interpreted it.

11 MR. BRANDT: It's irrelevant. It's
12 irrelevant. That's an ultimate -- for the jury to decide.
13 If that's where you're headed there'd be no need for juries.

14 THE COURT: No, that's not true.

15 MR. BRANDT: Yes -- yes, it is. Just afraid
16 it is.

17 THE COURT: You're wrong.

18 MR. BRANDT: Because every officer would come
19 in and say here's what he thought.

20 THE COURT: No, but that's exactly what I'm
21 saying is speculation.

22 MR. PERLOS: Judge, where we're going with
23 this is, I asked him whether or not he read the report,
24 whether or not he knew what was in the report and whether or
25 not that's what Mr. Butler said during the interview. He

1 said, "No, I don't remember that." He said, "Let me see the
2 report." He read the report and then he was not responsive
3 to me as to whether or not that was said, so if now she
4 wants to say did he say it, and if he did say it, even
5 though you don't remember him saying it, what does it mean
6 to you? So it calls for speculation.

7 MS. REZMIERSKI: Actually didn't say a single
8 thing that Mr. Perlos just said that I said. Like, I'm a
9 little lost.

10 THE COURT: We'll take it up out of the
11 presence of the jury.

12 We'll see you back here about 1:15. You can
13 go up now and get paid before lunch.

14 THE CLERK: All rise for the jury.

15 (At 11:47:23 p.m., jury excused)

16 THE COURT: Please be seated.

17 Okay, Ms. Rezmierski, your question again?

18 MS. REZMIERSKI: See if I can remember it.

19 BY MS. REZMIERSKI:

20 Q Was it clear in your mind what Mr. Butler was talking about
21 having to do to that witness in Rodney McKee's case?

22 A Yes.

23 Q How was it clear?

24 A Because he, himself talked about there was a hit for Ryan
25 Marshall and that he had been paid --

1 Q That's all I was saying.

2 A -- 5,000 dollars. He was supposed -- he -- they had agreed
3 on 10 racks, was his language.

4 THE COURT: So what's the problem with that?
5 That his understanding was --

6 MR. PERLOS: He testified to that before.
7 What I asked him was --

8 THE COURT: You asked him if that was his
9 understanding, if that's what he was saying.

10 MR. PERLOS: Right, Judge, but that's not
11 where I was going with. Where I was going with it, and the
12 report it says that he said, quote, "Take care of a
13 witness." That could mean a lot of things. It could mean
14 beat him up, kidnap him --

15 MS. REZMIERSKI: Which is exactly --

16 MR. PERLOS: -- threatening him.

17 MS. REZMIERSKI: -- why I thought --(multiple
18 speakers)--

19 MR. PERLOS: It could mean a lot of things,
20 and so I asked him that question to see if he knew whether
21 or not he read this report and it was something different in
22 his mind than what was in Detective Sullivan's mind when he
23 wrote the report --(multiple speakers)--

24 THE COURT: But he just clarified it.

25 MR. PERLOS: -- shortly after the interview.

1 MS. REZMIERSKI: So if he gets to get into
2 what's in whose mind why don't I get to clarify what's in
3 his mind because he's steady there asking him the question
4 in the interview?

5 MR. PERLOS: No, that's not why, it's because
6 I'm wondering whether or not that's what he said, "Take care
7 of the witness," and he wrote it down right and he
8 interpreted it wrong. That's where I was going with it.

9 MS. REZMIERSKI: And where I was going with
10 was what he said, which is "hit" and "kill."

11 THE COURT: For 10 racks.

12 MS. REZMIERSKI: Right.

13 MR. PERLOS: He already got that in.

14 MS. REZMIERSKI: Forgot about that part.

15 MR. PERLOS: He already testified to that.

16 THE COURT: Yeah, he got that in before and
17 she was clarifying it.

18 MR. PERLOS: Right. Yep. That's not where I
19 was going with it.

20 MS. REZMIERSKI: Can I complete that when the
21 jury comes back?

22 MR. BRANDT: That's -- that's not what Chuck
23 was asking.

24 THE COURT: I understand what Chuck was
25 asking but I don't limit you to that on cross. Don't

1 attribute it just to Chuck.

2 MS. REZMIERSKI: Fair enough.

3 THE COURT: Don't attribute -- or to Mr.
4 Perlos.

5 MS. REZMIERSKI: I will not. I'll keep Mr.
6 Perlos out of it.

7 THE COURT: There you go.

8 MR. PERLOS: Now what are we gonna do, go to
9 lunch?

10 THE COURT: You can do whatever you want, I'm
11 going to get something to eat.

12 MR. PERLOS: All right.

13 (At 11:50:48 a.m., hearing recessed)

14 (At 1:31:23 p.m., hearing resumed)

15 THE COURT: Please be seated.

16 Okay, bring in the jury.

17 THE CLERK: All rise for the jury.

18 (At 1:33:09 p.m., jury returned)

19 THE COURT: Please be seated.

20 Whenever you're ready.

21 MS. REZMIERSKI: Thank you.

22 BY MS. REZMIERSKI:

23 Q Detective, I think we left off with, based on your
24 conversation with Cortez Butler, what was your impression of
25 what he was supposed to do with the witness, Ryan Marshall,

from Rodney McKee's case?

MR. ENGLE: Your Honor, I guess I would object. That asking for his impression. He can say what was said, he can say that, but he can't give his impression.

THE COURT: Rephrase it.

BY MS. REZMIERSKI:

Q What did he say to you about what he was supposed to do with the witness, Ryan Marshall, in Rodney McKee's case?

A He said there was a hit for the individual that he described, as I previously testified to, and that he was supposed to kill him.

Q Thank you.

MS. REZMIERSKI: Nothing further.

THE COURT: Anything further from the defense?

MR. PERLOS: No, your Honor.

MR. BRANDT: No, your Honor.

THE COURT: Mr. Engle?

RE CROSS-EXAMINATION

BY MR. ENGLE:

Q Detective, during this situation you are not present at the December 11th interview with Mr. Butler?

A No, I was not at the interview on the 11th.

Q Some of this information I suspect you're getting as a result of meetings of the task force?

1 A I've received lots of information from the task force
2 meetings. I don't know what specifically you're referring
3 to.

4 Q Some people did one thing and some people did another, there
5 was, needless to say, a lot of stuff to go through, would
6 that be correct?

7 A Yes.

8 Q And those meetings were to try and correlate what was
9 happening with everybody?

10 A Well, it was to keep the task force and the members up to
11 speed, as well as to share some information, as well as to
12 delegate responsibilities for different particular tasks
13 that were to be performed, yes.

14 Q And that involved just finding out what other people knew.

15 A I'm sorry, Sir?

16 Q That involved finding out what other people had figured out
17 or found.

18 A Yes.

19 Q And I'm hearing two things, one, that Mr. Butler, if I heard
20 you correctly on direct, after he was confirmed that he did
21 not have to be read his rights, just started in to making
22 statement, but that's not correct is it, there's a lot of
23 conversation after that.

24 A Well, I've tried to accurately depict the events. It was
25 not a situation where as soon as I said I'm not intending to

1 use anything you say against you, he didn't just, "Oh,
2 okay," and off we went. It wasn't immediate but there
3 wasn't a lot of dialogue. There was a minor amount of
4 discussion about two things.

5 Q I think you indicated that you told him a second time that
6 you didn't -- well, how did you phrase it, that you didn't
7 intend to use what he said against him?

8 A I told him two times that I wasn't intending to use anything
9 he said against him.

10 Q And if -- if I was -- if I'm correct on what you've told me,
11 it wasn't until after you say that you're concerned about
12 Alexis, maybe you didn't use her name, but Alexis and Mr.
13 Wolfe and their getting back together, that he finally, for
14 lack of a better term, relents and starts to make a
15 statement to you?

16 A It was when he knew we weren't recording. When we weren't
17 recording. We talked about recording, we talked about the
18 child and the safety of the child and when we talked about
19 my intent, when we were done talking about those things that
20 was when Mr. Butler started talking and let us know that we
21 had it all wrong.

22 Q Would I be correct the two of you had -- between that and
23 taking the -- taking the samples for DNA the two of you had
24 probably been there what, 25, 30 minutes before he starts
25 talking?

1 A No.

2 Q How long was it?

3 A From when we first introduced ourselves or --

4 Q From the time you walked into the room with him til the time
5 he starts talking, how long was it?

6 A I would guess maybe 10 minutes. Maybe.

7 Q No Miranda rights waiver is ever signed?

8 A No.

9 Q The -- was there a discussion about some sort of deal to get
10 him into a federal prison?

11 A That was one of the requests that he had made.

12 Q And was there a discussion about that on the 16th when you
13 were there?

14 A Discussion as far as?

15 Q Well, if anything else, just telling him no, we can't do
16 that.

17 A We didn't -- we didn't tell him one way or the other what we
18 could or couldn't do in regard to that.

19 Q Okay, so there wasn't any discussion about that?

20 A Well, he brought it up and we responded to it, so in my mind
21 that's a discussion, but we didn't make a deal with him to
22 put him in federal prison. I don't -- I'm not --

23 Q You're just able to say this is a state charge and we can do
24 --(inaudible)?

25 A I'm sorry?

1 Q You were able to say just this is a state charge and we
2 can't do that?

3 A Again, I -- I told you we didn't -- we were un -- that's not
4 a decision that I have the authority to make and it's not a
5 decision Detective Sullivan has the authority to make so we
6 couldn't give him an answer.

7 Q Did -- when you went down there did you intend to ask him
8 about the dates of the 6th of August, the 8th of August, the
9 dates prior to the homicide?

10 A I didn't really have a set line of questioning in any way,
11 shape or form that I had for Mr. Butler.

12 Q Did you know about those dates prior to the interview?

13 A I knew of those dates, yes.

14 MR. ENGLE: I have no further questions of
15 this witness.

16 THE COURT: Anything?

17 MS. REZMIERSKI: Nothing. Thank you.

18 THE COURT: Anything else from anybody?

19 MR. PERLOS: No.

20 THE COURT: Thank you, you may step down.

21 THE WITNESS: Thank you.

22 (At 1:43:12 p.m., witness excused)

23 THE COURT: Next witness.

24 MS. REZMIERSKI: Call Detective Andrew
25 Sullivan.

1 THE COURT: Do you swear to tell the truth,
2 the whole truth and nothing but the truth so help you God?

3 MR. SULLIVAN: I do.

4 ANDREW SULLIVAN

5 (At 1:43:25 p.m., witness sworn, testified as follows):

6 THE COURT: Please state your name and spell
7 your last name for the record.

8 THE WITNESS: Andrew Sullivan, S-U-L-L-I-V-A
9 N.

10 THE COURT: Whenever you're ready.

11 MS. REZMIERSKI: Thank you.

12 DIRECT EXAMINATION

13 BY MS. REZMIERSKI:

14 Q Where do you work?

15 A The Jackson County Sheriff's Office.

16 Q How long have you been with JSO?

17 A Eight years.

18 Q As of August 10th, 2014 you were assigned to the Detective
19 Bureau, is that correct?

20 A Yes, I was.

21 Q How long did you spend in the DB?

22 A Four years.

23 Q You are what we commonly refer to as the officer in charge
24 of this particular case, is that fair to say?

25 A Yes.

1 Q You got called out to 5220 Timbercrest on the 10th?
2 A I did.
3 Q What time, do you remember? How does it come about that you
4 get called in?
5 A I was contacted by the acting desk sergeant and was informed
6 that some road patrol deputies were requesting a detective
7 at the address of 5220 Timbercrest Trail.
8 Q So what's going on when you get there?
9 A When I got there Deputy Barnett had basically temporarily
10 secured the house. No one was coming in and out of the
11 house. The rescue personnel were clearing when I got there
12 and kinda everything was, I guess you could say in a holding
13 pattern when I got there, not a whole lot of activity.
14 Q We've heard some testimony already, Detective Sullivan,
15 about individuals having been in and out of that bedroom,
16 what I'll call the crime scene, for lack of a better way to
17 put it, certainly before you got there that day did you hear
18 that testimony?
19 A I did.
20 Q What about after you got there, were there individuals in
21 and out of that bedroom even after you got there?
22 A Yes. Myself, Deputy Barnett and Sergeant Huttenlocker had
23 gone back into the bedroom shortly after I got there.
24 Q At that point was it obvious what you were dealing with?
25 A No.

1 Q Had anybody to your knowledge prior to the Crime Lab coming
2 on -- put on booties to sort of protect against shoe prints
3 and things like that?

4 A When I got there we did.

5 Q Okay. Prior to you getting there had that been done?

6 A That had not been done, no.

7 Q So we've also heard some testimony about some -- some shoe
8 impressions having been photographed in the dust there that
9 day, were you present when that happened?

10 A I was outside when the Crime Lab was taking the pictures,
11 yes.

12 Q You've seen all the pictures?

13 A I have and had a discussion with the Crime Lab about them.

14 Q So you were aware that there were some shoe prints in the
15 dust?

16 A Yes.

17 Q Did you or anybody else from the task force ever submit any
18 shoes or anything like that to follow up on those shoe
19 prints?

20 A No. The only thing we did was submit -- or, I'm sorry,
21 submit the known shoe impressions from the boots or shoes
22 that we were wearing.

23 Q Those were photographed as well?

24 A Yes.

25 Q Did it makes sense to you in any way to follow up on those

1 shoe prints in the dust?

2 A No. The discussion I had with the Crime Lab was, they may
3 be able to make a comparison but probably not, and that it
4 looked -- some of the impressions looked like a boot and the
5 boot was described as one that police officers typically
6 where, so it could have been one of our impressions.

7 Q This has an exhibit sticker, People's proposed Exhibit
8 number 2, is that right?

9 A Yes.

10 Q Okay. Again, you've been here throughout the trial. Let me
11 put this back over. You've seen this timeline, excuse me,
12 that's on the other side of this, People's proposed Exhibit
13 number 2, correct?

14 A Yes, I have.

15 Q Have you had an opportunity to look through all of the dates
16 and the facts, if you will, that are referenced on that
17 proposed exhibit?

18 A Yes, I have.

19 Q Is that an -- excuse me, is that exhibit a fair and accurate
20 representation of certain important dates and facts
21 pertaining to this investigation?

22 A Yes, it is.

23 MS. REZMIERSKI: Your Honor, at this time I'd
24 move for the admission of People's proposed Exhibit number
25 2.

1 (At 1:48:07 p.m., People's Exhibit 2 is
2 offered)

3 MR. ENGLE: Your Honor, I think we've argued
4 about this before. This is merely an argument aide, it's
5 not --(multiple speakers)--

6 THE COURT: The jury -- it's a jury aide,
7 it's not coming in.

8 MS. REZMIERSKI: Thank you, Judge.

9 BY MS. REZMIERSKI:

10 Q And just because you've already marked them so that it's
11 clear, where there are some numbers that are missing, this
12 one over here, Detective, this big board has an exhibit
13 sticker, People's proposed Exhibit number 3, is that
14 correct?

15 A Yes.

16 Q This has also at times been turned around to the jury here
17 in the courtroom so I'll flip it around. On the front, can
18 you see it if I take it all the way back over here? I'm
19 sorry.

20 A I can stand up if that's okay?

21 Q Okay. All right, that'd be helpful. Does this board have
22 names and pictures and just a minimal amount of factual
23 information, all of which are pertaining to this
24 investigation?

25 A Yes.

1 Q Are all those pictures and names, if you will, and the
2 minimal factual allegation fairly accurate representations
3 of individuals and issues pertinent to this investigation?

4 A Yes, it is.

5 MS. REZMIERSKI: Your Honor, at this time I
6 move for the admission of People's proposed Exhibit number
7 3.

8 (At 1:49:23 p.m., People's Exhibit 3 is
9 offered)

10 MR. PERLOS: Judge, I'm going to object to
11 that. I don't think that's relevant. Everyone on there has
12 testified, the jury knows who those people are and the other
13 three have all been identified by the witness, so I don't
14 know what -- what the relevance to that is.

15 MR. ENGLE: I think one step further, your
16 Honor, it is an aid to argument but it is not --

17 MR. PERLOS: Evidence.

18 MR. ENGLE: Those are all facts for the jury
19 to be determined -- to make the determination of it is not
20 admissible and I think we've been through this already.

21 MR. BUTLER: He's gonna let it in.

22 THE COURT: Yeah, we have.

23 MS. MCKINNIE: That one was marked and
24 admitted. Yeah.

25 This one was marked and admitted, the phones

1 board.

2 MR. BRANDT: That --

3 MS. REZMIERSKI: (Inaudible).

4 MS. MCKINNIE: That one was marked and
5 admitted as 1.

6 MR. BRANDT: Yes, that was 1.

7 MS. REZMIERSKI: This one's in.

8 THE COURT: Yeah, that's the --(inaudible).

9 MS. MCKINNIE: Yeah.

10 MS. REZMIERSKI: So 1 is in --(inaudible).
11 That was 2 --(inaudible).

12 THE COURT: That was -- yeah, but you also
13 had the phone records --(inaudible).

14 MS. REZMIERSKI: Yes, we do have a lot of
15 phone records --(inaudible).

16 THE COURT: But that one is marked 3?

17 MS. REZMIERSKI: Three.

18 THE COURT: I thought we had the phone
19 records of Rodney McKee as 3?

20 MS. REZMIERSKI: I don't think we have a 3,
21 Judge, I think we skipped 1, 2 and 3. We did 1 as the --
22 the pictures and the list of the phone numbers, 2 is the
23 timeline, 3 is the -- the picture and sort of the flow
24 chart. Then we picked up with 4 being the picture of
25 Frannie and the girls at the fair; 5 I believe is the

1 picture of Frannie just herself; 6 would be the -- 6 and 7
2 will be the pictures of the texting back and forth between
3 Eric and Frannie that night/early morning. I think we pick
4 up from there.

5 THE COURT: Can you double check what you've
6 got for then the binder?

7 MS. MCKINNIE: Which binder are you thinking
8 of, your Honor?

9 THE COURT: Rodney's.

10 MS. MCKINNIE: Phone binder or extraction
11 binder?

12 THE COURT: Both.

13 MS. MCKINNIE: Kay. The extraction, your
14 Honor, is 219, yeah.

15 THE COURT: All right.

16 MS. MCKINNIE: It's marked right there, and
17 the binder itself is marked 203.

18 THE COURT: Two o?

19 MS. MCKINNIE: Two o three, yes.

20 THE COURT: But that again is just a jury
21 aid, that one's not coming in.

22 MS. REZMIERSKI: That's fine. Thank you,
23 Judge.

24 BY MS. REZMIERSKI:

25 Q What's was your role that day?

1 A I was the lead investigator. The majority of my role was to
2 assign tasks, ensure they were completed and not duplicated.
3 Q Were you the one that made the decision to call in the task
4 force?
5 A I requested it through my command staff. The ultimate
6 decision has to come from someone higher than my rank.
7 Q Why did you do that?
8 A Just for the manpower. I felt we needed more investigators
9 out there to speed up the investigation. The first day or
10 two are the most critical usually.
11 Q Detective, you sat here throughout the trial, we've heard a
12 fair amount of testimony and evidence about what happened at
13 the scene there that day, do you really have a whole lot
14 necessarily to add to that?
15 A No.
16 Q You were present for most of what we've heard about, is that
17 fair to say?
18 A Yes.
19 Q We did hear some testimony about Eric Wolfe, and I believe
20 the question has been asked of different people at different
21 times, did Eric Wolfe have any blood on him that day? Now,
22 did you spend time with Eric Wolfe?
23 A I did.
24 Q How much time did you spend with Eric Wolfe that day?
25 A I spent the car ride from the address on Timbercrest Trail

1 to the interview room and then throughout the interview I
2 spent with him.

3 Q Any idea how long the interview was?

4 A Forty-five minutes, roughly.

5 Q And as we've all heard, he -- he was the suspect initially?

6 A Yes.

7 Q And for some time?

8 A Yes.

9 Q Did he have any blood on him that day?

10 A He did.

11 Q Where was that?

12 A He had a small amount of blood -- dried blood on, I believe
13 it was his right pinky finger in the fingernail area.

14 Q So he wasn't covered in it or anything like that?

15 A No.

16 Q But he did have a certain amount?

17 A Yes.

18 Q Speaking of blood, there were pillows in that bedroom that
19 we've seen in the pictures, do you recall seeing those as
20 well?

21 A Yes.

22 Q Specifically, we're talking about, if memory serves, one on
23 the floor and I think maybe two on the bed, does that sound
24 right to you?

25 A Yes.

1 Q Do I understand that those were not taken into evidence?

2 A They were not.

3 Q Why not?

4 A We had a -- once the Crime Lab was done with what they were
5 doing inside we had a lengthy conversation outside about
6 what they had taken, what they thought would be valuable
7 evidence. With the amount of blood on it they didn't think
8 that they would get any other DNA profiles other than the
9 victim's.

10 Q So were all three of those pillows soaked with blood?

11 A Some more soaked than others.

12 Q Which were more soaked than others?

13 A The one on the floor I believe had -- was the most
14 saturated.

15 Q As a part of your investigation did you determine that
16 anything was missing from that house?

17 A Yes.

18 Q What?

19 A The victim's cell phone.

20 Q Did you or any members of the task force eventually find
21 that cell phone?

22 A We did.

23 Q Tell us about that.

24 A Initially, while the Crime Lab was still inside processing
25 it we got a emergency order from the phone company to run

1 GPS ping on the phone. They were able to tell us that the
2 phone was still on and giving a signal when a phone call
3 would come in and they were able to provide a rough idea of
4 where the phone might be physically. Based on that, we went
5 out and searched the next day, we could not find it that
6 day.

7 Q At some later point did you?

8 A We did. We expanded -- after speaking with the phone
9 company again we expanded the area that we were gonna search
10 and brought in more manpower and were actually able to
11 recover the phone.

12 Q What day was that, what date?

13 A I don't know the specific date. I would say around three or
14 four days after the 10th, so the 13th or 14th.

15 Q Let me ask you this, was there a date where you and other
16 members of the task force went back to 5220 Timbercrest to
17 do any follow-up investigation?

18 A Yes.

19 Q Did you find the cell phone on the same date that you went
20 back to do that follow-up investigation?

21 A Yes, we did.

22 Q If I told you that your report reflects August 15th for that
23 date, does that sound about right to you?

24 A That sounds correct.

25 Q What was the purpose of going back to 5220 Timbercrest?

1 A There were a couple different reasons. One, we wanted to
2 see how dark the master bedroom was at the time that Mr.
3 Wolfe would have came home.

4 Q How did you go about doing that?

5 A We got there I want to say 5:30 in the morning roughly, and
6 we actually set up a video camera and tried to simulate the
7 conditions of the room that it was in when Mr. Wolfe got
8 home.

9 Q Do you recall what time sunrise was that day?

10 A That day it was 6:39, which was within a minute of the
11 sunrise on the 10th, so -- and the weather conditions were
12 pretty similar as well.

13 Q Correct me if I'm wrong, as I recall Mr. Wolfe's testimony
14 on the stand, he said he got home somewhere be -- and would
15 have been up there somewhere around 6:20, 6:30 a.m., does
16 that sound about right to you?

17 A I think he said 6:15, 6:20, roughly in there.

18 Q Okay. Do you have a memory as to how dark it was in that
19 room that morning?

20 A It was fairly dark between 6:20 and 6:35, light enough to
21 see the silhouette of a person on the floor, not light
22 enough to see the blood or anything else that was there.

23 Q So I'm sorry, did you get to the point where you told us
24 specifically where Frannie's cell phone was located?

25 A Not yet, I have not.

1 Q Okay. Tell us about that.

2 A The cell phone was found on Mapledale Road, roughly directly
3 east of the Timbercrest Trail address. Mapledale Road runs
4 north and south, just down from the neighborhood on
5 Timbercrest Trail.

6 Q Any idea what kind of a distance we're talking about?

7 A As the crow flies or on the road?

8 Q How about both.

9 A Probably three quarters of a mile if you were to walk it
10 straight. May be a little bit longer if you had to take the
11 roads and actually make right hand turns to get there.

12 Q Detective, you're fairly familiar with that location,
13 meaning the general Timbercrest, 5220 Timbercrest location,
14 certainly at least at this stage, correct?

15 A Yes.

16 Q (Inaudible)-- for a second let's see if we can put this up
17 here. This now has an exhibit sticker that says People's
18 proposed 26, is that fair to say?

19 A Yes.

20 Q What are we looking at here?

21 A This is an overlay of the area, yellow dot signifies the
22 5220 Timbercrest Trail address, and they're pretty small
23 over here, but there's four numerals, one, two, three and
24 four, there is where the -- that's where the four pieces of
25 her phone were found.

1 Q Okay. They are pretty small, they're hard to see, tell me
2 if I'm wrong if I'm pointing, that's number one, correct?

3 A Yes.

4 Q That's number two, correct?

5 A Yes.

6 Q That's number three, is that also right?

7 A Yes.

8 Q And then four is over here on the other side of the road,
9 correct?

10 A That's correct.

11 Q And this is a fair and accurate representation, this
12 picture, this map, of the Timbercrest Trail, Vrooman Road,
13 Mapledale Road area as you know it, also correct?

14 A Yes.

15 MS. REZMIERSKI: Your Honor, at this time I'd
16 move for the admission of People's proposed 226.

17 (At 2:03:22 p.m., People's Exhibit 226 is
18 offered)

19 THE COURT: Any objection?

20 MR. PERLOS: No.

21 MR. BRANDT: None, your Honor. Thank you.

22 THE COURT: Two twenty-six is admitted.

23 (At 2:03:29 p.m., People's Exhibit 226 is
24 admitted)

25 MS. REZMIERSKI: Thank you, Judge.

1 BY MS. REZMIERSKI:

2 Q What condition was her phone in? It looks like four
3 different pieces.

4 A The phone itself was in two pieces and then the case was in
5 two pieces.

6 Q I am now showing you evidence envelopes marked as People's
7 proposed Exhibits 190, 191, 192 and 193, is that correct?

8 A Yes.

9 Q Have you seen these before?

10 A Yes, I have.

11 Q What are these?

12 A These are individual packages of each piece of -- the two
13 pieces of the cell phone case and the two pieces of the
14 phone.

15 Q Okay. These evidence envelopes all bear your name, is that
16 correct?

17 A Yes.

18 Q You were present when they were found and then eventually
19 placed them into evidence?

20 A I recovered them myself and placed them into evidence.

21 Q Okay. Can you pull out -- let's start I guess with 190.
22 And in 190 we're looking at?

23 A This is the front of the cell phone case that was recovered.

24 Q Is that in the same condition as when you located it?

25 A There is some fingerprint dust on it that was not on it when

1 I recovered it. Other than that, the same.

2 Q Okay, because when you recovered all of these, placed them
3 into evidence, you eventually sent them to the lab for both
4 print and DNA analysis, correct?

5 A Yes.

6 Q All right, let's put 190 back in. What's in 191?

7 A One ninety-one is the front of the cell phone that was
8 recovered.

9 Q And so it was found front taken off of -- of the back?

10 A Yes.

11 Q Okay.

12 A The back and front of the phone were separate.

13 Q Okay. And again, is that in substantially the same
14 condition as when you found it and placed it into evidence?

15 A Yes.

16 Q Okay, you can put that back in. One ninety-two holds what?

17 A One ninety-two is the back of the cell phone case.

18 Q Same set of questions, is that essentially in the same
19 condition as when you found it and placed it into evidence?

20 A Yes, it is.

21 Q All right, put that back in and then we'll check on 193.
22 This is the one that gave us a little bit of pause, if
23 you'll recall, when Cassie Deruiter was opening the
24 envelope. What do you have in there?

25 A This is the back of the phone. When we sent it to the lab

1 it was just the back. After they were done processing it
2 for DNA and fingerprints we actually went to several
3 different cell phone stores and had the front of another
4 iPhone put on the back of the phone to see if it was
5 functional.

6 Q So in order to see if it's functional you have to have it
7 sort of be a completed thing?

8 A Correct.

9 Q Okay, so it was found without that front on it?

10 A Yes.

11 Q What is -- is there another receipt in there?

12 A I believe there is.

13 Q There was at least one receipt. What is that for --
14 (inaudible)?

15 A There's two receipts, they're just carbon copies, and
16 they're from Gamego. And this was to put the front of the
17 phone back on.

18 Q Okay, so did you place this paperwork also into this
19 evidence envelope after you took it to Gamego to -- to see
20 if it could be made functional?

21 A Yes.

22 Q Okay. Were you able to make it functional enough to -- to
23 extract anything or retrieve anything --(inaudible)?

24 A We were not. After they were able to assemble it back
25 together they told us the hard -- hard drive was fried due

1 to water damage.

2 Q Did you attend the autopsy on the 11th?

3 A Yes, I did.

4 Q Is that a matter of routine?

5 A Yes.

6 Q Why?

7 A To recover any evidence that the doctor finds or that we

8 find, and to document the injuries on the victim, and most

9 times to determine -- or the doctor will let us know the

10 cause and manner of death at that time.

11 Q Did you take any items of evidence from the doctor at the

12 time of autopsy?

13 A I did.

14 Q What did you take?

15 A The two zip ties that were attached to the victim's wrist.

16 Q I'm now going to hand you the envelope that -- the outer one

17 of which bears Exhibit sticker People's proposed Exhibit

18 195, do you recognize that?

19 A Yes.

20 Q As with all of these, we've got an awful lot of numbers

21 written on the outside of these evidence envelopes, one of

22 the numbers I see over and over again is 138-18880-14, what

23 is that number?

24 A That's the police report number assigned to the homicide.

25 Q Every report that comes in and gets investigated to your

1 department, and any law enforcement department, gets its own
2 unique police report number?

3 A Yes.

4 Q One three eight identifies itself as a Jackson Sheriff's
5 Office report, correct?

6 A Yes.

7 Q Fourteen is the year?

8 A Correct.

9 Q Okay. Can you look inside there?

10 A It's a third envelope which I recognize the lab number from
11 the Michigan state police.

12 Q Easier said than done on that one, isn't it?

13 A There's two zip ties located within that envelope.

14 Q Are those the zip ties that were taken from Frannie's left
15 wrist at the time of autopsy?

16 A Yes.

17 Q You took those and placed them into evidence?

18 A Yes.

19 Q And made sure that they got up to the Crime Lab for
20 analysis?

21 A Correct.

22 Q Okay. Let's put those back in there envelope. I'll trade
23 you and hand you what has been marked as People's proposed
24 Exhibit 227, is that another evidence envelope with a
25 proposed exhibit sticker?

1 A Yes, it is.

2 Q Do you recognize that?

3 A I do.

4 Q How do you recognize that?

5 A I completed this evidence envelope and the property tag
6 attached to it, bears my signature.

7 Q So let me ask you this before we get inside of that, on
8 August 15th when you are back at the house and initially you
9 were checking out how well you could see in that bedroom in
10 the very early morning hours, were there items of evidence
11 that were seized by you that day at the house?

12 A Yes.

13 Q What?

14 A These zip ties, some other zip ties and -- I believe that
15 was it.

16 Q Okay. Can you open that up for us?

17 A Yes.

18 Q So you're right, that has zip ties inside of it.

19 A Yes.

20 Q Do you remember where those were found?

21 A I remember originally seeing these under the bed as you
22 first walked in to the master bedroom.

23 Q So underneath Frannie and Eric's bed, in that bedroom kind
24 of closer to where the door is when you first walked in?

25 A Yes.

1 Q Where they were originally located was photographed, is that
2 fair to say?

3 A Yes.

4 Q Okay, and then somehow were not seized until you went back
5 on the 15th?

6 A That's correct.

7 Q Can you put these --(inaudible)? Do they look to you like
8 the same kind of zip ties as the ones that were around
9 Frannie's left wrist?

10 A Yes.

11 Q You referenced others that were taken that day from the
12 house, where were those others that you found?

13 A I cut those off of a -- it was either a dog gate or a baby
14 gate that was on the front porch. The zip ties were very
15 small and they were holding a piece of cardboard to the gate
16 itself.

17 Q Were they in any way similar to the zip ties that we found
18 -- you found on Frannie's left wrist and then under the bed?

19 A No. The square piece that locks was actually not the same
20 size as those two -- or those four, rather.

21 Q Kinda like shorter and thicker, is that fair to --

22 A Yes.

23 Q -- say? Okay. I'm showing you an evidence envelope that's
24 now been marked as People's proposed Exhibit 228, do you
25 recognize that?

1 A Yes, I do.

2 Q And what is that?

3 A This is a sealed evidence bag with -- it was originally

4 labeled as the bloody scarf that was removed from the

5 victim's mouth at the autopsy.

6 Q Okay, and did you recover that from the autopsy as well?

7 A I did.

8 Q Okay, can you open that up for us? Still seemingly

9 completely stained with blood?

10 A Yes.

11 Q Am I correct that that garment was not DNA tested?

12 A Correct.

13 Q So help us understand a little bit about who chose what to

14 be DNA tested and why, how does that happen?

15 A It's a discussion between investigators in the Crime Lab

16 personnel, and they only accept a certain number of items to

17 be tested for DNA. We -- between the Crime Lab and the

18 investigators we picked out what we thought would have the

19 best results.

20 Q When we were talking a little bit ago about the pillows and

21 -- and being very saturated, is that the same sort of

22 analysis that you have here with this scarf that was used to

23 gag Frannie?

24 A Yes.

25 Q I mean, that was seemingly utterly saturated with her blood?

1 A It was.

2 Q Okay. Did MLive cover this investigation?

3 A Yes.

4 Q Are you aware of how soon there were articles online on

5 MLive?

6 A I believe there was an article that day.

7 Q Meaning August 10th?

8 A Yes.

9 Q Do you know when the next one might have been?

10 A I believe August 12th.

11 Q Is that because by the 12th you had a cause and manner of

12 death?

13 A Yes.

14 Q And it was -- it was murder?

15 A Yes.

16 Q Again, Eric was the suspect?

17 A He was.

18 Q How long did he stay the suspect?

19 A Until the December 16th interview with Mr. Butler.

20 Q So from August 10th then moving forward, we're getting any

21 traction in this investigation?

22 A We were not.

23 Q When did that change?

24 A When we got the CODIS hit from the Michigan State Police.

25 Q And that's November 17th, right?

1 A That's correct.

2 Q That's when you got Mr. Butler's DNA on the zip ties on
3 Frannie's left wrist?

4 A Yes.

5 Q So what did you start doing at that point?

6 A At that point we tried to find a connection between Mr.
7 Butler and Mr. Wolfe, among other things.

8 Q Mm-hmm. What about connections to Jackson, were you trying
9 to see if he had any connections to Jackson as well?

10 A We were.

11 Q And were you able to come up with anything about connections
12 to Eric Wolfe or connections to Jackson?

13 A No.

14 Q Did you at some point discover a cell phone number for Mr.
15 Butler?

16 A Yes, I did.

17 Q What did you do with that information?

18 A I prepared a search warrant for historical records. When I
19 got the results I forwarded them to Detective/Sergeant
20 Gonyeau so he could do his mapping and his interpretation of
21 the records.

22 Q That's his specialty?

23 A Yes, it is.

24 Q Okay. And I guess while we're talking about phones let's
25 clean up some other phone stuff. I'm showing you evidence

1 envelopes that have been marked People's proposed 216, 217
2 and 218, do you recognize these envelopes?

3 A Yes, I do.

4 Q What are these?

5 A These all contain cell phones.

6 Q These are the cell phones that were taken from Clifford
7 McKee at the Westwood Mall on December 11th, is that
8 correct?

9 A That is correct.

10 Q And did you oversee these being placed into evidence?

11 A I did, they were actually placed in evidence a couple
12 different times, but.

13 Q Because they've gone different places to try to be analyzed?

14 A Correct.

15 Q Okay. You've seen them as they've been opened up and you've
16 seen what's inside of them?

17 A Yes, I have.

18 Q Anything startling or different about what was inside of
19 them?

20 A No.

21 Q Okay. I'm showing you People's proposed 214, these are two
22 cell phones as well, correct?

23 A Yes.

24 Q And these were taken by the Detroit Police Department from
25 Clifford McKee on December 16th, 2014, correct?

1 A That's correct.

2 Q Were these then handed to you?

3 A Yes, they were.

4 Q And placed into evidence?

5 A Yes.

6 Q You were present when that envelope was originally opened

7 here in court?

8 A Yes, I was.

9 Q Again, anything startling or different or surprising to you

10 about what was in this envelope?

11 A No.

12 Q I'm showing you People's proposed, I believe it says 215,

13 does that look right to you?

14 A Yes, it does.

15 Q This is a evidence envelope again, correct?

16 A Yes.

17 Q Inside three phones that were seized by another law

18 enforcement department from Rodney McKee on November, I

19 believe it was 25th, does that sound right to you?

20 A Yes.

21 Q Okay. And eventually a search warrant was offered for these

22 phones pertaining to this investigation, is that correct?

23 A That's correct.

24 Q You were present when this envelope was opened here in

25 court?

1 A Yes, I was.

2 Q Again, anything surprising about what was in there?

3 A No.

4 Q Nothing different from what you expected or had previously
5 seen?

6 A No.

7 Q Thank you. So, you get Cortez Butler's cell phone records
8 hand them over to desect -- Detective/Sergeant Paul Gonyea
9 and as a result of that you get certain information,
10 correct?

11 A Yes.

12 Q And the important information in your mind at that point was
13 what?

14 A There was a couple of pieces of important information. One
15 is that Mr. Butler's device was in Jackson on a couple dates
16 leading up to date of the homicide, as well as on the day
17 the homicide was reported.

18 Q Go ahead, sorry.

19 A Further, he provided us with some target numbers that he
20 felt stood out to him based on the amount of contacts and
21 the time frame where these contacts were occurring.

22 Q And was one of those, that first number on here for Clifford
23 McKee a 313-693-5985?

24 A Yes.

25 Q So based on Paul Gonyeau's analysis of Cortez Butler's phone

1 records you got a search warrant for that 313 phone number
2 correct?

3 A Yes.

4 Q And what does that tell you?

5 A That came back with subscriber information to a Dorito
6 Johnson, was the name provided.

7 Q As a part of your investigation did you uncover who Dorito
8 Johnson is?

9 A I did.

10 Q Who is that?

11 A Clifford McKee.

12 Q So now you've got both of their records, does that -- has
13 that clarified anything for you?

14 A It hadn't, no.

15 Q Were you still at that point able to make the connection
16 between Cortez Butler and Eric Wolfe or Frannie Craig?

17 A No.

18 Q I mean, other than DNA.

19 A Correct.

20 Q Same question with Dorito Johnson, Clifford McKee?

21 A Who's -- I'm sorry, I --

22 Q I'm sorry.

23 A Whose connection?

24 Q The same question with Dorito Johnson or Clifford McKee,
25 were you able to establish a connection between him and Eric

1 Wolfe or Frannie Craig?

2 A No.

3 Q How about with Jackson at least in general?

4 A With Mr. Butler or --

5 Q Sure.

6 A The only connection we could find from Mr. Butler was his
7 device being in Jackson on those particular dates.

8 Q What about Clifford McKee?

9 A Yes.

10 Q And what was that?

11 A His name was in our local report writing system a few times.

12 Q Did he have family here in Jackson?

13 A It appeared that way from looking at the reports.

14 Q He lived in Detroit --

15 A Yes.

16 Q -- as far as you knew but had family here in Jackson?

17 A That was my understanding from looking at the contacts he
18 had listed and the reports that he was involved in.

19 Q At some point you got contacted by Detroit Police
20 Department?

21 A Yes.

22 Q Sometime -- I think it would have been December 10th, does
23 that sound right?

24 A Yes, it does.

25 Q Did you travel with other detectives from the task force to

1 Detroit to participate in the execution of the search
2 warrant that we've heard about?

3 A Yes.

4 Q Mr. Butler was arrested that day but actually, by that time
5 it's the very early morning hours of December 11th, correct?

6 A Yes.

7 Q Did you and/or anybody else from the task force interact
8 with Mr. Butler or interview him on December 11th?

9 A Yes.

10 Q Where was he at that point?

11 A At that point he was at the Detroit Detention Center.

12 Q Who was with you for that interview?

13 A Myself and Detective Chris Boulter from Blackman Township.

14 Q Did either one of you advise Mr. Butler of anything prior to
15 talking to him?

16 A Yes.

17 Q What did you advise him of?

18 A Detective Boulter advised him of his Miranda rights.

19 Q Did he indicate that he understood those?

20 A Yes.

21 Q And did he speak to you?

22 A He did.

23 Q Did you gain any useful information out of that particular
24 interview or interaction?

25 A No.

1 Q Did he deny being here in Jackson?

2 A Yes.

3 Q Did he deny knowing anything about Frannie Craig or the
4 homicide that you were there to investigate?

5 A Denied any knowledge, correct.

6 Q Any idea how long you guys interviewed him that day?

7 A Twenty-five minutes, roughly.

8 Q Not too terribly long?

9 A No.

10 Q Okay. What happened when you were done interviewing?

11 A We started to walk him from -- their interview rooms are in
12 a different building than the cells, so we began to walk him
13 back towards the building that contained the cells.

14 Q Did he say something to you along the way?

15 A He did.

16 Q What did he say?

17 A He told us that if we could get him a federal deal that he
18 would be able to bring down families in Detroit.

19 Q That if you could get him a federal deal he could bring down
20 families in Detroit?

21 A Something to that effect, yes.

22 Q When you were interviewing him there in the -- in the
23 interview room there at DPD was that recorded?

24 A Yes, it was.

25 Q And he was aware of that?

1 A Yes.

2 Q How about when you're walking him back to his cell, is that
3 recorded?

4 A I'm sure there's outside cameras but no audio and nothing
5 specific where we were at.

6 Q And surely he's aware of that as well?

7 A I'm sure.

8 MR. ENGLE: Well, your Honor, I guess again,
9 I object. I mean, they can testify there's no outside mic,
10 they can testify --(undecipherable)-- but they can't testify
11 to what he's aware of and what he isn't aware of. You know,
12 that --

13 THE COURT: It's what they told him.

14 MS. REZMIERSKI: I'm sorry?

15 THE COURT: Just what they told him.

16 MS. REZMIERSKI: That's fine. Thank you.

17 I'll move on.

18 BY MS. REZMIERSKI:

19 Q At some point did you become aware that Cortez Butler had a
20 girlfriend?

21 A Yes.

22 Q Is that because he told you who this girlfriend is or was

23 A Yes.

24 Q And what was her name?

25 A Pamela Henry.

1 Q So that same December 11th was the day that there was a task
2 force meeting that we've heard about, correct?

3 A Yes.

4 Q And then interaction with Clifford McKee at the Westwood
5 Mall and the taking of his three cell phones, correct?

6 A Yes.

7 Q We've already heard from Detective Merritt about the two of
8 you then going to interact with Cortez Butler again on
9 December 16th and you were present in court for that as
10 well, correct?

11 A Yes.

12 Q I'm not gonna take you through the whole confession and all
13 the statements and details, but do you recall if, during
14 that interview, he talked to you at all about the murder
15 weapon or did you guys ask him anything at all about the
16 murder weapon?

17 A Yes.

18 Q Tell us about that.

19 A I believe Detective Merritt asked him originally what kinda
20 weapon was used and then whether it was still around, where
21 it might be at, just kinda some general questions, and Mr.
22 Butler made the comment that we wouldn't find it.

23 Q Did he answer the question about what kinda weapon was used?

24 A Not in detail.

25 Q You just asked where is it and he said, you're never gonna

1 find it?

2 A Yes.

3 Q And have you ever found it?

4 A No.

5 Q Did Mr. Butler talk to you guys about children in that home

6 that night that he was there and where they would have been

7 sleeping?

8 A Yes.

9 Q What did he say?

10 A He said that one small female child was sleeping on the sofa

11 right near the front door and two other small children were

12 sleeping in separate bedrooms upstairs.

13 Q And is that your understanding of where the children in the

14 home were that night?

15 A Yes.

16 Q Is -- is that a detail that had been public knowledge?

17 A No.

18 Q Usually you don't talk about kids and things like that in

19 investigations publicly do you?

20 A Not at all.

21 Q He did -- he, Mr. Butler, talked to you about Frannie's cell

22 phone in that conversation didn't he?

23 A Yes.

24 Q What did he say?

25 A I believe that he said he smashed it up and threw it out the

1 window, and I think he described it as a country road or
2 something to that effect.

3 Q Again, you've -- you've been out to this Timbercrest,
4 Vrooman, Mapledale Road area, correct?

5 A Yes.

6 Q I mean, is that what you might -- Mapledale, what you might
7 call a country road?

8 A It's pretty much in the middle of nowhere, except for the
9 neighborhoods.

10 Q What -- what surrounds -- I mean, I see houses here over
11 where Timbercrest is, what -- what surrounds Mapledale all
12 in that area?

13 A Woods and open fields.

14 Q I cannot remember if Detective Merritt testified as to what
15 time Mr. Butler noticed on the clock on the appliance in the
16 kitchen, did he testify to that?

17 A He did.

18 Q What time did he say, do you recall?

19 A I believe it was one --

20 MR. ENGLE: Well, your Honor, I guess it
21 isn't what Detective Merritt said, it's what --

22 MS. REZMIERSKI: Fair enough.

23 MR. ENGLE: -- he may remember.

24 MS. REZMIERSKI: Absolutely fair enough.
25 That was poorly worded.

1 BY MS. REZMIERSKI:

2 Q Do you remember what Mr. Butler said in that interview?

3 A I believe it was 1:42.

4 Q Okay. Do you -- well, we're looking up here, we've got the
5 timeline as an aid, I see a blurb here that says August
6 10th, 2014 at approximately 2:11 a.m. is when Cortez
7 Butler's phone leaves the Jackson area and pings at I-94 and
8 127, do you recall that from your investigation?

9 A Yes.

10 Q How -- I mean, you're familiar even with the I-94/127 area,
11 is that correct?

12 A Yes.

13 Q I don't want to get too much into your personal life but
14 you've grown up around here, is that fair to say?

15 A I have.

16 Q Do you have an understanding as to the distance between 5220
17 Timbercrest Trail and the ball park of I-94/127 area?

18 A Probably 20 or 25 minutes.

19 Q Do you recall if, when you were interviewing Mr. Butler he
20 used the name Ryan Marshall, or just referenced a witness?

21 A He just referenced a witness and then described his physical
22 characteristics.

23 Q And again, what was that description?

24 A He said it was a cross between Ellen -- Ellen Degeneres and
25 Puck from the Real World.

1 Q So I know Ellen Degeneres but I'm not great on M-TV, which
2 is probably gonna broadcast my age more than I want to, but
3 are you familiar with Puck from M-TV's Real World?

4 A I wasn't at the time, however, I Googled it shortly
5 afterwards.

6 Q I mean, have you done a comparison of Ellen Degeneres and
7 and Puck from the Real World?

8 A It's an accurate description.

9 Q Of?

10 A Of Ryan Marshall.

11 Q Do I understand correctly that Mr. Butler talked to you
12 about binding and gagging Frannie Craig?

13 A Yes.

14 Q Tying some clothing around her face and zip ties on her
15 wrists?

16 A Yes.

17 Q Had that been a matter of public record by the time you
18 interviewed him?

19 A No.

20 Q Did he also talk to you, "he," Mr. Butler, about some
21 meeting that he had with Rodney and Clifford at some time
22 after Frannie's murder?

23 A Yes.

24 Q Did he tell you when that took place?

25 A I believe his -- I believe he said within -- or roughly two

1 months or so after the homicide happened.

2 Q Did he tell you where that took place?

3 A In Jackson.

4 Q Did he tell you what was discussed and what happened during
5 that meeting here in Jackson?

6 A It was discussed between them that --

7 MR. BRANDT: Your Honor, our --

8 MR. ENGLE: Your Honor --

9 MR. BRANDT: -- objection is to hearsay
10 continues.

11 MR. ENGLE: This is -- it's just hearsay at
12 this point.

13 MS. REZMIERSKI: He's talking about what
14 Cortez Butler told him.

15 THE COURT: Go ahead.

16 MS. REZMIERSKI: Thank you.

17 THE WITNESS: Mr. Butler told us that there
18 was a discussion about the wrong person being killed and
19 that they wanted him to still follow through and take care
20 of Ryan Marshall, basically continue the hit.

21 BY MS. REZMIERSKI:

22 Q And they paid him some more money, right?

23 A I believe it was 2,500 dollars.

24 Q What he told you guys that day, December 16th, had you seen
25 that coming at all?

1 A I had not.

2 Q I know we've beat a dead horse over this, but Eric Wolfe was
3 still the suspect?

4 A Walking into that interview, yes.

5 Q When did that change?

6 A Walking out of the interview room for me.

7 Q You are responsible for overseeing this entire
8 investigation, fair to say?

9 A Yes.

10 Q Have you or anybody else involved in this investigation ever
11 come up with any evidence whatsoever to support Eric Wolfe
12 as a suspect in this case?

13 A No.

14 Q Did you go and talk to Eric and let him know he wasn't a
15 suspect?

16 A I did.

17 Q How soon after that December 16th interview did you do that?

18 A I believe it was between that interview and Christmas,
19 somewhere in that short time frame.

20 Q Where did you meet with him?

21 A I met with him at his attorney's office.

22 Q Shifting back to that December 16th interview, while he's
23 telling you all of that, all of that information, did you
24 know what he was talking about?

25 A I did.

1 Q You knew a little bit more than Detective Merritt as the two
2 of you were sitting there, is that fair to say?

3 A Yes.

4 Q Had you somehow played a role in that arson investigation?

5 A I did.

6 Q It wasn't a huge role, was it?

7 A No.

8 Q What was your role?

9 A Well, I assisted in the traffic stop that took place and
10 then later on I did a forensic download of Donna Marshall's
11 cell phone.

12 Q And that traffic stop would have been of Rodney McKee that
13 day?

14 A That's correct.

15 Q Okay.

16 MS. MCKINNIE: Twenty-nine.

17 BY MS. REZMIERSKI:

18 Q When you say forensic download, that's kind of a little bit
19 like what Detective/Sergeant Paul Gonyeau does, is that fair
20 to say?

21 A The download is the contents of the phone itself, nothing to
22 do with phone records or anything like that, but yes.

23 Q You're proficient in that, is it Cellebrite software?

24 A Yes.

25 Q Okay. I'm showing you what's been marked as People's

1 proposed Exhibit 229, do you recognize that?

2 A I do.

3 Q And what is that?

4 A This is part of the forensic extraction that I did on Donna
5 Marshall's phone.

6 Q Any -- any changes or corrections or additions or anything
7 like that that have been made to that report?

8 A No.

9 Q Okay. That essentially the role you played in that arson?

10 A Yes.

11 Q So peripheral, but you knew it was a crime that had happened
12 and existed?

13 A Yes.

14 Q Did you know that Rodney McKee had been charged with first
15 degree arson as a result of that?

16 A Yes.

17 Q And again, the arson case is not your case but it has become
18 a part of this case in this investigation, is that fair to
19 say?

20 A Yes.

21 Q As a part of your role in overseeing this murder
22 investigation have you become aware of any of Rodney McKee's
23 Circuit Court pretrial dates in that arson case?

24 A Yes.

25 Q Is there anything of import to July 21st, 22nd --

1 A Yes.

2 Q -- in that case? Tell us about that.

3 A I believe he had a scheduled court hearing on the 22nd and
4 it was changed -- or the date was changed on the 21st.

5 Q Okay, so he was supposed to have his first Circuit Court
6 pretrial on July 22nd of 2014, correct?

7 A Yes.

8 Q And the day before that, July 21st, it got adjourned ahead
9 of time?

10 A Yes.

11 Q And adjourned just means set over for another day, correct?

12 A Yes.

13 Q Okay, and the date it's got set over for was August 12th,
14 2014?

15 A Yes.

16 Q After that December 16th interview and confession did you
17 write that up in a supplemental police report right away?

18 A I typed the notes up.

19 Q Did it get officially added to the police report right away?

20 A It did not.

21 Q Because we keep hearing about some June or July or Summer
22 date that it seemingly officially got added to the police
23 report, is that right?

24 A Yes.

25 Q Why did that happen that way?

1 A It was easier for us to control the information if it wasn't
2 put into what's called our AJIS computer system. You can
3 put permissions on certain things, however, anybody from a
4 secretary to the Chief of Police has access to AJIS. So
5 when we -- what we put in there people can see. We hadn't
6 released a whole lot of information on the case so what we
7 got during that interview we kept to ourselves.

8 Q Trying very hard to keep -- keep a lid on it, keep a lock on
9 it?

10 A Yes.

11 Q The details of that confession and that statement, that is
12 something that you also have already testified about,
13 correct?

14 A Yes.

15 Q And again, I'm going off of memory, but does it sound right
16 if I tell you that you testified about your role on Friday,
17 February 19th?

18 A I believe that's accurate.

19 Q I believe you also did a little bit at the beginning of
20 Friday, February 26th hearing as well, does that sound
21 correct?

22 A Yes.

23 Q Back over here, all of these binders, all of this, I guess
24 I'll call it Paul Gonyeau cell phone information, is it fair
25 to say the vast majority of this came to us on March 10th of

1 this year?

2 A Yes.

3 Q Which would have been after you wrote your supplemental
4 police report on this confession, correct?

5 A Yes.

6 Q After you testified under oath about his confession,
7 correct?

8 A Yes.

9 Q Even as we sit here have you been through all of these
10 thousands of pages of these phone records?

11 A I have not.

12 Q Again, you sat here during trial, you were present when
13 Detective/Sergeant Gonyeau testified, correct?

14 A Yes.

15 Q Did you see the Power Point presentation of all the texts
16 but specifically the -- during the testimony about the
17 extraction from Clifford McKee's phone pertaining to texts,
18 and specifically photographs that were sent from Cortez
19 Butler's phone to Clifford McKee's phone, do you recall that
20 portion of the testimony?

21 A Yes, I do.

22 Q Do you recall looking at the pictures on the screen while he
23 was testifying?

24 A Yes.

25 Q And again, you are from Jackson, you've grown up here and

1 you've spent a lot of years investigating around here, did
2 you recognize the locations in those pictures?

3 A I did.

4 Q And where were they?

5 A The Reed Manor apartment complex area.

6 Q Detective, the guy that you interviewed on December 16th,
7 Cortez Butler, is he here in court?

8 A Yes, he is.

9 Q Where is he?

10 A He's sitting to my left wearing a striped blue shirt and a
11 while long sleeved shirt underneath.

12 Q Thank you. The guy that you know as Rodney McKee that you
13 were a part of the traffic stop on on March 4th, 2014 for
14 the arson, is he here in court today?

15 A Yes, he is.

16 Q Where is he?

17 A Also sitting to my left wearing a dress shirt and tie.

18 Q The guy that we have referenced as Dorito Johnson, a/k/a
19 Clifford McKee, who was located at the Westwood Mall on
20 December 11th, 2014 and phones were taken and he's been a
21 part of this investigation, is he here in court as well?

22 A Yes.

23 Q Where is he?

24 A Seated to my left wearing a white shirt and tie.

25 Q Thank you.

1 MS. REZMIERSKI: Your Honor, would the record
2 reflect the witness has pointed to and identified all three
3 defendants?

4 THE COURT: It'll so reflect.

5 MS. REZMIERSKI: Thank you.

6 BY MS. REZMIERSKI:

7 Q And in point of fact, Rodney is Clifford's nephew, is that
8 correct?

9 A Yes.

10 Q Did you guys ever go back to talk to Cortez Butler again?

11 A Yes.

12 Q Why?

13 A To basically keep him close to us I guess you would say, to
14 keep the rapport there and...

15 Q Had he asked for things, had he asked for you to maybe come
16 back and see him?

17 A He did as well.

18 Q You heard Detective Merritt's testimony about that -- that
19 day and that interaction with the lawyer and so on and so
20 forth --

21 MR. ENGLE: Again, your Honor, I think it's
22 not what he heard from Detective Merritt that's his
23 testimony.

24 MS. REZMIERSKI: I was just gonna ask him if
25 he remembers anything any differently than that. Is it okay

1 if I just ask it that way or would you prefer that I just
2 ask him what he recalls?

3 THE COURT: Ask him what he recalls.

4 MS. REZMIERSKI: I'd be happy to.

5 BY MS. REZMIERSKI:

6 Q What do you recall about that day?

7 A There was some discussion about I believe his girlfriend's
8 vehicle and he wanted to get that back to her, as well as
9 the concern if we had told anyone about what he had told us
10 the previous day.

11 Q Was there any further discussion about he wanted to do his
12 time federally?

13 A Yes.

14 Q Was it accurate that his lawyer first came out to talk to
15 you guys and said he doesn't want to talk to you?

16 A Yes.

17 Q But then he did want to talk to you?

18 A The lawyer came back out and told us that his client wanted
19 to talk to us.

20 Q And was that interaction recorded?

21 A No.

22 Q Because it was not, again, in a place where recording would
23 be happening, fair to say?

24 A Yes.

25 Q Did Cortez Butler ever reach out to you over the phone?

1 A Yes, he did.

2 Q When was that, do you recall?

3 A Within a couple days of that second visit on the 17th.

4 Q What was his point in calling you?

5 A He had called my cell phone and wanted to check the status
6 of the vehicle and I believe also some money.

7 Q The vehicle he keeps talking about, that -- is that the
8 Durango?

9 A Yes.

10 Q And he wants to get that out of police custody and get that
11 to Pam, correct?

12 A Yes.

13 Q Okay. Did you, during the course of that phone call, try
14 again to talk to him about, you know, hey, talk to a federal
15 prosecutor, do you want to talk about this, kind of a thing?

16 A I think what I told him is that we had a meeting scheduled
17 with an assistant US attorney and as soon as I started to
18 talk about that he said, "Not like this," or something to
19 that effect.

20 Q Are all jail phone calls recorded?

21 A Yes.

22 Q So he shut you right down?

23 A Yes.

24 MR. ENGLE: Your Honor, I guess I would
25 object. I think that he can -- she can -- that's just

1 commentary. If it's a question, it's a question, but it's
2 not --(undecipherable)-- what did he do, it's what he did,
3 not, he shut you right down. That's just purely
4 argumentative.

5 MS. REZMIERSKI: It was a question.

6 THE COURT: I think we all understand what
7 was meant by, "he shut you down." Go on.

8 MS. REZMIERSKI: Thank you.

9 BY MS. REZMIERSKI:

10 Q Detective, do I understand correctly that you actually
11 brought Cortez Butler here to Jackson on January 6th, 2015,
12 also for the purposes of interviewing him?

13 A Yes.

14 Q He did not want to talk to you that day either, is that fair
15 to say?

16 MR. ENGLE: Well again, your Honor, I think
17 that's leading. It's just the question is, what happened?
18 It's not -- it's not leading -- I mean, you can't say he
19 didn't want to talk to you again that day did he, that's
20 leading. What happened?

21 THE COURT: Ask him did he talk to you that
22 day.

23 BY MS. REZMIERSKI:

24 Q Did he talk to you that day?

25 A Maybe a couple words.

1 Q On the record at least?

2 A Yes.

3 Q Because where did that potential interview take place?

4 A It was in our interview room located next to the Detective

5 Bureau office.

6 Q Are things recorded there?

7 A Yes.

8 Q Did he say anything to you after you were done there in the

9 interview room?

10 A Yes, he did.

11 Q Tell us about that.

12 A I was walking him down -- the interview room's on the third

13 floor and where he had to go back to was on the first floor,

14 about the second floor in the stairway he looked at me and

15 asked if I really thought he was gonna admit to killing her

16 on the record.

17 Q Detective, thank you very much, I have no further questions.

18 MS. REZMIERSKI: Your Honor, at this time I

19 move for the admission of People's proposed --

20 THE COURT: Hold on. Kay.

21 MS. REZMIERSKI: -- 190, 191, 192, 193 --

22 THE COURT: Hold on, I gotta get to them.

23 I've got --

24 MS. REZMIERSKI: Sure, sure. Sorry.

25 THE COURT: -- pages. One ninety through one

ninety-three?

MS. REZMIERSKI: That's correct, the four pieces of the cell phone.

(At 2:50:28 p.m., People's Exhibits 190 through 193 are offered)

THE COURT: Yep. Any objection?

MR. BRANDT: No.

MR. ENGLE: No, your Honor.

MR. PERLOS: No.

THE COURT: Admitted.

(At 2:50:34 p.m., People's Exhibits 190 through 193 are admitted)

MS. REZMIERSKI: Thank you. One ninety-five, the zip ties --

(At 2:50:40 p.m., People's Exhibit 195 is offered)

THE COURT: The zip tie from wrist.

MS. REZMIERSKI: That's correct.

THE COURT: Any objection?

MR. PERLOS: No.

MR. BRANDT: No.

THE COURT: Admitted.

(At 2:50:47 p.m., People's Exhibit 195 is admitted)

MS. REZMIERSKI: Thank you. Two fourteen and

1 two fifteen. Two fourteen are the two Clifford McKee cell
2 phones, I believe, that were taken on December 16th, two
3 fifteen are the three Rodney McKee cell phones taken on
4 November --

5 (At 2:50:54 p.m., People's Exhibits 214 and
6 215 are offered)

7 THE COURT: Any objection?

8 MR. ENGLE: No.

9 MR. BRANDT: Your Honor, our objection goes
10 to the hearing we previously, your Honor.

11 THE COURT: The two phones for Exhibit 214
12 and the three phones for 215 are admitted.

13 (At 2:51:15 p.m., People's Exhibits 214 and
14 215 are admitted)

15 MS. REZMIERSKI: Thank you.

16 THE COURT: I've got 216, 17 and 18 admitted
17 already.

18 MS. REZMIERSKI: She does as well, so thank
19 you.

20 And then, your Honor, I move for the
21 admission of 227, the zip ties found under the bed on August
22 15th.

23 (At 2:51:32 p.m., People's Exhibit 227 is
24 offered)

25 MR. ENGLE: Your Honor, based on the hearings

1 we've had I do reserve any objections that we made
2 previously, but aside from that I don't have any objection

3 THE COURT: Hold on. You're at what now?

4 MS. REZMIERSKI: I'm at 227, the zip ties
5 found under the bed on August 15th, or seized on August 15th

6 THE COURT: What about the -- hold on. I got
7 your cuttings and those but what about the analysis? Is
8 that the lab report, 224?

9 MS. MCKINNIE: They were admitted together.

10 MS. REZMIERSKI: Two twenty-four is the lab
11 report for the arson, yes, your Honor.

12 THE COURT: I've got that admitted, then 225
13 was denied.

14 MS. REZMIERSKI: That's correct.

15 THE COURT: Okay.

16 MS. REZMIERSKI: Two twenty-six is the map of
17 --

18 THE COURT: That was admitted.

19 MS. REZMIERSKI: That's correct.

20 THE COURT: And then we're to 227, the zip
21 ties?

22 MS. REZMIERSKI: Yes.

23 THE COURT: Any objection?

24 MR. BRANDT: No.

25 MR. PERLOS: No.

THE COURT: Admitted.

(At 2:53:08 p.m., People's Exhibit 227 is admitted)

MS. REZMIERSKI: And move for the admission of 228, the shirt wrapped around --

THE COURT: The mouth?

MS. REZMIERSKI: -- Frannie's head.

(At 2:53:10 p.m., People's Exhibit 228 is offered)

MR. BRANDT: No objection.

MR. PERLOS: No.

THE COURT: Admitted.

(At 2:53:18 p.m., People's Exhibit 228 is admitted)

MS. REZMIERSKI: Thank you, and 229 are Detective Sullivan's --

THE COURT: The download --

MS. REZMIERSKI: I'm sorry?

THE COURT: The download from Donna Marshall's --

MS. REZMIERSKI: Yes.

(At 2:53:20 p.m., People's Exhibit 229 is offered)

THE COURT: Any objection?

MR. PERLOS: No.

MR. BRANDT: No.

THE COURT: Admitted.

(At 2:53:29 p.m., People's Exhibit 229 is admitted)

MS. REZMIERSKI: Thank you. Nothing further.

THE COURT: Okay. I'm just gonna double check before we...

MS. REZMIERSKI: I'll remove, just to be certain, if that's all right with the court?

THE COURT: Two o four -- oh, that was conditional but it was then later tied to Rodney. That was the certified -- certificate from Sprint, so.

MS. MCKINNIE: That's correct.

MS. REZMIERSKI: I believe that's been admitted.

THE COURT: Okay, it was, but I conditionally admitted it then. They tied it in.

MS. REZMIERSKI: Oh, that's right, that was Donna's testimony.

THE COURT: Yep, we got everything.

MS. REZMIERSKI: Thank you, Judge.

THE COURT: Let's take a break before we get into cross.

THE CLERK: All rise for the jury.

(At 2:55:52 p.m., jury excused)

1 (At 2:56:25 p.m., hearing recessed)

2 (At 3:20:53 p.m., hearing resumed)

3 THE COURT: Please be seated.

4 Mr. Engle, whenever you're ready, or Ms.
5 Rezmierski.

6 No, she's got some motions.

7 THE CLERK: Oh.

8 THE COURT: Oh, we gotta -- you got to rest
9 first. I don't want to bring them in and walk them right
10 back out.

11 MS. REZMIERSKI: I don't blame you. So what
12 you're saying is, have them make their directed verdict
13 motions now, is that what you're saying?

14 MR. ENGLE: I don't know whether to make
15 motions regarding her cross-examination or possible cross-
16 examination of my client now or wait until after they're
17 through? Up to you.

18 THE COURT: They're -- all they're gonna do
19 is rest.

20 MR. ENGLE: Yep.

21 THE COURT: Which means I bring the jury in
22 and bring them right back out.

23 MR. ENGLE: Well --

24 THE COURT: So why don't you make your
25 motions now and we'll deal with them and then I'll bring

1 them in and rest and we can go forward from there.

2 MR. ENGLE: Yep. The issue is, your Honor,
3 should --

4 THE COURT: Hold it, do you guys want to do
5 your directed now too?

6 MR. BRANDT: Sure.

7 THE COURT: Then I've got to have them rest.

8 MS. REZMIERSKI: You got to what?

9 THE COURT: Have you guys rest.

10 MR. BRANDT: See, it's better --

11 MS. REZMIERSKI: Sully --

12 MR. BRANDT: -- it's better to do it after
13 the cross-exam.

14 MS. REZMIERSKI: I'm not gonna rest til after
15 cross.

16 MR. BRANDT: Right.

17 MS. REZMIERSKI: Right, but that --

18 MR. BRANDT: She has to wait until after --

19 THE COURT: Okay.

20 MR. ENGLE: Okay.

21 THE COURT: If you want to do it that way,
22 that's fine. Are you --

23 MR. ENGLE: I'm sorry, your Honor?

24 THE COURT: Did you have some motions that
25 you wanted to bring about what they're --

1 MR. ENGLE: My motion would involve stuff
2 that's after the prosecution rests anyway, so it's up to
3 you, but I can bring it now. My issue is, is the
4 prosecutor, at least in chambers, has -- has threatened to
5 cross-examine should my client take the stand regarding
6 statements he may have made involving potentially homicide
7 that have nothing to do with this case. I suspect to say
8 that she's gonna verify or not verify, but at the same time
9 she does not have witnesses from any of the jurisdictions
10 that might be involved, and I would just simply state to the
11 court, number one, anything that may have been, quote
12 "confirmed or on confirmed," is purely hearsay, and number
13 two, that if that's going to happen it may change the whole
14 complexion of the case in what we do and who we have to
15 produce, and so I would object strongly to that at this
16 point in time.

17 Although the statements are there that he
18 made these and that Detective Merritt made phone calls,
19 there's no, I called this jurisdiction, I called that
20 jurisdiction, here's the people I talked to, there's no
21 reports, there's no nothing, so at this point in time I
22 would object to any cross-examination in that regard and I
23 think that it affects what I may or may not do.

24 THE COURT: Ms. Rezmierski?

25 MS. REZMIERSKI: I guess I'm just not sure I

1 understand what the objection is. I'm unclear what he
2 thinks I'm --

3 THE COURT: He's claiming that's hearsay.

4 MS. REZMIERSKI: That what is hearsay?

5 THE COURT: Statements made by the defendant.

6 MS. REZMIERSKI: Okay, so that would explain
7 why I don't understand, because anything he has said is not
8 hearsay.

9 THE COURT: Not hearsay.

10 MS. REZMIERSKI: Not to me.

11 THE COURT: Why wouldn't admissions by the
12 defendant, or statements made by the defendant, why would
13 they be hearsay?

14 MR. ENGLE: No, I --

15 THE COURT: Why would they -- why would
16 statements made by the defendant be hearsay?

17 MR. ENGLE: Number one, this came up in
18 chambers previously --

19 THE COURT: I know.

20 MR. ENGLE: -- and I'm not -- essentially, it
21 would have some effect, I suspect, on how we proceed.

22 THE COURT: Okay, but I'm asking you why, if
23 you're going to object on hearsay grounds why would they be
24 hearsay?

25 MR. ENGLE: I don't think they can be. You

1 --

2 THE COURT: I don't think they can be either
3 that's why I was trying to figure out the basis of your
4 objection.

5 MR. ENGLE: I just wanted to make sure and
6 put it on the record ahead of time, because I didn't want

7 MS. REZMIERSKI: He just said I don't think
8 they can be used. I'm not sure you guys are hearing each
9 other.

10 MR. ENGLE: Oh. Well, if they can't be used
11 and you agree they can't be used at this point --

12 MS. REZMIERSKI: That what can't be used?

13 MR. ENGLE: Those statements about other
14 crimes that have nothing to do with this crime.

15 MS. REZMIERSKI: Statements that he made to
16 the detective about other crimes that they were able to
17 verify and corroborate? I mean --

18 MR. BUTLER: Man, get out of --(inaudible).

19 MR. ENGLE: I don't think they can be used.

20 MR. BUTLER: Where is this corroboration?

21 MR. ENGLE: Because he can't testify, quote,
22 "I corroborated them." All he can testify to is the
23 statements were made, and anything else would be hearsay.
24 There -- number one, there would have to be people from
25 these other jurisdictions, number one, and number two, if

1 that's going to go on then these people should not have went
2 to trial with my client.

3 MS. REZMIERSKI: I don't even understand.

4 I guess the thing for sure that I'm clear
5 about are -- are two things, in my own mind, and please,
6 your Honor, correct me if I'm wrong, I am clear that if the
7 door to Dale Morgan being a liar is kicked open then I get
8 to ask him why, if he's such a liar he pled to the murder
9 that Dale fingered him on in Detroit in 2014? That's number
10 one.

11 A number two that I am equally clear on is
12 that where we get his first two, his, Cortez's, first two
13 phone numbers from is from parole, and so should he in any
14 way attempt to disavow a connection to those two phone
15 numbers, that I should then be allowed to prove that that's
16 where we got those phone numbers, was from parole. Those
17 are the two things I'm for sure clear about.

18 What I think Mr. Engle is trying to say is
19 that if Cortez takes the stand and not only says Dale's a
20 liar or whatever else he may say, but also says those cops
21 are liars --

22 THE COURT: Which cops?

23 MS. REZMIERSKI: Sully and Joe.

24 THE COURT: Okay.

25 MS. REZMIERSKI: I'm assuming. In other

1 words, there lying, I never said those things to them, I
2 should be allowed to get into, with either one or both of
3 them, other things that Mr. Butler said to them about other
4 murders that they were able to corroborate. That's what I
5 think he's objecting to.

6 MR. ENGLE: Your Honor, that is one of the
7 things. The other thing is, as to Dale Morgan, that has
8 been a real problem right from the start. I suspect
9 strongly, should my client get on the stand, he would say,
10 "I don't know what Dale Morgan's talking about, I didn't say
11 that to him." And I think that's as far as it would go in
12 that regard, and I don't think that opens the door to the
13 second degree murder conviction in Detroit. All that does
14 is he says he's not telling the truth. We've been very
15 limited about that. I was very circumspect about even my
16 cross as a result, and I think it has to stay that way.

17 I mean, she can't possibly anticipate that my
18 client would be getting on the stand and saying, "Oh, yeah,
19 he said that." You know, that -- I think it's just simply
20 that, did he say it, did he not say it? If he didn't say it
21 to him, he didn't say it to him.

22 And the issue about whether -- whether or not
23 he made the statement has nothing to do with these other
24 cases. And further, those other cases cannot be verified at
25 this point in time with the testimony of out of county -- I

1 assume out of county detectives. I don't even know where
2 those allegations are, where they have been, quote,
3 "verified," and certainly Detective Merritt cannot testify
4 well, these people told me on the phone. That just isn't
5 going to work, that's hearsay.

6 THE COURT: Ms. Rezmierski, if he gets up and
7 states, "Mr. Morgan's lying, I didn't say that," why would
8 that open the door to the second degree murder?

9 MS. REZMIERSKI: I don't know that that opens
10 it up if he keeps it that -- that simple, that he lied here
11 under oath.

12 THE COURT: Okay.

13 MS. REZMIERSKI: It's if it's broader that I
14 think that it opens it up. I'm firmly of the position that
15 it opens it up at that point. Arguably, it opens it up --

16 THE COURT: It depends on what he says
17 though.

18 MS. REZMIERSKI: It does, because arguably,
19 it opens it up if he says --

20 THE COURT: If he -- if he gets up there and
21 just says, "He's lying, I never said that," fine. That's no
22 different than what we had Dale do. So he could say that,
23 but if he gets into other things with Dale, then that may
24 end up opening the door.

25 MS. REZMIERSKI: I mean, I guess I still sort

1 of feel like --

2 THE COURT: Just because he says he's lying
3 doesn't open the door.

4 MS. REZMIERSKI: Except that he pled to a
5 murder that he fingered him on. I guess that just goes to
6 his credibility in my mind, and at that point his
7 credibility has been called into question.

8 MR. BUTLER: Your credibility called into
9 question.

10 MR. ENGLE: His credibility's called into
11 question just showing in a prison outfit, but beside that,
12 if all he's saying is, "I never made that statement to him,"
13 where do we open any doors?

14 THE COURT: And that's where I agree with
15 you.

16 MS. REZMIERSKI: What about the phone number
17 issue, your Honor?

18 THE COURT: We'll come to that in a second.

19 MS. REZMIERSKI: Okay, thanks. As it
20 pertains to de --

21 THE COURT: What about the -- let's take one
22 at a time -- oh, it's to what we're talking about right now?
23 Okay, go ahead.

24 MS. REZMIERSKI: I was just gonna say, as it
25 pertains to other things that Mr. Butler told them during

1 that interview that were able to be corroborated, does it
2 assist the court in your analysis if we take some brief
3 testimony from Detective Sullivan right now about what we're
4 talking about?

5 THE COURT: Corroborated as far as other
6 murders?

7 MS. REZMIERSKI: Yeah.

8 MR. ENGLE: It doesn't change anything, your
9 Honor, it's still hearsay as to all of it. As to Dale
10 Morgan, your Honor, I suppose all my client's gonna say is
11 he's not telling the truth. That's --

12 THE COURT: Well, that -- that part I don't
13 think we're arguing about at this point. We're talking
14 about -- I'm trying to envision a situation, you want to
15 impeach him with the other murders?

16 MS. REZMIERSKI: So this is I think what I
17 imagine, I imagine Mr. Butler taking the stand and saying
18 not only that Dale's lying but the cops are -- are lying as
19 well, and so then it bears on whether or not Sully and Joe
20 are lying if there are other things, which there are, that
21 Mr. Butler told them during that interview which, for
22 instance, involve a huge armed home invasion shootout
23 situation in Detroit and details of that that he told them
24 that Sully was then able to go and corroborate through a
25 conversation with ATF Agent Brian Beardslee, who was

1 familiar with that incident and that investigation. So he
2 is somebody who is local who could --

3 MR. BRANDT: Right, so shouldn't that --
4 Katie, I think the point -- the point is that if we get that
5 far that testimony should come from ATF Agent Beardless.

6 MS. REZMIERSKI: Sure, but I have to be able
7 to ask -- (multiple speakers) --

8 MR. BRANDT: Because if it comes from
9 Detective Sullivan it's hearsay.

10 MS. REZMIERSKI: Yep.

11 MR. BRANDT: That's what you're getting at,
12 right, Jerry?

13 MR. ENGLE: Yeah, that's number one, it's
14 hearsay, and number two, it is not relevant to this case. I
15 suppose anything could happen. My client could get on the
16 stand and say, gee, Dale Morgan was involved in the case
17 down here and he's the one who actually went into the house
18 and did the killing. You know, I don't know what he -- what
19 is gonna be said, and I can't -- I don't know. You know, at
20 this point in time it -- I suppose even that's a
21 possibility, but, you know, at any rate, the issue of these
22 outside felonies is just not an issue. He's never been
23 charged with any of these, he's never been tried on any of
24 these, and frankly, he'd have to be tried here by at least
25 as an offshoot by the jury as to whether these things are

1 true or not true. And I think that would be the whole
2 issue, we'd have to bring in a whole nother set of witnesses
3 here.

4 THE COURT: Somebody can correct me, but why
5 wouldn't admissions under 801 regarding the prior murders be
6 not hearsay?

7 MS. REZMIERSKI: Which is why I though --

8 THE COURT: -- against penal interest?

9 MS. REZMIERSKI: Which is why I thought his
10 statements to Dale Morgan should come in as well in terms
11 of, "I got bodies in Flint, in Grand Rapids and Ohio and
12 Jackson." I mean, those are his statements.

13 MR. ENGLE: She's going one step further.
14 Number one, I don't know if you can ask about them because
15 they're just so prejudicial. Number two -- and they add
16 very little to her case, but number two, they can't be
17 verified at this point in time. You can't get on the stand
18 and say somebody told me this was true.

19 THE COURT: No, but if --

20 MS. MCKINNIE: But Agent Beardslee could.

21 THE COURT: If he made admissions to the
22 officers that -- of other offenses under 801, and then also
23 the law dealing with admissions against penal interest, why
24 would those not be admissible if he comes up and takes the
25 stand?

1 MS. REZMIERSKI: And the same with the
2 statements that Dale Morgan says that he made, your Honor,
3 can I ask him about those as well?

4 THE COURT: Well --

5 MS. REZMIERSKI: Same theory.

6 MR. ENGLE: It still goes to the same issue
7 this is extremely prejudicial, number one, it can't be
8 proven, and number two, if it's going to be asked and if
9 it's going to -- it just -- it just lends itself to a whole
10 new set of investigation here that should be done and should
11 have been provided --

12 THE COURT: I thought you were arguing that
13 it was hearsay?

14 MR. ENGLE: The verification is hearsay.

15 THE COURT: Any verification is hearsay but
16 his admission by themselves are, under 801 are not hearsay.
17 That's my whole point. That's one of the exceptions under
18 801, is that admissions short of like a traffic infraction
19 or something like that, but admissions of other offenses are
20 not considered hearsay. Unless somebody has got something
21 real quick on it that --

22 MS. REZMIERSKI: Nope.

23 THE COURT: -- I'm not aware of?

24 MS. REZMIERSKI: So then I should be allowed
25 to ask Detective Sullivan about those even right now? Even

1 before he takes the stand. Because their statements by the
2 defendant, right?

3 MR. ENGLE: If that was gonna be done all of
4 this stuff would have to be provided ahead of time.
5 Clearly. And it's not.

6 MS. REZMIERSKI: It's just another statement
7 that he made in the context of that interview.

8 MR. BUTLER: They lied. What the fuck I
9 gotta go through all this for?

10 MR. ENGLE: Again, nothing in detail has been
11 --

12 MR. BUTLER: You lied about a phone
13 conversation.

14 MR. ENGLE: -- provided. All of that would
15 need to be, you know, if a person was going to be subject to
16 that then they need the chance to defend against it.

17 THE COURT: Right.

18 MR. BRANDT: And so while you're looking that
19 up --

20 THE COURT: Yeah.

21 MR. BRANDT: -- while the court is looking up
22 whether or not it's admissible as to Mr. Butler, it's
23 certainly more prejudicial than probative versus our
24 clients, ergo the need for a separate jury from the start.
25 And if you're about to let in --

1 THE COURT: But see, previously I barred that
2 coming in because it was too prejudicial as --

3 MR. BRANDT: No, and I agree, and therein
4 lies the corner the court is in, which is now --

5 MR. ENGLE: And, your Honor, I would add that
6 motion to join trials was made by the prosecution.

7 MS. REZMIERSKI: No, I didn't move to join
8 them, I charged them together because they are co-
9 conspirators and co-defendants --

10 MR. ENGLE: I think there was actually a
11 motion --

12 MS. REZMIERSKI: -- and aiders and abettors.

13 MR. ENGLE: -- for joinder at the start. I
14 have two --

15 MS. MCKINNIE: Just a motion to separate, not
16 to join.

17 MS. REZMIERSKI: (Multiple speakers)-- join
18 the arson charge.

19 MR. ENGLE: Or an answer to the motion to set
20 them asunder, let's put it that way.

21 THE COURT: Oh, boy. This creates quite a
22 dilemma in the sense that if your client gets up there and
23 as part of cross-examination it's clear that there was --
24 well, based on the testimony we've heard so far, that there
25 were admissions about bodies in various counties, the

1 problem is, allowing that statement to come in is too
2 prejudicial, at least in the court's opinion, against the
3 McKees. It has nothing to do with their involvement in this
4 particular case. It's not an admission adopted by either
5 one of them. And you don't know what your client's gonna
6 testify to, right?

7 MR. BUTLER: Nope.

8 MR. ENGLE: Well, that depends on the ruling
9 on the motion, frankly.

10 THE COURT: For?

11 MR. ENGLE: A lot -- a lot depends on the
12 ruling on the motion, frankly. I -- and I guess what the
13 court's saying is, if it was just him you would keep it out
14 at this point, but if he got on the stand and said --

15 THE COURT: No, if it was just him --

16 MR. BUTLER: Anything.

17 THE COURT: -- I think they could have
18 brought it out a long time ago.

19 MR. ENGLE: But at this point --

20 THE COURT: But we get -- because of the
21 McKees being involved in the trial I think it creates an un
22 -- or creates too much of a prejudicial influence against
23 the McKees to allow these array of other murders that have
24 been raised to come in.

25 MR. ENGLE: And I don't think -- Katie's

1 arguing they're relevant if he denies -- if he gets on the
2 stand and says they're not telling the truth, that they
3 become relevant. Other homicides aren't relevant for cross-
4 examination, generally speaking, it has to be a crime of
5 theft or dishonesty, but --

6 THE COURT: No, not -- not if you admit to
7 them.

8 MR. ENGLE: Not if you admit to them, but
9 he'd have to get on the stand to raise that issue.

10 THE COURT: No, I -- I totally agree with you
11 there, yes.

12 MR. ENGLE: Yeah, so if he doesn't get on the
13 stand the issue's just gone.

14 THE COURT: Right.

15 MR. ENGLE: And the issue is, if he gets on
16 the stand does it raise prejudice that is unbearable in
17 regard to the McKees?

18 THE COURT: Well, that depends on what he
19 says, because that's part of the reason I wouldn't allow it
20 in.

21 MR. ENGLE: But it would appear at this point
22 that any -- most anything he says, other than an admission
23 of the crime, would probably create a real issue.

24 MS. REZMIERSKI: Because if he denies the
25 phone number --

1 MR. ENGLE: At least I can't anticipate much
2 that would not.

3 THE COURT: I'm trying to think of something
4 that -- I mean, other than saying -- calling Mor -- you
5 know, just saying Morgan lied.

6 MR. ENGLE: I don't know how you do that.

7 THE COURT: Yeah.

8 MR. BRANDT: Just so I'm clear, as I'm
9 watching this as a interested spectator so far, Mr. Butler
10 takes the stand and says Mr. Morgan lied, that's it, that
11 that ends what Katie may or not -- may not be able to do.
12 He takes a step beyond that in terms of indicating that
13 Detective Sullivan --

14 THE COURT: And Merritt.

15 MR. BRANDT: And -- and Detective Merritt are
16 not telling the truth, Ms. Rezmierski is then allowed,
17 pursuant to the court ruling, that under 801 the statements
18 he made relative to other homicides comes in.

19 THE COURT: Right.

20 MR. BRANDT: That, at that point, whatever
21 those statements are, probably prejudices us to a point we
22 can't get a fair and impartial jury.

23 THE COURT: I agree with you.

24 MR. BRANDT: And so if we're that far down
25 the road I am assuming --

1 THE COURT: That's why I barred it in the --
2 or that was a factor in barring it --

3 MR. BRANDT: I understand.

4 THE COURT: -- in the first place.

5 MR. BRANDT: Exactly.

6 THE COURT: Right.

7 MR. BRANDT: Exactly. But now we're left
8 with the very thing the court was trying not to...

9 MR. ENGLE: Maybe what we should do, your
10 Honor, this is my suggestion, I assume Katie's going to rest
11 after Detective Sullivan?

12 MS. REZMIERSKI: Yep.

13 MR. ENGLE: Maybe we should finish Detective
14 Sullivan's testimony, we're already at 3:53, and then
15 perhaps the three of us and our clients should talk and then
16 come back tomorrow morning?

17 THE COURT: What?

18 MS. REZMIERSKI: I mean, cuz it's not just
19 about other murders that he --

20 MR. BRANDT: Right, right.

21 MS. REZMIERSKI: -- confessed to in the
22 course of that interview.

23 MR. BRANDT: Right.

24 MS. REZMIERSKI: He calls them liars, it's
25 gloves off on that topic.

1 MR. BRANDT: Right.

2 MS. REZMIERSKI: He calls Dale Morgan a
3 global liar, then it's gloves off on pleading guilty to the
4 murder two most recently in Detroit that he fingered him on.
5 If he disavows knowledge of the phone -- phones at issue,
6 this one in particular with the texting conversation, I
7 mean, both of them came from parole, I mean --

8 THE COURT: Parole.

9 MR. ENGLE: Before we even get to that
10 argument --

11 MS. REZMIERSKI: -- he's -- he's boxed in.

12 MR. ENGLE: -- we have -- the issue is, does
13 he take the stand, that's the first issue.

14 THE COURT: Yeah.

15 MS. REZMIERSKI: I agree. I'm just making it
16 clear, all of the -- the pitfalls and the traps and the mine
17 fields and -- they're not of my doing.

18 THE COURT: Okay.

19 MR. BUTLER: Yeah, they is.

20 THE COURT: Let's bring the jury in and we'll
21 let you finish up with Detective Sullivan, rest and then
22 I'll break for the day, you guys can have a conference about
23 going forward. Before anything happens we will all have a
24 discussion.

25 MS. REZMIERSKI: Thank you.

THE COURT: And figure out how to go forward

MR. ENGLE: Thank you.

THE CLERK: All rise for the jury.

(At 3:56:37 p.m., jurors returned)

THE COURT: Please be seated.

Ms. Rezmierski?

MS. REZMIERSKI: I believe I moved for the admission of all the -- the exhibits and --

THE COURT: Those are all admitted. Okay.

MS. REZMIERSKI: Yes. Thank you.

THE COURT: Cross?

MR. ENGLE: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. ENGLE:

Q Detective Sullivan, you indicated as far as your phone goes, that -- who -- who called you on your phone? Did my client or Mr. McKee, who called you on your phone?

A Mr. Butler.

Q Mr. Butler. And when did he do that?

A I believe it was a couple days after 17th of December, after that second interview.

Q Between the 17th and Christmas sometime?

A I believe so.

Q And is that on your personal phone or a phone that the Sheriff's Department gives you, or --

1 A That was on a cell phone provided by the Sheriff's Office
2 that time.

3 Q And that's what you use primarily for Sheriff's business?

4 A At the time, yes.

5 Q I assume much like Mrs. Clinton you have a separate phone
6 that you use for your own personal use?

7 A I do now.

8 Q And how did -- how did -- do you know how he got your
9 personal number?

10 A I gave it to him.

11 Q You gave it to them? Did you also speak with Pam Henry at
12 all on that phone?

13 A On which phone? On which phone?

14 Q Yep. On your personal phone.

15 A I didn't talk to Mr. Butler on my personal phone either.

16 Q On the Sheriff's Department phone did you speak with Pam
17 Henry?

18 A It was either my cell phone or the desk phone, or a
19 combination of both.

20 Q One or the other, it was a police related phone of one sort?

21 A Yes.

22 Q Do you remember when you spoke with her?

23 A I believe the same day because Mr. Butler provided me with a
24 new phone number for her.

25 Q Okay, and did -- would that have been after the 17th? Would

1 it have been the -- when did he provide you with her number
2 was at the 16th, the 17th, the 11th?

3 A It was -- he provided me with the number over the phone
4 sometime after the 17th.

5 Q Okay. Did you speak with her prior to January 6th?

6 A I don't recall if I did or not.

7 Q Did you make any statement -- well, did she talk to you
8 about the truck too and the return of the truck?

9 A Briefly.

10 Q I said truck, I guess a Durango is an SUV, I suspect, rather
11 than a truck. Did you tell her anything about having him
12 make a statement if she wanted the truck back?

13 A No.

14 Q And when did you actually -- first of all, when did you
15 write the report after the 16th?

16 A Can you clarify what you mean by report, because we might
17 have a different interpretation?

18 Q What's -- what's AJIS or -- is there a place you guys put
19 your reports in?

20 A Reports as well as supporting documents go into that
21 computer system, yes. It's like an electronic file folder.

22 Q And are your reports -- and I -- would I be correct, in
23 general there are some reports you make that never get typed
24 because a report has to be made but probably nothing's going
25 to happen?

1 A No, if we take a police report there's generally a
2 narrative.

3 Q Okay, there's a narrative but it could affect a potential
4 civil case rather than a criminal case, would that be
5 correct, in a car accident?

6 A I guess I'm not clear on the question. If we make a police
7 report there is a narrative that would be either typed or
8 dictated.

9 Q Okay. Is it necessarily put on a piece of paper in what I
10 might look at as a paper police report?

11 A That's how you obtain the police reports, yes.

12 Q And some police reports are obtained, I suspect some are
13 never obtained?

14 A I would imagine that's the case.

15 Q In this case when did you -- when did you enter your report
16 into AJIS?

17 A Which report?

18 Q On the December 16th statement.

19 A I don't know for sure when that got submitted.

20 Q When was the report actually typed up?

21 A That's kinda why I asked what you meant by a report.

22 Q I mean as far as a piece of paper that has everything on it
23 about the December 16th interview.

24 A The facts of the December 16th interview were typed within
25 12 hours of that interview happening.

1 Q When was it actually printed out on a piece of paper?

2 A Printed out on a piece of paper, probably the same day. I
3 was discussed at a task force meeting.

4 Q When -- and that was circulated probably with the other
5 members of the task force?

6 A I didn't pass out any reports if that's what you mean? I
7 printed it out to talk off of it.

8 Q Okay. So you didn't pass it out to anybody at that --

9 A No.

10 Q And I suspect that even you and Mr. Merritt had some
11 question about the admissibility or use of that report based
12 on the fact that the Miranda decision by Mr. Butler and the
13 statements by Mr. Merritt?

14 A Correct, lengthy conversation.

15 Q And -- now, Detective Merritt also indicated that some --
16 some of the members of the task force, even with knowledge
17 of that report, still wanted to charge Eric Wolfe.

18 A I don't believe he said charge Eric Wolfe, I believe it was
19 --

20 Q Or thought Eric Wolfe was the primary suspect, or a primary
21 suspect.

22 A I don't think that's what he said, I think he said he still
23 -- some people didn't think he could be ruled out.

24 Q Okay. The -- had you actually dealt with -- now, you
25 indicated that you knew who Ryan Marshall was, had you

1 actually dealt with him or was this based on a picture that
2 you had?

3 A A picture.

4 Q Did you actually deal with Donna Marshall or was that again
5 based on other reports?

6 A That was -- when I downloaded the phone I usually ask for
7 background on what I'm looking for, why am I doing the
8 phone, that's when I was filled in about Donna and Ryan.

9 Q Did you also call Ryan Marshall on the phone?

10 A Several times.

11 Q Did you also call Ryan Marshall on the phone?

12 A Several times.

13 Q When was the first time you called him that -- if you
14 remember?

15 A I think the 16th, maybe on the way back from Detroit.

16 Q Okay, did you call Ryan Marshall early -- there's an
17 indication, I believe in the police report, somebody talked
18 to him probably in September shortly after the homicide
19 itself.

20 A I believe somebody talked to him, yes, as a preliminary
21 interview.

22 Q Okay, and that was not you though?

23 A Was not.

24 Q But the name Cortez Butler did not come up until this CODIS
25 hit?

1 A That's accurate.

2 Q And the names of both Mr. McKees did not come up in this

3 investigation until after Mr. Butler had come up in the

4 investigation, would that be correct?

5 A Not until December 16th.

6 Q Well, you already had, would I be correct, somebody -- I

7 think Mr. Merritt indicated he had talked to Mr. McKee on

8 December 11th for the first time.

9 A Yes.

10 Q Would that be based on phone records that had been obtained

11 after Mr. Butler's name had come up?

12 A Yes.

13 Q Were the phone records of Mr. Morgan ever checked?

14 A I don't believe so.

15 Q On that December 11th interview, that interview was actually

16 taped, was it not, or recorded one way or another?

17 A Yes.

18 Q And in -- in your original testimony at the grand jury

19 proceedings, I believe on the second date, you testified

20 twice, did you not?

21 A Yes.

22 Q On the second date did you indicate that -- if I read the

23 statement regarding the December 11th interview correctly,

24 at that point you did not indicate that there was any

25 dealing with Mr. Butler after the end of the interview that

1 was recorded. Maybe I'm reading that incorrectly, but if
2 am, please correct me. I just...You're welcome to turn the
3 pages back --(inaudible).

4 A Can you repeat the question? Are --

5 Q Did you, at that point in time, indicate that there was another
6 further statement from Mr. Butler after the recorded
7 interview had ended?

8 A Yes, it says a short time later and then that's what he told
9 me.

10 Q Can you find where that was? At that point in time you did
11 not indicate on that page at least you indicated that that
12 ended the interaction.

13 A Specifically it doesn't say that -- where this short time
14 later and then what he said, that -- it's not in here where
15 that occurred.

16 Q I couldn't find it, I was just wondering. At the hearing
17 the motion we had regarding evidence in this matter, I
18 believe the actual recording was played at that time, was it
19 not?

20 A Yes.

21 Q I certainly don't lay perfect memory on you or me or anybody
22 else, had you actually listened to the recording prior to
23 testifying at the grand jury?

24 A No.

25 Q At that point in time did you remember that this was said

1 after you had left the interview room and were walking back
2 to the cell?

3 A I knew it at this time, I just don't think it was relevant
4 to the question that was asked to me.

5 Q Okay, so at that -- but you did testify at the evidentiary
6 hearing that indeed, this occurred on the way back to his
7 cell after the recorded portion of the interview?

8 A I believe when that question was posed to me in that manner
9 is when I answered. This question only talks about the
10 statements he made, not where they were at.

11 Q Okay. At any rate, that statement was made on the way back
12 to his cell?

13 A Yes.

14 Q And that would not have been recorded.

15 A Like I said earlier, maybe on video, but I don't know what
16 the cameras are like at the Detroit Detention Center.

17 Q The best of your knowledge it was not recorded.

18 A Correct.

19 Q As a result of that interview and of the search warrant for
20 Mr. Butler's DNA, you go back with Detective Merritt on
21 December 16th?

22 A Yes.

23 Q And that's the next date you go back to see him?

24 A Yes.

25 Q On that date I assume that we're correct that -- that the --

1 you start to read Miranda and the defendant says he knows
2 his rights, doesn't want to hear the rest of it?

3 A No, that's not accurate.

4 Q What -- take me through it, what happened at that point?

5 A I pulled the form out of a file folder and that's when he
6 said, "Bro, I know my rights, Bro." I never began to read
7 from the form.

8 Q Was this after doing the DNA swab?

9 A Yes.

10 Q And he said -- what did he say when you pulled that out?

11 A He looked at it, said, "Bro, I know my rights, Bro."

12 Q And at that point they were not read, would that be correct?

13 A At no point were they read.

14 Q The -- where does Detective Merritt then become involved
15 after that?

16 A He was involved the whole time.

17 Q At some point where does he say or where does he first say,
18 "I don't intend to use" -- or words to the effect -- I don't
19 remember his exact statement, but, "I don't intend to use
20 anything that you say against you," or words to that effect,
21 whatever his exact statement was?

22 A Sometime shortly after that.

23 Q And I believe you've indicated, as he has, that he brought
24 that up more than once?

25 A Twice, I believe.

1 Q Did he ever -- was that brought up two times before there
2 were actual incriminatory statements made by Mr. Butler?
3 you remember.

4 A There were one before and one after, some smaller pieces of
5 incriminating statements.

6 Q One -- when you say one after, was that after he had started
7 to make the statements?

8 A He had started to make some statements.

9 Q Did -- did you ever indicate anything to that effect to Mr.
10 Butler?

11 A To what effect?

12 Q To the effect that anything he said you didn't intend to use
13 against him?

14 A No, I did not.

15 Q Was the interview being recorded -- from the start was there
16 any recording stuff on?

17 A No.

18 Q And did there -- at any point did any recording instruments
19 get turned on during the interview?

20 A No.

21 Q The statement on December 11th was inter -- was recorded?

22 A Yes.

23 Q Did you go back on the 17th with Detective Merritt?

24 A Yes, I did.

25 Q Was that recorded?

1 A No, it was not.

2 Q And there are not really -- the major interview, the primary
3 admissions is on the 16th, is that correct?

4 A Yes.

5 Q Did you go back -- I believe January 6th is the next date
6 anybody goes back, did you go back at that point?

7 A Nobody went back.

8 Q What is the next -- oh, he was brought here, I'm sorry.

9 A Yes.

10 Q He was brought here. At that point was the interview
11 recorded?

12 A The portion that took place in the interview room, yes.

13 Q And essentially during the interview he said nothing, that
14 it would be -- it's after the interview that he supposedly
15 says something?

16 A Yes.

17 Q After January 6th did you ever have occasion to interview
18 Mr. Butler again?

19 A No.

20 Q Af -- no? Okay. Do you know -- to the best of your
21 knowledge did anybody else in the task force interview Mr.
22 Butler after that date?

23 A No.

24 Q Did -- how long did this -- well, starting from the time --
25 well, on the 16th was he already in his cell when you got

1 there, or in this room when you got there?

2 A Yes.

3 Q From the time you walked in til the time he first made a
4 statement that was incriminatory, how much time elapsed,
5 approximately?

6 A Fifteen minutes maybe with the first 8 to 10 minutes were
7 obtaining the buccal swabs and allowing him enough time to
8 read his copy of his search warrant.

9 Q And did -- were there any statements -- what statement
10 preceded his making any statements or beginning to make
11 statements, if you remember?

12 A What statement preceded his statements? I guess I'm not
13 sure what you mean.

14 Q You guys are asking him a series of, I suspect questions and
15 making assurances to him. Was Detective Merritt making some
16 assurances in his statement that he didn't intend to use the
17 statement against him?

18 A Detective Merritt said that, yes.

19 Q And did -- when you didn't read him his rights did he say he
20 was exercising his Miranda rights or he was -- he didn't
21 intend to waive his rights, something to that effect?

22 A I don't think he said that, no.

23 Q What did he say?

24 A Just the first statement, "Bro, I know my rights, Bro."

25 Q Did you indicate previously that you at least believed that

1 he was indicating he hadn't waived his rights by -- or
2 hadn't waived them, you had pulled out the form and took it
3 as he wasn't going to sign and waive his rights away?

4 A Yes.

5 Q Now, to straighten this out in my mind, at one point you've
6 testified at that point Mr. Butler began to tell us about
7 the homicide that occurred in Jackson. Was it right away
8 that he started to tell you or was there more conversation
9 after that?

10 A There was a little more conversation.

11 Q He had been assured after that, I assume, by -- first of
12 all, that is statements wouldn't be -- well, whatever
13 Detective Merritt indicated, is that correct?

14 A Is that what Detective Merritt said? Yes.

15 Q And he had been assured that nothing was being recorded?

16 A Yes.

17 Q Did -- was there any discussion of why the two of you wanted
18 to talk to him on that date?

19 A Yes.

20 Q What was -- was that before he made any statements?

21 A Yes.

22 Q And what was the discussion?

23 A The discussion was about the young girl that we felt was
24 still in harm -- harm's way.

25 Q And was he also told about -- was he told at all about the

1 -- Eric Wolfe and the problem with Alexis?

2 A He was told of the problem, I don't believe we used
3 anybody's names. He was -- I guess that was brought back up
4 because that was a concern on the 11th, so he was well aware
5 of it.

6 Q Was he told about that prior to making the statement?

7 A He was informed about it on the 11th at the first interview.
8 It was brought back up again on the 16th.

9 Q Was he informed about it again on the 16th, if you remember?

10 A That's what I just said, yes.

11 Q And then at some point he starts to make statements?

12 A Yes.

13 Q He had previously, on the 11th, made some statement about
14 wanting to go to a federal prison, would that be correct?

15 A I believe the statement at that time was to cooperate with
16 the federal government.

17 Q Was he told on the 16th that indeed, he was gonna have to
18 make some sort of statement to give some facts and fill out
19 some details before anybody could talk to him about any sort
20 of deal?

21 A I think he was informed that no one was going to work with
22 him unless he had permission.

23 Q Did -- there was an indication he brought up the term, "ten
24 racks" during the statement.

25 A Yes.

1 Q Did you know what that was?

2 A No, I did not.

3 Q Did you have to ask him?

4 A I did.

5 Q Indeed, what he indicated to you, would I be correct, was

6 that he was supposed to get a total of 10,000 dollars?

7 A Yes.

8 Q And that he had only seen 5,000 of it up front?

9 A Correct.

10 Q And then he got another 2,500 but was still owed 2,500?

11 A There was two different conversations going on there. The

12 2,500 came up later on.

13 Q Later on? Okay. And according to what he told you, all he

14 had received total was 7,500 dollars?

15 A In total throughout the whole thing?

16 Q Yeah.

17 A Yes.

18 Q There were a lot of reasons that Eric Wolfe was the first

19 suspect, were they not?

20 A Yes.

21 Q Number one, there was a very, very small amount of blood on

22 him that -- you indicated there was some on his little

23 finger, or pinky finger if I remember what you said?

24 A That didn't contribute to him being a suspect.

25 Q Did the lack of other blood contribute to him being a

1 suspect?

2 A Yes.

3 Q He had indicated early on that he had held the body after he
4 saw what had happened, is that correct?

5 A I don't think he ever said "held," I think he said he tried
6 pick her up or bring her close, I'm not sure what he said.
7 I don't know if you said "held" though.

8 Q Whatever you said should have put blood on him, would that
9 be correct?

10 A Not necessarily, no.

11 Q When he answers the door, according to the testimony by the
12 --(undecipherable)-- officer on scene, he is wearing a pair
13 of boxer shorts and nothing else, was he wearing any more
14 than that when you first saw him?

15 A I'm not sure when I first saw him. I believe he was still
16 in boxers though, just boxers.

17 Q Did anybody take possession of whatever close he had on
18 before that?

19 A A few days later we did, yes.

20 Q Did he make some statements that kept him as a suspect?

21 A Yes.

22 Q Was there evidence that seemed to indicate that the
23 relationship was having its problems between he and the
24 decedent?

25 A I'm not sure you could call them problems in the

1 relationship.

2 Q What were they?

3 A I'm sorry?

4 Q What were they?

5 A What was?

6 Q You said you're not sure you could call them problems,
7 what's "them"?

8 A We had found some contacts between Mr. Wolfe and some other
9 females through social media.

10 Q Are you involved at all in the first inter -- or the
11 interview of Dale Morgan on the 11th of December?

12 A Yes, I was.

13 Q On the 11th of December did he indicate to you a statement,
14 such as he made on the stand, that -- that Mr. Butler had
15 said to him he had just killed this woman in Jackson, or
16 nearly took her head off, whatever the statement was, I
17 don't remember the details, did he indicate to you on that
18 date a statement to that effect?

19 A No.

20 Q Would I be correct that during the investigation you also
21 got into the arson case to some extent?

22 A During this case?

23 Q The arson -- the -- Rodney's arson case, did you get into
24 some of the details about that when you were investigating
25 -- as part of your investigation?

1 A Yes.

2 Q You also interviewed Rita McMillen as part of your
3 investigation?

4 A Yes.

5 Q And it sounds like you had occasion on more than one time
6 talk to Ryan Marshall, and probably Donna Marshall also?

7 A Yes.

8 Q Did it ever appear that either Clifford McKee or Cortez
9 Butler had anything to do with the arson case?

10 A No.

11 Q Detective Merritt did not seem to know right away when I
12 asked him, I'll ask you, when -- when you originally got
13 the, was it called the CODIS, the -- the hit saying that we
14 have this person by this name who's DNA may fit, is that
15 what it's called, CODIS?

16 A That was the confirmation, was on.

17 Q And does that tell you any real details or just the name at
18 that point in time?

19 A There's a few other details on there.

20 Q The extraction you saw as far as -- I believe you indicated
21 the only telephone call list you saw was about 20 phone
22 calls back and forth between the -- was it between Clifford
23 and my client, or total between -- first of all, were there
24 -- to the best of your memory where there any telephone
25 calls between Rodney and Cortez Butler?

1 A No.

2 Q The 20 phone calls you saw, where they -- were they between

3 -- who where they between, if you remember?

4 MS. REZMIERSKI: I guess I'm confused --

5 THE WITNESS: I don't think I testified to

6 any phone calls.

7 MS. REZMIERSKI: -- I -- yeah.

8 THE COURT: What?

9 MR. ENGLE: Well, however many you saw. You

10 indicated you saw an extraction --

11 MS. REZMIERSKI: I think he might -- I think

12 he might be remembering Detective Merritt's testimony about

13 having seeing 20 text messages.

14 THE COURT: Twenty-two text messages.

15 MS. MCKINNIE: Right.

16 MS. REZMIERSKI: Thank you. I don't recall

17 Detective Sullivan --

18 BY MR. ENGLE:

19 Q Did you see the phone calls? Did you see -- did you -- were

20 you one of the people that reviewed all of the phone calls?

21 A Which phone calls?

22 Q Phone calls between Clifford and Mr. Butler.

23 A Do you mean the content of the phone -- of the --

24 Q Content.

25 A -- of the text messages?

1 Q Yes.

2 A First time I saw those was in court.

3 Q Was in court. Okay. When you referenced -- I don't know if

4 you referenced, were you familiar with the exhibits that

5 Detective Gonyeau from the State Police had prepared showing

6 the travels of various phone -- phones?

7 A Some of them.

8 Q Were you familiar with them prior to December 16th when you

9 interviewed Mr. Butler, if you remember?

10 A I don't recall when he performed that, or the first time I

11 saw it.

12 Q In the search of the house, the garage and everyplace else,

13 other than that zip tie was any DNA of Mr. Butler's found?

14 A Not that I was informed of by the Crime Lab.

15 Q And were any fingerprints of Mr. Butler's found?

16 A Not that I was informed by the Crime Lab.

17 Q And, in fact, would I be correct that if a fingerprint had

18 been found of his, probably would have been down a different

19 direction a lot earlier?

20 A I think the fingerprint and the DNA are about the same time

21 that confirmed them, so it would have been roughly the same

22 amount of time.

23 Q I guess I should ask also, when I say no recording on the

24 16th and then you say no recording, with that include a

25 video also? There was no video either on the 16th?

1 A No audio or video on the 16th.

2 Q And I believe you indicated that the statement, when he was
3 asked how it was killed, he told you that he damn near cut
4 that Bitch's head off?

5 A When she was killed?

6 Q Yes, when Frances was killed.

7 A Yes.

8 Q Mr. Butler said that to you?

9 A Yes.

10 Q You indicated to the prosecutor that you went back to try
11 and see how light it was at approximately the time Ryan came
12 home that morning.

13 A Eric?

14 Q Eric, I'm sorry. How much later in the investigation was it
15 that you did that?

16 A The homicide was on the 10th, that was on the 15th.

17 Q 15th.

18 A Of the same month.

19 Q Just shortly after the homicide? Two days after the
20 homicide?

21 A Five days.

22 Q Was the bed still -- I believe the testimony was the bed was
23 out of place, it was somewhat askew when the first deputy
24 arrived, was the bed still out of place when you did that?
25 If you remember.

1 A I believe the bed was completely gone at that point. There
2 was no bed in the bedroom.

3 Q And do you know if the blood stain on the bed could have
4 been seen when the first person came in there at that hour
5 in the morning?

6 A I think it was too dark. You might have seen an outline but
7 to know that it was a stain or what color it was, it was too
8 dark.

9 Q Was it obvious that all of the sheets were off the bed?

10 A I wouldn't be able to testify to that, the bed wasn't there,
11 so.

12 Q And you don't know if there were any lights on in the room
13 or anything of that nature when the homicide occurred?

14 A We replicated the conditions that Eric told us the bedroom
15 was in, no lights, I believe the blinds were three quarters
16 of the way closed.

17 Q And you're basing that on Mr. Wolfe's statement as to when
18 he got home?

19 A As to the conditions? The conditions and the time we based
20 off of his statement, yes.

21 Q And the statement basically -- he would have to make would
22 be the one who made the statement as to when he got home,
23 would that be -- I'm assuming that's true. You don't have
24 any reason to believe anybody else was up at that point in
25 time, do you?

1 A No.

2 Q This area on Vrooman Road is -- how do I say it, you spoke
3 with the neighbors shortly thereafter, would that be
4 correct?

5 A I didn't, I assigned that task to somebody else.

6 Q Were any of the neighbors black, if you know?

7 A Yes.

8 Q Where were they at?

9 A I can't tell you which house they lived in.

10 Q This strikes me as a fairly quiet neighborhood, as far as
11 know.

12 A First call I've ever been to on that road.

13 Q This is a ways out of town?

14 A A few minutes.

15 Q And if I saw the picture correctly, it looks like there's a
16 field or a farm field just to the east of where Timbercrest
17 ends?

18 A There's a farm field surrounded by woods.

19 Q Surrounding it. And the -- were there dogs in the house
20 when you got there?

21 A Yes.

22 Q How many?

23 A I believe there was two, they were both in a cage when we
24 got -- when I got there.

25 Q During the investigation were there ever any neighbors that

1 were developed as witnesses who could say I saw this or
2 heard this at that time?

3 A They all gave statements.

4 Q Did any of them say they saw or heard anything as far as you
5 know?

6 A Nothing that -- I read through their interviews, nothing
7 that stuck out to me as being pertinent to our
8 investigation.

9 Q How far is it from where, if you know, where Mr. Wolfe works
10 to the home?

11 A We did MapQuest it. I -- I don't know the specifics. I
12 think between 8 and 15 minutes is what it told us.

13 MR. ENGLE: Your Honor, I guess I have, in
14 looking at this, no further questions.

15 THE COURT: Mr. Perlos, any questions?

16 MR. PERLOS: Judge, just briefly.

17 CROSS-EXAMINATION

18 BY MR. PERLOS:

19 Q Detective, I take you testified that Mr. Butler told you
20 that he saw a time on the microwave at like 2:11?

21 A 1:42.

22 Q Oh 1:40 --

23 A A.m.

24 Q And then you indicated that the -- that his phone pinged at
25 127 and 94 sometime after 2:00?

1 A 2:11.

2 Q And so you think that it's probably 25 minutes from there

3 -- would that be assuming he went down to Reynolds Road,

4 took Reynolds to --

5 A Assuming you knew the quickest route.

6 Q Reynolds to M-60 and to 94? The only other -- he -- you --

7 Mr. Engle asked you about you contacting Mr. Wolfe early on

8 in the investigation, that had to do with what he observed

9 -- not Mr. Wolfe, but Ryan Marshall, and that had to -- had

10 to do with what you observed in regards to the relationship

11 with Ms. Craig and Mr. Wolfe, correct?

12 A I didn't have contact with him early in the investigation.

13 I had contact with him shortly after --(multiple speakers)--

14 December 16th.

15 Q The line of questioning in regards to Mr. Marshall early on

16 had to do with his relationship with the two of them, Ms.

17 Craig and Mr. Wolfe, correct?

18 A I believe so. I didn't do that interview.

19 Q You were present when my client was arrested apparently for

20 -- and accused of this arson?

21 A On which date?

22 Q I think it would have been the 4th of -- 4th of March,

23 correct?

24 A Yes, I was present for that.

25 Q You didn't interview him though?

1 A No.

2 Q You didn't take a statement from him?

3 A No.

4 Q And as of today's date you haven't interviewed him, correct?

5 A I made contact with him, he did not want to give me a

6 statement.

7 Q So you didn't interview him?

8 A No.

9 Q Inside of all those phone records there's 30 -- I don't

10 know, 3,200 pages of phone records, you found no texts

11 between my client and Mr. Butler?

12 A I didn't review your client's records.

13 Q You have no knowledge of any communication between my client

14 and --(multiple speakers)--

15 A Nothing that was relayed --

16 Q -- Mr. Butler?

17 A -- to me.

18 Q And when Mr. Butler -- when you spoke with him as it related

19 to that December 16th interview he indicated to you that he

20 was actually contacted by a guy named Dorito?

21 A Yes.

22 MR. PERLOS: I don't have anything further.

23 THE COURT: Mr. Brandt?

24 MR. BRANDT: Thank you, your Honor.

25 CROSS-EXAMINATION

1 BY MR. BRANDT:

2 Q You okay?

3 A I'm good, Sir.

4 Q I won't be long. I won't be long. You testified for us
5 that Mr. Wolfe was a suspect until December 16th when you
6 had the interview with Mr. Butler, correct?

7 A That was my opinion.

8 Q Yes. But you also testified on September 8th under oath at
9 the grand jury that that -- he was your primary or your only
10 suspect for a period of time, Ms. Rezmierski, asked at some
11 point did that change, you said it did, she asked when did
12 that change and you said October 28th of 2014 when you got
13 the CODIS hit. You remember testifying to that?

14 A Yes.

15 Q Okay. So, when that changes the focus changes to the person
16 who's on the CODIS hit, grabbing his phone records, Mr.
17 Butler's, and looking at them, correct?

18 A Yes.

19 Q As a primary officer in this case there is an initial report
20 and at least 25 supplements, that I have.

21 A Sounds right.

22 Q I'm sorry, I -- but there -- and look, I get it, you've been
23 named the officer in charge, people are doing things,
24 reports are coming in. I don't expect you to know all of
25 this, I -- I really don't, but there are 25 supplements,

1 between October 28th of 2014, December 16th of 2014, when Mr.
2 Butler's interviewed, are there any reports that say
3 anything about specifically Eric Wolfe being investigated?
4 Report. Not background noise, reports. I understand guys
5 think he's involved, I get that, I fully understand what
6 you're saying, I fully understand why, we -- none of the
7 reports have anything.

8 A There are some e-mail Apple accounts that there was reports
9 generated from that, but as far as a typed narrative, we did
10 this on this date, no.

11 Q Okay. Was there -- and now I'm gonna apologize because I --
12 I kinda told you this on break...So now I've -- I talked to
13 you on break about this, and I'm gonna apologize again,
14 you're the officer in charge, so after October 28th Eric
15 Wolfe is -- he's not on the front page, we look at Mr.
16 Butler's, whose DNA comes up, actually November 17th is when
17 you actually get the name and all of the rest, correct?

18 A They're both on the --(multiple speakers)--

19 Q You get a CODIS report October 28th?

20 A I guess you'd say they're both on the front page.

21 Q Okay. Somebody directs a series of search warrants relative
22 to the phone records of Mr. Butler.

23 A Yes.

24 Q Okay, and I'm assuming that's not your expertise, that was
25 Detective Gonyeau's and maybe another detective who did most

1 of that?

2 A We would type the search warrant, he would tell us what
3 number to type it for and pretty much why he thought that
4 number stuck out to him.

5 Q Correct. And one of the things he wanted is a frequency
6 report that indicates how often Mr. Butler's phone number
7 contacted other individuals?

8 A He came up with the frequency report based on the phone
9 records.

10 Q Right. Now, I'm going to show you a frequency report and
11 that is for what number --(inaudible)?

12 A Sorry. The target number is 313-826-5275.

13 Q All right, so you would agree with me that the first number
14 for Cortez Butler?

15 A Yes.

16 Q All right. Now -- and again, I -- we've got maybe 25 of
17 those, or so, as you look down the numbers, the frequent --
18 those list the frequency of calls to other numbers, or
19 contacts to other numbers in descending order, the most is
20 number one, the least is last, correct?

21 A I don't see a number one on here. It starts at three.

22 Q Okay, so whatever the number is, but they're listed in
23 descending order of the most contact to the least, correct?

24 A It appears that way, yes.

25 Q Okay. There is a number 33, could you read that phone

1 number out?

2 A 313-693-5985.

3 Q Okay. I know, it's not your report. There are other
4 reports similar to these.

5 A I believe a report for each target number was generated like
6 that.

7 Q Okay. Do you know if there was an extraction report for
8 Eric Wolfe's phone?

9 A I don't believe there was.

10 Q Now, I want to turn to the interview of December 16th of Mr.
11 Butler that you and Detective Merritt were at. We've had
12 lots of discussions about that, but you prepared a report
13 relative to that interview within 12 hours of the interview
14 being conducted, correct? Roughly.

15 A The pertinent facts --

16 Q Yeah.

17 A -- were typed out within 12 hours.

18 Q Okay. Mr. Engle asked you about some dates, and the reason
19 he asked that is because we have a printed copy of that that
20 stated in July, correct?

21 A You probably -- I would have to see it, but if you have a
22 copy and it says July, I'm sure that's the date that's on
23 there.

24 Q And so it looks like that was actually generated in July,
25 not within 12 hours of the report.

1 A That would have been when it was submitted in order with the
2 other supps.

3 Q I got it. Now we understand. That's the reason for the
4 questions.

5 A Yes.

6 Q All right, so this was -- this report was done when it was
7 fresh in your memory. You just did -- you were just sitting
8 in the interview.

9 A Yes.

10 Q Correct? You learned all sorts of new stuff that you didn't
11 know before?

12 A Yes.

13 Q Okay. And I believe you testified that that was, at least
14 to your knowledge, the first time Clifford McKee's name had
15 come up as to you?

16 A The name Clifford McKee?

17 Q Yeah. You had the Dorito Johnson but Clifford McKee, that
18 was the first day?

19 A I would have to look at one of the reports but I think we
20 knew the alias Dorito Johnson was tied to Clifford McKee
21 prior to that.

22 Q But you didn't know who that was until you talked to Mr.
23 Butler?

24 A I didn't know who was?

25 Q Mr. McKee was, Clifford McKee, you just knew that there was

1 some kind of phone call with the different --(inaudible)?

2 A Did we know of him?

3 Q Yes.

4 A I believe, like I said, we were able to link that alias,
5 Dorito Johnson --

6 Q Okay.

7 A -- to Clifford McKee.

8 Q Okay. So, you -- you interview Mr. Butler, you -- you
9 prepare this report within 12 hours, have you had a chance
10 to review that report prior to coming into court and
11 testifying?

12 A I've read it.

13 Q Okay. Does it fairly and accurately represent what you
14 recall Mr. Butler said during that interview?

15 A Yes.

16 Q And isn't it true that what Mr. Butler indicated is that he
17 was contacted by Dorito to take care of a witness?

18 A I believe that's what he said.

19 Q And you have testified under oath, I believe it is on
20 October 5th, at a hearing that Mr. Butler indicated he was
21 contacted by Dorito, he identified that person as Clifford
22 McKee about taking care of a witness in his nephew's case in
23 Jackson, correct?

24 A Yes.

25 Q In your summary of the interview of Mr. Butler, he never

1 says that Clifford McKee paid money?

2 A Nope, I don't believe he did.

3 Q And to the best of your knowledge he, Clifford McKee, did
4 not have a case pending relative to some witness that needed
5 to be taken care of?

6 A No.

7 Q When -- when Mr. Butler said take care of a witness in his
8 nephew's case, he --(undecipherable)-- mistaken and he said
9 "kill," he actually said, "take care"?

10 A The -- the subject of the witness was discussed a couple
11 different times. The first time it was brought up is to
12 take care of a witness.

13 Q Right. What to do with a witness later is not something my
14 client said, Clifford McKee?

15 A Did he tell -- I'm sorry.

16 Q Did Mr. Butler -- sorry, so you want -- you're
17 differentiating the take care portion is early (ph)?

18 A Mm-hmm.

19 Q Yes?

20 A Yes.

21 Q Okay. Later in the interview there's another discussion
22 about this particular witness, correct?

23 A Yes.

24 Q The person who makes the statement about the witness is not
25 Clifford McKee?

1 A No.

2 Q And just for purposes of clarification, you had the

3 interview December 16th with Mr. Butler, you come back to

4 Jackson and then procedurally do you go back to interview

5 him? Mr. Butler?

6 A Did I drive back there to interview him?

7 Q Yes.

8 A Yes.

9 Q Okay. Having gotten the statement on the 16th from him, the

10 reason to go back is?

11 A Keep them close to us.

12 Q Okay, and you mean by that to keep contact with him?

13 A Yes.

14 Q Okay. You -- you had completed the buccal swabbing or

15 whatever, correct?

16 A That was completed on the 16th.

17 Q Okay. Okay.

18 MR. BRANDT: Nothing further, your Honor.

19 THE COURT: Ms. Rezmierski?

20 REDIRECT EXAMINATION

21 BY MS. REZMIERSKI:

22 Q Do I understand your testimony correctly that when Mr.

23 Butler first referenced a witness in the nephew's case the

24 language used was he was wanted to take care of a witness in

25 that case?

1 A Yes.

2 Q Do I further understand your testimony correctly that that

3 witness was brought up and referenced more than one time in

4 your interview with Mr. Butler?

5 A Yes.

6 Q Do I further understand your testimony correctly that as Mr.

7 Butler continued to discuss what he was supposed to do with

8 that witness both Clifford and Rodney McKee were present?

9 A Yes.

10 Q What else was said about what needed to be done with that

11 witness?

12 A That they need to be taken out and killed.

13 Q Thank you.

14 MS. REZMIERSKI: Nothing further.

15 THE COURT: Anything further?

16 RE CROSS-EXAMINATION

17 BY MR. BRANDT:

18 Q But that was not said by my client?

19 A That's not what Mr. Butler said, no.

20 THE COURT: Okay. You can step down.

21 THE WITNESS: Thanks, your Honor.

22 (At 5:03:48 p.m., witness excused)

23 MR. ENGLE: Your Honor, regarding time may we

24 approach for a second?

25 THE COURT: Yep.

1 (Bench Conference held from 5:03:54 p.m. to
2 5:06:00 p.m.)

3 THE COURT: Ms. Rezmierski, what's your
4 pleasure, today or tomorrow?

5 MS. REZMIERSKI: Your Honor, making certain
6 that in evidence are People's Exhibit 1 --

7 THE COURT: I thought we went through this
8 already?

9 MS. REZMIERSKI: Yep. I know. It's my tiny
10 little OCD thing.

11 THE COURT: Okay. Hold on. (Inaudible).

12 MS. REZMIERSKI: Yep, it's right down there.
13 It's number 1.

14 THE COURT: Oh, yeah, the phone chart was --
15 (inaudible).

16 MS. REZMIERSKI: Yep. One and then People's
17 Exhibits 4 through 224 should all be admitted, because 2 and
18 3 were not admitted, timeline --

19 THE COURT: Right.

20 MS. REZMIERSKI: -- and the photo board; 225
21 is the phones seized from Rodney McKee during the arson
22 investigation that was not admitted, and then People's 226
23 through 229 have also all been admitted.

24 THE COURT: (Inaudible). I got photo of kids
25 at the fair.

1 MS. REZMIERSKI: That's number 4.

2 THE COURT: Four. Alexis Wolfe and Eric
3 Wolfe.

4 What you got on 4? Huh?

5 THE CLERK: (Inaudible).

6 THE COURT: I want to make sure -- I made
7 some notes but I've got it right next to another photo. Who
8 was in that photo?

9 MS. REZMIERSKI: Which one, number 4?

10 THE COURT: Yeah.

11 MS. REZMIERSKI: All three of the children,
12 Ruby, Royce and Lex and Frannie.

13 THE COURT: Okay, yes, that is --

14 MS. REZMIERSKI: Frannie and --

15 THE COURT: That is admitted.

16 MS. REZMIERSKI: Okay.

17 THE COURT: I've got them all admitted then.

18 MS. REZMIERSKI: Wonderful. Just wanted to
19 verify. With that, your Honor, then the People rest.

20 THE COURT: Okay. Ladies and gentlemen, I
21 have adjourned a number of matters in the morning already
22 but I've still got a number to take care of and a couple
23 other things to take care of, so I'm gonna bring you back
24 about 10:00, 10:00 o'clock tomorrow and then we should --
25 hopefully, will be able to start up at 10:00.

1 Have a good night. Don't talk to anyone
2 about the case, don't read anything in the paper and keep
3 open mind and we'll see you tomorrow around 10:00 o'clock.
4 Have a good night.

5 THE CLERK: All rise for the jury.

6 (At 5:10:05 p.m., jury excused)

7 THE COURT: Be seated if you want to.

8 Mr. Engle?

9 MR. ENGLE: Your Honor --

10 THE COURT: Hold on, somebody get the --

11 MR. ENGLE: -- the motions I've made earlier
12 today were based on written motions my client had given to
13 me. He's asked that I enter those written motions into the
14 record.

15 THE COURT: Okay. Have them marked --

16 MR. ENGLE: (Inaudible). I don't care if
17 they're -- you've already ruled on them, it's just he wants
18 them entered into the record.

19 THE COURT: Well, have them marked as
20 exhibits. Why don't you just do it in the morning?

21 MR. ENGLE: I'll run --

22 THE COURT: Make -- yeah, make copies for
23 everybody so everybody's got a copy, including me. Make
24 copies.

25 MR. ENGLE: I will.

1 THE COURT: And then mark them in the
2 morning.

3 MR. ENGLE: Okay. I will do that.

4 THE COURT: We'll see everybody here about
5 10:00 -- well, I'll see the rest of you hopefully around --

6 MR. ENGLE: And I don't know that they need
7 to be exhibits for the jury, they're obviously just for the
8 record.

9 THE COURT: For the record, yeah.

10 MS. REZMIERSKI: When do you want us here?

11 MR. ENGLE: Your Honor, can we have the --
12 the defendants brought back a little earlier than the 10:00
13 o'clock?

14 THE COURT: Oh, yeah. I was thinking having
15 them brought over about 9:30?

16 MR. ENGLE: That'd be fine.

17 THE COURT: Because I'm figuring we'll have
18 20 minutes to a half hour to discuss things before we get
19 them over here, and...

20 MR. ENGLE: Okay, thank you.

21 MS. REZMIERSKI: So when do you want us here
22 as counsel?

23 THE COURT: A little after 9:00.

24 MS. REZMIERSKI: Thank you, Judge.

25 THE COURT: Well, 9:15, right around there.

1 MS. REZMIERSKI: Whenever you want.

2 THE COURT: Huh?

3 MS. MCKINNIE: What time -- what time did you
4 want the defendants here?

5 THE COURT: 9:30.

6 MS. MCKINNIE: 9:30?

7 MS. REZMIERSKI: You don't want them to talk
8 to the defendants first before we all --

9 MR. BRANDT: We're gonna talk to them right
10 now for a minute.

11 MS. MCKINNIE: Oh, okay.

12 MS. REZMIERSKI: I'll stay out of it.

13 MS. MCKINNIE: There we go.

14 (At 5:12:33 p.m., hearing concluded)
15

CERTIFICATION

This is to certify that the attached electronically recorded proceeding, consisting of two hundred and twenty-two (222) pages, before the 4th Judicial Circuit Court, Jackson County, Michigan:

PEOPLE OF THE STATE OF MICHIGAN

v

CORTEZ ANTONIO BUTLER,
CLIFFORD DURELL MCKEE and
RODNEY JAMAR MCKEE

_____/

Location: Circuit Court

Date: Monday, April 4, 2016

was held as herein appeared and that this is testimony from the original transcript of the electronic recording thereof, to the best of my ability.

I further state that I assume no responsibility for any events that occurred during the above proceedings or any inaudible responses by any party or parties that are not discernible on the electronic recording of the proceedings.

s\ **Sally Fritz**
Sally Fritz, CER #7594
Certified Electronic Recorder

Dated: November 9, 2016

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STATE OF MICHIGAN

4TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF JACKSON

PEOPLE OF THE STATE OF MICHIGAN

v

CORTEZ ANTONIO BUTLER
and
CLIFFORD DURELL MCKEE
and
RODNEY JAMAR MCKEE,

File No, 2015-2789-FC
File No. 2015-2787-FC
File No. 2015-2788-FC

Defendants.

_____/

JURY TRIAL - VOLUME III of IX

BEFORE THE HONORABLE THOMAS D. WILSON, CIRCUIT COURT JUDGE

Jackson, Michigan - Wednesday, March 30, 2016

APPEARANCES:

For the People:

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 Jackson, MI 49201
 (517) 787-4744

For Cortez Butler: JERRY M. ENGLE (P13194)
 1104 W. Michigan Avenue
 Jackson, MI 49202
 (517) 782-9459

1 Michelle, come here for a minute. Have a
2 chat with the gentleman in the last -- not the last row,
3 right behind the woman, tell him if he ever sits down again
4 before I tell him he's gonna be expelled from the
5 courtroom.

6 Next witness.

7 MS. MCKINNIE: Thank you. People call
8 Detective/Sergeant Paul Gonyeau.

9 THE COURT: Do you swear to tell the truth,
10 the whole truth and nothing but the truth so help you God?

11 MR. GONYEAU: I do.

12 PAUL GONYEAU

13 (At 1:39:47 p.m., witness sworn, testified as follows):

14 THE COURT: Be seated, Sir.

15 THE WITNESS: Thank you, Sir.

16 THE COURT: Will you state your name, spell
17 your last name for the record.

18 THE WITNESS: Paul Gonyeau, G-O-N-Y-E-A-U.

19 MS. MCKINNIE: You good, Judge? Thank you.

20 THE COURT: Whenever you're ready.

21 DIRECT EXAMINATION

22 BY MS. MCKINNIE:

23 Q Detective, where are you employed?

24 A Michigan State Police Technical Services Unit.

25 Q And I've called you a detective, is that a current rank of

1 yours?

2 A Detective/Sergeant, yes.

3 Q Detective/Sergeant. Thank you. How long have you been
4 with MSP?

5 A Over 18 years.

6 Q How long have you been a detective?

7 A Almost a year.

8 Q Okay, how long have you been Sergeant?

9 A Or check that, it is a year as of yesterday.

10 Q Okay, how long have you been a Sergeant?

11 A Same.

12 Q Okay, and you said you're with what division?

13 A Technical Services Unit.

14 Q All right. What does that mean?

15 A We're a unit that provides technical assistance to
16 detectives and officers from County, state, local and
17 federal agencies across Michigan.

18 Q So you work with a whole lot of different agencies and
19 people?

20 A Yes, we do.

21 Q Quite often is it your investigation or are you kind of
22 assisting other people?

23 A We are assisting.

24 Q Okay. Are there -- I mean, are all of your cases kind of
25 assisting for technological stuff, or are -- do you ever

1 have kind of your own?

2 A We're a support entity within the Michigan State Police,
3 much like say your laboratory or other services we offer.

4 Q What kind of cases do you work on?

5 A We work on a wide variety of cases. The majority of our
6 casework tends to be with homicides, missing, endangered,
7 kidnapping, loss of life type of crimes.

8 Q Okay. Maybe some of the higher profilesque (ph) cases, if
9 you will?

10 A Yes.

11 Q What kind of work do you do within your Technical Services
12 Unit?

13 A We do a variety of work. Everything from covert audio and
14 video installations, GPS tracking, cell phone tracking,
15 record analysis, target development and cellular forensics.

16 Q Do you things with computers as well if need be?

17 A No, we leave that the Computer Crimes Unit.

18 Q Okay, so you're just strictly kind of a GPS and cell phone
19 kind of as the big stuff, is that fair?

20 A And the audio/video.

21 Q Thank you. I knew there was something I was missing. So,
22 as part of that do you often look at phone records, review
23 phone records?

24 A Yes, I do.

25 Q How often on your cases?

1 A Very regularly.

2 Q Okay, from all sorts of different cell phone companies?

3 A Yes.

4 Q How often do you do something more with those cell phones?

5 A In most cases.

6 Q What is it that you do more of, or what is that next step?

7 A When you're doing record analysis with records provided by
8 cellular service providers, typically, we are looking to
9 place a device at a given area at a given time to determine
10 whether it was there, whether it wasn't there. And often
11 times we are looking to develop associates or other persons
12 of interest relating to communications that we are
13 observing within those service provider records.

14 Q If you're so fortunate to actually get a cell phone sent to
15 you, do you do above and beyond stuff as well?

16 A Yes.

17 Q Because do you need the actual cell phone in front of you
18 to be able to review the records?

19 A The service provider records are separate from the cell
20 phone content, so when you ask the question do I need it in
21 front of me to review the records, no, I can look at
22 service provider records in and of themselves to see which
23 communications were occurring and whom they were between.

24 Q They're kinda two separate reports, if that is a fair
25 statement?

1 A Yes.

2 Q What comes out of the phone and what the cell phone
3 companies send you, right?

4 A Yes, correct.

5 Q Okay. So what is it the process that you get into a phone
6 or what is that process kinda called?

7 A That's a forensic extraction of the contents of that mobile
8 communication device.

9 Q How often do you do forensic extractions of phones?

10 A Whenever possible. Whenever the phone is available in the
11 investigations.

12 Q Do you have any specialized training or experiences in the
13 extraction process?

14 A Yes, I do.

15 Q What kind?

16 A I have multiple trainings in cell phone forensics, Smart
17 phone certifications. In addition, the forensic tools I
18 operate, Cellebrite, Oxygen and Lantern, I hold
19 certifications in all of those.

20 Q So those are all separate programs you can use to maybe get
21 into a phone?

22 A Yes.

23 Q And I think you said Cellebrite, Oxygen, Lantern, those are
24 kind of some of -- some of the ones you have?

25 A Those are three of the four tools I use. I have another

1 tool called Device Seizure which rarely gets used.

2 Q Fair enough. Now, I meant to ask you this earlier, did you
3 have any specialized training that got you into this unit?

4 A Prior to joining the unit I had started training in cell
5 phone analysis, record analysis, things of that nature
6 going back to May of 2011, I believe.

7 Q And was that a lot of just reviewing and kind of learning
8 about the records in a general sense, I guess? Walk me
9 through a little bit of what that training is.

10 A Yes, that's a good description of it. It did cover the
11 basics, interpreting service provider records,
12 understanding mapping concepts, being able to successfully
13 map out locations of phones off the historical records.
14 It's basically making sense of the different types of data.

15 Q So one of the things -- one of the many things you learned
16 was how to look at data and then actually be able to put
17 someone's phone at least in a location on a map?

18 A Yes.

19 Q I would assume at least that technology updates, that there
20 are trainings that update you, software that updates, is
21 that -- is that a true statement?

22 A Yes.

23 Q How kinda does that work? Do you go to trainings
24 frequently to update yourself?

25 A Yes. With the different forensic extraction tools, those

1 are constantly updating. They're constantly, as new
2 technology comes out, they're attempting to keep up with it
3 and have answers as far as how to access that data and put
4 it out to us in something that's understandable. So,
5 that's constantly updating. As far as continued training,
6 I currently hold a certified technical investigator
7 certification to which continued training is required, and
8 that's in a variety of different disciplines, not only cell
9 phones.

10 Q Okay. Detective, have you ever been qualified as an expert
11 in criminal court?

12 A Yes, I have.

13 Q In what areas have you been qualified, or area?

14 A Cellular forensics and the historical placement of a cell
15 phone or a mobile communication device utilizing service
16 provider records.

17 Q Have you -- how many times have you been qualified as an
18 expert?

19 A I believe four.

20 Q Okay. Do you remember where they all in Michigan?

21 A Yes, they were.

22 Q Have you ever been qualified as an expert in Jackson County
23 before?

24 A Yes, I have.

25 Q Ever been asked to be qualified since you've been in this

1 tactical (sic) unit and -- and not been qualified?

2 A No.

3 MS. MCKINNIE: Your Honor, at this time I'd
4 ask that the Detective/Sergeant be qualified as an expert
5 in that area of the cell phone record --

6 BY MS. MCKINNIE:

7 Q Can you repeat it for me again?

8 A Historical placement of cell phone while using service
9 provider records and cellular forensics.

10 Q Thank you.

11 MS. MCKINNIE: In that area.

12 THE COURT: Any voir dire?

13 MR. ENGLE: No objections, your Honor.

14 MR. PERLOS: No.

15 MR. BRANDT: No objection. Thank you.

16 THE COURT: Okay, he'll be qualified as an
17 expert in cellular forensics and historical placement of
18 cell phones.

19 (At 1:47:50 p.m., Mr. Gonyeau Qualified as
20 Expert)

21 MS. MCKINNIE: Thank you, Judge.

22 BY MS. MCKINNIE:

23 Q So, Detective, how did you get involved in this case?

24 A On a request to assist Jackson County Sheriff's Department
25 came in to the Technical Services Unit.

1 Q Okay, and you said from the Jackson County Sheriff's
2 Department?

3 A Yes.

4 Q And when they reached out to you what was kinda that first
5 request for what they wanted you to do?

6 A The first request was to -- they had a homicide and they
7 developed some information on a possible suspect, they
8 presented me with a set of records and their question,
9 quite simply was, can you look at these cell phone records
10 and tell us if this possible suspect was in the Jackson
11 area at the time of our homicide?

12 Q Is this kind of analysis of phone records something you've
13 done on a regular basis then?

14 A Yes.

15 Q Was it an unusual request?

16 A Not at all.

17 Q All right. Did you analyze those records?

18 A I did.

19 Q What did you learn from those records?

20 A That on the approximate date and time of the homicide the
21 phone in question, which they identified as belonging to a
22 Cortez Butler, was in the greater Jackson area.

23 Q Was the fact that Cortez Butler's phone -- and it was in
24 the greater Jackson area, was that something that was
25 abnormal for the record you are looking at?

1 A Yes, it was.

2 Q And when I say abnormal, can you expound on that a bit?

3 A When I analyze a set of records like that I'm looking for
4 what is -- what's normal, what's the pattern of life, where
5 do we normally see this device, are we seeing it someplace
6 that's out of the norm? We would describe an anomaly to
7 that pattern of life. So, that phone being in the greater
8 Jackson area was out of the norm.

9 Q Where was its pattern of life located normally?

10 A Typically in the Detroit -- greater Detroit area.

11 Q Okay, and did you -- I'm sorry, did you say the dates that
12 that phone was here, at least let's focus on August 1st, was
13 that phone here more than once in August?

14 A Yes, it was.

15 Q And I say here, it's kinda the greater Jackson area --

16 A Yes.

17 Q -- right? Do you remember the dates of when that phone was
18 located here in Jackson?

19 A It was here August 6th of 2014, August 8th of 2014 and then
20 August 10th of 2014.

21 Q Outside of those three dates in August could you tell again
22 just by looking at those phone records if he was ever in
23 the greater Jackson area again later on?

24 A Yes. The initial set of records indicated he was in the
25 greater Jackson area on October 24th of 2014.

1 Q Now, was there -- strike that. What did you do next I
2 guess? After you find kinda this location information
3 what's your next step?

4 A When the device appears to be out of its general area, when
5 I see that anomaly, it's somewhere where it typically
6 wouldn't be and I don't have a connection I begin to look
7 for devices, numbers it's communicating with at or around
8 the times that it's actually in the Jackson area or coming
9 to or from the Jackson area.

10 Q And again, that's kind of a general next step when you're
11 doing these analyses of phone records?

12 A Yes.

13 Q All right. Did anything stand out to you that was of
14 value?

15 A There were several numbers in there of interest that I
16 wanted to conduct additional review of.

17 Q So what do you do?

18 A I worked with the Jackson County Sheriff's Department to
19 generate search warrants, and I believe it was on seven --
20 seven additional numbers for historical records for those
21 devices.

22 Q So, do you get those seven records that?

23 A Yes.

24 Q So then are you comparing them, what's your kinda step when
25 you've got the Cortez Butler phone and then these seven

1 kind of unknowns at that point, is that fair?

2 A Yes.

3 Q What do you do?

4 A I begin to compare the location of those devices as well to
5 see if I have any corresponding trips to the Jackson area,
6 anything that looks like it lines up as a potential nexus
7 to Mr. Butler's device in the Jackson area.

8 Q So one of the things you're looking at is locations?

9 A Yes.

10 Q Of the two phones.

11 A Yes.

12 Q Are you also looking at timing of obviously when that --
13 those locations are happening?

14 A Yes.

15 Q So see if they match up with that record we have as known
16 to be Cortez Butler's?

17 A Correct.

18 Q Did any number stand out to you?

19 A Yes, one did.

20 Q Do you remember what that number was?

21 A Yes.

22 Q What is it?

23 A From memory I believe it is 313-693-5985.

24 Q That's a good memory. Why did that number stand out to
25 you?

1 A That number made a trip to the Jackson area on August 6th of
2 2014 with Mr. Butler's phone, or in very close proximity to
3 the time Mr. Butler's phone was coming to the Jackson area.
4 And on October 24th of 2014 again, the same type of travel.
5 The device is traveling very close to one another and/or
6 together from the Detroit area to the Jackson area.

7 Q Did anything stick out to you about August 8th? Maybe not
8 in terms of location but about in terms of contact?

9 A Yes. On August 8th when Mr. Butler's device returned to the
10 Jackson -- greater Jackson area and down to the southern
11 part of the Jackson area, there was a communication between
12 that device and the device I just listed there.

13 Q The ending in 5985?

14 A Correct.

15 Q So, Detective, you just said even the southern part of --
16 of the greater Jackson area?

17 A Mm-hmm.

18 Q The cell phone records that you're looking through can even
19 kinda give you that much specifics?

20 A Yes, they can.

21 Q How specific -- just generally, I guess, what kind of an
22 area are we talking about?

23 A General geographic area --

24 Q Okay.

25 A -- and just typically, you see most of your towers

1 traditionally are three sector towers, so they're going to
2 give you a center point, which we call the azimuth, so
3 that's going to give you the directionality of the sector
4 of that tower. So, as long as the records are recording
5 that tower and the sector, it can give you a general
6 geographic area.

7 Q Now, you said as long as those towers are recording, what
8 are some of the instances where the towers aren't
9 recording?

10 A Just depending if -- one of the most common is, if it's a
11 one sector tower.

12 Q Okay.

13 A That's the most common.

14 Q Okay. If the cell phone is turned off do towers still --
15 can towers still register it?

16 A No.

17 Q And when you look at information of cell phones registering
18 on towers, are you doing anytime someone sends a text or
19 someone pulls up a data, or are you looking at something
20 specific happening on that phone?

21 A It -- with different carriers it occurs differently. But
22 what you want to look for typically are your voice
23 activities. You can have -- generate location off of other
24 activities. Some carriers will generate it off of SMS data
25 communication, but kind of the standard by which I operate

1 would be the voice calls, because there is something called
2 voiceover data protocol and that means if you and I are
3 standing here and I'm trying to make a voice call and
4 you're trying to make a text call, the tower sees me and
5 says your number one --

6 Q You get priority.

7 A -- and then you're number two to that tower if there's
8 room, or you could be sent to an adjoining tower --
9 adjacent tower, excuse me.

10 Q Okay. You said SMS, what's SMS?

11 A Short message service.

12 Q Is that kind of your general text message?

13 A Yes. It's your standard text. I'm sorry, simple message
14 service.

15 Q Okay. Focusing on those records again on that 5985, ending
16 in 5985, did you get any information about what kind of a
17 phone that actually was?

18 A Yes.

19 Q Where did you get that information from?

20 A When the warrant was served for records they provided us
21 subscriber information for that device.

22 Q So again, that comes from those -- that same phone
23 company's records?

24 A Yes, it does.

25 Q Okay. And in those records could you tell I guess what

1 kind of a phone it was?

2 A I could tell that it was a prepaid Boost phone.

3 Q Is that something that's significant to you?

4 A Yes, it is.

5 Q Why?

6 A Boost does not require their customers to provide them with
7 proper identification, no -- no owner information is
8 required whatsoever.

9 Q So can someone walk in and say I'm Mickey Mouse and their
10 phones under Mickey Mouse?

11 A Yes.

12 Q Did that subscriber information also send you a name linked
13 to this 5985?

14 A Yes, there was a name entered.

15 Q What was that name that was linked to that phone?

16 A Dorito Johnson.

17 Q Now, you've talked about that you worked with the sheriff's
18 office originally, did you also work with Blackman
19 Township, City of Jackson, or some other agencies involved
20 in this?

21 A Yes, I believe they were also involved in --

22 Q Okay.

23 A -- the task force.

24 Q Okay. And you said a task force, this is kind of a joint
25 agency event?

1 A Yes.

2 Q Did you guys have a meeting, "you guys" meaning the task
3 force officers, December 11th?

4 A Yes, we did.

5 Q At that meeting did you learn something about the name
6 Dorito Johnson?

7 A Yes.

8 Q Who did you learn that that name was attributed to?

9 A It was associated to --

10 MR. BRANDT: I'm going to object, your Honor.
11 This is hearsay.

12 THE COURT: Sustained.

13 MR. BRANDT: Thank you.

14 MS. MCKINNIE: Judge, can we approach for a
15 moment?

16 THE COURT: Yep.

17 (Bench Conference held from 1:57:50 p.m. to
18 1:58:59 p.m.)

19 THE COURT: Okay, you can go forward with the
20 line of questioning subject to verification later through
21 other witnesses.

22 BY MS. MCKINNIE:

23 Q Detective, did you learn something at that meeting about
24 who Dorito Johnson was a street name for?

25 A Yes.

1 Q Who was that person?

2 A Clifford McKee.

3 Q Okay. What did you try to do I guess next in terms of
4 verifying Clifford McKee and that phone?

5 A At the meeting I was provided with the name for Clifford
6 McKee, I observed photos as well of Mr. McKee. At that
7 point, I attempted to locate the device in question.

8 Q How are you locating that device?

9 A Using GPS information provided by Sprint.

10 Q So not only do you get historical GPS, you can get real-
11 time GPS from the carriers?

12 A Some of the carriers. In this case, Sprint, yes.

13 Q Okay. Were you able to use that real time GPS tracking to
14 locate that phone?

15 A Yes, I was.

16 Q Where was that phone?

17 A The Westwood Mall in Jackson.

18 Q Here in Jackson. What did you do?

19 A I made entry into the mall, and this was on the same date,
20 August 11th.

21 Q December?

22 A I'm sorry, December 11th, 2014 approximately 6:00 p.m. Made
23 entry into the mall, went to the general area of the
24 location provided by Sprint. At that time, I observed
25 Clifford McKee.

1 Q And again, you had just seen photos of him earlier that
2 day?

3 A Yes.

4 Q But prior to that you didn't really know who he was?

5 A No idea.

6 Q Okay. What happens at the mall?

7 A I contacted Sergeant Huttenlocker and Detective Jaakkola,
8 who -- from the Sheriff's Department, they then came into
9 the mall and made contact with Mr. McKee.

10 Q Okay. Were phones seized from Mr. McKee that day --

11 A Yes.

12 Q -- from --(multiple speakers)-- McKee?

13 A Yes, they were.

14 Q Do you know how many phones?

15 A Three.

16 Q Were they handed to you?

17 A They were.

18 Q What did you do with them?

19 A I put all three of the phones into airplane mode to disable
20 the network communication.

21 Q Detective, I meant to do this earlier, before we go
22 forward, I want you to look at this board that's behind you
23 for a moment. There's a whole lot of dates and some of
24 them are prior to your investigation. I don't really want
25 you to --(undecipherable)-- those, but the dates that

1 include your investigation, can you look at those and tell
2 me if those are accurate representations of information you
3 have to this investigation?

4 A Yes, that looks correct.

5 Q So, the first thing that I see is, you already talked about
6 an August 6th date, I've got my laser pointer on it, in
7 terms of Mr. Butler's phone being here in Jackson, right?

8 A Correct.

9 Q All right, and then you were just talking about December
10 11th of three phones were seized from Clifford McKee, right?

11 A Correct.

12 Q I think you also talked about that October 24th date here
13 where -- or -- that one where at least Cortez Butler at
14 this point we know his phone was in the Jackson area?

15 A Yes.

16 Q All right. So, I'm sorry, I believe we left off before I
17 took you there that you took the phones or the phones were
18 given to you and you did something with them.

19 A Yes.

20 Q What did you do with them?

21 A I put them into airplane mode.

22 Q And why is that?

23 A To break the communication with the network to preserve any
24 contents within that device to protect them from being
25 remotely wiped.

1 Q So if you break it from the network, at least, you're
2 stopping anyone from remotely doing anything to that phone

3 A Through -- through use of the cellular network, that's
4 correct.

5 Q Are there still other ways they could still get into that
6 phone?

7 A Yes.

8 Q How?

9 A If there are -- if the phone has known wifi associations
10 and you take it back within range of that wifi you're
11 essentially restoring network connectivity to that device.

12 Q So it's -- you put it in airplane mode as a safety
13 precaution but it's not the end all/be all?

14 A Right.

15 Q Okay. You said you -- we got three phones from Clifford
16 that day at the mall?

17 A Yes.

18 Q At some point do you then get -- well, do draft search
19 warrants for the records for those phones?

20 A I assisted the sheriff's department in drafting search
21 warrants.

22 Q Okay, and at some point you get records for all three of
23 those phones?

24 A Yes.

25 Q Are they all Sprint, do you remember?

1 A They are.

2 Q All Sprint, okay. Did you analyze those phones, so now
3 we've got new records for two of them, they probably have
4 pretty same record for the first one?

5 A Yes.

6 Q And then we have Cortez Butler's phone still?

7 A Correct.

8 Q Did you analyze all of those together?

9 A Yes.

10 Q What did you come up with at that point?

11 A One of the second devices recovered from Mr. McKee at the
12 mall, or Clifford McKee at the mall did also have communi
13 -- bear with me just a second --

14 Q Mm-hmm.

15 A I'm trying to recall as -- can I refer to my reports --

16 Q Yes.

17 A -- is that --

18 Q Your first one or your second one?

19 A At this point probably both.

20 MS. MCKINNIE: May I approach?

21 THE WITNESS: Thank you.

22 MS. MCKINNIE: Mm-hmm.

23 THE WITNESS: As it pertained to -- as it
24 pertained specifically to Mr. Butler, there was nothing
25 additional discovered at that time.

1 BY MS. MCKINNIE:

2 Q Okay, fair enough. When you were looking at the phone
3 attributed to Mr. Butler and the phone attributed to
4 Clifford McKee, did you find medications?

5 A Yes.

6 Q Did you find a few, did you find a lot, did you find how
7 many?

8 A A Fair amount. Over -- between that and Mr. Butler's first
9 device there were over 100 communications.

10 Q Okay. At some point did you learn that Mr. Cor -- or Mr.
11 Butler had more phones?

12 A Yes.

13 Q When was that?

14 A In his records I identified that the records -- the number
15 I was working with ended service approximately October 25th
16 of 2014, so the search for the new number began.
17 Detectives from Jackson County Sheriff's Department were
18 able to confirm a new number for Cortez Butler.

19 Q And when was that did you get that new number?

20 A Shortly after they asked me to initially review this, so --

21 Q Okay.

22 A --(multiple speakers)--

23 Q Early December-ish maybe?

24 A -- beginning of December, yes.

25 Q All right. And obviously, you got three phones from

1 Clifford on the 11th, at some point did you learn that there
2 were more phones attributed to Clifford McKee?
3 A Yes.
4 Q Okay. Sometime after that 11th date?
5 A Yes.
6 Q All right. Detective, you've reviewed phones for all three
7 of these guys, is that fair?
8 A Yes, I have.
9 Q Do you know how many phones you've reviewed that are
10 connected to Cortez Butler?
11 A May I refer to my report?
12 Q You may.
13 A Six.
14 Q How many phones did we have that were attributed to
15 Clifford McKee?
16 A Five.
17 Q Now again, the task force is kind of an ongoing task force,
18 is that fair?
19 A Yes.
20 Q At some point do you learn that there is actually a third
21 suspect as well?
22 A Yes.
23 Q And are you then provided with records from that third
24 suspect as well?
25 A Yes, I was.

1 Q How many phones did you look at originally for that third
2 suspect?

3 A Three.

4 Q And that one we're talking about is?

5 A Rodney McKee.

6 Q Okay. So, we have five records for Clifford, is that
7 right?

8 A Yes.

9 Q You said we have six phones for Cortez Butler, are one of
10 them possibly his girlfriend's?

11 A That would be the seventh phone.

12 Q Seventh phone.

13 A So it was not counted as belonging to him.

14 Q Okay, thank you. So we've got six phones for Cortez
15 Butler?

16 A Yes.

17 Q And then we've got three attached to the homicide for
18 Rodney McKee?

19 A Correct.

20 Q All right, and you've got records for all three of Rodney
21 McKee's, and I mean Sprint records -- excuse me, like the
22 phone carrier records?

23 A Yes, I do.

24 Q And you've got the phone carrier records for all of
25 Clifford McKee's phones as well?

1 A Yes.

2 Q Do we have phone records for all of Cortez Butler's phones?

3 A We do not.

4 Q Why not?

5 A Numerous phones were received very late in this
6 investigation, that's why we do not have records for them.

7 Q So there wasn't time to go back and get those records from
8 those companies?

9 A No.

10 Q Okay. We have two of his phones though, correct?

11 A Yes, we do.

12 Q And -- okay, we'll leave it at that for now. All righty,
13 202. We'll start with Mr. Butler. I am handing you a
14 binder that is marked as People's proposed Exhibit 202. Do
15 you recognize that binder?

16 A Yes, I do.

17 Q Have you seen it before?

18 A Yes, I have.

19 Q Have we been through that before?

20 A We have.

21 Q All right. In that binder there are highlighting on pages,
22 is that fair?

23 A Yes.

24 Q Are there also sticky notes on that binder?

25 A There are.

1 MR. BRANDT: Kelsie, whose extraction is
2 that?

3 MS. MCKINNIE: It is, I'm sorry, this is Mr
4 Butler's phone records.

5 MR. BRANDT: Which -- which phone?

6 MS. MCKINNIE: For all of them.

7 MR. BRANDT: All of them? Okay.

8 MS. MCKINNIE: All of them are binded
9 together.

10 MR. BRANDT: Thank you.

11 MS. MCKINNIE: YEp.

12 MR. ENGLE: Can I ask one question? You said
13 all -- you said you only had --

14 MS. MCKINNIE: We --(undecipherable)-- two.
15 Only two.

16 MR. ENGLE: There's only two phone records --
17 (multiple speakers)--

18 MS. MCKINNIE: Only two of the five.

19 THE WITNESS: Yes, Sir.

20 MS. MCKINNIE: All of the ones we have are in
21 there.

22 MR. BRANDT: Okay.

23 BY MS. MCKINNIE:

24 Q There's sticky notes on there as well?

25 A Yes.

1 Q There's also a piece of paper kind of stuck in the top of
2 that.

3 A There is.

4 Q All right, and you and I have been through it and it's kind
5 of the legend we've created for this binder, is that a fair
6 statement?

7 A Yes.

8 Q It has Cortez's name at the top, right?

9 A Yes.

10 Q And it's got to phone numbers that we are associated to
11 Cortez in this phone?

12 A Yes.

13 Q And then it's got one number down here, we wrote "C.M.," do
14 you know who that number is?

15 A Yes, that's Clifford McKee's number.

16 Q Okay, and it's written in blue, is it also highlighted in
17 blue?

18 A Yes.

19 Q And the sticky notes are what color?

20 A Red.

21 Q And I guess before we get into this I want to do the
22 phones. So, you looked at all these phone numbers?

23 A Yes.

24 MR. ENGLE: If I may, Kelsie, could I just --
25 which two phone numbers do you have --(multiple speakers)--

1 MS. MCKINNIE: Well, we --

2 MR. ENGLE: -- for --

3 MS. MCKINNIE: -- will go back to that,

4 Jerry.

5 Why don't I do this first?

6 MR. BRANDT: I've given you that.

7 BY MS. MCKINNIE:

8 Q Detective, can you see that board?

9 A If I sit back, yes, I can.

10 Q Have you seen that board before today?

11 A Yes, I have.

12 MS. MCKINNIE: Your Honor, that's People's
13 proposed Exhibit 1.

14 BY MS. MCKINNIE:

15 Q There are three pictures at the top?

16 A Yes.

17 Q Those are our three sitting here today?

18 A Yes, they are.

19 Q And there are phone numbers listed below them?

20 A Yes.

21 Q Are those all phone numbers you're aware of?

22 A Yes.

23 Q All phone records and/or extraction reports for some that
24 you've been in and you've been communicating with?

25 A They are the ones I've been able to document through

1 service provider records, extraction or for an examination
 2 Q And are those numbers -- you've reviewed this before but
 3 are those numbers all accurate numbers to your reports as
 4 well?

5 A Yes, I believe so.

6 MS. MCKINNIE: Your Honor, I'd ask that --
 7 (undecipherable)-- Exhibit 1 be admitted.

8 (At 2:12:15 p.m., People's Exhibit 1 is
 9 offered)

10 MR. ENGLE: May I ask a couple questions
 11 before I even do that?

12 Detective, which -- which two phone numbers
 13 on that are Mr. Butler's phone numbers where the records
 14 were actually obtained?

15 THE WITNESS: Yes, Sir. It's gonna be the
 16 top two numbers. The 313-826-5275 and then the 586-935-
 17 2733.

18 MR. ENGLE: Okay, and the other four were his
 19 numbers but the records are not -- were not obtained?

20 THE WITNESS: Correct, Sir.

21 MR. ENGLE: With that caveat, your Honor, I
 22 don't mind that being introduced, I guess I have some
 23 questions about further exhibits, but that's fine with me.

24 THE COURT: Any objection?

25 MR. BRANDT: Your Honor, I don't. I've

1 actually reduced that down for each defendant to have and
2 I'd maybe suggest that for the jury it be reduced rather
3 than take the entire board in. Other than that, I don't
4 object.

5 THE COURT: Mr. Perlos, any objection?

6 MR. PERLOS: No, Judge.

7 THE COURT: Admitted.

8 (At 2:13:25 p.m., People's Exhibit 1 is
9 admitted)

10 BY MS. MCKINNIE:

11 Q So now When we're talking about phone numbers they can see
12 them too. So you have what Mr. Engle has asked, two phone
13 numbers in that binder ending in 2733 and 5275?

14 A Correct.

15 Q All right, are those both T-Mobile, Metro PCS records?

16 A They are.

17 Q And here did we get certifications for all of those
18 records?

19 A Yes, we did.

20 Q What do those certifications show or mean?

21 A The certifications are basically the custodian of records
22 at T-Mobile representing the records that they provided,
23 which are in here and on a disk, are true and accurate use
24 in the general course of their business.

25 Q And when they send you those certifications they actually

1 send you a CD as well?

2 A Yes.

3 Q And you've gone through and you've looked at what you and
4 have been through and printed out and compared with the CDs
5 and they're the same records?

6 A They are.

7 Q So what we've got in those binders are certified by Metro
8 PCS?

9 A They are.

10 MS. MCKINNIE: Your Honor, I'd ask that
11 People's proposed Exhibit 202 be admitted with the
12 certifications as well.

13 (At 2:14:30 p.m., People's Exhibit 202 is
14 offered)

15 MR. ENGLE: Your Honor, I guess the problem I
16 have is that at this point in time it is the record all
17 marked up with tags and underlines and things of that
18 nature and I'm a little leery of admitting a record that is
19 made into an argument rather than just a record.

20 MS. MCKINNIE: Your Honor, all we simply did
21 was went through and highlight. There's no writing in it,
22 just simply went through and highlighted communication
23 between Cortez Butler and Clifford McKee. In fact, We
24 talked about this at a hearing and said these are the ones
25 we are gonna admit, or else the jury is cycling through

1 thousands and thousands of papers with no really way to
2 know how to look. There's no writing in them and it's
3 simply highlights and colors for the jury to understand
4 what's in the binders.

5 MR. ENGLE: Well, doesn't it -- I mean, we're
6 talking about records this thick and we're talking about
7 not highlighting or explaining anything else, I guess I --
8 I object to the way in which that's prepared.

9 THE COURT: Can I see it?

10 THE WITNESS: Yes, Sir.

11 MR. ENGLE: There is an extraction report --

12 MS. MCKINNIE: Not with this.

13 MS. REZMIERSKI: It's not the same.

14 MS. MCKINNIE: It's not the same.

15 MR. ENGLE: Not with that?

16 MS. MCKINNIE: They're two separate records.
17 The extraction reports are different. These are not text
18 (ph) with contents, these are not anything that shows
19 pictures. It is simply communications between the two of
20 them showing the text messages sent back and forth or phone
21 calls sent back and forth, there's no content in this.

22 MR. ENGLE: Your Honor, I guess I have some
23 other questions too.

24 Do you show whose name that -- on both phones
25 were the phones in the name of Cortez Butler? Were they

1 purchased or subscribed for in the name of Cortez Butler?

2 THE WITNESS: From memory I -- I don't be --

3 MR. ENGLE: Will that -- would that be in
4 that record?

5 THE WITNESS: I would have to look at the
6 binder, see if the subscriber information's there.

7 MS. MCKINNIE: And, your Honor, We had a
8 blank copy of all the records as well, but I just don't
9 know what use that's going to be to the jury.

10 MR. ENGLE: Maybe I should make this easy,
11 your Honor. I'm not sure those are in the name of Cortez
12 Butler, but admission may be premature at this point until
13 they are tied to -- somehow to Cortez Butler. Either by
14 being in his possession -- if they are in somebody else's
15 name by being in his possession or something else.

16 MS. MCKINNIE: Your Honor, a later witness is
17 going to testify that he's the one that seized them from
18 Mr. Butler. Mr. -- Detective/Sergeant Gonyeau just has
19 some vacation plans that we are trying to let him get to.

20 MR. ENGLE: And that's why I think it's --
21 The motion to admit is just early at this point in time.
22 The evidence has to be there to say --

23 MS. MCKINNIE: We've got to be able to talk
24 about them with him.

25 MS. REZMIERSKI: (Multiple speakers)--

1 weight. Yeah, that goes to weight.

2 MS. MCKINNIE: It goes to weight, not
3 admissibility, your Honor.

4 MR. ENGLE: But it doesn't -- it is an
5 exhibit, it just is not admissible as yet (ph).

6 THE COURT: How you gonna tie him in?

7 MS. MCKINNIE: How we gonna tie them in?

8 THE COURT: To --

9 MS. MCKINNIE: Officer Perez is the one that
10 seizes them from Butler. These are the phones then he
11 delivers to Detective Gonyeau through JSO.

12 MS. REZMIERSKI: Also -- (inaudible).

13 MS. MCKINNIE: Hmm? Right.

14 Can we approach?

15 MS. REZMIERSKI: Your Honor, may we approach?

16 (Bench Conference held from 2:18:26 p.m. to
17 2:20:10 p.m.)

18 MR. ENGLE: I'll withdraw the objection.

19 THE COURT: Objection withdrawn, 202 is
20 admitted.

21 (At 2:20:11 p.m., People's Exhibit 202 is
22 admitted)

23 MS. MCKINNIE: Thank you.

24 BY MS. MCKINNIE:

25 Q Detective, when those records start? And, I'm sorry, let's

1 first focus -- cuz there are two phones in there, is that
2 right?

3 A That's correct.

4 Q Let's first start with the top one there, 313-826-5275.
5 What date to those records start?

6 A July 12th of 2014.

7 Q And when do those records end?

8 A October 26th of 2014.

9 Q And then if we get to 586-935-2733, when to those records
10 start?

11 A October 25th of 2014.

12 Q And when to those records end?

13 A December 10th of 2014.

14 Q And they were seized on the 11th? Is that your
15 understanding?

16 A I believe so, yes.

17 Q Okay. We're gonna --(inaudible)-- these for a minute.
18 Thank you.

19 MS. REZMIERSKI: Kelsie, that got admitted,
20 right?

21 MS. MCKINNIE: It did, 202.

22 Guys, this is Rodney's phones.

23 BY MS. MCKINNIE:

24 Q (Undecipherable)-- proposed Exhibit 203. Have you seen
25 that --(undecipherable)-- before?

1 A Yes, I have.

2 Q You've been through it numerous times, right?

3 A Yes.

4 Q Is that a fair and accurate representation of the Sprint
5 records that also come with their own certifications?

6 A Yes.

7 Q And we're talking about numbers 517-936-7201 and 517-748-
8 6755 and 517-795-0564, is that fair?

9 A Do me a favor, can you --

10 Q Yeah.

11 A -- start from the top again with that?

12 Q I totally can start on the top with that. 517-936-7201.

13 A Yes.

14 Q 517-748-6755.

15 A Yes.

16 Q And 517-795-0564.

17 A Yes.

18 Q All right. And we've got Sprint certification --
19 (inaudible). Yep. For all three of those as well, is that
20 air?

21 A Yes, we do.

22 Q And you've reviewed those records in comparison to what
23 Sprint sent you and they're all fair and accurate
24 representations of one another?

25 A Yes, they are.

1 MS. MCKINNIE: Your Honor, I would ask that
2 203, which also has a legend -- we'll get to that in a
3 second, which also has a legend and is highlighted, again,
4 with no writing, just highlights and sticky notes be
5 admitted.

6 (At 2:23:22 p.m., People's Exhibit 203 is
7 offered)

8 THE COURT: Mr. Perlos?

9 MR. PERLOS: Judge, can I see the
10 certification from Sprint? Can I voir dire the witness
11 briefly?

12 THE COURT: Go ahead.

13 MR. PERLOS: Whose names those phones are in?

14 THE WITNESS: The -- I would have to look at
15 the Sprint subscriber information on those. I'm not able
16 to recall from memory.

17 MS. MCKINNIE: Is it in the certifications --

18 THE WITNESS: It is.

19 MS. MCKINNIE: -- or the -- yeah?

20 THE WITNESS: It's on the CD. It's on the
21 certified records.

22 MS. MCKINNIE: Oh.

23 THE WITNESS: It's in the CD.

24 MS. MCKINNIE: Gotcha. If I can pull it up
25 on my flash drive? (Undecipherable).

1 THE WITNESS: I'm good but not that good.

2 MS. MCKINNIE: I was gonna say, it was on t
 3 of, written on, no? All right.

4 MR. BRANDT: Didn't he do -- didn't he do a
 5 report?

6 MR. PERLOS: Is it in here?

7 MR. BRANDT: No.

8 MS. MCKINNIE: I mean, do you just want to
 9 know what phone numbers they are?

10 MR. PERLOS: Whose names the phones were in
 11 is all I want to know.

12 THE WITNESS: That information is in his
 13 subscriber records --

14 MS. MCKINNIE: Right.

15 THE WITNESS: -- from Sprint.

16 MR. BRANDT: Well, you didn't --

17 MR. PERLOS: Did you tie the phone together
 18 to Mr. McKee?

19 THE WITNESS: Yes, based on other
 20 information.

21 MR. PERLOS: I'll withdraw the objection.

22 THE COURT: Two o three is admitted.

23 (At 2:25:11 p.m., People's Exhibit 203 is
 24 admitted)

25 MS. MCKINNIE: Thank you.

1 BY MS. MCKINNIE:

2 Q All right, and so this one again has highlighting in it and
3 it has sticky notes in it and it has a legend on top.

4 A Yes, it does.

5 Q All right, and so that legend on top says what?

6 A It indicates three numbers for Rodney McKee.

7 Q Those three numbers I listed off already?

8 A Yes, they are.

9 Q Okay, and what else?

10 A Then it has two phone numbers listed for Clifford McKee.

11 Q And is that again highlighted in blue?

12 A Yes, they are.

13 Q And --(undecipherable)-- Cortez is highlighted in blue?

14 A Yes, it is.

15 Q And is that same way Clifford is blue up there?

16 A Yes.

17 Q Try to keep that consistent. And there are two that are
18 sticky notes on this one, is that fair?

19 A Yes, there are.

20 Q Why are there two different sticky notes?

21 A Indicating contacts with the two different numbers that
22 have been listed for Clifford McKee.

23 Q So between Rodney's three phones he was contacting Clifford
24 on two phones?

25 A (No audible response).

1 Q I might have misstated that, I think it might be two and
2 two; two of Rodney's phones and two of Clifford's phones?
3 A Yes, that's correct.
4 Q Is that -- okay. So two of Rodney's phones are
5 communicating with two of Clifford's phones?
6 A Yes.
7 Q All right. When does the record -- let's start with the
8 936-7201, when do those records start?
9 A June 18th of 2014.
10 Q And when to those records end?
11 A December 3rd, 2014.
12 Q All right, and then let's move onto the 748-6755, when do
13 those records start?
14 A June 18th of -- stand by, that's incorrect. I'm sorry, May
15 1st of 2014.
16 Q Okay, and go until when?
17 A August 24th, 2014.
18 Q And then the 795-0564, when do those start?
19 A September 17th of 2014.
20 Q And when do those end?
21 A December 3rd, 2014.
22 Q Okay. And those are again the certifications that go with
23 this. I'm gonna -- (inaudible) -- for a minute.
24 A Okay.
25 Q (Inaudible). Detective, I've handed you kind of an excerpt

1 out of that same --(inaudible)-- just gonna mark --
2 (inaudible).

3 A These are inside there.

4 Q (Inaudible).

5 A Okay. Okay.

6 Q Okay, I'm handing you People's proposed Exhibit 204, in a
7 second (ph). Do you recognize those records?

8 A Yes, I do.

9 Q Is that a record not associated --(undecipherable)-- a
10 phone number not associated with the homicide?

11 A Correct.

12 Q What is that number associated with?

13 A Prior arson investigation.

14 Q Okay, and when you came on with the homicide you were asked
15 to review these records as well?

16 THE COURT: Counsel, have you all seen this?
17 I mean, she's asking questions about it, I'm not sure you
18 --

19 MR. PERLOS: I didn't hear which -- I didn't
20 hear what she said, Judge.

21 MS. MCKINNIE: These are -- these are the --
22 yeah, they have them all. These are the arson records that
23 --

24 THE COURT: They haven't been admitted.

25 MS. MCKINNIE: No, correct.

1 MS. REZMIERSKI: No, she's just showing them
2 to him.

3 MS. MCKINNIE: I'm just showing it to him.

4 THE COURT: I know, but she's --

5 MR. BRANDT: They haven't been admitted.

6 MS. MCKINNIE: No.

7 THE COURT: Okay, go ahead.

8 BY MS. MCKINNIE:

9 Q You've reviewed them?

10 A Yes, I have.

11 Q You've looked at them in the course of this investigation
12 as well?

13 A Yes.

14 Q All right, and are those records a fair and accurate
15 representation of again that certification that's there?

16 A Yes.

17 MS. MCKINNIE: Your Honor, I would ask that
18 -- that 204? Is that what it is, or 203?

19 MS. REZMIERSKI: Two o four.

20 THE COURT: Two o four.

21 MS. MCKINNIE: Two o four be admitted.

22 (At 2:29:53 p.m., People's Exhibit 204 is
23 offered)

24 MS. MCKINNIE: (Inaudible).

25 MR. PERLOS: Right, Judge, I guess I'm gonna

1 have to object because they're taking numbers from somebody
2 else's phone and using phone numbers from somebody else's
3 phone that says, hey, this guy called me and now they want
4 to admit these records saying that that was his phone.

5 MS. MCKINNIE: Let me see if I can --

6 MR. PERLOS: It's hearsay to begin with but
7 then also there's no certific -- there's nothing that ties
8 -- they didn't recover that phone.

9 MS. MCKINNIE: We did not recover that phone
10 -- well, actually, we did.

11 MS. REZMIERSKI: Yes, we did.

12 MS. MCKINNIE: Yeah, we did. No, we have
13 that phone in evidence, we just never extracted from it.
14 We have the phone in evidence.

15 MS. REZMIERSKI: It's the arson phone.

16 MS. MCKINNIE: It's the arson phone. We have
17 the phone in evidence.

18 MS. REZMIERSKI: It was seized on March 4th.

19 MS. MCKINNIE: You want to see pictures?

20 MS. REZMIERSKI: Which is how the search
21 warrant was issued.

22 MS. MCKINNIE: We've got --

23 UNIDENTIFIED SPEAKER: Yes. Yes.

24 MR. PERLOS: I don't think they got...

25 MS. MCKINNIE: Joe (ph)?

1 MR. PERLOS: (Inaudible).

2 MS. MCKINNIE: Right, they're certified
3 records, I mean --

4 MR. BRANDT: It's -- it's just the certified
5 records of the --

6 MS. MCKINNIE: Right.

7 MR. BRANDT: -- 586, right?

8 MS. MCKINNIE: Right. It's just the -- yeah
9 it's just that number. It's a number that was seized
10 during the arson.

11 MR. PERLOS: It's not the -- the number for
12 that phone.

13 MS. MCKINNIE: Judge, they're self-
14 authenticating records. We've got the certification for
15 them. I mean, he can argue that that's not the phone we
16 maybe have but it's the phone -- we're gonna have a witness
17 that's gonna talk about this is the phone number I texted
18 him back and forth with all the time. We're gonna admit
19 pictures later on through one of the witnesses --

20 MR. PERLOS: Wait, let me just ask the
21 Detective a couple questions.

22 Is there any way of verifying that the phone
23 that they have pictures of and the certification you've got
24 showing that that was that 804-1440 number?

25 THE WITNESS: To physically connect a device

1 to a cell phone number you're gonna need the identifiers,
2 the ESN --

3 MR. PERLOS: How do we do that?

4 THE WITNESS: -- IMEI. The service provider,
5 in this case, Sprint, provides device identifiers that you
6 should be able to see on the case of that phone, on the
7 back of the phone.

8 BY MS. MCKINNIE:

9 Q So, if we've got -- here is the certification that
10 certifies for this number, I mean, right, we're looking at
11 586-041 -- or excuse me, 586-804-1440, right?

12 A Yes.

13 Q That's what this certifies and that's what these records
14 are?

15 A Correct.

16 Q Okay.

17 MS. REZMIERSKI: We can have Holly bring the
18 phone.

19 MS. MCKINNIE: Right. I was just gonna see
20 because we have a picture of the battery. But it doesn't
21 -- we get the whole model number.

22 BY MS. MCKINNIE:

23 Q So if I'm able to find the subscriber information you can
24 compare it to this phone because it has that information?

25 A Correct. Yes.

1 Q The --(undecipherable)-- subscriber information?

2 A Yes.

3 MS. MCKINNIE: Judge, can we table (ph) that
4 one for a minute?

5 THE COURT: Yeah, and you've got a witness
6 who will testify that they contacted Mr. McKee at that
7 number?

8 MS. MCKINNIE: Numerous times. We have
9 pictures of screen shots of the phones -- of the contact in
10 her phone. That's the number she's contacting him at. So
11 you've got...

12 MR. PERLOS: Until she testifies that somehow
13 -- and we're satisfied that she can tie up the caller on
14 the other end of the phone and she can identify my client
15 to it, they don't have the phone, I don't know who is
16 sending texts or who is calling from that number.

17 MS. MCKINNIE: At this point we're just
18 saying they're contacts. He can argue that later but the
19 records themselves are self-authenticating.

20 MR. RODNEY MCKEE: (Multiple speakers)--
21 arguing in front of the jury, it's already in.

22 THE COURT: I understand the record is self-
23 authenticating but they still have to be relevant and --

24 MS. MCKINNIE: Right.

25 MR. PERLOS: You guys, I can't hear.

1 MS. REZMIERSKI: Yes, we have a witness who
2 will tie that up.

3 MR. RODNEY MCKEE: (Inaudible)-- argue in
4 front of the damn jury.

5 UNIDENTIFIED SPEAKER: This is some clown
6 (ph) shit, man.

7 THE COURT: I'll conditionally admit it
8 subject to that witness ident -- number one being able to
9 identify Rodney McKee's voice from previous contacts and
10 number two, the fact that she called that number a number
11 of times and always spoke to him about things --
12 (inaudible).

13 MS. MCKINNIE: And they're most text messages
14 and we don't even have any other content within these
15 records, it just shows that text messages were sent from
16 that 586 number to her number.

17 THE COURT: So how I tie that --

18 MR. PERLOS: Why do people --

19 MS. MCKINNIE: Well, she's got -- she's got
20 pictures on her phone that they're having a back and --
21 well, somewhat of a back and forth communication and then
22 he's texting her and he's -- she'll be able to testify to
23 some of that, but --

24 MR. PERLOS: Judge, I --

25 MS. MCKINNIE: -- all of these records have

1 been from one phone to another. We haven't gotten into at
2 all how they're for sure anyone's yet.

3 MR. PERLOS: The point I'm getting at is, I
4 got four phones in my name, only one I carry, one my wife
5 has, two the kids have. I have no idea what they're doing
6 with those phones. That's the point I'm getting at. And
7 they don't have the phone.

8 MS. REZMIERSKI: Yes, we do.

9 MS. MCKINNIE: We do. It's in the arson
10 stuff.

11 MR. PERLOS: Well, we're gonna find out.

12 MR. BRANDT: Just the number.

13 MS. MCKINNIE: Right. Just the number. It
14 certifies the number, it doesn't certify the subscriber
15 information, it just certifies the number that these are
16 the records from that number that they've held, right.

17 THE COURT: And what are you asking him about
18 then right now?

19 MS. MCKINNIE: I was just gonna ask him how
20 many contacts there were between the two numbers. That's
21 all we're getting into.

22 THE COURT: As far as the -- that number
23 being a certified number that was presented by Sprint, that
24 can come in as one, but right now I don't see a lot of
25 relevancy unless you tie it in later.

1 MS. MCKINNIE: Okay. Thank you, Judge.

2 MR. PERLOS: Are you going to let her admit
3 it now?

4 THE COURT: I will let her admit it but it's
5 not relevant unless she can really tie it in --

6 MR. PERLOS: I gotcha.

7 THE COURT: -- but from what they're
8 representing as an officer of the court, that they can tie
9 it in later, so I guess it'll be a conditional admission
10 and I'll put a note in -- on my --(undecipherable)-- that
11 this is conditioned on you being able to tie it in to Mr.
12 McKee.

13 (At 2:36:50 p.m., People's Exhibit 204 is
14 conditionally admitted)

15 MS. MCKINNIE: Thank you, Judge. So that's
16 204, I believe.

17 THE COURT: So it's admitted conditionally,
18 simply because we've got other witnesses that'll be coming
19 in at a future -- or --(inaudible)-- future.

20 MS. MCKINNIE: I appreciate that.

21 BY MS. MCKINNIE:

22 Q All right, so you've reviewed those records?

23 A Yes, I have.

24 Q You've reviewed them with regards to that number, 586-804-
25 1440 and there's another number there, is that a fair

1 statement?

2 A Yes, there is.

3 Q What number is that other number?

4 A There are many other numbers here, but one, there's a lot
5 of -- a frequent amount of contacts with that's
6 highlighted, is 517-395-7563.

7 Q Okay. And, Detective, you can go through and count them
8 but if I tell you there's approximately 65 contents --
9 contacts on those phone records between those four -- two
10 numbers would you dispute that?

11 A No, I would not.

12 Q And what are the dates from those records? Is that a
13 pretty quick synopsis?

14 A It's fairly narrow. It's from March 3rd of 2014 through
15 March 4th of 2014.

16 Q Okay. Thank you. Let's go back to People's Exhibit 202.
17 Oop, nope, I lied. I still haven't -- (inaudible).

18 MR. ENGLE: Can I see 202 while you're doing
19 that?

20 BY MS. MCKINNIE:

21 Q All right, I'm handing you People's proposed Exhibit 205.
22 Is that a binder you've seen before?

23 A Yes, it is.

24 Q Is that a binder you've been through before?

25 A Yes.

1 Q Is that a binder that has phone records that you got
2 certifications from Sprint, Sprint, Sprint, Sprint and
3 Sprint? If I read you off some numbers will you verify
4 that for me?

5 A If you can, give me just a second.

6 Q All right. There's a lot of them there. 313-693-5985?

7 A Yes.

8 Q 313-693 -- oop, nope, read that one twice. Sorry. 248-
9 773-6494?

10 A Yes.

11 Q 586-709-2059?

12 A Sorry, bear with me a moment.

13 Q No problem, it's a big one.

14 A Can you repeat the last number you read?

15 Q I can. I believe it was 586-709-2059. Do we have records
16 in there for that phone number, or no? I believe it's a
17 shorter record if we do.

18 A These are all Mr. McKee's, Clifford McKee's records?

19 Q They are indeed.

20 A Okay. We have a Metro PCS in here and --

21 Q That's what that one is?

22 A It doesn't belong in here.

23 Q Oh.

24 A I believe all of his devices were Sprint's.

25 Q Okay, thank you.

1 MS. MCKINNIE: Thank you.

2 BY MS. MCKINNIE:

3 Q What about 313 --

4 A If you don't mind can we start --

5 Q Oh.

6 A -- again at the beginning of the numbers you're asking --

7 Q We can indeed.

8 A for once I get this re-assembled?

9 Q All right.

10 A Thank you.

11 Q You ready? All right, 313-693-5985?

12 A Yes.

13 Q All right. And that's the big one?

14 A Yes.

15 Q 248-773-6494?

16 A Yes.

17 Q All right, 586-709-2059?

18 A (No audible response).

19 Q Is that a number that's associated with a phone that had
20 two numbers on the same phone?

21 A Yes, it is.

22 Q Okay, so that we maybe just have the 773-6494 records?

23 A I'm trying to confirm that right now.

24 Q Fair enough.

25 MS. REZMIERSKI: Kelsie, he's ready for you.

1 MS. MCKINNIE: Sorry. Thank you.

2 THE WITNESS: Right off the top I'm not
3 seeing those records in here --

4 MS. MCKINNIE: Okay.

5 THE WITNESS: -- but I'm seeing some items
6 that are not Sprint records in here.

7 BY MS. MCKINNIE:

8 Q All righty.

9 MS. MCKINNIE: You know, Judge, is this a
10 time to take a break for a second and Detective/Sergeant
11 Gonyeau and Mr. Brandt and I just for a moment?

12 THE COURT: Sounds like a wonderful idea to
13 me.

14 MS. MCKINNIE: All right. It's getting warm
15 in here.

16 THE CLERK: All rise for the jury.

17 (At 2:44:50 p.m., jury excused)

18 (At 2:45:10 p.m., hearing recessed)

19 (At 3:06:00 p.m., hearing resumed)

20 THE COURT: Please be seated.

21 Go ahead and bring in the jury.

22 THE CLERK: All rise for the jury.

23 (At 3:07:58 p.m., jury returns)

24 THE COURT: Mr. Losier (ph)?

25 Please be seated.

1 BY MS. MCKINNIE:

2 Q All right, Detective, the number we seemed to get hung up
3 on before was this 586 number, is that fair?

4 A That's correct.

5 Q Is that a number Clifford McKee had for very long?

6 A No, it's not.

7 Q Okay, is it a number that when he had the phone it was
8 around any relevant dates?

9 A No, it was not.

10 Q Okay, so we don't have that record in this binder?

11 A Correct.

12 Q All right, but all the rest of them, 313-693-5985; 248-773-
13 6494; 313-264-3481; 743-260-4290 and 734-260-4292, right?

14 A Yes, those are in the binder.

15 Q We've confirmed all of that.

16 A Yes.

17 Q And we have certifications for all of those?

18 A Correct.

19 MS. MCKINNIE: Your Honor, I would ask that
20 --(inaudible)-- lost what number this is.

21 MS. REZMIERSKI: Two o five.

22 MR. BRANDT: Two o five.

23 MS. MCKINNIE: Two o five be admitted.

24 (At 3:09:23 p.m., People's Exhibit 205 is
25 offered)

1 THE COURT: Any objection?

2 MR. BRANDT: We've already had evidentiary
3 hearings preserving our objections for the record. Absent
4 that, your Honor, I'd leave it in the court's discretion.

5 THE COURT: Well, your previous objections
6 are noted, it's admitted.

7 (At 3:09:44 p.m., People's Exhibit 205 is
8 admitted)

9 MS. MCKINNIE: Okay.

10 BY MS. MCKINNIE:

11 Q And again, this one has the same legend on it, or a legend
12 on it, I shouldn't say the same.

13 A Yes.

14 Q Okay. In Cortez's phone binder his phones only talked to
15 Clifford, is that a fair statement?

16 A Correct.

17 Q And at least for the records we know of.

18 A Correct.

19 Q And all of these statements are gonna be for the records we
20 know of, they can have other phones --(multiple speakers)--

21 MR. ENGLE: Your Honor, I guess I would
22 object.

23 THE COURT: What's your objection?

24 MR. ENGLE: He talks to a lot of people, not
25 just Clifford, would that be correct?

1 THE WITNESS: That's correct, Sir.

2 MR. ENGLE: Okay. That -- that answers my
3 question.

4 BY MS. MCKINNIE:

5 Q Of these three Cortez only talks to Clifford, is that a
6 fair statement?

7 A That's correct.

8 Q Okay. Of these three Rodney only talks to Clifford, is
9 that a fair statement?

10 A Yes.

11 Q And of these three Clifford talks to both Rodney and
12 Cortez?

13 A Yes.

14 Q Those are all fair statements?

15 A Yes.

16 Q Okay. Do you need all three up there? Let's start with
17 Clifford's since that's what you have. Would you agree
18 with me that Clifford's phone records are the easiest to
19 look through because he communicates with both of them?

20 A Yes.

21 Q So instead of going through Rodney's individually and
22 Cortez individually we can find all of that information in
23 Clifford's records?

24 A Yes.

25 Q Okay. You've reviewed these records in pretty good length,

1 is that a fair statement?

2 A Yes.

3 Q Are there months that have stood out to you in terms of the
4 records -- and again, all we're talking about here are
5 contacts, right?

6 A Correct.

7 Q We don't have in these records, communications in terms of
8 text message content, is that fair?

9 A Correct.

10 Q And we don't have voicemails or anything like that, is that
11 fair?

12 A Yes.

13 Q All we have are sent and received text messages and sent
14 and received phone calls?

15 A Yes.

16 Q Okay. We have dates and time stamps on them?

17 A Yes, we do.

18 Q Explain to me the difference between the date time stamps
19 between a text message and a phone call.

20 A In the -- as it pertains to Sprint records?

21 Q Yes, please. Thank you.

22 A Sprint records, they -- they stamp the calls based on which
23 switch you're going through, so these records reflect a
24 switching system that is in Eastern Standard Time. So any
25 call activity is in the Eastern Standard Time. The text

1 messages come through Sprint itself, through their servers
2 which are in Central Standard Time, so there's gonna be one
3 hour offset, so text messages here are displayed in Central
4 Time. So if you add one hour that brings it up to Eastern
5 Standard Time.

6 Q Okay, so what may look like a phone call took place before
7 text messages might not be the actual case?

8 A Correct.

9 Q Okay. But you're obviously familiar with that as something
10 that Sprint records do?

11 A Yes.

12 Q All right. So, when -- Detective, can you tell me when
13 Clifford and Cortez, let's start with those two, first
14 communicate within Clifford's records? Yep, the legend
15 should help.

16 MR. ENGLE: Isn't there one of Clifford's
17 phones in Exhibit 202 also?

18 THE WITNESS: Appears to be July 28th, 2014.

19 BY MS. MCKINNIE:

20 Q July 28th of 2014 is the first time within our records that
21 Cortez and Clifford communicate?

22 A Yes.

23 Q Who initiates that? Can you tell?

24 A Yes. That's a -- stand by one second. Was the question
25 for Rodney or Cortez?

1 Q Cortez, thank you. What has you perplexed?

2 A I'm looking for Cortez Butler's 313 number.

3 Q Correct.

4 A That's not it.

5 Q (Inaudible).

6 A The first time he talked to Cortez --

7 Q Mm-hmm.

8 A -- it's gonna be 313 number. It's not on there.

9 Q Is it in these here? Is it in here? What's that first

10 one?

11 A It is May 6th.

12 Q Okay. May 6th is the first --(multiple speakers)--

13 A Of 2014.

14 Q 2014. Okay. And what's that number Cortez is talking on?

15 A 313-826-5275.

16 Q And what's the number Clifford's talking on?

17 A 313-693-5985.

18 Q Okay. So that starts May 6th. Does that continue with some

19 regularity, let's say up until August 1st?

20 A Yes.

21 Q Okay, some sporadic regularity?

22 A Yes.

23 Q All right. If I said that they probably had -- I don't

24 have the number so we'll come back to that. At some point

25 do the contact between Clifford and Cortez amp up?

1 A Yes.

2 Q When is that?

3 A August.

4 Q Okay. If I say that in August alone they have 95 contacts
5 between August 5th and August 24th would you dispute that?

6 A No, that sounds correct.

7 Q You've looked through those records that many times to
8 kinda know those?

9 A Yes.

10 Q All right. On August 8th -- excuse me, on August 6th -- can
11 we go to August 6th please in that same 3 -- or that same,
12 sorry, Clifford number, 5985?

13 A Okay.

14 Q And I'm sorry, did we say August 5th or August 6th, where we
15 starting?

16 A August 6th is what you asked for.

17 Q Okay. So if I said on August 6th there were approximately,
18 these are all approximate's, 19 communications, either
19 texts and/or calls between Cortez Butler and Clifford
20 McKee, does that sound about right?

21 A Yes.

22 Q Okay. So 19 alone on that day?

23 A Yes.

24 Q And, I'm sorry, can we go to August 5th as well?

25 A Okay.

1 Q Does there seem to be an amped up communication on August
2 5th as well?

3 A Yes, there does.

4 Q Okay. Are you doing a quick count for me, is that what
5 you're --

6 A If you would like.

7 Q If you could?

8 A Approximately eight.

9 Q Okay, so August 5th there's about 8 contacts, on August 6th
10 there becomes 19 contacts. We jump to August 8th. I
11 believe there is a single phone call between the two of
12 them, does that sound about right?

13 A That's correct.

14 Q Okay, and what about August 10th? If I said that there are
15 14 communications between Clifford and Cortez on August 10th
16 would you dispute that?

17 A No, that sounds correct.

18 Q If I said they start around say 11:00 ish in the morning,
19 approximately, does that sound right?

20 A Actually, with that one hour offset it's gonna be closer to
21 12:53 p.m.

22 Q Thank you. So 12:53 p.m. with the offset of the hour?

23 A Yes.

24 Q Okay. And so then you've also mapped out -- based on the
25 records you're looking at you've also mapped out locations

1 for those three dates as well, is that fair?

2 A Yes, I have.

3 Q And those are all based on the records we've already
4 admitted, is that fair?

5 A Correct.

6 MS. MCKINNIE: Your Honor, I have a single
7 that contains all of the videos that he did for mapping
8 purposes. I can ask to have it admitted at the end of
9 playing them, I can ask to have it admitted now, I'm not
10 sure what the preference is for defense counsels. They all
11 are in possession of the mapping video.

12 MR. BRANDT: For me, whenever you want. I've
13 got it.

14 THE COURT: You all got it?

15 MR. BRANDT: I do. The mapping video.

16 THE COURT: Is there any objection --

17 MR. PERLOS: I got the mapping video --

18 MR. BRANDT: No, no.

19 THE COURT: -- to admitting --

20 MR. PERLOS: I got it.

21 THE COURT: Any objection, Mr. Engle?

22 MR. ENGLE: I've seen it, I don't have it
23 with me.

24 THE COURT: What number is it?

25 MS. MCKINNIE: Two o six.

1 THE COURT: You already got a 206.

2 MS. REZMIERSKI: I don't have -- what did you
3 have as 206?

4 UNIDENTIFIED SPEAKER: Two o five?

5 THE COURT: Oh --(inaudible).

6 MS. REZMIERSKI: Ah, see where mine are?

7 THE COURT: Yeah. You're right, 205.

8 MS. MCKINNIE: So 206 will be the mapping
9 videos.

10 THE COURT: You need that moved over a little
11 bit --(inaudible)?

12 THE WITNESS: Maybe a little bit. Thank you,
13 Sir.

14 BY MS. MCKINNIE:

15 Q All right, Detective, is this what your video starts out
16 looking like?

17 A Yes.

18 Q And it's a little hard to see when it gets blown up that
19 much but there are three names at the top.

20 A Yes, there are.

21 Q And they're in a color as well.

22 A They are.

23 Q So in keeping with this Cortez Butler is red, is that fair?

24 A Yes.

25 Q Clifford McKee is blue?

1 A Yes.

2 Q And Rodney McKee is green?

3 A Correct.

4 Q All right. And then you've got kind of two dots on the
5 left side of the screen?

6 A Yes.

7 Q What's the higher dot?

8 A It's gonna be Westwood Mall.

9 Q Okay, and the lower dot?

10 A Is gonna be the address of the location of the homicide,
11 5220 Timbercrest Trail.

12 Q Okay. And so this first one, we can see when I move the
13 mouse, that it says -- it's a little cut off but it says
14 6/14, is that going to be August 6th, 2014?

15 A Yes, that's correct.

16 Q And this is the mapping video you created for that content?

17 A Yes, correct.

18 Q All right.

19 (At 3:21:50 p.m., Playing of Mapping
20 Commenced)

21 BY MS. MCKINNIE:

22 Q Now, Detective, that was sped up, is that a fair statement?

23 A Yes.

24 Q What span was that actually for?

25 A The time span is on the right side there as you pull the

1 video up.

2 Q So if I see on mine, which is a little hard to see on their
3 screen, and it says 11:02:13 a.m., does that sound about
4 right?

5 A As the start time, yes.

6 Q As the start time? And if I drag it all the way through to
7 -- the end time says about 03:42:43 p.m., does that sound
8 about right?

9 A Yes, it does.

10 Q Okay. So, we're spanning a couple hours there on that one
11 minute and 22 second video?

12 A Yes.

13 Q All right. And again, those are cell phones hitting off of
14 towers or registering on towers when a phone call is made?

15 A Or -- or received.

16 Q Or received. Thank you.

17 A Correct.

18 Q Thank you. Okay, so that's August 6th. (Undecipherable)--
19 clicked on the one that said August 8th, and this one says
20 it starts at 11:45:05 a.m. And so if I say that one ends
21 -- well, no, missed it. It looks like at about 3:33, does
22 that sound about right?

23 A That does sound about correct.

24 Q Okay, and that would be in the afternoon again?

25 A Yes.

1 Q Yeah. Okay. So, there's a couple things about this one,
2 and this is again the August 6th, at one point -- or August
3 8th, excuse me, at one point we see, and our lighters don't
4 work over here, we see a red blob (ph), we see a Cortez
5 Butler phone right in this area?

6 A Yes.

7 Q At the exact same time a blue blob over the Detroit area
8 lights up that you had said that through the phone records
9 you could tell that Cortez Butler's phone, while in
10 Jackson, communicated with Clifford McKee's phone in
11 Detroit, is that a fair statement?

12 A Yes.

13 Q Is that what that depicted?

14 A Yes.

15 Q We also saw Cortez's phone, again, displayed in red, at
16 first to be up here and then clearly moved down here and
17 hit off of some towers down here, is that a fair statement?

18 A Yes, it is.

19 Q Is that what you are talking about, kinda that southern
20 part of the Jackson area?

21 A That's exactly what I was talking about.

22 Q And the last thing we'll do for right now is August 10th.
23 And, I'm sorry, this one starts around 11:17:55 p.m., does
24 that sound about right?

25 A On August 9th, 2014.

1 Q Thank you very much. So this starts on August 9th and
2 carries over past midnight?

3 A Yes.

4 Q Thank you very much. So August 9th at 11:17:55 p.m. And if
5 that one ends around 3:12:56 a.m. on August 10th does that
6 sound about right?

7 A Yes, that's correct.

8 Q Now, when you watched this video would you -- thank you for
9 correcting me, starts on August 9th, we can see red phone
10 for Cortez Butler phone communicate with someone still kind
11 of over here in this area, is that a fair statement?

12 A In the Metro Detroit area, yes.

13 Q Thank you. And we don't see anything for quite a long
14 time, is that a fair statement?

15 A Yes.

16 Q Until we see this phone again right kind of through here at
17 the 94-127 interchange, is that a fair statement?

18 A Yes.

19 Q And then we are able to watch it progress back?

20 A Yes.

21 Q Through -- through the mapping?

22 A Yes.

23 MS. MCKINNIE: (Inaudible).

24 BY MS. MCKINNIE:

25 Q Within Mr. Butler's phones can you see on his records as

1 well where he makes a phone call at 11:55 ish on August 9th
 2 I believe that's what it is.

3 MR. BRANDT: 11:55 p.m.?

4 MS. MCKINNIE: Correct. On August 9th.

5 THE WITNESS: You're saying 11:55 p.m.?

6 BY MS. MCKINNIE:

7 Q Is that when he leaves the Detroit area that he pings off
 8 of the tower?

9 A 11:23.

10 Q 23. Thank you.

11 A Yes.

12 Q 11:23. Thank you for correcting me.

13 A And it's actually -- it doesn't appear that he's making --

14 Q He gets -- he receives --

15 A -- he receives a phone call.

16 Q -- a phone call?

17 A Yes.

18 Q Thank you. Okay, so that's an 11:23 phone call that he
 19 receives?

20 A Yes.

21 Q On his records can you see what the very next time he
 22 either sends or receives a call or a text or anything?

23 A Yes.

24 Q When's that next time?

25 A The next day, August 10th, 2014 at 2:11 a.m., he's placing

1 an outgoing call.

2 Q So his phone is not used at all in that period of time?

3 A Correct.

4 Q He doesn't receive any phone calls either in that period?

5 A Correct.

6 Q Detective, and I'm sorry, I can hand it back to you, that
7 number that calls him and that then he sent, is it one of
8 these three? Is it any of those numbers up there?

9 A I'd have to refer to it. I'm sorry.

10 Q That's all right, I should have asked you when you had it.

11 A No, it's not.

12 Q It's not a number we know of to be associated with these
13 three guys?

14 A No.

15 Q Okay. All right, let's jump -- well, before we jump, we
16 talked about those three dates in August, are there
17 continuing communications throughout the month of August?
18 Between -- and I'm sorry, we're going to go back to
19 Clifford and Cortez.

20 A Yes, there are.

21 Q Okay, what about in September? I told you that in
22 September there are less than 10 contacts between Clifford
23 and Cortez, would you dispute that?

24 A No, that sounds correct.

25 Q Okay. So we have approximately 95 in August and less than

1 10 in September?

2 A Correct.

3 Q Let's look at October. I said that there's approximately
4 101 communications between Clifford and Cortez in October,
5 would you dispute that?

6 A No, that sounds correct.

7 Q Specifically, let's look at October 21st.

8 A Okay.

9 Q If I said that there were 19 contacts on that date alone
10 between the two of them, and that means Cortez and
11 Clifford, would you dispute that?

12 A No, it sounds correct.

13 Q Okay. And October -- let's look at October 24th.

14 A Okay.

15 Q And if I said there were nine contacts on that day would
16 you dispute that?

17 A No, that also sounds correct.

18 Q On October 24th those records all show, and I can show -- we
19 can show it on the board as well, that you're able to put,
20 based on all those phone records that have been admitted
21 into evidence, that all three phone -- that three of their
22 phones at least were in Jackson together?

23 A Yes --(multiple speakers)--

24 Q In the same --

25 A -- the greater Jackson area.

1 Q -- general area?

2 A Yes, that's correct.

3 Q Okay. Approximately 5:30 in the evening?

4 A Yes.

5 Q Okay, and we said August 21st. What about August -- or,

6 excuse me, I said October, what about October 28th, is there

7 a communication between Clifford and Cortez on October 28th?

8 A Yes, there is.

9 Q I said there's approximately 27 contacts on that date does

10 that sound about right?

11 A Approximately, yes.

12 Q And on October 28th are we able to determine from one of Mr.

13 Butler's phones that he's here in Jackson?

14 A Yes, I was able to determine that.

15 Q Is that off of that same phone of the 313 number?

16 A No, it is -- on the 28th, no, it is not.

17 Q It is on this 586 number?

18 A Yes, it is.

19 Q So at that point Mr. Butler's at least in our records

20 switched phones?

21 A Yes.

22 Q And the phone that's here on October 28th is no longer the

23 313 number but instead is that second 586 number?

24 A Correct.

25 Q Okay. And on October 28th with that 586 number he is

1 communicating again with Clifford McKee?

2 A Yes, he is.

3 Q So four days prior Clifford and Cortez were communicating
4 on a different number than what they're communicating on,
5 at least from Cortez's and, on October 28th?

6 A Yes, that's correct.

7 Q Okay. Detective, you've got records, if I recall, was that
8 from May to December, is that --

9 A Yes. Approximately.

10 Q Approx --

11 A The end of May to the end of December.

12 Q Right. Okay. In those months that are not August,
13 September and October, if we said the rest of them
14 combined, approximately, 50 contacts in total, does that
15 sound about right?

16 A Yes, it does.

17 Q How many of Clifford's phones does Cortez communicate with?

18 A One.

19 Q How many of Clifford's phones does --(undecipherable)--
20 excuse me, how many of Cortez's phones communicate with
21 Clifford?

22 A Three.

23 Q Okay. We've already talked about the 313 being the first
24 --

25 A Yes.

1 Q -- the second is the 586 --

2 A Yes.

3 Q -- is the third this third 313?

4 A Can I refer to my report for a moment?

5 Q If that'll refresh your memory?

6 A It is going to be the number 517 --(multiple speakers)--

7 Q 883-3364?

8 A Yes, that's correct.

9 Q So that's the third number of Cortez's that communicates

10 with Clifford?

11 A Yes.

12 Q Okay. All right, so let's table Clifford and Cortez for a

13 minute and let's move within these records to Clifford and

14 Rodney.

15 A Okay.

16 Q When do Clifford and Rodney's communications start? I

17 believe it's in July if that gives you a time frame?

18 A I believe it's July 25th but I'd like to confirm that. It

19 appears this July 28th of 2014.

20 Q 28th, okay. In the month of August if I said there were

21 approximately 98 contacts between Clifford and Rodney would

22 you dispute that?

23 A No, it sounds correct.

24 Q Okay. And they could only kind of just sort of at least on

25 the cell phones, late July?

1 A Yes.

2 Q In the month of September does about 42 sound right?

3 A Yes, it does.

4 Q And in October drops off to about nine approximately?

5 A Yes, that sounds correct.

6 Q All of those numbers sound accurate to you?

7 A Yes, they do.

8 Q Okay. And then I think we get to about 10 contacts between
9 the two of them in November, does that sound right?

10 A It does.

11 Q Wouldn't dispute any of those?

12 A (No audible response).

13 Q Okay. How many of Clifford's phones communicate with
14 Rodney?

15 A Two.

16 Q And how many of Rodney phones communicate with Clifford?

17 A Two.

18 Q Can we -- 313-693-5985 I think is one of Clifford's, is
19 that a fair statement?

20 A Yes, it is.

21 Q What is the other Clifford number?

22 A The 248-773-6494.

23 Q Okay, and what are the two Rodney McKee numbers that
24 communicate with Clifford?

25 A 517-936-7201 and if it's okay I'm gonna refer to my report

1 for the second number?

2 Q Please.

3 A I believe it's gonna be the 517-795-0564 number.

4 Q Thank you. Now, we talked about --

5 MS. MCKINNIE: Dawn, would you get the light

6 again for me?

7 BY MS. MCKINNIE:

8 Q We talked about those October 24th and that October 28th
9 date, and obviously we talked about how that October 28th
10 date is a different phone for Cortez, but you can still map
11 them all the same, right?

12 A Yes.

13 Q We at the same information on that phone and you are able
14 to produce mapping videos for those as well?

15 A Correct.

16 Q So it says 10:24:14 is the video title, it starts at
17 approximately 4:10:40 -- or, excuse me, 4:01:42 in the
18 afternoon, in the p.m.?

19 A Sounds correct.

20 MR. ENGLE: What are the numbers on the
21 phones?

22 MS. MCKINNIE: We just talked about, 586-935-
23 2733. That's the 28th number, this is the 24th. So this is
24 still his 313-826 --(inaudible).

25 BY MS. MCKINNIE:

1 Q If I said that ends approximately 7:09:42, does that sound
2 about right in the evening?

3 A Yes, it does.

4 Q Okay. And so at some point in that one we could see all
5 three phones at least gathered in the same general area of
6 Jackson?

7 A That's correct.

8 Q And we could see the red moving through, along with some of
9 the blue, as well?

10 A Yes.

11 Q Through -- or down across 94?

12 A Yes.

13 Q All right, and so October 28th, obviously, we're moving to a
14 different Cortez phone, but still all the same abilities
15 for you to map them?

16 A Correct.

17 Q This one starts at 5:27 p.m.?

18 A Sounds correct. One of the points on this map is
19 different.

20 Q Thank you, we'll address that. Thank you.

21 A Okay.

22 Q I guess while they're watching it, why -- or what is that
23 different point on this map?

24 A It's no longer the location of the Westwood Mall, it is the
25 address of 301 Steward Ave in Jackson. It's where Reed

1 Manor is located.

2 Q It looks like this one ends at approximately 10:02:07 p.m.
3 does that sound about right?

4 A Yes, it does.

5 Q Detective, I'm gonna take that binder from ya. Detective,
6 after you get all the phone records did your investigation
7 into phones stop?

8 A No, it did not.

9 Q Okay. What was your next step in terms of these phones?

10 A To attempt to extract data from within the phones that we
11 were able to recover.

12 Q And you talked a little bit about your extractions and
13 being certified in them before when we talked about your
14 qualifications, but give me just a quick overview of what
15 do you do when you are extracting information from phones?

16 A Basically, you're taking the -- the handset, the cell phone
17 itself, and you're attempting to establish communication
18 between it and the software you're utilizing that will help
19 extract its contents.

20 Q So do you plug it up to your computer or your software or
21 something like that?

22 A Yes, precisely.

23 Q Okay. If there's damage to the phone, like physical damage
24 to the phone, can that prohibit you from being able to
25 extract?

1 A Sometimes, yes.

2 Q Okay, are there other things that can prohibit you from
3 extracting?

4 A Yes.

5 Q Like what?

6 A Security, encryption, different lock screens. It just
7 depends on the make and model of the phone, the version of
8 the operating system on the device.

9 Q Is that why the FBI is asking Apple to help get into their
10 phones?

11 A I believe so, yes.

12 Q All right. Did you attempt extractions on Rodney's phones?

13 A Yes.

14 Q Okay, were you successful in extracting on Rodney's phones?

15 A No.

16 Q Okay. Were you -- on Rodney's phones?

17 A Clifford's or Rodney's.

18 Q Extractions?

19 A Refer to my report if that's okay?

20 Q Yep.

21 A Correct, Clifford -- Clifford's devices.

22 Q Clifford's devices what?

23 A Yes.

24 Q You were able to?

25 A No, I was initially -- no.

1 Q Thank you. Okay, so let's clarify. At some point -- well
2 when did you first -- thank you, when did you first get
3 Clifford McKee's phones in an attempt to extract out of
4 them?

5 A December of 2014.

6 Q Okay, somewhere in that month?

7 A Yes.

8 Q All right. And when you first attempted to extract out of
9 them were you able to get any extractions?

10 A No.

11 Q Why not?

12 A The phones were all passcode protected. They had screen
13 locks on them, which I was not able to bypass at that time.

14 Q All right. Let's fast-forward to like December of 2015,
15 January of 2016, okay, around there, maybe even into
16 February of 2016, did you try to get into Clifford's phones
17 again?

18 A Yes, I did.

19 Q Did you at that time also try to get into Cortez Butler's
20 phones and Rodney McKee's phones?

21 A I did, and I need to clarify --

22 Q Yeah.

23 A -- a previous answer reference Clifford McKee's phones.

24 The first three phones that were obtained in the beginning
25 of December, December 11th --

1 Q Mm-hmm.

2 A -- I was unable to get into those. The two additional
3 phones that were obtained a week or so later, I was able to
4 get into those.

5 Q Fair enough. Okay. And those are -- well, let me just say
6 this, that's not that 313-693-5985 number, that one came in
7 that first three, correct?

8 A Correct.

9 Q That was one you weren't able to get into until February of
10 this year?

11 A Correct.

12 Q Okay, and Cortez Butler -- excuse me, not Cortez, let's go
13 to Rodney, Rodney's is 517-936-7201, that's one I don't
14 believe you are able to get into until February?

15 A Correct.

16 Q Okay. I focus on those two, because correct me if I'm
17 wrong, but Rodney's extraction reports fill three binders.

18 A Sounds correct.

19 Q I think it's 3,247 pages of data.

20 A Yes.

21 Q Is that fair?

22 A Yes.

23 Q Clifford's extraction isn't quite as long but still about
24 1,000 pages, does that sound about right?

25 A Sound's Correct.

1 Q And those are for 313-693-5985, and 517-936-7201, is that
2 right?

3 A Yes.

4 Q Okay. Before we get into the extraction reports I want you
5 to look at the phones.

6 A Okay.

7 Q Because that's where all this information comes from,
8 right?

9 A Yes.

10 Q And you personally viewed all of these phones?

11 A Yes, I have.

12 Q They came from different locations?

13 A Yes.

14 Q But you viewed all of them and you worked with all of them?

15 A Correct.

16 Q All right.

17 MS. MCKINNIE: (Inaudible).

18 MS. REZMIERSKI: I gave them back to him.

19 BY MS. MCKINNIE:

20 Q Okay. I'm going to give you this one which is marked
21 People's proposed Exhibit 207.

22 A Do you need me wearing gloves, or no?

23 Q (Inaudible).

24 A Thank you.

25 Q It's up to you.

1 A No.

2 Q All right, so that's 207, would you open that one up --
3 before you do, I'm sorry, will you tell me what's on the
4 label of that one?

5 A It's marked Jackson Police Department and it's listed as 1
6 -- it's listed as an LG flip phone, it has an IEM -- IMEI
7 that ends in 237108.

8 Q Is that an identifier that you used to identify phones?

9 A Yes, it is.

10 Q It's a unique identifier to a phone?

11 A Yes.

12 Q All right, so you are able then to look at your reports
13 that you documented and say whose phone that is?

14 A Yes.

15 Q And whose phone is that?

16 A I'll tell you in just a moment.

17 Q All right.

18 A The phone belongs to Cortez Butler.

19 Q Okay. At least how it was portrayed to you, right?

20 A Correct.

21 Q All right. So if you would open that? All right, is that
22 a phone that you've looked at before?

23 A Yes, it is.

24 Q And is that a phone you looked at before in the context of
25 being a Cortez Butler phone?

1 A Correct.

2 Q Are you able through your records to tell me what the phone
3 number that was associated with that phone?

4 A Yes.

5 Q What's that phone number?

6 A 517-883-3364.

7 Q So that's a phone at some point that communicated with
8 Clifford McKee?

9 A Yes, it is.

10 Q All right. I'm gonna hand you --(undecipherable)-- Exhibit
11 208, what's on the outside of that one?

12 A Also a Jackson Police Department label and it is listed as
13 a TAG Mobile phone.

14 Q Okay.

15 A Again, the IMEI, last six are 598099.

16 Q And again, through your records are you able to see whose
17 phone that's associated with?

18 A Yes, it's been listed as Cortez Butler.

19 Q Okay. Would you open that up for me? Okay, is that a
20 phone you recognize?

21 A Yes, it is.

22 Q Is that a phone that you reviewed in this case in regards
23 to Cortez Butler?

24 A Yes.

25 Q Let me ask you that while you have that, is that a phone

1 you're able to get an extraction out of?

2 A The phone itself, no, but the SIM card inside the phone,
3 yes.

4 Q Okay. What about this 207 that we already talked about
5 which was his 517-883-3364, were you able to get an
6 extraction out of that one?

7 A The phone itself, no, but again, the SIM card inside, yes.

8 Q What's the difference?

9 A Depending on the make and model of the phone, in the older
10 phones and handsets such as this, the SIM card does store
11 some additional memory content possibly related to
12 contacts, phone books, even some messaging, and a call log
13 from time to time. What's universal about these SIM cards
14 is, they hold an ICC ID number on them, which is associated
15 to your carrier, your service provider, and inside of them
16 they hold an IMSI number, which is simply your
17 international mobile subscriber ID. It's just an
18 authentication number but it lends help in identifying
19 phone numbers, handsets, correlating records.

20 Q And what was the phone number associated with that one?

21 A 313-649-8354.

22 Q So the very last --(undecipherable)-- over there?

23 A Correct.

24 Q All right. Here is 209, can you tell me what's on the
25 outside of that?

1 A Jackson Police Department property label, it says listed as
2 a Kyocera phone. The MEID number, last six are -- or is
3 643590.

4 Q And whose phone was that associated with?

5 A It's been listed as Cortez Butler as well.

6 Q Okay. Do you know the phone number?

7 A Yes. 313-850-4635.

8 Q So the third one down in our list?

9 A Yes.

10 Q Is that a phone you recognize?

11 A Yes, it is.

12 Q And is that a phone you attempted to get extractions out
13 of?

14 A Yes.

15 Q Were you successful in getting extraction out of it?

16 A I was not.

17 Q Why not?

18 A It was not supported by any of the forensic tools I used.

19 Q Okay. I'm handing you People's proposed Exhibit 210.

20 A Also contains a Jackson Police property label. It's listed
21 as a Samsung with a MEID last six characters, David -- D,
22 David, 438B, boy, C, Charles. It's also listed as Cortez
23 Butler.

24 Q Do we know the phone number?

25 A But this is -- we do know the phone number and I do not

1 believe it to be Mr. Butler's.

2 Q Was there one phone that we seized that we believe is
3 connected to his girlfriend, Pamela Henry?

4 A Yes.

5 Q Is that this phone?

6 A Yes, it is.

7 Q Okay, and so did you attempt an extraction on this as well?

8 A I did.

9 Q Were you successful with it?

10 A No. I was unable --

11 Q You remember why?

12 A -- unable to connect to it.

13 Q Okay, so that was more of an equipment issue?

14 A It's a device specific, not supported, not able to connect.

15 Q Okay. Two eleven.

16 A Also has a Jackson Police Department property label. It's
17 listed as a Samsung Galaxy, last six of the IMEI are
18 720939.

19 Q And who is that associated with?

20 A Mr. Butler.

21 Q Do we have a phone number that we believe is associated
22 with this one?

23 A We do.

24 Q What is it?

25 A It is 586-935-2733.

1 Q Is that the phone number that was -- that phone was at
2 least here on October 28th of 2014?

3 A Yes, it was.

4 Q All right. Is that a phone you were able to extract from?

5 A Yes.

6 Q Okay. Handing you 212.

7 A This also has a Jackson Police Department property label.

8 It's listed as a Samsung, last six of the IMEI are 005740.

9 Q Who's that associated with?

10 A Mr. Butler as well.

11 Q And what's the phone number.

12 A 313-826-5275.

13 Q So that was the phone number that was communicating August
14 6th, August 8th, August 10th and August 24th and was here on
15 the relevant dates as well?

16 A Yes.

17 Q Were you able to get extractions off of that?

18 A No, I was not.

19 Q Why not?

20 A I received USB connection errors on all attempts to hook it
21 up to different machines indicating that the USB port for
22 purposes of data connection or data transfer itself is
23 corrupted or damaged.

24 Q And 213?

25 A Also has a Jackson Police property label on it listed as a

1 Freedom phone, last six of the IMEI are 419940, it's listed
2 as belonging to Cortez Butler.

3 Q We know that number -- phone number?

4 A Yes. 313-264-8183.

5 Q So the second from the bottom on our list?

6 A Yes.

7 Q All right. Were you able to do an extraction on that
8 phone?

9 A The phone, no, but the SIM card inside, yes.

10 Q Okay. So, we just went through seven phones but six of
11 them we can attribute to Cortez Butler, that a fair
12 statement?

13 A Believe so, yes.

14 Q Okay. Here is 214. I believe there's more than one phone
15 number.

16 A Also has a Jackson Police label on it.

17 Q Thank you. Does it have identifiers on the outside in
18 terms of the phones that are inside?

19 A Yes, it does. The MEID that's listed last six would be
20 138997.

21 Q Who's that associated with?

22 A That's going to be Clifford McKee.

23 Q And which phone numbers that?

24 A 734-260-4290.

25 Q Our second from bottom on the list?

1 A Yes. And there's a second device also in this bag and the
2 last six characters of the MEID on that are 245 Edward 00.
3 That's associated phone number 734-260-4292.

4 Q Those last two on the list are both in that bag, is there
5 third phone in there too?

6 A No.

7 Q No, just those two? Okay.

8 A Just the two.

9 Q And so both of those phones were attributed to Clifford?

10 A Yes.

11 Q All right. That's 214, here is 215.

12 A Again, has a Jackson Police Department property label, has
13 three phones listed. All three phones were seized from
14 Rodney McKee.

15 Q Okay. Did you look at all three of these phones?

16 A I did look at all three of them.

17 Q Does the fourth phone that's up there that's attributed to
18 the arson isn't something you did an extraction on?

19 A Correct.

20 Q We never presented that to you to do?

21 A Correct. I've never had that phone in my hand.

22 Q Yep.

23 A Would you like me to remove these from the individual
24 property bags, or no?

25 Q You can tell what they are still inside of them?

1 A Yes, I can.

2 Q Okay.

3 A I'm gonna put them in order. This is a Samsung Galaxy S5.

4 It has an assigned number of 517-936-7201.

5 Q Okay. And who's that associated with?

6 A Rodney McKee. All three of these devices are associated

7 with Rodney McKee.

8 Q Thank you. Were you able to get extraction off of that?

9 A Yes.

10 Q 936-7201?

11 A Yes, I was.

12 Q Okay. What are the other ones?

13 A Next one is HTC, also belongs to Rodney McKee. It actually

14 has two assigned numbers to it with different date ranges,

15 517-748-6755 and then 517-936-7201.

16 Q So explain that to me, how can one device have two

17 different numbers associated with it?

18 A They're at different periods of time, so simply a matter of

19 asking your service provider to switch your active number

20 to a different device.

21 Q Okay. And what's the third one --(inaudible)?

22 A Last device is an LG model phone, S740.

23 Q And what number is associated with that one?

24 A 517-795-0564.

25 Q So the last one on our list. Were you able extract from

1 that one?

2 A That one and the HTC before, all three I was able to
3 extract from, yes.

4 Q Okay. Awesome. I failed to ask you about Clifford's two
5 phones in here that end in 4290 and 4292, we were able to
6 extract out of these two?

7 A Yes, I was.

8 Q (Inaudible).

9 A Envelope might note make it.

10 Q There's 216, 217 and 218, the last three phones. You want
11 to open up to 16 first?

12 A Sure. This envelope has a Jackson Police Department
13 property label on it listing one cell phone.

14 Q Is that a phone you recognize?

15 A Yes, it is.

16 Q Is that a phone you have an identifier to know whose it is?

17 A Yes, I do. This is Motorola model XT1031, last six of the
18 MEID are C, Charles, D, David, A, Adam 6, D, David, 1-2.
19 Belongs to Clifford McKee, assigned number is 313-693-5985.

20 Q Okay. Is that one you were able to extract out of?

21 A Yes.

22 Q All right.

23 A Next envelope also has a Jackson Police Department property
24 label on it.

25 Q And that's 217?

1 A Yes, it is. It contains an LG phone model LS620, last six
2 of the MEID are F, Frank, 89 E, Edward, 84.

3 Q And whose -- yes, and whose phone is that?

4 A Clifford McKee.

5 Q What's the phone number?

6 A 313-264-3481.

7 Q Third from the bottom or fourth from the top. We were able
8 to extract out of that?

9 A Yes, I was.

10 Q (Undecipherable)-- all of these extractions took place in
11 February of this year?

12 A Yes, I believe so.

13 Q Got one more there?

14 A Yes.

15 Q What's the identifier on that?

16 A It is a -- also, the envelope also has Jackson Police
17 Department property label, it is a Kyocera, model C6730,
18 last six of the MEID, 422006. This device has two numbers
19 assigned to it. The primary number assigned to this device
20 for the greatest duration was 248-773-6494.

21 Q And what was a second number, was it that 586 number?

22 A Correct.

23 Q Okay. Was that a phone you are able to extract out of?

24 A Yes.

25 Q All right.

1 MS. REZMIERSKI: For the record that was 218
2 right?

3 MS. MCKINNIE: That was 218, yes.

4 MS. REZMIERSKI: Okay.

5 BY MS. MCKINNIE:

6 Q Now -- so that is five phones we have for Clifford?

7 A Yes.

8 Q And you were able to get extractions out of all of them?

9 A Yes.

10 Q Three phones for Rodney and extractions out of all of them?

11 A Yes.

12 Q Six phones for Cortez, you weren't able to get extractions
13 out of all of them?

14 A Correct.

15 Q All right. And you didn't seize any of these phones, they
16 were all presented to you from other law enforcement, is
17 that fair?

18 A That's correct.

19 Q Which phone number --

20 MS. MCKINNIE: 219, Katie?

21 MS. REZMIERSKI: Yes.

22 MS. MCKINNIE: Let me strike that.

23 BY MS. MCKINNIE:

24 Q I'm adding -- or I'm handing People's proposed Exhibit 219,
25 do you recognize it?

1 A Yes, I do.

2 Q What is it?

3 A It is an excerpt of the -- as you said earlier, the entire
4 extraction report for these phones is very large, this is
5 an excerpt of the extraction done on Rodney McKee's Samsung
6 Galaxy S5 with the assigned number that's top of the list,
7 517-936-7201.

8 Q So these three binders here, is that 3,000 number of pages
9 all loaded as 517-936-7201?

10 A Correct.

11 Q All right. All of what's in here important to this case?

12 A No, I wouldn't say so. No, not at all.

13 Q Okay. Is what you have in your hand the relevant stuff
14 that -- what's in those?

15 A I believe so, yes.

16 Q Okay. Is 219 a fair and accurate representation of what's
17 in them?

18 A Yes, it is.

19 Q You didn't alter this at all other than just to pull out as
20 an excerpt?

21 A Correct.

22 Q You haven't changed any of the words, done anything to
23 alter it at all, it's still what came out of those
24 extractions, you just took an excerpt out of it?

25 A Correct.

1 Q So we're not looking through thousands of things that don't
2 matter?

3 A Yes.

4 MS. MCKINNIE: Your Honor, I would ask that
5 213, is that what it is, 219? Yep. Yep. 219 be admitted

6 (At 4:10:53 p.m., People's Exhibit 219 is
7 offered)

8 MR. ENGLE: Can I see it for a second, your
9 Honor? I'm starting to lose track here on --

10 MS. MCKINNIE: It's Rodney McKee extraction
11 report.

12 MR. BRANDT: You got that?

13 MR. PERLOS: If it's this one.

14 MR. BRANDT: Yeah.

15 MR. PERLOS: Is that it?

16 MR. BRANDT: Mm-hmm.

17 MR. PERLOS: I don't know what's relevant
18 about it, Judge. I'm gonna object.

19 MS. MCKINNIE: You do object?

20 MR. PERLOS: What purpose is it? I don't
21 know what we're admitting it for.

22 MS. MCKINNIE: It's communication between
23 Rodney and Clifford.

24 MR. BRANDT: I got it.

25 MS. MCKINNIE: They are your client's

1 statements and Mr. Brandt's client's statements.

2 MR. PERLOS: Okay.

3 MS. MCKINNIE: Taken directly from your
4 client's phone.

5 MR. BRANDT: It's communication between the
6 phone --

7 MS. MCKINNIE: That's accurate. Thank you.
8 That's accurate.

9 MR. BRANDT: Thank you.

10 MS. MCKINNIE: It's communication between the
11 phones. I would re-move for 219 that's --

12 MR. BRANDT: I don't object. I have those
13 documents, they are -- they're a summary of them between
14 the phone numbers listed in the extraction.

15 THE WITNESS: Yes, Sir, they're excerpts.

16 MR. BRANDT: Yep, thank you.

17 THE COURT: It's really not a summary.

18 MS. MCKINNIE: Yeah, it's just an excerpt,
19 it's a -- it's a copy and paste from them of what's
20 relevant between the guys.

21 THE COURT: And you've had the whole -- Mr.
22 Brandt, you had the --

23 MR. BRANDT: No, I got the whole thing.

24 THE COURT: Okay.

25 MR. BRANDT: I don't object.

1 THE COURT: So that there was no pick and
2 choose whatever looks good.

3 MR. BRANDT: No.

4 MR. PERLOS: Judge, I got it, I mean, they're
5 texts between phones. I don't know what they're gonna use
6 it for though.

7 THE COURT: Well, I'm sure we'll all find
8 out.

9 MS. MCKINNIE: Show the text messages.

10 THE COURT: Admitted.

11 (At 4:13:04 p.m., People's Exhibit 219 is
12 admitted)

13 MS. MCKINNIE: Thank you.

14 BY MS. MCKINNIE:

15 Q Detective, how do we know what phone that goes to?

16 A The extraction itself has to be -- it's -- the extraction
17 itself has to be loaded back into the tool which you use to
18 analyze it, so after it's extracted it's marked, it has
19 device identifiers on it that are specific to this device,
20 and those are contained here on the second page where it
21 makes reference to the make and model of the device, and it
22 gives all the device identifiers, including the phone
23 number, the ICC ID number, all the things that you can --
24 some of them you can physically find on the device
25 yourself.

1 Q Okay. So, those records -- that printout is the exact same
2 of what's in those, in the extraction reports?

3 A The content that's here, yes, you can find it in the large
4 report, yes.

5 Q And the identifiers are the same too, I mean --

6 A Yes.

7 Q -- you know we're talking about that same phone?

8 A Correct.

9 Q Okay. So, where does that extract and report start?
10 What's the first things you see within that excerpt?

11 A This excerpt -- the first page that the attached after the
12 identifiers, device information is a calendar itself.

13 Q Okay. All right, so there's a calendar is the first part
14 of this, is that a fair statement --(inaudible)?

15 A Yes.

16 Q Okay. And it's a calendar that shows what dates, what
17 starting date?

18 A Appears to begin on June 29th, 2014.

19 Q And goes until when?

20 A November 3rd of 2014.

21 Q Okay. Just looking at the dates on this calendar that talk
22 about court, what are those?

23 A First date is July 28th, 2014 with a subject note of "court
24 at 1:00."

25 Q Okay.

1 A Next no --

2 MR. PERLOS: Could you hold on just one
3 second?

4 THE WITNESS: Sure.

5 MS. MCKINNIE: Go back another. That's what
6 we're talking about.

7 BY MS. MCKINNIE:

8 Q On The calendar, July 28th it says, "Court at 1:00"?

9 A Yes.

10 Q What else is the next date?

11 A August 12th of 2014, subject, "court."

12 Q And the next one?

13 A August 18th of 2014, subject, "court."

14 Q There's another one on July 17th that says, "Halpern, 5th
15 floor," is that accurate?

16 A Yes.

17 Q Okay. And, Detective, just for my clarification, it is --
18 I believe it's July 29th --

19 MS. REZMIERSKI: 28th.

20 BY MS. MCKINNIE:

21 Q -- 28th when, According to Clifford's -- and I'm gonna
22 strike that, will get to that in a second. So, we move --
23 the second page is also more calendar, is that a fair
24 statement?

25 A Yes.

1 Q Okay. There's another thing that says "Halpern checkup"?

2 A Yes, there is.

3 Q What date is that?

4 A June 30th of 2014.

5 Q Okay, so then we get to -- it says timeline at the top, is

6 that a fair statement?

7 A Yes.

8 Q All right, and the first seven entries all say "instant

9 message." Where does that come from?

10 A Facebook Instant Messenger.

11 Q Okay, and then it says "direction" and it says "attachment"

12 and it says "locations," and this is time stamped, right?

13 A Yes.

14 Q So those are the time stamps that these are sent through

15 that Facebook notif -- or this Facebook app or whatever?

16 A Yes, that's correct.

17 Q Can you tell if it's an app that they're using?

18 A I believe it is, yes.

19 Q Okay. And so Detective, I've made a Power Point that

20 outlines these text messages, is that a fair statement?

21 A Yes.

22 Q You've reviewed that Power Point?

23 A Yes.

24 Q You've reviewed both Power Points I've made?

25 A Yes.

1 Q All right. Is what's up there and accurate representation
2 of what's in these?

3 A Yes, I believe it is.

4 Q Okay. (Inaudible)-- cuts off a little bit. So, it's
5 Facebook between Clifford McKee and Rodney McKee on July
6 21st of 2014, is that fair?

7 A Yes.

8 Q And then it kind of shows an arrow from Rodney McKee going
9 to Clifford McKee, is that fair as well?

10 A Yes.

11 Q So is that how this starts is, it's from Rodney to
12 Clifford?

13 A Yes.

14 Q And, in fact, what are the actual names? What is it from
15 -- what's the Rodney name?

16 A In the party column here it has the Facebook identifier to
17 that specific user and then screen name for Rodney is
18 "Rodney Prince Charming Hustle King."

19 Q Okay. And what is the number he's communicating with? I'm
20 -- what's the name he's communicating with?

21 A Dorito Johnson.

22 Q Thank you. All right, so the first message that goes from
23 Rodney to Clifford, is this?

24 A Yes.

25 Q All right, can you read it?

1 A "I need yo," and then three number signs.

2 Q All right. And my time stamp says 12:19:04 a.m. on 7 -- o
3 July 21st of 2014?

4 A Correct.

5 Q All right. And then Clifford responds?

6 A By providing the number 313-693-58 -- 5985.

7 Q The top number on our board, is that right?

8 A Yes.

9 Q Okay, same day?

10 A Same day at 12:34 a.m.

11 Q Rodney gets back to him?

12 A He responds, "Da other one too," and that was at 12:35 a.m.

13 Q Does he send a couple of them in a row there?

14 A Yes. He responds again, "KOL," and that was at 12:35 and
15 33 seconds -- or, check that, that's correct, 12:35 and 33
16 seconds a.m.

17 Q And then is there one more there?

18 A There is. The next text from Rodney says, "LOL." And that
19 was sent at 12:35 and 37 seconds a.m.

20 Q At some point does the account Dorito Johnson respond to
21 him again?

22 A Yes, it does.

23 Q And what does Dorito say back to him?

24 A "I have to call you from it because I don't know the
25 number." That was at 1:07:53 seconds a.m.

1 Q Okay. Does Rodney get back to him one more time?

2 A Yes.

3 Q And says?

4 A "LOL, aight," and that was at 1:55 and 17 seconds a.m.

5 Q All right. And then we get into a communication that this
6 phone has with a person named "D," is that right?

7 A Yes.

8 Q All right. And the conversation starts from whom?

9 A From D.

10 MR. ENGLE: Your Honor, I guess I'd object to
11 the relevance of a conversation with a third party who's
12 yet to be identified as having anything with this case.

13 MS. MCKINNIE: The Conversation is going to
14 be more than relevant, your Honor. It talks all about
15 court and going to court and how to stay out of jail.

16 THE COURT: Let me see it. Have you read it?

17 MS. MCKINNIE: He has a copy of it.

18 THE COURT: I mean, I read it but why is it
19 really that relevant to what we're discussing here? I
20 don't --

21 MS. MCKINNIE: Because this whole thing
22 starts with Rodney trying to stay out of jail from the
23 arson.

24 MS. REZMIERSKI: So D's telling him how to
25 and he's like, "I'm a be good."

1 MS. MCKINNIE: He's got it under control.
2 That's what this says.

3 MR. PERLOS: Judge, that calls for
4 speculation.

5 MS. MCKINNIE: Well, we can argue it.

6 MR. PERLOS: I mean, I don't know what --

7 MR. ENGLE: It -- if she's going to describe
8 the whole document we ought to be arguing it outside of the
9 presence of the jury, not in...

10 THE COURT: I'm gonna let them go because I
11 want to hear argument on this. I'm not sure why it's
12 really that relevant.

13 MS. MCKINNIE: Okay.

14 THE COURT: Him staying -- wanting to stay
15 out of jail.

16 Let me see my schedule -- (inaudible).

17 Okay, ladies and gentlemen, I'm gonna send
18 you home for the night. Don't read any papers, keep an
19 open mind, don't get online, look at anything about the
20 trial and is 9:30 a problem for anybody tomorrow?

21 UNIDENTIFIED JUROR: What's that?

22 THE COURT: 9:30? Okay, we'll see you at
23 9:30.

24 THE CLERK: All rise for the jury.

25 (At 4:25:00 p.m., jury excused)

1 THE COURT: Please be seated.

2 By him saying he's going to be good and he's
3 trying to stay out of jail, what's so relevant about this?

4 MS. REZMIERSKI: Well, Judge, it's
5 interesting to me that it's a conversation that happens the
6 day after his very first phone conversation with Clifford,
7 and it's all about with this D person telling him how to
8 stay out of jail and Rodney keeps saying, "I got a good
9 chance though, I ain't hangin' my head, I'm out here. I'm
10 a be good though, I ain't worried, I'm stayin' home." I
11 think it's something from which we can argue that the day
12 after he has his first phone contact with one of his co-
13 conspirators is when he's texting with another friend who's
14 telling him how to stay out of jail and he's like, "I'm a
15 be good, I'm stayin' home, I got it." I think you can
16 argue it. I think his state of mind is relevant.

17 MR. ENGLE: I'm lost to how his -- we're
18 trying to prove a conspiracy, I assume that's what this is
19 about, but this third-party is not named, he's not -- this
20 is a text I even missed as far as this things go, but
21 there's thousands and thousands and thousands of pages.
22 This guy's not named, he's obviously -- if they're still
23 referring to him as Z (sic), they haven't brought him into
24 the --

25 MS. REZMIERSKI: D.

1 MR. ENGLE: -- courtroom to -- D, to testify
2 I just don't see how this would be rel -- not only that,
3 it's essentially hearsay to the other two defendants, it's
4 not a communication between them, and I don't know how a
5 state of mind of Rodney is going to affect anything that's
6 going on here as far as we are trying to prove a conspiracy
7 and --

8 THE COURT: Mr. Perlos?

9 MR. PERLOS: Well, I know who D is, he was in
10 a federal facility that has nothing to do with this case,
11 has nothing to do with Clifford and has nothing to do with
12 Butler. These conversations going on through there about
13 his attorney, about what we talked about on Friday about --
14 about forfeiture money. I just don't get how those
15 comments are in any way criminal, are -- it just draws a
16 long line to speculate --(multiple speakers)--

17 THE COURT: It's not criminal but how they're
18 relevant to --(multiple speakers)--

19 MR. PERLOS: -- right -- I mean, there was
20 anything -- when I say criminal I meant that they had
21 anything to do with this ongoing conspiracy that they've
22 alleged.

23 MR. BRANDT: Does it tend to prove an element
24 of the crime, and the answer is no.

25 MS. REZMIERSKI: Conspiracy is, quite

1 frankly, not really much but a state of mind, so to say
2 that a state of mind is irrelevant in a conspiracy case --

3 THE COURT: No, that's just not my point, is
4 -- the fact that he's trying to --

5 MS. REZMIERSKI: Well, that's what they're
6 saying.

7 THE COURT: -- stay out of jail and
8 somebody's giving him advice, or trying to give him advice
9 and he says, "I got it" --

10 MS. REZMIERSKI: Yep. I mean, the -- the
11 advice piece to the extent that they're arguing hearsay
12 about what D has to say and the advice piece, I actually
13 get that part, and it's not introduced for its truth. I,
14 quite frankly, don't know whether what he says about you
15 got to be on paper and you got to have a job and you got to
16 go to school, I mean, you know, okay, one could argue, but
17 that's not -- that's not introduced for its truth. The
18 piece that's relevant is him with the day after he
19 communicates with his uncle for the first time and he's out
20 on bond for this arson case and he's not worried about it,
21 "I'm a be good, I'm stayin' home, I got it."

22 MR. PERLOS: You know, you can draw a lot of
23 inferences from all of this. I don't know if they got all
24 their phones but the phones that they got they're saying
25 with the map that all because it lit up here and it lit up

1 there. Well, my client's at his house. He lives a mile
2 from the mall. And every time the phone lights up it looks
3 like he's making a phone call, maybe to order a pizza, who
4 knows? And so who knows if they got the phones, whether or
5 not that -- and -- and what they're doing back and forth
6 with these texts has anything to do with -- with this case
7 is beyond me.

8 THE COURT: It's not coming in. I just don't
9 see the relevancy of it.

10 MS. REZMIERSKI: Thank you, your Honor.

11 THE COURT: It's staying out.

12 MS. REZMIERSKI: Is it acceptable if we just
13 Sharpie it out rather than do a whole new extraction
14 report?

15 MR. PERLOS: What we're talking about --

16 MS. REZMIERSKI: We can do that.

17 MR. PERLOS: -- that --

18 THE COURT: Okay.

19 MR. PERLOS: I'm gonna -- I had your --

20 MS. MCKINNIE: Yes, we can Sharpie that.

21 MR. PERLOS: I had your bailiff -- I e-mailed
22 this to her, it had to do with the issue on Friday about --
23 (inaudible)-- money, so she's got it but she's not --
24 (inaudible). So I think we concede that my client didn't
25 get any of that money either.

1 MS. REZMIERSKI: I still don't think him
2 getting the money is the relevant piece, but that's fine.
3 I think that's money that goes to his attorney than money
4 out of his pocket isn't going to his attorney. But that's
5 good.

6 MR. PERLOS: (Inaudible)-- print it when she
7 gets back.

8 UNIDENTIFIED SPEAKER: No, that ain't got
9 nothin' to do with the money.

10 THE COURT: It looks like Halpern gets all
11 the money.

12 MR. PERLOS: He got it all. At least that's
13 what he -- because -- I mean, I understand. I wasn't a
14 party to it.

15 MS. REZMIERSKI: Right, it's -- my point
16 still is, but it doesn't matter because it takes us down a
17 rabbit hole, so that's fine.

18 THE COURT: Yeah, it's not gonna come in.
19 Anything else?

20 MS. REZMIERSKI: No, don't think so.

21 MS. MCKINNIE: Don't believe so.

22 MR. BRANDT: Do you want to go through that
23 thing, Kels, before you leave?

24 MS. MCKINNIE: Sure.

25 MR. BRANDT: Okay.

1 MS. MCKINNIE: I'm doing it right now.

2 THE COURT: Go through what?

3 MR. BRANDT: What has to be marked out.

4 THE COURT: Oh.

5 THE WITNESS: Would you like the exhibit
6 itself?

7 MS. REZMIERSKI: That might be a better way
8 to do it.

9 MS. MCKINNIE: My copy doesn't matter. Thank
10 you.

11 THE COURT: I guess I'll see you --
12 (inaudible)-- 9:30 --(inaudible)-- you got to be done
13 tomorrow, right?

14 MS. MCKINNIE: 9:30?

15 MS. REZMIERSKI: Yeah.

16 MR. PERLOS: Thanks -- thank you, Sir.

17 (At 4:33:35 p.m., hearing concluded)

18

CERTIFICATION

This is to certify that the attached electronically recorded proceeding, consisting of two hundred and twenty-nine (229) pages, before the 4th Judicial Circuit Court, Jackson County, Michigan:

PEOPLE OF THE STATE OF MICHIGAN

v

CORTEZ ANTONIO BUTLER and
CLIFFORD DURELL MCKEE and
RODNEY JAMAR MCKEE

_____ /

Location: Circuit Court

Date: Wednesday, March 30, 2016

was held as herein appeared and that this is testimony from the original transcript of the electronic recording thereof, to the best of my ability.

I further state that I assume no responsibility for any events that occurred during the above proceedings or any inaudible responses by any party or parties that are not discernible on the electronic recording of the proceedings.

\s/ Sally Fritz
Sally Fritz, CER #7594
Certified Electronic Recorder

Dated: October 27, 2016

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STATE OF MICHIGAN

4TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF JACKSON

PEOPLE OF THE STATE OF MICHIGAN

v

CORTEZ ANTONIO BUTLER
and
CLIFFORD DURELL MCKEE
and
RODNEY JAMAR MCKEE,

File No. 2015-2789-FC

File No. 2015-2787-FC

File No. 2015-2789-FC

Defendants.

_____ /

JURY TRIAL - VOLUME VII of IX

BEFORE THE HONORABLE THOMAS D. WILSON, CIRCUIT COURT JUDGE

Jackson, Michigan - Tuesday, April 5, 2016

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TABLE OF CONTENTS

WITNESSES: PEOPLE

DET. ANDREW SULLIVAN (Rebuttal)	
Direct Examination by Ms. Rezmierski	88
Cross-Examination by Mr. Engle	111

WITNESSES: DEFENDANT

CORTEZ BUTLER	
Direct Examination by Mr. Engle	23
Cross-Examination by Ms. Rezmierski	38
Redirect Examination by Mr. Engle	65, 70
Cross-Examination by Mr. Brandt	67
Cross-Examination by Mr. Perlos	68
Recross-Examination by Ms. Rezmierski	69
CLIFFORD MCKEE	
Direct Examination by Mr. Brandt	76
Cross-Examination by Ms. Rezmierski	81
Cross-Examination by Mr. Engle	86
Cross-Examination by Mr. Perlos	86

OTHER MATERIAL IN TRANSCRIPT

Defense Motions For Directed Verdict	10 - 17
Opening Statement by Mr. Engle	17
Opening Statement by Mr. Perlos	19
Opening Statement by Mr. Brandt	20
Motion For Mistrial	71

EXHIBITS:

INTRODUCED

ADMITTED

None

1 Jackson, Michigan

2 Tuesday, April 5, 2016 - 10:19:13 a.m.

3 THE COURT: Please be seated.

4 Mr. Engle?

5 MR. ENGLE: Your Honor, probably for the
6 record I should put -- probably for the record I should put
7 on a continuation of his motions from the other night. I
8 would note that -- just a couple things. I'm not sure, they
9 may be relevant evidence under 401, but what the relevance
10 is under 402 I have some problem with. The exclusion can be
11 made under 403 in that relevant evidence may be excluded if
12 the probative value is substantially outweighed by the
13 danger of unfair prejudice, confusion of the issues or
14 misleading the jury.

15 Certainly, I think all of that is an issue
16 with the statements about prior homicides and the second
17 degree murder. The 404(b) also deals with it. I don't
18 think there's reasonable notice under 404(b)(2).

19 I would also note, your Honor, under 608 and
20 609 they're clearly not evidence of, quote, "character,"
21 because evidence of character has to have some issue of
22 dishonesty or theft involved, so under 608 and 609 they are
23 not evidence of character. I don't think they can be argued
24 as evidence of character either under that rule.

25 I would note that under rule 801 where it

1 gets into hearsay, this is -- that his statement may not be
2 hearsay, that he had these, but to the extent it has been,
3 quote, "verified" that then becomes hearsay. You can't say
4 gee, I called a detective and so and so and he verified
5 this, this and this, that is purely hearsay. They can bring
6 up, did you say this, did you say this, did you say this,
7 and then put a witness on in rebuttal to say he said it, but
8 they can't -- my client said it, but they can't say gee, I
9 called this department and somebody said that fits an open
10 crime.

11 Particularly, you don't even know if the
12 person who said it fits an open crime has any direct
13 knowledge of the open crime. So that I would object to
14 under hearsay -- or the hearsay rule, which is 802, which is
15 simply hearsay is not admissible except as provided by these
16 rules, and I couldn't find anything that really fit this
17 case. So, I would ask that that part be kept out also.
18 Thank you.

19 THE COURT: Response?

20 MS. REZMIERSKI: I'm not sure I followed all
21 of that, but we are re-hashing the same issues over and
22 over, I believe, and I believe my position is as follows and
23 the court ruling is as follows: I anticipate Mr. Butler to
24 take the stand and among the things that he will say I would
25 expect it to be possible for him to say Dale Morgan is a

1 liar. If he limits it to, he lied here under oath on the
2 stand about me, it is what it is. If it's broader and he'
3 a liar, then we all know you've already ruled that I get to
4 get into the facts of the 12/16/2014 Detroit murder that
5 Dale fingered him -- fingered him on and he pled to.

6 We have also hashed, hashed and re-hashed
7 that if he takes the stand the other thing I anticipate him
8 saying is that the detectives are lying about him having
9 confessed, that he did not confess. I then get to get into
10 didn't you confessed to some other murders as well? One of
11 them is a triple homicide, armed home invasion that he was
12 hired to be a part of, some 200 shell casings, I don't even
13 know all the details, but one of them was that.

14 And also apparently, one of them was that he
15 confessed to this murder that he's now doing 25 to 40 for.
16 The 12/16/2014 Detroit murder. And so, when he says that
17 Detectives Sullivan and Merritt are liars, I didn't confess,
18 I get to ask him about both of those things. And also then,
19 didn't you plead to that Detroit homicide, the one that you
20 say you didn't confess to them on and they say you
21 confessed? And then in rebuttal I get to put Sully back up
22 and have him talk about the other murders that he confessed
23 to. Those are his statements.

24 You have, I feel, attempted to be more than
25 fair to every defendant because I'm still of the position I

1 should have been able to get those statements in case-in-
2 chief because they're a defendant's statements. But you've
3 been more than fair and protecting the record and protecting
4 everyone's rights, but as soon as he takes the stand and
5 says those two things, Dale's lying and the cops are lying
6 it's gloves off, I get to prove that they're not. And
7 that's the way to do it.

8 THE COURT: I think you're also gonna --
9 depending on what comes up with Roberts, you'll have to
10 bring Roberts back in.

11 MS. REZMIERSKI: Dale Morgan you mean?

12 THE COURT: Or Dale Morgan, I'm sorry.

13 MS. REZMIERSKI: And -- and you know, Judge,
14 I've thought about that, and maybe I ask him if he said that
15 statement to Dale, maybe I don't, maybe it's enough that he
16 confessed to two other murders to -- to Sullivan and
17 Merritt, you know?

18 THE COURT: Depending on where you go with
19 it.

20 MS. REZMIERSKI: But I do appreciate that if
21 I ask him that I might have to bring in Dale again.

22 THE COURT: And, obviously, when I went home
23 I took a number of books with me on -- and looked at 801,
24 because of my comment yesterday that -- of the prejudice to
25 the other two defendants, and in reviewing the books on

1 evidence, it appears that there is prejudicial effect but
2 that a jury is presumed to follow instructions and that
3 defense will get a limiting instruction to the jury with
4 regard to those statements and it would not require a
5 mistrial with regard to the other two.

6 So, we'll go forward. Are you gentlemen
7 ready to do your openings?

8 MR. PERLOS: One -- in accordance with that
9 until we hear what he said I don't know how you could say
10 that it's not gonna be prejudicial, but just from the sound
11 of it there is no way that I can see if that testimony comes
12 in that this jury is gonna be able to ignore it. So, I just
13 want that on the record.

14 THE COURT: Okay. Anything, Mr. Brandt?

15 MR. BRANDT: Your Honor, I concur with what
16 Mr. Perlos said given the fact that, in essence, the court
17 had precluded Madam Prosecutor from getting in some of this
18 stuff on our case-in-chief on direct and now --

19 THE COURT: That was because the defendant
20 was unavailable to her --(multiple speakers)--

21 MR. BRANDT: No, and I --

22 THE COURT: -- because of his Fifth Amendment
23 rights and that --

24 MR. BRANDT: -- understand that, and -- and
25 -- right, and all the pleadings in the case that go back to

1 the start indicate that. The problem now is that
2 information is going to be admitted that has put that, if
3 there were separate juries I think they would probably leave
4 because it wouldn't be admissible as to these gentlemen
5 because it's not A, part of the conspiracy, or B, part of
6 the solicitation charge, and that we are left with one jury
7 and that the court now has to make some of this magical
8 curative instruction that says well, everything you said you
9 can't use against the other two. Which I don't know will
10 ever fully get them to just somehow hit the delete button
11 and say, don't use it.

12 MR. PERLOS: Right, so like if I was picking
13 the jury and I said to the jury, you know, this guy over
14 here, sitting over here, he's gonna admit to doing this,
15 this, this, this and this, do you think maybe that you can
16 keep that out and tone that out and not hold it against my
17 client? I doubt we would have had a jury -- we would have
18 even empaneled --(multiple speakers)-- a jury.

19 THE COURT: Your objections are noted for the
20 record. You ready to do your openings?

21 MR. ENGLE: I don't have anything to add,
22 your Honor, I --

23 THE COURT: Okay. Bring them in.

24 MR. BRANDT: Your Honor, do you want us to go
25 ahead now and make motions for directed --

1 THE COURT: Yeah.

2 MR. BRANDT: -- just for the record?

3 THE COURT: Yes, go ahead.

4 MR. BRANDT: So I can go ahead and do this?

5 Your Honor, at least for the record I make a
6 motion of directed verdict as to my client, Clifford McKee.
7 Taking the evidence at a light most favorable to the
8 prosecution thus far, there is nothing to indicate that my
9 client conspired or solicited something other than, "take
10 care." The testimony is that -- from Mr. Butler's statement
11 to the detectives, whether true or not, is that my client
12 called him to "take care." There is no explanation of that.
13 It is left without explanation. It is a conspiracy to take
14 care. My client doesn't have a dog in the fight in the
15 arson case, my client doesn't direct Mr. Butler to an
16 individual, my client doesn't pay. My client is -- and mere
17 presence doesn't make him a conspirator or solicitation of
18 those charges. I would ask the court respectfully to grant
19 the motion for directed verdict as it relates to Mr.
20 Clifford McKee.

21 THE COURT: Mr. Perlos?

22 MR. PERLOS: Judge, as it relates to all the
23 counts, there's no physical evidence -- my client is not on
24 trial for arson. The evidence that was admitted during this
25 trial as it related to his involvement in that arson came

1 from two admitted heroin addicts who had selective memories
2 who saw two different things.

3 There was evidence that the fire chief was
4 there sometime after 11:00, they found no accelerants, they
5 found no -- they found no gasoline, they found no evidence
6 The follow-up, after the time of the arrest, showed that he
7 did, in fact, have a gas can in a car. The officer
8 questioned him about that can, it was for a car that had a
9 broken gas gauge. There's an explanation. The Michigan
10 State Police lab testimony, couldn't testify as to when the
11 gas got on the boots or the clothes, where it was on the
12 boots or the clothes, how much was on the boots or clothes
13 or how long ago or how long it'd been there.

14 There's no evidence that -- in light of the
15 -- most favorable to the prosecutor that she's overcome that
16 burden as it related to whether or not there was a motive to
17 do any of this. There's no physical evidence that my client
18 contacted Mr. Butler. There's three -- 3,270 extracted
19 records of phone messages, none of which tie my client to
20 Mr. Butler. There's no evidence that he was at the scene,
21 there was no evidence -- physical evidence or otherwise,
22 besides for Mr. Butler's statements, and we -- and we know
23 that he is, in fact, a convicted felon looking for a deal,
24 that would implicate -- and that is the only thing that they
25 have shown that he made these statements.

1 So, given that, I would ask that you also, as
2 co-counsel indicated, direct a verdict of not guilty as it
3 relates to my client.

4 THE COURT: Mr. Engle?

5 MR. PERLOS: Hey, Jerry.

6 MR. ENGLE: I --

7 MR. PERLOS: Directed verdict.

8 MR. ENGLE: Your Honor, I guess my only
9 motion in regard to the directed verdict would be that I
10 feel the evidence of my client's statement was, although
11 given by two detectives, is very controversial. It's the
12 only non-reported statement that they take, I suspect in a
13 lot of the entire investigation. And all of a sudden it has
14 my client, who they want to make out as being a really bad
15 guy, just suddenly confessing to a lot of stuff, which makes
16 no sense at all, and without that I'm not sure that they
17 have a case that they could proceed on.

18 THE COURT: Response?

19 MS. REZMIERSKI: Judge, all counsel are
20 correct, you are required to look at all of the evidence and
21 testimony in a light most favorable to the prosecution. In
22 that light there is more than ample evidence to take all of
23 the charges on all of the defendants to a jury for them to
24 determine their guilt.

25 Your Honor, there is solicitation,

1 conspiracy, home invasion and open murder. The court is
2 well acquainted with the elements of all of those charges.
3 The court is well acquainted with the evidence and the
4 testimony in this case. You've sat through numerous
5 hearings, even aside from the trial. You've already ruled
6 about the admissibility of the confession and the statements
7 as against all of these defendants, and Judge, that's --
8 that's not all that we have.

9 We, in addition, have phone records that
10 corroborate certain people at certain times and places and
11 dates that are of import to these charges and this
12 investigation. Obviously, we've got Mr. Butler's DNA on the
13 zip ties so you know that he was there right next to
14 Frannie's body.

15 Judge, if you want me to outline what the
16 phone records corroborate in terms of the confession, I can
17 do that, but my sense is that you know that there's more
18 than ample evidence on all of these charges to go to a jury.

19 THE COURT: Just for the record, go ahead,
20 because --

21 MS. REZMIERSKI: Certainly.

22 THE COURT: -- I need to make a record.

23 MS. REZMIERSKI: Certainly. I can tell you
24 that the very first time in all of those phone records --
25 and -- and counsel's right, or close to right, it's thirty-

1 two forty-seven, 3,247 pages of an extraction record from
2 Rodney's phone. The first time that he has contact with his
3 relative, his uncle, is on July 21st that's Facebook
4 messenger. You've already heard from Detective Sullivan
5 that the first Circuit Court pretrial date in the arson case
6 was to be July 22nd. It was adjourned I had of time on July
7 21st. Coincidentally, on July 21st is when Rodney reaches
8 out to Clifford again for the first time and says, "Unc, I
9 need your number."

10 He texts it to him and then he says, "I need
11 your other one." And then Clifford said, "Well, I gotta
12 call you from it because I don't know it," which is not a
13 shock to me. I don't know how they -- any of them kept any
14 of their phones or phone numbers straight.

15 Then, the first phone call that they have
16 between the two of them is Rodney calling Clifford on July
17 28th at about 1300 hours for a conversation that lasted
18 about five minutes. And then you have the phone mapping
19 that gets Clifford and Cortez here in Jackson, for Cortez
20 the very first time on August 6th, then Cortez again on
21 August 8th and he's calling Clifford when he's here, and
22 excuse me, Rodney's with them in that same general area on
23 August 6th when they're all here, and then, course, the date
24 in question, leaving Detroit at 11:23 p.m. on August 9th,
25 phone traveling here to Jackson, turning off while it's here

1 in the early morning hours of August 10th, and then pinging
2 again at I-94 and 127 at 2:11 a.m., headed back eastbound
3 Detroit.

4 You then have, again, all of this separate
5 and apart from the confession the texting conversation from
6 -- I think it's Rodney's extraction report between Rodney
7 and Clifford that takes place on August 5th. That's all
8 about Clifford saying, "You were supposed to get me the
9 number, where's the number, get on your job, you're supposed
10 to do this." And then Rodney eventually texts him a money
11 gram number and Clifford's also talking about, "You gotta
12 get me the gas money." And that's August 5th, that's the
13 day before Clifford brings Cortez here for the first time,
14 which we know from his confession is the date that they all
15 met together and Rodney paid Cortez 5,000 of the 10,000
16 dollars to kill Ryan Marshall.

17 We then have further in Rodney's extraction
18 report on August 25th when he's down in Key West, is texting
19 his Uncle Clifford, "My bond got revoked." And we know all
20 about that because he left state and he didn't have
21 permission and so his bond, in his absence, has been revoked
22 and in the context of that bond conversation on the arson
23 case Rodney says to his uncle, "How's the project?"

24 Then, you obviously have the gruesome facts
25 of the death in the murder. You do, in fact, have the

1 confession and the statement that implicates all of them,
2 and then back to the phone records. You have mapping phone
3 records which put all three of their phones again together
4 in Jackson on October 24th. You have Cortez's extraction
5 report where he texts to his girlfriend on a TangoMe app on
6 October 24th, that same date, "I'm trying to kill."

7 And then you have the mapping which shows
8 Cortez back here on October 28th, and you have from
9 Clifford's phone extraction report a texting conversation
10 between Clifford and Cortez that begins on October 28th and
11 continues off and on over the days up through November, and
12 forgive me, I don't remember the date off the top of my
13 head, there's that extensive texting conversation on October
14 28th, and then there's November 2nd when Clifford reaches out
15 to Cortez and says, "How's the project?"

16 And then on November 9th when he doesn't hear
17 back he says, "You okay?" And then there continues another
18 texting conversation, and all of those texting conversations
19 from Clifford's phone extraction between Clifford and Cortez
20 about -- are about Cortez stocking Ryan Marshall. He is
21 asking Clifford for the name, he is asking Clifford for,
22 where does the mother live, what's the apartment number,
23 what's the phone numbers, and Clifford is giving him those
24 phone numbers, but only after he's saying, wait, I gotta
25 check.

1 There is more than ample evidence on this
2 record, your Honor, for you to allow this case to go to the
3 jury for all the defendants and all of the crimes that were
4 charged.

5 THE COURT: Okay. As counsel's already
6 pointed out, I have to take this matter in a light most
7 favorable to the prosecution, and in considering the text,
8 as well as the phone records that go back and forth from
9 Clifford McKee, Rodney, Cortez and Clifford, the mapping
10 that was viewed by all of us of the phones traveling to
11 Jackson at the relevant time periods, Mr. Butler's phone
12 leaving soon after the murder occurred, the confession, when
13 I consider all of the records in the light most favorable to
14 the prosecution a reasonable jury could find them guilty as
15 charged. Your motion's are denied.

16 MS. REZMIERSKI: Thank you.

17 THE COURT: You ready to do your opening?

18 MR. ENGLE: I'm ready, your Honor.

19 THE COURT: Okay, bring in the jury.

20 THE CLERK: All rise for the jury.

21 (At 10:42:01 a.m., jury returned)

22 THE COURT: Please be seated.

23 Who wants to go first?

24 MR. ENGLE: I'll go first, Judge.

25 Ladies and gentlemen, we reserved our

1 openings and this is now an opening statement, which is a
2 short statement of what my client intends to say when he
3 gets on the stand. He does intend to get on the stand. He
4 will tell you, number one, he knows nothing about an August
5 10th homicide in Jackson. He did not -- he wasn't here, he
6 didn't do it, simply put. He'll explain what little he
7 remembers. He was not -- he had no details of this
8 happening, or anything happening until much later when he
9 heard about it primarily through the investigation.

10 He'll also explain that on December 16th,
11 which is the primary date, because if you notice, he talks
12 to the police on four occasions, on three of the occasions
13 he says nothing, two of the occasions are recorded, the
14 third one where he says nothing is right at his cell door
15 and it means very little.

16 He will get on the stand, he'll tell you
17 December 16th I talked to the detectives, they were there
18 and I -- if he says what I anticipate he's going to say, it
19 will be that, I talked to them," all this stuff about the
20 rights and all this stuff about saying, you know, we are not
21 going to do this, we are not going to do that, is correct
22 but he never made any statement to them saying I did this.
23 They went through a lot of theories. He'll explain what
24 happened during the interview, and that's basically it.

25 The prosecution may raise as a result of this

1 the fact that there are some allegations that he was
2 involved in homicides in Flint and Grand Rapids and in Ohio
3 and Detroit, I believe also. He'll tell you it just simply
4 isn't true. And, in fact, they will get on the stand, and I
5 anticipate raise details -- or possibly raise details of a
6 crime in Detroit. And listen carefully because the one
7 thing he'll tell you, and they'll have to say, if they know
8 is he's never been prosecuted on any of this stuff.

9 So listen carefully to everything. I
10 anticipate -- I don't know if my other co-counsel will make
11 opening statements now or after my client takes the stand,
12 but I anticipate they'll probably --(undecipherable). Thank
13 you.

14 MR. PERLOS: Ladies and gentlemen, just
15 briefly. When we picked the jury I explained, and we spoke
16 and we made several references to the burden in this case.
17 The burden relative to the prosecution is on the prosecutor.
18 It remains with the prosecutor, she has the burden of proof.
19 She has to prove to you each and every element beyond a
20 reasonable doubt. I, and along with the Judge, made
21 comments as it related to my client and his right to remain
22 silent. The Judge I think will give you another instruction
23 as it relates to whether or not he takes the stand. If he
24 doesn't take the stand he's going to instruct you that you
25 not -- you're not to hold that against him. He has no

1 obligation whatsoever.

2 The prosecutor brought these charges, it's
3 her burden to go forward with these charges, it's her burden
4 to prove beyond a reasonable doubt each and every element of
5 the charge, my client has no obligation to do anything
6 whatsoever. What Mr. Butler says or doesn't say, I don't
7 know, he's not my client. But I don't want you to hold what
8 he does or he doesn't do against my client.

9 So, I want you to keep an open mind, think
10 about what's happened throughout this trial, think about
11 what's been offered as evidence against my client, hold her
12 to her burden and don't hold it against him if, in fact, he
13 does not take the stand, he has no obligation to do so.
14 Thank you.

15 THE COURT: Mr. Brandt?

16 MR. BRANDT: Thank you, your Honor.

17 And I think the Judge, I think in his opening
18 directions to you, indicated opening statements are not
19 evidence, they are simply kind of where we think the case is
20 going to go, and when you're done and you're deliberating,
21 despite this combined brilliance of all the attorneys,
22 you're supposed to wash it from your memory and just listen
23 to the evidence that's presented.

24 Despite the number of witnesses, we believe
25 relatively straightforward case. There is an awful death,

1 an awful death that investigated by police in Jackson
2 County. That for the first month and a half they do their
3 investigation looking at a fiancé. They do. That changes
4 on October 24th of 2014 when they get what's called a CODIS
5 hit. At that point the investigation shifts, and totally
6 shifts on November 17th of 2014 when they get the positive
7 CODIS DNA hit of the person's DNA that's on the zip ties.

8 From that point forward the only people who
9 are investigated are the defendants. That's true, that's
10 what they did.

11 As to Clifford McKee, who is my client,
12 nothing happens to him until he's shopping in Jackson on
13 December 11th. There is no arrest warrant for him. There
14 is no search warrant. He's taken in handcuffs without an
15 arrest warrant or search warrant. They take three phones
16 from him without a search warrant. He's put in a room by
17 himself and he waits. Detective Merritt shows up and I'm
18 not sure if he directs, but the cuffs are taken off. A
19 series of questions are asked, do you know this person, do
20 you know this person, do you know this person. I don't know
21 who you're talking about. I don't know.

22 Well, let me get you a picture, maybe you
23 know them by picture. Whether the detective leaves or stays
24 there and has it, unsure, unsure, but what is clear is, he
25 shows Cliff a photo of somebody and he leaves the room and

1 comes back and says, yeah, I know him, know him by the name
2 of Coco. My clients allowed to leave. That's it for my
3 client.

4 Now, you're going to hear about an interview
5 unrecorded December 16th. Not with Cliff, not with Cliff,
6 from someone else. And if you believe that statement, if,
7 the statement is, Cliff called and said, "I need somebody to
8 take care" without explanation. That's the statement that
9 the prosecutor alleges my client made. Not kill, kidnap,
10 strangulate, intimidate, "take care."

11 I think you'll learn that at the end of the
12 statement my client's got no dog in the fight. He doesn't
13 name the person, he doesn't pay money, he doesn't do
14 anything. It is, in the final analysis, in our view, a
15 conspiracy to take care, because that's the only thing they
16 could say my client did. You will hear about phone records
17 and you will also hear from a Michigan State Police expert
18 who will testify that the five phones he has are all working
19 at the same time, and that he, or no one, can tell you who
20 was using either of those five phones at the time they were
21 used.

22 We have pled not guilty to this charge from
23 the start. My client carries with him a presumption of
24 innocence until the end of the trial, until you start
25 deliberations. Give him that, and we think at the end

you'll agree with us that the most they have is a conspiracy
to take care.

Thank you, your Honor.

THE COURT: Thank you.

MR. ENGLE: Call my client to the stand, your Honor.

THE COURT: Stop and face me, raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth so help you God?

MR. BUTLER: Yep.

CORTEZ BUTLER

(At 10:53:13 a.m., witness sworn, testified as follows):

THE COURT: State your name, spell your last name for the record.

THE WITNESS: Cortez Antonio Butler Bey (ph).

MR. ENGLE: Go ahead.

THE WITNESS: B-U-T-L-E-R -- L-E-R, hyphen, B-E-Y.

DIRECT EXAMINATION

BY MR. ENGLE:

Q Mr. Butler, on August 10th of 2014 do you have any idea of where you were?

A When?

Q On August --

A The 6th?

1 Q -- 10th, 2014, do you have any idea of where you were?

2 A Yep.

3 Q Were you at any point on the address they've described on
4 Timbercrest here in Jackson?

5 A No.

6 Q At any point did you kill this young lady?

7 A No, I did not.

8 Q Do you even remember ever having contact with her?

9 A No, I don't know her.

10 Q You're from the Detroit area?

11 A Yes.

12 Q They indicated that you knew Clifford McKee, did you know
13 him?

14 A Yes.

15 Q And, in fact, did you come -- did you come to Jackson during
16 the Summer of 2014?

17 A Yes.

18 Q Do you know if those dates included August 6th or August 8th?

19 A I don't know exact dates but I -- I remember on the 6th I
20 came, me, D, White Boy self came and Pops came up here.

21 Q Why did you come here on August 6th?

22 A We was coming to party.

23 MS. REZMIERSKI: I didn't understand that.

24 THE WITNESS: We were coming to party.

25 BY MR. ENGLE:

1 Q Yeah, you have to speak up just a little bit louder. The
2 microphone doesn't really amplify --

3 A Oh, we was coming to party.

4 Q To party?

5 A Yeah.

6 Q Who were you going to party with?

7 A Some dancers and stuff.

8 Q And how long were you here in Jackson?

9 A I would say about a hour or so. They didn't show up, so
10 after we blew some rillows (ph) I was like, I'm ready, we
11 I'm ready to go back to the city, and we left.

12 Q Did you possibly come back on August 8th?

13 A I coulda. More -- I coulda. I been up here a lot of times.
14 They trying to say I just came up my first time on the 6th,
15 I been -- I been coming up here since like 2013.

16 Q In 2013 when you were coming here was there a reason you
17 were coming here?

18 A Yeah.

19 Q What was that?

20 A I been back and forth selling -- I come to sell weed and
21 stuff up here.

22 Q You were dating a girl or seeing somebody here?

23 A I say selling weed. I tricked with some females -- I mean,
24 we party and stuff like that when I come up here.

25 Q Did -- when you came here what area of Jackson were you

1 going to, do you remember?

2 A I don't know all of it, like the -- the whole -- all of it

3 like --

4 Q They indicated when they drew that diagram that your phone

5 had been somewhere on the -- out toward Westwood Mall,

6 although not necessarily at Westwood Mall.

7 A I don't -- I don't know they malls and stuff like that, but

8 all I can say, it's on the 6th or wherever it was at,

9 wherever it was at.

10 Q Did you -- at any time -- you've seen the pictures of Ms.

11 Craig?

12 A Yes.

13 Q At any time do you remember meeting her?

14 A No, I ain't did nothing to her.

15 MS. REZMIERSKI: I didn't hear that.

16 THE WITNESS: No.

17 MS. REZMIERSKI: What else did you say?

18 THE WITNESS: I didn't do anything to her.

19 BY MR. ENGLE:

20 Q Now, sometime in December, particularly December 11th, you

21 were approached or spoken to by Detective Sullivan and a

22 detective by the name of Boulter, is that correct?

23 A I remember -- I know his name but I don't remember the other

24 one's name. I know his name because we keep coming to

25 court.

1 Q And when they approached you on December 11th had you heard
2 of this Jackson homicide before December 11th?
3 A No.
4 Q When they approached you did you make any statements to them
5 affecting -- or in regard to this case?
6 A No.
7 Q Did they tell you at that point about your DNA being on the
8 tie strap?
9 A I think -- one of them dates, it mighta been the first one
10 or the second one.
11 Q Any reason you can think of that your DNA would be on that
12 tie strap?
13 A Nope.
14 Q On the 16th when they came back, which was the second
15 interview, which was the one in which they say you made
16 statements, what happened to start that interview? Did they
17 do a swab for DNA?
18 A Oh, yeah. Yeah. He gave me a paper -- he gave -- say that
19 I gotta do a swab.
20 Q A search warrant for the swab?
21 A Yeah.
22 Q And you complied with that or gave him the swab?
23 A Yes.
24 Q Did -- after you did that did they start talking to you?
25 A What happened was, he gave me the swab and Merretti -- the

1 other one was Merretti (sic), the one that came up and
2 testified, started talk -- asking me about my -- he asked me
3 about my -- the rights and stuff.

4 Q And did they actually read the rights or just tried to read
5 the rights to you?

6 A No, he didn't read -- he pulled out the paper, I told him,
7 "I ain't signing my rights away, I ain't -- I ain't got
8 nothing to say."

9 Q And so they never did read them to you, they just -- or did
10 they?

11 A No, he -- he didn't read them. Merretti went to say, well,
12 we just want to talk to you about the situation up in
13 Jackson. After that, we sitting there, he said well, look,
14 I -- basically, just -- I just -- we know you was there cuz
15 your DNA is on the -- on the zip tie at the -- at the place
16 and stuff, and all we want you to do is just give us the
17 information because we know some other people was involved
18 in this. So I'm sitting there looking at them and then he
19 said, well, we won't be -- we won't be using none of this
20 against you, and then -- so next -- he say -- he went to
21 give me some scenarios and that's it.

22 Q Did you -- did you ever say I did anything in Jackson?

23 A No.

24 Q Did you ever admit to even being here?

25 A No. He asked me well, how -- they kept asking me, well, how

1 your DNA -- how your DNA will get there? I said, "I don't
2 know, man." You know, he said, "Well, was you up there on
3 August 10th?" I was like, "No, I wasn't up there." He
4 said, "Well, can you prove" -- you know, he was asking can I
5 prove that I wasn't up there. I'm telling him I wasn't --
6 I'm not -- no, man, I don't really know what I was doing but
7 I know that I was in the city at -- out with a dame in the
8 city, and what was it, and then he was like, well, "Who
9 could corroborate your story," you know, then I told him --
10 I said, "Ask Dale." Well, O'Shay, that's what we called
11 him, or Face.

12 Q Did they talk to you about an issue supposedly with Mr.
13 Wolfe and getting custody of his daughter back, although
14 maybe not using names?

15 A No. He asked me did E have something to do with it too and
16 I was like -- I was like, no.

17 Q Did they ask you if you knew Clifford McKee?

18 A Yeah, they was ask -- they asked me did I know a lot of
19 people at that time and I told them I didn't know nobody by
20 the names they gave me.

21 Q Did you even know Clifford's real name?

22 A No, I did not.

23 Q What did -- what did you know him by?

24 A Oh, I called him "Moa" (ph).

25 Q Did you know Rodney at that point in time?

1 A No, I did not.

2 Q At that point in time did you even think your DNA would
3 match the DNA on the tie straps?

4 A No.

5 Q Did they eventually leave that day?

6 A Yeah, after we -- after they asked me they was like, well,
7 he asked me who was E, and I say -- I say that's Dale Man.

8 UNIDENTIFIED JUROR: Can't hear him.

9 MR. ENGLE: The jury can't --

10 MS. REZMIERSKI: I didn't understand that at
11 all.

12 THE WITNESS: I say -- I say really, after
13 the conversation he was asking me like, who was E, cuz I
14 told him he's at, I said, "That's Dale Man, you gotta ask
15 him."

16 BY MR. ENGLE:

17 Q During that entirety of that interview did you make any
18 statements saying you did anything here in Jackson as far as
19 committing the crime goes?

20 A No, I did not.

21 Q Did they come back after that?

22 A Oh, yeah. Yep.

23 Q In fact, did they come back the next day?

24 A No, it wasn't the next -- I don't think it was right the
25 next, next day, no.

1 Q And were any statements made at that time?

2 A Yeah.

3 Q What statements, if any, were made at that time?

4 A Me and my lawyer was in there, they came in, my lawyer said
5 he ain't gonna be talking to you -- two of y'all, and so my
6 lawyer asked -- the other depts was like, my lawyer said hold
7 on a minute, so the other depts had them step out in the
8 hallway and so when they -- then he said, okay, y'all can
9 come in. That's how me and my lawyer was talk -- talking.
10 My lawyer's sitting there and then I asked, I say -- they
11 say, y'all got the truck, because they was ping ponging
12 between -- when he was talking about -- I'm asking him about
13 a truck and I'm gonna confess to a murder because of the
14 truck, they lying. They asked me -- because Detroit saying
15 that they got the truck, they keep telling -- cuz Detroit
16 got my other car, and they got the truck and they keep --
17 Detroit is saying they got it, then they saying they got it,
18 and so I was like, "Where is the truck at, man?" Detroit
19 says, "Y'all got it, man." And I asked my lawyer to find --
20 can you find out who got the truck and get it back to her?

21 Q Is that your fiancée's truck?

22 A Yes.

23 Q And did they come back -- did you make any statements
24 regarding this crime at that time?

25 A No, Sir. No.

1 Q Did they come back again after that?

2 A No, they didn't -- I went to -- I came up here to Jackson.

3 Q And when you were here in Jackson did they make -- did you
4 make any statements about this case at that point?

5 A No, I did not.

6 Q The first time they talked to you on December 11th, if you
7 know, was the statement recorded? As best you --
8 (inaudible).

9 A Yeah, y'all showed it. Y'all showed it in court.

10 Q On December 16th was the statement recorded, if you know?

11 A No. No, they -- this -- he had his phone -- Merretti had --
12 D have his bag and stuff like that, he went through the
13 motions and talking about well, "We ain't gonna record, we
14 not gonna record this" --(undecipherable)-- say, "We won't
15 be using against you," and all -- "if you have anything to
16 say." I ain't told them nothing about I killed nobody. He
17 gave me a bunch of scenarios about well, if this happened
18 and if this -- he wanted to give me scenarios about this
19 person if this happened like this and this happened like
20 that. I sat there listening to him and then so after that
21 -- and basically, he asked me, "What you think?" I just sat
22 there, I told him, "It's your scenarios." And so basically,
23 that's how it went.

24 Q Was the statement on December 17th, the next day, recorded?

25 A I don't know if it -- I don't know if they came back the

1 next -- very next day or not, but --

2 Q Whatever the next time was, was that recorded or was that
3 just where you were at that point?

4 A No, that was just -- cuz me and my -- no, that wasn't
5 recorded, we was right there.

6 Q Then they apparently brought you to the interview by the
7 detective's office in the sheriff's department over here on
8 January 6th, or the last time?

9 A Yes.

10 Q Was that recorded, if you know?

11 A I don't -- he said it wasn't. I mean, I don't know if he
12 said -- I don't know, but I don't think so -- I don't -- I
13 don't think so. You talking about in -- in the room? In
14 the room we all -- he said it was being recorded so it was
15 being recorded --

16 Q Did you ever make any statements about this crime on that
17 day?

18 A No.

19 Q In fact, are you really in a position where you know enough
20 -- or knew enough then, I suspect now you know enough, about
21 that crime to make a statement?

22 A No. Man, when I called -- when I -- they had me in they
23 bull pen, when I -- when I called home -- when I called
24 home, and this on they -- they said they got their jail
25 recording and they could record, they brought it, and as

1 soon as I -- as soon as I catch Pam on the phone -- and they
2 told them I didn't know where she was at, she was staying at
3 my momma house cuz they had -- the way they had came to my
4 house, so it was messed up, so they was re-putting the
5 windows in and stuff, so all that time I don't know where
6 she is, they -- it's some B.S. because of -- the simple fact
7 is, when I called I had been talking to her from up here in
8 they jail on the 6th and it was -- her number's on there and
9 they got -- (undecipherable) -- we got the things, and the
10 first thing she said to me is, "They told me to tell you to
11 confess and I get -- they'll give you the truck back."

12 Q When did that occur?

13 A I was here on -- I was here on the 6th, January the 6th.
14 And, so that's when he told me -- so when you say that --
15 and on the jail call and -- I did call them and -- and when
16 I was in Detroit, and on that call you -- you still hear me
17 pacifically (sic) just asking what -- cuz they was -- she
18 had to get to work and they kept on playing games, her --
19 with her about getting the cars back. And it wasn't til
20 recently that they just gave it back.

21 Q Well, there's some follow up question -- questions. The
22 Prosecutor's Office made a big thing of Pam's phone being
23 off for a period of time in 2014 that was started in July
24 and running for a month or two, was her phone off for a
25 while?

1 A No. I been -- man, you know how many phones I -- I got?
2 phones -- my phones will go off.

3 Q Did -- do you know if she used one of your phones at some
4 point in time?

5 A She had her own. She had her own phones to use.

6 Q There was a -- another female whose name they raised that
7 you called her phone for a while, was there another female
8 in 2014 whose phone you called for a while?

9 A Yes.

10 Q Who was that?

11 A Jasmine Harris, the man he said.

12 Q How do you know Jasmine?

13 A That's my man cousin.

14 Q On 10/24/14 there was a text that had the term "trying to
15 kil," K-I-L, on it, was that sent?

16 A On my phone?

17 Q Yes.

18 A I guess we -- yeah, if it was off my phone.

19 Q Any idea what it meant?

20 A Man, no. I don't know what I was doing or saying, you know,
21 at that day, no. I think it was in the morning, but man, I
22 don't want to say all -- you know, some wild stuff, so I
23 don't know what it was saying at that time, no.

24 Q Dale Morgan alleges that you made a statement to him about
25 the crime in Jackson, did you make any statements to him

1 about the crime in Jackson?

2 A Man, Dale tel -- no.

3 Q The --

4 A The only thing -- this -- just a thing, I -- I don't -- I
5 don't -- I don't really deal with -- I come up here to deal
6 with a few people and when I come up here, do what I do,
7 Dale done been with me on a -- on a couple occasions.
8 That's why I -- I was trying to get you to ask him had he
9 ever been up here, you know what I'm saying, have you ever
10 been up here to Jackson with me. But nobody want -- you
11 know, y'all didn't really want to get into, you know, his
12 hookup. But yeah, you know what I mean? And that's why I'm
13 -- I was like, well, did -- when you asked me was he
14 investigated, you know what I mean? He don't -- he don't
15 (ph) drove my Raz (ph), he don't got caught my plates and
16 everything, you know, wanting to take care of stuff, you
17 know what I mean?

18 So now, because they saying it was my DNA on
19 the thing he give them his --(undecipherable)-- you know,
20 like I -- my whole thing to them was -- and I -- even with
21 you when you came to first see me, I told you, I said, well,
22 if this the case then, why Dale not being investigated, you
23 know, since he wanted -- you know, was supposedly brought it
24 up to him?

25 Q The prosecutor also introduced a record indicating that on

1 December 10th your phone was off for two or three hours and
2 then came back on somewhere in the vicinity of 127 south and
3 I-94 --

4 MS. REZMIERSKI: That would be August 10th,
5 not December.

6 BY MR. ENGLE:

7 Q On August 10th, I'm sorry, you're right. August 10th, the
8 night where partic -- this homicide supposedly occurred, did
9 you have -- do you remember anything about that?

10 A Yeah, I told -- look, I was at Jasmine house, Dale got to
11 use -- cuz his reversal (ph) on his truck was gone out, I
12 left my joint in the car so he dropped me off. He used it,
13 then he told me I could -- I called -- well, he called me
14 and let me know he was on his way to pick me up. That's
15 when -- if you -- just look at the call. That's why they
16 keep talking about the call records. That's why I got
17 sarcastic with -- when they -- with Merritt and them about
18 -- and Sullivan about every time they asked. I'm like --
19 I'm like, "played what?" I ain't -- I ain't been up there
20 -- I didn't do it, man, don't -- you -- this one you won't
21 -- you won't -- you know, you -- you can't hook on me.

22 Q Cortez, also keep your voice up --

23 A Oh.

24 Q -- a little because I'm having --

25 A I was telling -- I telling them they won't be able to hook

1 this one on me, so when -- after -- that's when he was
2 finishing his scenarios and talking about stuff, I told him,
3 "Man, I ain't got shit to say to you." What's what I --
4 that was basically what my words was.

5 Q Okay. Did you know Ryan Marshall?

6 A No, I don't know him.

7 Q Did you know Donna Marshall?

8 A No, I don't -- I don't know her.

9 Q Did you now anything about the alleged arson that was
10 brought up in here the other day?

11 A No.

12 Q In going back to square one and one of the first questions I
13 asked you, Mr. Butler, did you commit this crime?

14 A Nope.

15 MR. ENGLE: I have no further questions, your
16 Honor.

17 THE COURT: Whenever you're ready.

18 CROSS-EXAMINATION

19 BY MS. REZMIERSKI:

20 Q Did I just hear you say something like, "This one they can't
21 hook on me"?

22 A Yeah.

23 Q What do you mean by that?

24 A You ain't --(undecipherable)-- to hook no murder on me.

25 Q What do you mean by "this one"? Somebody hooked another one

1 on ya?

2 A Hmm? No. They won't.

3 Q I'm sorry?

4 A I said they won't.

5 Q They won't.

6 A No.

7 Q You said "this one you can't hook on me." As opposed to
8 what other one? Is there another one that somebody hooked
9 on you?

10 A No -- yeah, I got -- yeah, I got convicted, and, when he was
11 -- and he was just -- what's his name, telling -- when y'all
12 -- no, don't -- don't try to stop me, when he was -- when he
13 was just telling -- what y'all was just -- when he gave the
14 opening y'all was talking about that I supposedly told y'all
15 about some other stuff, that's what I'm talking about.

16 Q All right, so --

17 A You know what I'm talking about.

18 Q -- let's go through it one -- you better believe I know what
19 you're talking about.

20 A Yeah.

21 Q So let's go through it one by one so that the jury knows
22 what --

23 A All right.

24 Q -- you're talking about, right? Okay, so this one they
25 can't hook on me, did I just hear you say that there is one

1 that you got convicted of?

2 A Yes.

3 Q Right. That's the one December 6th that you committed with
4 Dale Morgan, right?

5 A Yes.

6 Q Right, and you want us all to believe, I think what you're
7 saying, is that --

8 MR. ENGLE: Your Honor, I -- I'd only note me
9 continuing objection on this.

10 MS. REZMIERSKI: Thank you.

11 BY MS. REZMIERSKI:

12 Q I believe what I hear you to be saying now, after all these
13 many days of testimony and all these many months of
14 investigation, is that the reason your phone was here on
15 August 10th in the middle of the night is because Dale had
16 your phone here, did I get that right?

17 A I said I left it in the truck.

18 Q Right, and Dale had the truck and Dale was here in Jackson?

19 A You know it was.

20 Q I'm asking you --

21 A You know it was.

22 Q -- what you said. You know what, it don't go like this.

23 A Okay.

24 Q I'm not bound and gagged.

25 A All right.

1 Q You got to answer the questions.

2 A Okay, I just answered it.

3 Q Your choice to be up here.

4 MR. ENGLE: Your Honor -- (multiple speakers)

5 --

6 THE WITNESS: I just asked -- I said you know

7 he was in Jackson too.

8 MR. ENGLE: -- she's arguing with him. If

9 he's not answering the question she has to address the court

10 --

11 THE WITNESS: My -- my response --

12 MR. ENGLE: -- not him.

13 MS. REZMIERSKI: Judge, could you tell him --

14 THE WITNESS: -- is --

15 MS. REZMIERSKI: -- that he doesn't get to

16 run the show?

17 THE WITNESS: My response, Judge, is she

18 knows that he was in Jackson too, so yes.

19 THE COURT: Okay. Ask the question, then

20 he'll answer it.

21 BY MS. REZMIERSKI:

22 Q Are you telling me now, after all these many days of trial,
23 the evidence and testimony and investigation, that it was
24 Dale Morgan here in the middle of the night with your truck
25 and your phone on August 10th?

1 A Yes.

2 Q So that's super, super convenient, right, because this is

3 gonna be nothing more than retaliation --

4 MR. ENGLE: Your Honor, this is --

5 BY MS. REZMIERSKI:

6 Q -- because --

7 MS. REZMIERSKI: Excuse me --

8 MR. ENGLE: -- I object.

9 MS. REZMIERSKI: -- I get to ask a question.

10 MR. ENGLE: This is argument, not a question.

11 This is argument.

12 THE COURT: Form it as a question, Ms.

13 Rezmierski.

14 MS. REZMIERSKI: That's what I was getting

15 to.

16 BY MS. REZMIERSKI:

17 Q That's because he fingered you for the December 6th murder

18 in Detroit, right?

19 A No.

20 Q No.

21 A If that's the case, I -- in Detroit -- I coulda easily been

22 the one -- if you -- if you go get the records of the case

23 in Detroit, I coulda been the one that easily said Dale did

24 everything and went home. So that's what I'm -- that's what

25 I'm telling you today.

1 Q And instead what you did was, you pled to that murder and
2 now you're in prison for it, right?

3 A Yes, Ma'am.

4 Q Right. So he was right and telling the truth when he said
5 you shot a hole in that 80 year old man's head?

6 A No.

7 Q No, you just --(multiple speakers)--

8 A No, no, no, no, no --

9 Q -- because --

10 A -- listen to what I'm saying --

11 Q No question to you. You pled to it just because?

12 THE WITNESS: Your Honor, can she let me
13 finish this line of my question?

14 MR. ENGLE: He said no, your Honor, and I
15 guess that's all he's got to say at this point.

16 THE COURT: Let him finish his answer.

17 THE WITNESS: Can you re-ask what you said?

18 BY MS. REZMIERSKI:

19 Q I don't remember because you keep interrupting me --

20 A Okay.

21 Q -- and trying to tell me whatever you want to tell me.

22 MR. ENGLE: Again, your Honor --

23 BY MS. REZMIERSKI:

24 Q It works better if I ask a question --

25 MR. BRANDT: Your Honor --

1 MR. ENGLE: It's just a matter of asking
2 questions, not arguing with her.

3 BY MS. REZMIERSKI:

4 Q -- and you wait to listen.

5 THE WITNESS: I can't help that you want to
6 just put some stuff on one person.

7 THE COURT: Hold on. Everybody hold on.
8 What (ph)?

9 MR. BRANDT: Thank you. Either we're going
10 --

11 THE COURT: One at a time.

12 MR. BRANDT: We're going to ask questions and
13 they're going to be answered or we're going to make
14 editorial comments and then make -- you have to get control
15 of this because this is questions and answers.

16 THE COURT: Go ahead, Ms. Rezmierski.

17 MS. REZMIERSKI: Thank you.

18 BY MS. REZMIERSKI:

19 Q So that we're clear, you pled to that murder that Dale
20 fingered you on and you're now in prison for it?

21 A We both pled to the murder.

22 Q He pled to accessory after.

23 A Yes, Ma'am.

24 Q You pled to the murder.

25 A Yes, Ma'am.

1 Q Those phone numbers on that sheet right there, those are
2 yours, right?

3 A Yes.

4 Q You told your attorney that that text you sent on October
5 24th saying, "I'm trying to kill," you had absolutely no
6 idea now as you sit here today what you were talking about?

7 A No, what I -- what I said, I coulda been -- I don't really
8 know what it was about and I didn't want to just say it was
9 about something that I didn't really know what -- being
10 texted about it (ph) --(multiple speakers)--

11 Q Which is exactly what I just asked you, you don't know what
12 you were saying, is that your testimony?

13 A Yes.

14 Q Thank you. Do you usually text people on trying to kill?

15 A I text people a whole lot of stuff. You got all my texts.
16 Some of them you say you can't even stand to remember. And
17 pictures.

18 Q Those phone records also show you back here in Jackson on
19 October 24th when you're texting Pam, "I'm trying to kil,"
20 right?

21 A What time was it?

22 Q What time was what, your text?

23 A Yes.

24 Q As you're headed here to Jackson?

25 A No, it wasn't.

1 Q Phone records also show you here in Jackson on October 24th
2 2014, isn't that correct?

3 A Yes, Ma'am, but it was later in the day at like --

4 Q And those phone records --

5 A -- 5:00 o'clock that afternoon.

6 Q Those phone records also show you back here in Jackson on
7 October 28th, 2014, isn't that correct?

8 A That's what it says, yes. If that's what it says.

9 Q Isn't that also the date of the extraction report from your
10 buddy, Clifford McKee's phone, with the two of you steady
11 texting back and forth about your hanging out here, waiting,
12 texting him pictures, Reed Manor, what's the number, what's
13 the name, Ryan Marshall, you remember that, right?

14 MR. BRANDT: Objection.

15 MR. ENGLE: This is --(multiple speakers).

16 THE COURT: Is that a question, Ms.
17 Rezmierski?

18 MR. ENGLE: This is argument, not a question.

19 BY MS. REZMIERSKI:

20 Q Do you remember the texting conversation from your buddy,
21 Clifford McKee's phone, on October 28th?

22 A No, it wasn't -- it wasn't with Cliff.

23 Q It wasn't with Cliff?

24 A No.

25 Q It was with Cliff's phone.

1 A All right.

2 Q Okay. So who did you think you were texting about stalking
3 Ryan Marshall outside of --(multiple speakers)--

4 A I wasn't stalking nobody.

5 Q Excuse me, ain't gonna work --

6 A You just asked me a question.

7 Q -- unless you listen to the question. Who did you think you
8 were texting while you were sitting outside of Reed Manor

9 MR. ENGLE: Well, your Honor --

10 BY MS. REZMIERSKI:

11 Q -- trying to stalk and kill Ryan Marshall?

12 MR. ENGLE: -- I object.

13 THE COURT: Ms. Rez -- stop.

14 THE WITNESS: I wasn't -- I wasn't stalking
15 nobody, I don't know what you talking about.

16 THE COURT: Ms. Rezmierski, tone it down, ask
17 questions.

18 MS. REZMIERSKI: That's what I thought I was
19 doing.

20 THE COURT: No, you're editorializing.

21 BY MS. REZMIERSKI:

22 Q Who did you think you were texting on October 28th, when
23 you're texting that you're outside of Reed Manor trying to
24 stalk and kill Ryan Marshall?

25 MR. ENGLE: Objection, your Honor, again,

1 it's -- she said --

2 THE WITNESS: I wasn't stalking nobody.

3 MR. ENGLE: -- she's editorializing, she's
4 going on and on.

5 THE COURT: I've already warned you once, Ms
6 Rezmierski.

7 BY MS. REZMIERSKI:

8 Q You don't know who you were texting on October 28th?

9 A I was texting Booney (ph), that's who I was texting.

10 Q I'm sorry?

11 A I was -- I told you I was texting -- you said it was Cliff
12 phone, I'm telling you who I was texting. I can't -- I
13 can't tell you I was texting somebody, then you was telling
14 -- you want to tell me that it was somebody else on the
15 other end, that's my fault. I'm telling you --(multiple
16 speakers)--

17 Q Clearly, I'm lost.

18 A -- I'm telling you who I'm texting, so I just told --

19 Q Who?

20 A -- you I was texting Booney. You say I was texting Cliff
21 phone.

22 Q I don't understand the word you're saying.

23 A I --

24 THE COURT: I didn't hear who you were
25 texting.

1 MS. REZMIERSKI: Thank you.

2 THE WITNESS: Once again, I said I was
3 texting Booney. You said I was texting my buddy Clifford,
4 I've told you I wasn't texting Clifford. You said well, it
5 was his phone. That's what I said.

6 BY MS. REZMIERSKI:

7 Q So you're texting Booney on Clifford's phone?

8 A I been tell -- I told -- yes.

9 Q I asked you a question.

10 A Yes, Ma'am.

11 Q Thank you. Why were you texting him about Ryan Marshall?

12 A Because we were gonna make his momma and him sell dope for
13 us. That's why.

14 Q That's right, I forgot that you were here in Jackson to sell
15 dope. Now, when you were interviewed before didn't you say
16 you'd never been to Jackson?

17 A Yeah, I don't -- yeah, I -- you gonna tell the police the
18 same thing, you a criminal.

19 Q Okay, so you lied to the --(multiple speakers)--

20 A You done did -- you done did criminal activity.

21 Q Excuse me. So you lied to them?

22 A Yes, I did. Yes, I did, yes.

23 Q Okay. So really, you were here in Jackson but it was to
24 sell dope?

25 A Which time? This is what I'm telling you, I been coming up

1 here. I done been coming up here. You try to say that on
2 the 6th of August that that was my first time ever coming to
3 Jackson, Michigan. I told my attorney as soon as he started
4 talking about it, I said, man, I been going to Jackson.
5 They got other phones -- detective got up here and told you
6 they -- with the other phones. I said that's what I been
7 asking everybody. It is so -- if y'all do all this
8 extraction stuff y'all been doing and mapping everything,
9 it'll show that I been coming up here for the longest, so
10 don't -- don't try and say that all of a sudden on August
11 6th this is my first time coming up here, that's -- that --
12 that's wrong.

13 Q Well, in fairness, part of it is because you said you ain't
14 never been here, right?

15 A That's -- nope, that ain't right. Nope, you lying.

16 Q Okay. So your lie doesn't matter?

17 A Because what happened was -- even -- even with that --

18 MS. REZMIERSKI: Judge, I wonder if you could
19 tell him --

20 THE WITNESS: Can I please explain --

21 MS. REZMIERSKI: -- to simply answer the
22 questions?

23 MR. ENGLE: Your Honor, I think --

24 THE COURT: Just answer her questions --

25 MS. REZMIERSKI: Thank you.

1 THE COURT: -- and your attorney gets to ask
2 you --

3 THE WITNESS: I wasn't finished.

4 THE COURT: -- to follow up. Finished with?

5 THE WITNESS: The question, answering the
6 question. She -- she asked me -- she asked me, so that's
7 because I lied on the first time, that's why on August 6th,
8 and I'm telling her no, that ain't -- that ain't why. It'
9 be -- just like they continue -- they -- that didn't stop
10 them from interviewing the rest of -- (multiple speakers) --

11 MS. REZMIERSKI: Judge, he's still just
12 answering whatever he wants to answer.

13 THE WITNESS: Good Lord, can I please --

14 THE COURT: All he said --

15 MS. REZMIERSKI: Actually, it started with --

16 THE COURT: Just ask him yes and no, it's
17 easier that way, and then your attorney will get up and --

18 THE WITNESS: All right.

19 THE COURT: -- he can follow up.

20 BY MS. REZMIERSKI:

21 Q So you have come to Jackson even though you lied and said
22 you hadn't? That's the question.

23 A Yes, Ma'am.

24 Q Thank you. You have come to Jackson, according to you, to
25 sell dope?

1 A Yes, Ma'am, I been -- yes.

2 Q How long have you been coming to Jackson to sell dope?

3 A I been coming to Jackson since 2013.

4 Q What kinda dope are we talking about?

5 A I sell weed.

6 Q That's it?

7 A Yay (ph).

8 Q So somehow you're texting with a friend on October 28th on

9 Clifford's phone, right? Somebody who's not Clifford, do

10 understand that?

11 A Yes.

12 Q Okay.

13 A I came up -- I came up --

14 Q That's not the question.

15 A Just --

16 MS. REZMIERSKI: Thank you.

17 THE COURT: Your attorney will --

18 THE WITNESS: I gotcha, I gotcha.

19 THE COURT: -- follow up.

20 BY MS. REZMIERSKI:

21 Q And so now what you're telling us is that you're texting

22 this other friend on Clifford's phone on October 28th about

23 Ryan and Donna Marshall because you were trying to get them

24 to sell dope?

25 A No, I wasn't --

1 Q Isn't that what you just told me?

2 A You -- you cannot -- can I finish?

3 Q No. You may answer yes or no.

4 A No, because you wording it the way you want to word it and
5 that's not the way it was worded to you.

6 Q Did you tell me moments ago that you were trying --

7 A I was gonna make them --

8 Q Excuse me, Sir, trying to get in touch with Ryan and Donna
9 Marshall because you wanted them to sell dope?

10 A I said I was gonna -- I was gonna make them.

11 Q You were going to make them?

12 A Yes.

13 Q Not because you wanted them to, because you were going to
14 make them?

15 A Yes.

16 Q And how were you gonna make them sell dope?

17 A Like I do in the city when I want people to sell dope, make
18 --

19 Q I don't know how like you do, you tell me how like you do?

20 A Oh, make them -- make them a offer that they're basically
21 going to sell. They dope fiends.

22 Q So -- so how is it that you come across this Ryan and Donna
23 Marshall here in Jackson when you're all the way from
24 Detroit?

25 A Man, I been -- just like when I told you I came on the 6th,

1 me and Booney -- Booney been come -- Booney wanted to
2 introduce me to Jackson, not Cliff, so that's what -- that's
3 the whole thing --

4 Q So whoever --

5 A -- that -- can I finish?

6 Q Sure.

7 A That you didn't -- that y'all didn't -- see, that's what
8 y'all didn't want to accept, y'all didn't want to accept
9 none of that. Y'all wanted to -- y'all wanted to run with a
10 whole nother theory. Well, I can't say you, but, you know.

11 Q Somebody else wanted to run with --

12 A Yes.

13 Q -- a whole nother theory? So -- so did I hear you say that
14 Detective Sullivan and Detective Merritt -- and it's
15 Merritt, it's not Merretti, that they're lying?

16 A Yeah, they lie.

17 Q Okay. So -- so they just cooked this whole thing up?

18 A No, I'm -- I'm saying that they got the story from
19 somewhere, it just wasn't from me, and that you work with
20 Dale Morgan and then just decide because again, they wasn't
21 nothing ever to be found, y'all -- they cooked it up, yeah,
22 so that's what I said.

23 Q Okay, so somehow we cooked this up with Dale Morgan?

24 A I didn't say per se, I'm not saying per se you, I'm saying
25 -- cuz you got to represent the case, I'm saying that

1 Merretti and Dole --

2 Q Merritt.

3 A Merritt and Sullivan.

4 Q He has a name, it's Andrew Sullivan.

5 A Okay. Well, Sullivan --

6 Q Okay.

7 A -- y'all know what -- you know what they did and that's why

8 you been -- you even -- you even came to me still at the

9 grand jury when I'm telling you that I ain't -- I ain't

10 working with y'all, talking about you need me to get

11 Clifford and him.

12 Q Tried to give you your chance didn't I? You're absolutely

13 right.

14 A How you gonna give me a chance on --

15 Q Tried to give you your chance, didn't I?

16 A -- how you gonna give me a chance on a murder case to go to

17 prison for --(multiple speakers)--

18 MR. ENGLE: Your Honor --

19 THE WITNESS: -- natural life? That don't

20 even make sense.

21 MR. ENGLE: -- that's just argument. Get on

22 with the questions rather than argument.

23 BY MS. REZMIERSKI:

24 Q So, they worked with Dale Morgan?

25 A Who?

1 Q Detectives Merritt and Sullivan.

2 A I believe -- I believe so, yeah. I believe so. Yeah. I

3 know so now.

4 Q So --

5 A The way you let him come to court.

6 Q -- how is it that your DNA winds up on the zip tie on

7 Frannie's wrist?

8 A You know what, we just went through --

9 Q I'm sorry?

10 A -- this. I -- I just told you -- if he wanted to use my

11 truck, right, and I got equipment in my truck who else would

12 get it -- have it? It didn't -- I don't have them in my

13 house.

14 Q Let me make sure I understand this, because when your

15 attorney asked you the question about the DNA, I don't know,

16 couldn't have been 20 minutes ago --

17 A He said --

18 Q -- if I -- excuse me --

19 A Yes.

20 Q -- if I heard you correctly, what you said was, "I have no

21 idea how my DNA is on that zip tie." Did I hear --

22 A No --

23 Q Excuse me --

24 A That's correct.

25 Q -- did I hear that right?

1 A That's correct.

2 Q Okay. Do I now understand you 20 minutes later to be
3 telling us that somehow Dale Morgan swiped your DNA by using
4 your truck and put it on that zip tie?

5 A No, you could phrase it -- that's not -- can I explain?

6 Q I'm not trying to phrase anything --

7 A No, that ain't --

8 Q -- I'm trying to ask you how your DNA --

9 MR. ENGLE: Well, again, your Honor, let him
10 answer.

11 THE COURT: He's trying to answer and you're
12 interrupting him. Let him answer.

13 Answer.

14 MS. REZMIERSKI: I'll do my best.

15 BY MS. REZMIERSKI:

16 Q How'd your DNA get on the zip tie?

17 A I'm -- I'm not denying my DNA was on the zip ties, you -- he
18 asked me how.

19 Q How?

20 A It appears I handled the zip ties if they in my truck, and I
21 been -- so what difference is that?

22 Q Well, I guess it's a little different because 20 minutes
23 ago, correct me if I'm wrong, you told your attorney you had
24 no idea.

25 A No, you -- that ain't what I was saying. He -- he asked --

1 asked me pacifically (sic) to me that did you have any part
2 of the murder, like I was dealing (ph) a murder and my -- my
3 -- my stuff got on there, that's how. And then you got
4 Merretti -- I mean Sullivan and them saying that I put --
5 told them I put the -- what's name (ph) in my pocket.
6 That's how my DNA got on there. Come on, man. The zip ties
7 all along been in my truck and he got my ride, then how else
8 it gonna be in there? So you tell me something different.

9 Q I guess -- I guess I'm confused --

10 A Yeah, you is.

11 Q -- because again, I'll go back to 20 minutes ago that wasn't
12 the answer --

13 MR. ENGLE: Again, your Honor --

14 BY MS. REZMIERSKI:

15 Q -- when your lawyer was asking --

16 MR. ENGLE: -- this is argument, not --

17 BY MS. REZMIERSKI:

18 Q -- questions --

19 MR. ENGLE: -- a question.

20 BY MS. REZMIERSKI:

21 Q -- am I correct?

22 A You can try and -- no, you ain't correct.

23 Q Okay.

24 A You know, you --

25 Q So the record will speak for itself.

1 A -- you -- yeah, you know, you know -- you trying to trip me
2 up on some B.S. but you know the fact of it is, I don't believe
3 told y'all a long time ago --

4 Q I don't need to try.

5 A All right. That's why you -- you ain't got your so called
6 recording neither then, huh?

7 THE COURT: There's no question right now.

8 MS. REZMIERSKI: Thank you, Judge.

9 THE WITNESS: Where that at?

10 MS. REZMIERSKI: Excuse me?

11 THE WITNESS: Where that recording at?

12 BY MS. REZMIERSKI:

13 Q Actually, the way this works --

14 A Yeah, okay.

15 Q -- is you answer and I ask.

16 A Okay, well explain that one.

17 Q You're on trial, not me. Did I understand your testimony
18 correctly that when the detectives asked you if the fiancé,
19 Eric Wolfe, had anything to do with it you said no?

20 A What'd you say?

21 Q Did I understand your testimony correctly that when the
22 detectives asked you if the fiancé, Eric Wolfe, had anything
23 to do with it you said no?

24 A I said E.

25 Q You said E had nothing to do with it?

1 A Yeah.

2 Q Who's E?

3 A That's what y'all -- I called him, that's Dale Man.

4 Q I'm really lost. So you said E, who you mean is Dale, had
5 nothing to do with it?

6 A No, man. No.

7 Q Tell me what you meant.

8 A I said E Man -- I said you -- E Man didn't have nothing to
9 do with it.

10 Q Who is E Man?

11 A I mean -- Dale Man -- E didn't have nothing to do with it.

12 Q Who are you talking about? It's a pretty simple question.
13 Do you not understand it or do you think you can intimidate
14 me?

15 A I won't look at you then. Listen, you can play -- it's like
16 you trying to play words --

17 Q It's a simple question. Who is E Man? Who are you talking
18 about?

19 A Eric.

20 Q Eric?

21 A Yes.

22 Q Who's Derek?

23 A I said Eric.

24 Q Eric. So the fiancé had nothing to do with it --

25 A No -- no.

1 Q -- and you told that to them?

2 A No, I did not. I didn't say nothing about the fiancé,
3 period, since we been sitting -- since I been sitting up
4 here. What you shoulda been --

5 Q There's no question to you, Sir. Thank you.

6 THE COURT: Let Mr. Engle ask you questions

7 THE WITNESS: Your Honor, the thing of it is
8 they know it was more peop -- if somebody was with him, they
9 don't want to say nothing now.

10 THE COURT: You -- she'll ask you questions,
11 he'll follow up.

12 THE WITNESS: All right.

13 BY MS. REZMIERSKI:

14 Q Frannie's murder on August 10th --

15 A Yes.

16 Q -- is not the only murder that you confessed to in the
17 course of your interview with the detectives, correct?

18 A I ain't confess to no murders to them.

19 Q Didn't you also confess to the December 6th, 2014 murder
20 that you eventually pled to and are now in prison for?

21 A Oh, yeah, yeah, I told y'all I was in -- had a murder, yes.

22 Q Right, so you confessed that to them and they're -- they're
23 right about that part?

24 A Yeah, they asked me.

25 Q Right, so -- so they're not making up that part, just the

1 August 10 Frannie murder part?

2 A No, they -- wait a minute, you said I confessed --

3 Q Did you --

4 A -- to them about the murder in Detroit?

5 Q Yes.

6 A Hell no.

7 Q Okay. Didn't you also confess --

8 A They --

9 Q Excuse me, Sir --

10 THE COURT: He said no.

11 MS. REZMIERSKI: Thank you.

12 THE WITNESS: Man.

13 BY MS. REZMIERSKI:

14 Q Didn't you also confess to them another murder in Detroit,
15 an armed home invasion that you were hired to commit?

16 A No. I -- this -- the only thing they asked me about my
17 previous murder that I went to prison for, that's the one
18 that they asked me, was you in prison for murder? Yes. So
19 don't -- don't try and act like I was -- I was up here and I
20 confessed to them about a murder in Detroit because they
21 woulda came -- believe me you, if I confessed to them about
22 the murder I ended up taking a plea for in Detroit they
23 woulda long had came to court and told the detective down
24 there well, we coming to court because he just confessed to
25 the murder in Detroit before I got convicted --

1 Q Well, I mean, in fairness --

2 A -- so don't -- don't try and act like that's --

3 Q Excuse me, Sir --

4 A -- what it was.

5 Q -- in fairness, they didn't need to because you pled to it

6 right?

7 A No, no, I'm talking about way before -- no, no. When they

8 -- if I'd a did that on December the 16th, I didn't plead to

9 it until like almost a year later --

10 Q August 31st.

11 A Okay, so that's how many months? So if you look at it, they

12 woulda went to Detroit Police Homicide and told them he just

13 confessed to the murder in Detroit. So don't -- don't --

14 don't act like -- I told them pacifically when I got

15 convicted in 1992 about the murder because that's what they

16 asked me, period.

17 Q So you told them --

18 A Don't -- don't try and act like --

19 Q Excuse me, Sir --

20 A -- it was something else.

21 Q -- so you told them about --

22 A Let me finish please.

23 Q -- the 92 murder that you confessed to and have been to

24 prison to already? Did I hear that right?

25 THE WITNESS: Your Honor --

1 THE COURT: (Inaudible).

2 THE WITNESS: -- because she trying to -- sh

3 trying to --

4 MR. ENGLE: Your Honor, I guess --

5 MS. REZMIERSKI: Simple question.

6 MR. ENGLE: -- she is jumping ahead.

7 THE WITNESS: What I'm saying is, is this --

8 THE COURT: Hey, hold it.

9 MR. ENGLE: She has to let him finish his

10 answer --

11 MS. REZMIERSKI: Judge --

12 MR. ENGLE: -- you know, before she starts

13 interjecting. He started answering and she's all of a

14 sudden arg -- this isn't final argument, this appears to be

15 what she's trying to make it into.

16 MS. REZMIERSKI: We may or may not even need

17 that.

18 MR. ENGLE: She asked him a question, he

19 hadn't finished answering and she's jumping up and down. If

20 it's not an absolute yes or no question I think she's got to

21 let him finish before she starts yelling at him again.

22 THE COURT: Next question.

23 MS. REZMIERSKI: I think we've heard about

24 enough murder. Thank you.

25 THE COURT: Mr. Engle?

REDIRECT EXAMINATION

BY MR. ENGLE:

Q You were using Clifford's phone at one point in time?

A I -- I was never using Clifford's phone. This is what I'm saying, I'm -- I'm texting somebody got Clifford phone, using his phone. Me -- me and B came up here, that's the first time. The second time B come up here. Then, that's -- and that was it. So now, I don't know where the other stuff coming from.

Q At one point you were up here looking for Ryan and Donna Marshall?

A Yes.

Q Did you ever find them?

A No. I knew where they were but I --

Q When you were looking for them would this have been before or after August 10th, the date of the homicide?

A That was before and after.

Q When you -- you saw the phone records that indicated you asked what the guy's name was --

A Yes.

Q -- sometime later, is that correct?

A Yes.

Q And is that how you're dating this, is later than --

A Yes.

Q What you wanted to do was to get them to sell dope for you?

1 A Yes.

2 Q And you're not -- Cortez, you're not pretending you're any
3 angel in this case, or in any case, is that correct?

4 A In this case I ain't did -- I ain't doing what they said I
5 did.

6 Q And you never found him?

7 A Huh?

8 Q You never Mr. Marshall or Mrs. Marshall?

9 A Nu-uh.

10 Q Why did Mr. Morgan have your truck on August 10th?

11 A Cuz his trans -- like he couldn't go in reverse and he
12 couldn't use reverse in his truck no more.

13 Q Now, he didn't -- he never indicated to you, "I'm gonna go
14 use your truck and do a murder" or anything like that, did
15 he?

16 A No.

17 Q And you don't know for sure that he did this or didn't do
18 it, you just know he's in Jackson at that point in time?

19 A Shit -- I mean, excuse me, your Honor, but logically, I know
20 I ain't -- I ain't -- I ain't do it, you hear me, and then
21 so for him to -- for him to be able to interject, shit,
22 that's like a two and two, so I felt that they -- they went
23 after me just because they said well, your DNA and we can't
24 tie him in it, Eric and all that.

25 Q So that's -- that's the only way you can tie your -- and

1 you're just speculating, would that be correct --

2 A Yes.

3 Q -- as to whether that's how your DNA got there or that --

4 A That's the only -- that's the only -- that's the only
5 scenario I could come up with, and so that's -- that's what
6 I -- I'm saying right now here in court. But that ain't
7 what -- that ain't what they wanted to hear and run it (ph)
8 with.

9 MR. ENGLE: I have no further questions, your
10 Honor. I -- just one.

11 BY MR. ENGLE:

12 Q You didn't do this --

13 A No.

14 Q -- did you?

15 MR. ENGLE: I have no further questions, your
16 Honor.

17 THE COURT: Any recross?
18 Anything?

19 MR. BRANDT: I have some. Is that okay?
20 Thanks.

21 CROSS-EXAMINATION

22 BY MR. BRANDT:

23 Q Mr. Butler, a couple of times you used the term, a person,
24 Dale, and when you said that were you meaning Dale Morgan?

25 A Yeah -- yeah, we call him by a few names -- (multiple

1 speakers)--

2 Q Okay, you didn't use the last name.

3 A -- Face, Dale, O'Shay.

4 Q Okay, thank you. Did Clifford McKee ever pay you any money
5 for anything?

6 A No.

7 Q Did you ever come to Jackson with Clifford McKee?

8 A No.

9 Q Did Clifford McKee ask you to take care of a witness?

10 A No.

11 MR. BRANDT: Nothing further.

12 CROSS-EXAMINATION

13 BY MR. PERLOS:

14 Q Did you ever meet Rodney McKee?

15 A Do I -- no, I don't know Rodney.

16 Q Did he ever pay you any money?

17 A No.

18 Q Did he ever tell you to do anything?

19 A No.

20 Q Ask you to do anything?

21 A No, Sir.

22 Q Ever come here to meet him?

23 A No.

24 Q None of that's true?

25 A No.

1 THE COURT: Anything further?

2 RECROSS-EXAMINATION

3 BY MS. REZMIERSKI:

4 Q You don't want to go back to the joint as a snitch do you?

5 A I'm not going back to the joint as no snitch.

6 Q Snitches get stitches done they?

7 A You could use that lingo but my reputation stand for itself
8 that I --

9 Q Yes, it does.

10 A My reputation --

11 Q Thank you.

12 A -- stands for itself that if I did something --

13 THE COURT: Okay.

14 THE WITNESS: Hold on, can I finish?

15 THE COURT: It was a yes or no.

16 THE WITNESS: If I -- no, cuz she trying to
17 -- she trying to imply so I was -- just my response.

18 THE COURT: Okay, go ahead.

19 MR. ENGLE: (Inaudible).

20 THE WITNESS: If -- if every -- every --

21 THE COURT: Hold on, hold on, your attorney's
22 got something -- (inaudible).

23 THE WITNESS: Every --

24 MR. ENGLE: (Inaudible).

25 THE WITNESS: Okay.

REDIRECT EXAMINATION

BY MR. ENGLE:

Q What was the continuation of your answer -- (inaudible)?

A Every -- every -- the -- every crime that I been involved in that she allude -- alluded to from 1992 to date that they they -- they broken down and then I pled out to her because I had did it. This one I wasn't pleading out to it and taking it because I didn't do it. So that's why. That's what we talking about, so it's not about no snitches get stitches or none of that. And so look at -- look at -- you looked at my criminal history and all that, they had did it already before they came to see me, so it -- it will show that right there.

Q We're talking about this crime down in Detroit?

A Yeah, from 92, the one I got convicted of, to the other one, even -- you know, so it's not like I come to court and go -- this -- you know, my first time happening -- even going to trial and it ain't like they had a abundance of stuff, I just said well, you know, and talking, I said, all right, I did it, it's over with, so it's not like on this one -- I'd have been like, it's done and over with, regardless.

Q That's 24 years ago. How long have you and Dale been friends?

A I've known him since we were like 13.

MR. ENGLE: I have no further questions, your

Honor.

THE COURT: You can step down.

THE WITNESS: All right.

(At 11:46:44 a.m., witness excused)

MR. ENGLE: I have no further witnesses, your

Honor.

THE COURT: Okay, any witnesses? One? Oh, it's ten to 12:00. We'll break for lunch.

You can go up and get paid now.

THE CLERK: All rise for the jury.

(At 11:47:09 a.m., jury excused)

THE COURT: See everybody here about 1:15.

MR. ENGLE: 1:15.

(At 11:47:55 a.m., hearing recessed)

(At 1:21:25 p.m., hearing resumed)

THE COURT: Mr. Brandt, whenever you're ready.

MR. BRANDT: Yes, your Honor. I have a motion out of the presence of the jury and that is to renew the motion that -- and I believe Mr. Perlos will join in this, that during the course of the trial the court endeavored, based upon the pleadings and the evidentiary hearings that we had to date that certain information relative to, in this case, Mr. Butler's past, was not going to come in, and -- and the reason for that, in large part,

1 is that he exercised his Fifth Amendment right during the
2 grand jury, and so the court has endeavored, and I think
3 correctly, not to allow the prosecution to get that in case
4 in-chief.

5 During the preparation of the trial, at least
6 to the McKees, our voir dire and our trial prep had that
7 information in mind. In light of Mr. Butler's testimony,
8 and the fact that the prosecutor was able to elicit pursuant
9 to the court's ruling, the information about prior
10 homicides, which are not -- does not have anything to do
11 with the charges against our client, we are renewing our
12 motion for a mistrial and asking the court to discharge
13 them, given the fact that the information is more
14 prejudicial than probative. Thank you, your Honor.

15 THE COURT: Ms. Rezmierski?

16 MR. PERLOS: Judge, I just will comment
17 briefly. Through the course of the trial preparation, the
18 questions to the jury, none of which anticipated Mr. Butler
19 taking the stand, and then the admission and/or statements
20 in regards to two prior murders being disclosed in front of
21 that jury in a homicide case, I can't think of anything that
22 is more prejudicial to my client. There is no way that any
23 instruction is ever going to cure the damage that has been
24 done as it relates to Mr. Butler and the testimony this
25 morning.

1 THE COURT: Okay. Ms. Rezmierski?

2 MS. REZMIERSKI: So a couple of things.

3 First of all, I really didn't even have to elicit it, it was
4 all offered on his own.

5 Secondly, we've litigated, debated, argued
6 and litigated, debated and argued, and you've made your
7 ruling. Certainly, I think to a certain extent there's an
8 offset here because what he did in taking the stand, in
9 addition to saying I've got some other murders on my watch
10 was that he also disavowed the confession that implicates
11 the two of them. So, he did them a favor, arguably.

12 Judge, you've already ruled that this won't
13 amount to a mistrial. They had their opportunity to cross-
14 examine, the confrontation clause rights are intact. We did
15 try to scrupulously honor -- certainly you did, even better
16 than me, try to honor in advance of trial keeping out things
17 that you felt might be unduly prejudicial, but at the end of
18 the day, what we have is a -- is a conspiracy trial
19 involving three people. These are statements of his own
20 that he made, statements that are -- that are presumptively
21 admissible that I still maintain should have been able to
22 come in in case-in-chief, but you -- you kept them until he
23 testifies and -- and he testified. I mean, I don't know
24 what to tell you.

25 THE COURT: Okay. Well, my initial

1 inclination was that it would be prejudicial to the McKees
2 however, as I noted before, I went home, took a number of
3 the evidence books with me to read through various cases,
4 highlights dealing with 801 and the information that would
5 come under Michigan Rule of Evidence, and from what I could
6 read, or understood, that an instruction in those
7 circumstances, it's presumed to be followed, and that it
8 would not be a basis for a mistrial, as I stated earlier,
9 and therefore, your motion is denied.

10 MR. BRANDT: Thank you, your Honor.

11 THE COURT: Now all we need is the jury and I
12 think we are ready --

13 MR. PERLOS: Judge, before you bring the jury
14 in, I don't know what witnesses the prosecutor intends to
15 call, but there are several officers in the courtroom.

16 MS. REZMIERSKI: I rested.

17 MR. PERLOS: So you're not going to recall
18 anybody?

19 MS. REZMIERSKI: This would be rebuttal and
20 I've told everybody repeatedly, at this point the only
21 rebuttal witness I intend is Detective Sullivan, who's been
22 absented from the sequestration order throughout. I rested,
23 nobody -- nobody mandated that anybody be maintained on the
24 subpoena at that point.

25 THE COURT: Anything further before we bring

1 in the jury?

2 MR. BRANDT: No, your Honor.

3 MR. ENGLE: As long as they're not recalled
4 don't have any objection.

5 THE COURT: And does anybody intend to call
6 anymore witnesses?

7 MR. BRANDT: Your Honor, I'm going to call
8 Clifford McKee.

9 THE COURT: I assume you want to wait for
10 rebuttal until Mr. McKee gets done?

11 MS. REZMIERSKI: Yes. Thank you.

12 THE COURT: Okay, if the jury's all here
13 bring them in.

14 (Conversation Between Mr. Brandt and Judge
15 re: unrelated topics - not transcribed)

16 THE CLERK: All rise for the jury.

17 (At 1:32:39 p.m., jury returned)

18 THE COURT: Please be seated.

19 Any other witnesses from the defense?

20 MR. BRANDT: Yeah, mm-hmm.

21 THE COURT: Do you swear to tell the truth,
22 the whole truth and nothing but the truth so help you God?

23 MR. CLIFFORD MCKEE: Yes, I do.

24 CLIFFORD MCKEE

25 (At 1:33:28 p.m., witness sworn, testified as follows):

1 THE COURT: State your name, spell your last
2 name for the record.

3 THE WITNESS: Clifford McKee, last name
4 spelled M-C-K-E-E.

5 THE COURT: Mr. Brandt?

6 MR. BRANDT: Thank you very much, your Honor.

7 DIRECT EXAMINATION

8 BY MR. BRANDT:

9 Q Clifford, where do you live?

10 A In Detroit, Michigan.

11 Q And what do you do for a living?

12 A I'm basically a stay at home grandpa, but I'm self-employed
13 though.

14 Q Okay. You -- you came to Jackson December 11 of 2014, is
15 that correct?

16 A Yes, it was.

17 Q Okay, and about 6:00 o'clock, 6:30 that evening where were
18 you at?

19 A I was at the mall.

20 Q Which mall, do you remember?

21 A It's right off of Michigan Avenue.

22 Q Okay, and what were you doing at that mall?

23 A Just trying to grab me something that I seen a little
24 earlier -- earlier in the week or earlier I think it was in
25 the -- in the month.

1 Q Okay, and did you then come into contact that evening with
2 police?

3 A Yes -- yes, I did.

4 Q And did they handcuff you and take you to, I believe the
5 Sheriff's Department?

6 A Yes, they did.

7 Q Okay, and while you were there you were interviewed by a
8 detective, correct?

9 A Yes, Sir.

10 Q Okay, did they take your handcuffs off when the interview
11 was conducted?

12 A They did.

13 Q Okay. There was a series of questions about a person?

14 A Yes, Sir.

15 Q And do you remember who they were asking you about?

16 A They had asked me about a Cortez Butler.

17 Q Okay, and -- and what did you say?

18 A I didn't know no one by the name of Cortez Butler.

19 Q So what happened?

20 A Then -- but I asked them is there another name by which the
21 person go by, because a lot of people that I know -- I don't
22 know they government name, I know them by a nickname or what
23 have you.

24 Q And -- and what happened then as a result of that?

25 A He -- like I said, if he was to show me a picture would it

1 refreshen my memory.

2 Q And so what happened then?

3 A They got the picture, showed me the picture and I said yes.

4 I do know him.

5 Q And who was that?

6 A It was Coco.

7 Q Is -- is that the person who's been identified here as Mr.

8 Butler?

9 A Yes, Sir.

10 Q Okay. What happened after you -- you told them Coco or

11 whatever the name was?

12 A If I recall correctly, they was asking me different

13 questions in relation to me coming out here to Jackson.

14 Q Have you been to Jackson before?

15 A More than numerous occasions.

16 Q Okay. You've got some family here?

17 A I do.

18 Q Okay.

19 A And friends.

20 Q Okay. Did there come a point when the interview ended?

21 A Yes, it did.

22 Q And how did that happen?

23 A Well, more so than anything else, aside from me being tired,

24 I just got tired of the insinuation that was being pushed up

25 on me about me being in Jackson or traveling to Jackson with

1 other people.

2 Q Did you indicate that you hadn't been coming to Jackson with
3 other people?

4 A To the most -- I told them I came to Jackson -- it was
5 either when I had my grandchildren with me, or when I'm
6 bringing somebody up to see, you know, somebody that's
7 locked up, that's incarcerated.

8 Q Okay. Okay. So the interview ends and what happens as it
9 ends?

10 A I was told that I can leave but they told me they going to
11 keep my phones.

12 Q Okay. Were you asked to call back?

13 A Yeah. As a matter of fact, I was asked to come back the
14 next day and I told them I would come back the next day, but
15 when I got home I contacted an attorney, my attorney said
16 that, you know, it wasn't in my interest to go back, so I
17 gave them -- I made a courtesy call.

18 Q What call -- call to who?

19 A To -- to Officer Merritt.

20 Q Did you have a number?

21 A He gave me a business card of his and told me I can call,
22 you know, with any information, additional information I may
23 have.

24 Q Okay. And when did you make that call?

25 A The next morning after I talked to my attorney I made the

1 call and let them know that I would not be coming back down
2 this way.

3 Q In that interview you indicated, I think -- they -- was it
4 six to nine times within a four-month period, is that -- is
5 that --

6 A Well, he said a four-month period of time but I was thinking
7 basically through the course of my traveling I couldn't
8 really come up with a number so I said around about six to
9 nine.

10 Q Did you -- Rodney McKee is your nephew, correct?

11 A Yes, Sir.

12 Q And that's the gentleman seated at counsel table at the end
13 of the table?

14 A Yes, it is.

15 Q Did you, as a result of a conversation with Rodney, call Mr.
16 Butler and ask him to take care of a witness?

17 A No, Sir.

18 Q Did you pay Mr. Butler any money?

19 A No, Sir.

20 Q Did unlawfully conspire, combine, confederate or agree with
21 someone to commit a murder?

22 A No, Sir.

23 Q Did you solicit the crime of murder?

24 A No, Sir.

25 Q Did you commit a home invasion?

1 A No, Sir.

2 Q Did you commit murder?

3 A No, Sir.

4 Q Did you know Frances Craig?

5 A No, I did not.

6 Q Do you know Ryan or Donna Marshall?

7 A No, I do not.

8 MR. BRANDT: Thank you, nothing further.

9 THE COURT: Ms. Rezmierski?

10 MS. REZMIERSKI: Your Honor, may we approach?

11 THE COURT: Yep.

12 MS. REZMIERSKI: Thank you.

13 (Bench Conference held from 1:39:46 p.m. to
14 1:40:30 p.m.)

15 CROSS-EXAMINATION

16 BY MS. REZMIERSKI:

17 Q So you know this guy as Coco?

18 A Yes.

19 Q How long have you known him?

20 A I couldn't say in numbers of years.

21 Q You couldn't say the number of years?

22 A I couldn't say.

23 Q But it has been years?

24 A Yes, Ma'am.

25 Q You were aware of his 1992 murder conviction, correct?

1 A No, I was not.

2 Q You don't remember talking to detectives about that?

3 A They -- I talked to the detectives about him but I don't

4 recall the detectives telling me about a murder conviction

5 that he had.

6 Q So you're telling us here under oath that you had no idea of

7 his 1992 murder conviction?

8 A Yes, Ma'am.

9 Q You also basically have denied this whole thing?

10 A Yes, Ma'am.

11 Q Okay, that's what you just testified to?

12 A Yes, Ma'am.

13 Q You don't know anything about a conspiracy, solicitation,

14 Ryan, Donna Marshall, none of those things?

15 A Correct.

16 Q Okay. That is your phone number, 313-693-5985, correct?

17 A Yes.

18 Q All right. You were texting with Cortez, Coco, on October

19 28th of 2014, correct?

20 A No, Ma'am.

21 Q All right. Who had your phone?

22 A I couldn't say who had my phone but I don't -- I mean, I was

23 not texting him that day. I mean, I may have been texting

24 him maybe on my other phone, but I didn't see no way I was

25 texting Coco.

1 Q Do you let other people walk around using your phones?

2 A Well, more occasions than a couple.

3 Q So who do you know that would have been using your phone to

4 text Coco on October 28th?

5 A I couldn't say. You're giving a date and a pacific (sic)

6 time, there's more than just yesterday.

7 Q I'm sorry?

8 A I said I could not say. You're giving a date --

9 Q I am.

10 A -- and it's a pacific time that was more than just

11 yesterday.

12 Q That's true.

13 A Okay.

14 Q So you have no idea who would have been using your phone on

15 October 28th, 2014 texting Coco?

16 A Somebody might not have even been using my phone that day.

17 I could a had my phone that day. That's my point. I know I

18 was not texting that day, him.

19 Q So are you telling me that this extraction report from your

20 actual phone is in accurate?

21 A Let me see it.

22 Q This is People's Exhibit 221. Do you remember that coming

23 into evidence?

24 A I do, indeed.

25 Q All right. That's from your phone, right?

1 A No, Ma'am.

2 Q No?

3 A No.

4 Q Where you tell us that that comes from?

5 A It don't come from my phone and it don't show no indication
6 that it came from my phone.

7 Q So you see where it says to and from here?

8 A Yes, Ma'am.

9 Q Okay, so I probably told you the wrong phone number, because
10 this one is Coco's, right, 586-935-2733?

11 A Okay.

12 Q That doesn't sound right to you, or that does sound right?

13 A I mean, I couldn't say for certain. I mean, for the most
14 part, you lock a person in up under their name and I
15 wouldn't memorize or know the number by heart myself.

16 Q Okay. So, you heard the testimony of Detective/Sergeant
17 Paul Gonyeau --

18 A I did.

19 Q -- correct? Okay. Who told us -- and you agree with us
20 that we took three phones from you on December 11th when you
21 are at the Westwood Mall, correct?

22 A Yes, Ma'am.

23 Q And you also heard him testify that he was eventually able
24 to do extractions from those phones, correct?

25 A Okay.

1 Q Okay. You don't have any reason to believe that he took the
2 stand and lied that this was an extraction from one of your
3 phones, do you?

4 A Yes, I do.

5 Q Okay.

6 A He also said that my number was one of the top five numbers
7 when he was doing this -- the extraction on Mr. Butler's
8 phone, that my number was one of the top five numbers that
9 was on there. I looked at Mr. Butler's phone call list and
10 my number is not even within the top 30.

11 Q I don't recall him saying a number, what I recall him saying
12 is that he looked for frequency and then also specific dates
13 and locations, and based on those dates and locations and
14 frequency was when he then did search warrants on phone
15 numbers --

16 A Okay, well --

17 Q -- you don't remember hearing that?

18 A No, uh-uh, I remember -- (multiple speakers) --

19 Q Okay.

20 A -- different during that day.

21 Q So you're just telling us that it wasn't you texting from
22 your phone to Coco?

23 A Yes, Ma'am, I mean, I --

24 Q How about Ryan and -- I'm sorry?

25 A I've sent him texts, make no mistakes about it.

1 Q Sure.

2 A I've sent him texts but the texts that I sent, he is, among
3 many other people that I be texting in relation to different
4 job opportunities that's in Detroit area.

5 Q What kinda job opportunities?

6 A Pepsi-Cola may be hiring, may have a job over here for
7 mechanics or something like that there. People will send me
8 the texts and let me know where they hiring at, because a
9 lot -- like a lot of friends and family want to try to get
10 me different jobs and opportunities like that and I just
11 pass along the information along the wire.

12 Q So you're just a middle man?

13 A Yes, Ma'am.

14 MS. REZMIERSKI: Nothing further.

15 THE COURT: Anything?

16 CROSS-EXAMINATION

17 BY MR. ENGLE:

18 Q Clifford, were you ever present when Rodney McKee gave money
19 of any sort to Mr. Butler?

20 A I have no knowledge of nothing like that.

21 MR. ENGLE: I have no further questions, your
22 Honor.

23 THE COURT: Anything further?

24 MR. BRANDT: I think Chuck does.

25 CROSS-EXAMINATION

1 BY MR. PERLOS:

2 Q My client ever tell you to get a hold of Mr. Butler to do
3 something illegal?

4 A No, Sir.

5 Q You ever conspire with my client to do anything illegal?

6 A No, Sir.

7 Q My client ever tell you that he needed some help taking care
8 of a witness?

9 A No, Sir.

10 Q You ever see my client give you any money to give to
11 anybody?

12 A No, Sir.

13 Q You ever see him give any money to anybody?

14 A No, Sir.

15 THE COURT: Anything further from the
16 prosecution?

17 MS. REZMIERSKI: No. Thank you.

18 THE COURT: Anything further from anyone
19 else?

20 MR. BRANDT: No, your Honor. Thank you.

21 THE COURT: You can step down, Sir.

22 THE WITNESS: Thank you, Sir.

23 (At 1:48:29 p.m., witness excused)

24 THE COURT: Anything further from the
25 defense?

MR. PERLOS: Could we have just a second,
Judge? No, Judge.

THE COURT: Ms. Rezmierski?

MS. REZMIERSKI: Your Honor, may we approach?

THE COURT: Come on up.

MS. REZMIERSKI: Thank you.

(Bench Conference held from 1:49:32 p.m. to
1:51:11 p.m.)

MS. REZMIERSKI: So Judge, I'm sorry, it's up
me for rebuttal?

THE COURT: Yes.

MS. REZMIERSKI: Recall Detective Sullivan.

THE COURT: Detective, you're still under
oath.

MR. SULLIVAN: Yes, your Honor.

ANDREW SULLIVAN

(At 1:51:23 p.m., witness recalled, testified as follows):

MS. REZMIERSKI: May I proceed, your Honor?

THE COURT: Yes, go ahead.

MS. REZMIERSKI: Thank you.

DIRECT EXAMINATION

BY MS. REZMIERSKI:

Q Detective, you were present when defendant, Cortez Butler,
testified?

A Yes, I was.

1 Q You heard him tell the court that you and Detective Merritt
2 were lying, correct?

3 A Yes.

4 Q He also did a lot of testifying about other murders, did you
5 hear that?

6 A I did.

7 Q Was he correct that he talked to you about his 1992 murder
8 and that conviction?

9 A He did talk about that, yes.

10 Q Do you remember specifics of what he said about that?

11 A Just that he was younger when it happened and it had cost
12 him a majority of his adult life at that point, up until
13 that point.

14 Q Did you also hear him testify that he did not confess to you
15 the December 6th, 2014 homicide in Detroit?

16 A Yes.

17 Q Was that an accurate statement?

18 A That was inaccurate.

19 Q Inaccurate

20 A Correct.

21 Q What did he say to you about that?

22 A He actually told us the circumstances of that homicide.

23 Q Tell us what he told you.

24 A He told us that him and Dale Morgan were in a vehicle and he
25 went to rob the person and the gun accidentally went off and

1 he shot the victim in the head.

2 Q You are aware that he pled to that murder, right?

3 A Yes.

4 Q Got sentenced for it and is back in prison?

5 A Correct.

6 Q Did you also hear him say or -- or infer or insinuate that

7 somehow you or Detective Merritt or me or maybe all three of

8 us have conferred with -- with Dale Morgan?

9 A Yes, that's what I heard.

10 Q Did you interview Dale Morgan?

11 A Yes.

12 Q What date was it?

13 A That was on December 11th, 2014.

14 Q Was that before or after you interviewed Mr. Butler?

15 A That was before.

16 Q Any idea how long you spent interviewing him?

17 A Maybe a half hour, 40 minutes.

18 Q That was recorded, correct?

19 A Yes, it was.

20 Q Is that the only interview you've done of him?

21 A Yes.

22 Q Did you conspire with him to pin this on Cortez Butler and

23 Clifford and Rodney McKee?

24 A No.

25 Q That whole Dale Morgan driving his car here with his phone

1 on August 10th, is that the first time you've heard of that?

2 A Today's the first time I've heard that.

3 Q Was there yet another murder that Cortez Butler confessed to
4 you during that December 16th interview?

5 A Yes.

6 Q What was that one?

7 A I believe Detective Merritt asked him what he had meant the
8 previous day about bringing down families, and at that point
9 he told us that when he got out of prison he was basically
10 -- I think he called himself a hired gun, drug dealers would
11 hire him to go into other drug houses and rob them of their
12 drugs and money.

13 Q Did he give you specifics about some murder that he was
14 talking about?

15 A He brought up and incidents where he was hired to do that,
16 and I believe he was un --

17 MR. ENGLE: Your Honor, can we approach for a
18 second?

19 THE COURT: Come on up.

20 (Bench Conference held from 1:55:27 p.m. to
21 1:56:39 p.m.)

22 BY MS. REZMIERSKI:

23 Q I'm sorry, Detective, you were saying that he said when he
24 got out of prison he -- he was what, basically hired by drug
25 dealers to do what?

1 A To Rob other drug houses.

2 Q He was some sort of a drug dealer hitman enforcer?

3 MR. ENGLE: Well, your Honor, I guess the
4 term "hitman" doesn't even go along with what was said.

5 MS. REZMIERSKI: I believe he's already said
6 hitman in previous testimony.

7 MR. ENGLE: But she's -- she's saying --
8 she's saying he made a statement that, number one, I've
9 never seen anywhere, and number two, that he was enforcing
10 monies that were owed. Doesn't say anything about being a
11 hitman. Nothing. That's an addition that just seems out of
12 the blue.

13 THE COURT: That's a characterization.

14 MR. ENGLE: I ask that it be stricken.

15 THE COURT: It'll be stricken unless you can
16 point to a specific point. It sounds to be more of your
17 characterization of the description that was given to you.

18 MS. REZMIERSKI: That's absolutely fine, your
19 Honor. I didn't mean to -- to extrapolate.

20 BY MS. REZMIERSKI:

21 Q Tell me again so that I understand what he said to you. I
22 apologize.

23 A That he was contacted when he got out of prison and was
24 basically a hired gun and was hired by drug dealers to Rob
25 other drug dealer's houses, their stash houses where there

1 would be lots of money or lots of drugs.

2 Q And did he give you specifics of a murder that he committed
3 along those lines and in that context?

4 MR. ENGLE: Your Honor, again, this is just
5 -- there is no police report, there is no nothing of this.
6 There is no forewarning of this. And the statute says
7 specifically you've got to start to forewarn people of these
8 things. You can't come out with something brand-new in the
9 tail end of the trial.

10 MS. REZMIERSKI: Judge, we have --

11 MR. ENGLE: That my client didn't even deny
12 on direct.

13 THE COURT: Hold on. Stop.

14 MS. REZMIERSKI: A, he --

15 THE COURT: Before you go any farther, take
16 the jury out, we'll have this discussion outside the
17 presence of the jury.

18 THE CLERK: All rise for the jury.

19 (At 1:58:54 p.m., jury excused)

20 THE COURT: Please be seated.

21 Okay. Go ahead, Mr. Engle.

22 MR. ENGLE: Your Honor, on several notations,
23 number one, if this is even going to be used as 404(b)
24 evidence there has to be some forewarning of it. I at least
25 have to -- I mean, at a minimum I got to see it in a police

1 report or I got to be forewarned if there's some -- I have
2 never seen this in a police report. There are, without a
3 doubt, as the court can see from what's in front of it,
4 thousands and thousands and thousands of pages of reports,
5 but I have never seen this, and I've looked through all of
6 the reports on my client. This part is brand new. Now --

7 THE COURT: That he was involved -- my
8 recollection, because it was not gonna come in until he took
9 the stand, was that there was prior statements that he made
10 on the 16th where they hit a house, three people were
11 killed, was my recollection, and after completing that
12 interview they contacted the Detroit Police Department.

13 Am I incorrect, Detective?

14 THE WITNESS: That's correct, your Honor.

15 MR. ENGLE: That involves, according to what
16 Katie has said in chambers, some huge shootout with 200
17 round, a bunch of other stuff. It does not involve what we
18 appear to be going into here. I've never heard of this.

19 THE COURT: How is it -- that different than
20 what I'm talking about, that they were involved in a --

21 MR. ENGLE: This -- this -- where -- we've
22 already objected. He's -- they've raised the term "hitman"
23 when it didn't apply to what he said. Now, we're getting
24 into something that appears to be entirely different from
25 anything I've heard about so far, and where do we go --

1 THE COURT: You don't recall -- you don't
2 recall any of that? The --

3 MR. ENGLE: No, that is not what he said, and
4 what my client -- (multiple speakers) --

5 THE COURT: No, no, what I'm saying is that
6 he told the detectives that he was involved, there was three
7 people killed and based on that information they then
8 contacted the Detroit Police Department. You don't remember
9 any of that?

10 MR. ENGLE: The bodies that he said existed,
11 if that was the statement, were in Flint, Grand Rapids and
12 Ohio.

13 THE COURT: No, that -- that's -- that's a
14 separate --

15 MS. REZMIERSKI: That's additional.

16 THE COURT: -- that's another one.

17 MS. REZMIERSKI: I mean, Judge, I guess I'm
18 with you, and I can understand and appreciate with that many
19 bodies and that many statements it might be hard to keep up,
20 but we have literally argued and debated and litigated this
21 specific issue pretty much throughout the entire trial in
22 terms of whether or not I was gonna be able to get into it,
23 and if I was, what was going to be the prerequisite and how
24 we were gonna -- we've literally gone on and on and on and
25 on and on, and the court has very carefully considered this.

1 None of this is surprise, none of this is new, none of it.
2 And I apologize if I misspoke or mischaracterized things.

3 In his own statements in his confession he
4 calls himself a hitman, Detective Sullivan testified that he
5 was a hired gun. If I've transposed those, I apologize.
6 me, it's potato potato.

7 MR. ENGLE: That's wrong. Dale Morgan said
8 that --

9 MR. BUTLER: That's who said it.

10 MR. ENGLE: -- at the grand jury testimony
11 and it was kept out. He didn't say it. I don't think he
12 said it anywhere. If they've got a recording, bring it in.
13 Even if they got physical notes, bring it in. Dale Morgan
14 said that at the grand jury. It's got noth -- that was kept
15 out. I don't care what Dale -- if Dale Morgan told it to
16 him it's just strictly hearsay and that's the end of it. My
17 client didn't say that. There's nothing to indicate that he
18 said it and all of a sudden he's a hitman, he's doing crimes
19 for drug dealers when he gets out. That is not in the
20 record as to my client ever saying that. It is in the
21 record as to Dale Morgan inferring that.

22 And, in fact, the court held that out because
23 it was just an inference. It was not my client saying it.
24 And at this point in time I have never heard that my client
25 said this.

1 MS. REZMIERSKI: He testified to it
2 yesterday, Detective Merritt and Sullivan, about him being a
3 hitman.

4 MR. ENGLE: But, not all this -- number one.
5 I objected to that and it went in. This, I have never heard
6 about, and it is just -- again, it's the same problem.

7 THE COURT: You've never heard about the
8 three murders?

9 MR. ENGLE: There were three bodies but they
10 --

11 MR. BUTLER: Where -- (inaudible).

12 MR. ENGLE: -- the bodies weren't in Detroit
13 if that's the three you're singling.

14 MR. BUTLER: Where at?

15 MS. REZMIERSKI: I'm sorry if counsel is
16 confused --

17 THE COURT: No, this -- this was strictly in
18 Detroit. We're not talking about the Ohio, the Flint and
19 all the other places.

20 MR. PERLOS: Yeah, but Judge, I think what he
21 just said was, is he was running some kinda ongoing criminal
22 enterprise of being a hitman and robbing drug dealers.

23 MR. BUTLER: Right. That can't be --
24 (inaudible).

25 MS. REZMIERSKI: Which is a part of

1 explaining his statements --(multiple speakers)--

2 MR. PERLOS: But that has nothing to do with
3 --

4 MS. REZMIERSKI: -- confessing --

5 MR. PERLOS: -- the home invasion and the
6 shootout. She's talking about an ongoing criminal type
7 hitman for hire, gunner.

8 MR. ENGLE: This -- this is --

9 MR. PERLOS: Robbing.

10 MR. ENGLE: It's the continuing problem in
11 this case of stuff I haven't heard about, but -- and not
12 only haven't I heard about it --

13 THE COURT: I'm sorry you don't remember it
14 but I remember --

15 MR. ENGLE: -- it doesn't fit with the Rules
16 of Evidence.

17 THE COURT: -- hearing testimony to that
18 effect, Mr. Engle. If you don't remember it, I don't know
19 where I heard it.

20 MR. ENGLE: I don't know where I saw it. And
21 it's not -- I don't know where you heard it because I've
22 never heard this before.

23 MS. REZMIERSKI: So here's the thing, whether
24 it was testified to before or not, I will most assuredly lay
25 my fingers on that, but I for sure can state as an officer

1 of the court that this is the exact part of his confession
2 that we have been debating and discussing and talking about
3 since this trial began, and whether or not I would be able
4 to get into it and only if he testified and only if he
5 denied, and so on and so forth. So for him to say that he
6 doesn't have notice is absolutely inaccurate.

7 THE COURT: Because that was part of what I
8 was keeping out --

9 MS. REZMIERSKI: Exactly.

10 THE COURT: -- unless he testifies.

11 MR. ENGLE: I don't have notice of these
12 details, period.

13 MR. BUTLER: None of that. We didn't get
14 none of that.

15 MR. ENGLE: This is --

16 THE COURT: I -- I heard it.

17 MR. ENGLE: Fine. I'll just put my client
18 back up. All I can do is say this is bullshit.

19 MS. REZMIERSKI: He doesn't get surrebuttal.
20 He had his chance.

21 MR. BUTLER: Your Honor, can I say --

22 THE COURT: Talk to your attorney, your
23 attorney does the talking for you.

24 MR. BUTLER: Listen, man, he -- listen, this
25 is what he doing -- this is what's going on, he's saying

1 that now it's --(multiple speakers)--

2 THE COURT: Okay.

3 MR. PERLOS: Well --

4 THE COURT: What?

5 MR. PERLOS: The only other thing I'm gonna
6 say is if it's gonna keep on going I'm gonna renew my motion
7 about having a mistrial --(multiple speakers-with Mr.
8 Butler)-- now he's a hitman for hire --

9 MR. BUTLER: Dale Morgan --

10 THE COURT: Your -- they opened the door.

11 MR. PERLOS: Not for that though.

12 THE COURT: Yeah. When they start denying
13 all that stuff then they get to rebut it.

14 That was at the interview on the 16th?

15 THE WITNESS: Yes, and I believe Detective
16 Merritt testified to it --(inaudible)-- grand jury that he
17 followed up based on what he told us.

18 MR. ENGLE: I would note, your Honor, just
19 for the record, none of this is in even the grand jury
20 testimony, which is the prosecutor's ability to expand
21 beyond the end of everything.

22 MR. BUTLER: (Undecipherable).

23 THE COURT: Okay, before we get any farther
24 --

25 MR. BUTLER: (Multiple speakers).

1 THE COURT: -- we're gonna take a break, you
2 find where that's at --

3 MR. BUTLER: I got it right here.

4 THE COURT: -- or get Detective Merritt up
5 here and talk to him again. Let me know when you find it
6 because I know that I took testimony on that subject and I
7 said that it was not coming in unless he took the stand and
8 denied, and if there was denials, or they were called liars,
9 then that information could come in.

10 MS. REZMIERSKI: Thank you, Judge.

11 MR. BUTLER: That was yesterday.

12 THE COURT: We'll taking a break until
13 everybody can get --(inaudible).

14 THE CLERK: All rise.

15 (At 2:08:20 p.m., hearing recessed)

16 (At 2:23:14 p.m., hearing resumed)

17 THE COURT: Ms. Rezmierski, back on the
18 record.

19 Ms. Rezmierski, did you find the part that we
20 were talking about?

21 MS. REZMIERSKI: I did, your Honor. I
22 haven't had a chance to go through the entire transcript
23 because my guess is gonna be that it's referenced more than
24 the times I have found, but I have found at least on Friday,
25 February 26th before this Honorable Court on page 29 and 30

1 of that transcript Detective Merritt talks about this
2 particular triple homicide in Detroit that I was questioning
3 Detective Sullivan about, and then, I believe, it's
4 referenced again and also it is referenced loosely in the
5 grand jury through Dale Morgan's testimony in terms of when
6 Cortez got out of prison being a hired hitman for Detroit
7 families.

8 THE COURT: But, as far as the testimony goes
9 about the three that came from the 16th interview, December
10 16th interview --

11 MS. REZMIERSKI: Yes, it did.

12 MR. ENGLE: It --

13 THE COURT: And we heard testimony before
14 about it.

15 MS. REZMIERSKI: We have.

16 THE COURT: Yep.

17 MR. ENGLE: Your Honor --

18 THE COURT: And that was one of the things
19 that was gonna stay out.

20 MS. REZMIERSKI: Yes.

21 MR. ENGLE: The only testimony on the 29th
22 is, "I definitely wasn't going to say, for instance, Mr.
23 Butler admitted to his involvement in a triple homicide in
24 Detroit." That is it. And in -- I went through the
25 entirety of the grand jury testimony by Detective Sullivan,

1 he never mentions any of these other crimes in the grand
2 jury testimony. The only thing mentioned is in one place
3 where they mention a triple homicide in Detroit and they
4 mention no details. They indi --

5 THE COURT: Now see, I remember them saying
6 that they then thereafter contacted Detroit Police
7 Department --

8 MS. REZMIERSKI: It goes on. It goes on.

9 MR. ENGLE: He says --

10 MR. BUTLER: Listen --

11 MR. ENGLE: Well, and interestingly enough,
12 he does say the next day he goes and talks to a detective
13 from Detroit in Ann Arbor. The other thing I would put my
14 client back on to say is, this is 2014, have you ever been
15 charged with this crime? And the answer is no.

16 MS. REZMIERSKI: Judge, I'll stip he hasn't
17 been charged with that. He doesn't get to take the stand
18 again.

19 MR. BUTLER: Yeah, I do.

20 MS. REZMIERSKI: He had his chance.

21 MR. BUTLER: No.

22 MS. REZMIERSKI: We have litigated -- excuse
23 me, I'm not talking to you and you're not under oath right
24 now.

25 MR. BUTLER: Yeah, it's on the record.

1 MS. REZMIERSKI: We have been litigating this
2 issue and the facts and the specifics of it throughout this
3 entire trial. I can't count how many chambers conversations
4 we've had, how much discussion we've had about what I know
5 him to have said through the detectives, so if the bottom
6 line issue is significant or -- or sufficient notice, he's
7 had notice in spades. That's what he initially objected to.

8 MR. ENGLE: I guess where I'm looking for is
9 there is no notice of supposedly being a hitman for drug
10 dealers, which has nothing to do with this. There's no
11 notice of any of that other stuff. This is the triple
12 homicide in Detroit, it is the one thing there's notice of.

13 THE COURT: What other stuff?

14 MR. ENGLE: He testified that when he got out
15 of prison he was a enforcer for drug dealers. And then
16 added that he was a hitman, or Katie added, I'm not sure
17 which, but there is absolutely nothing that I can find in
18 any of the testimony that deals with that anywhere. I don't
19 see any reports from Detroit, I -- there is -- Dale Morgan
20 testifies in his testimony that my client did jobs for a guy
21 I believe named Turner, and he thought those jobs were
22 homicide, but when asked do you know, he said no, I don't
23 really know for sure. And you struck that and said wait a
24 minute, we're not gonna get into this just general --

25 THE COURT: Right.

1 MR. ENGLE: -- making up things. And it --
2 that's all at page 99 of Mr. Morgan's testimony at the hearing
3 -- at the grand jury. It's -- well, no, at -- yeah, at the
4 grand jury itself. And that was stricken and should have
5 been stricken, and was. There is nothing else in here that
6 notifies us of all these other allegations, and without it
7 how do we prepare for it?

8 THE COURT: All of what other allegations,
9 that he killed three people in Detroit?

10 MR. ENGLE: That he's a hitman for drug
11 dealers.

12 THE COURT: Is that the specific part you're
13 talking about?

14 MR. ENGLE: He testified to that. And it --
15 you know, and added the term hitman. You, I think, struck
16 the term "hitman."

17 MS. REZMIERSKI: I said hitman because --

18 MR. ENGLE: Katie said hit --

19 MS. REZMIERSKI: -- our client said hitman --

20 MR. BUTLER: I ain't said nothing.

21 MS. REZMIERSKI: -- in the interview --

22 THE COURT: Mr. Butler --

23 MS. REZMIERSKI: Thank you.

24 THE COURT: -- if you speak out again I'm
25 gonna have you taken to another room --

1 MR. BUTLER: All right.

2 THE COURT: -- and you can watch everything
3 from remote.

4 MS. REZMIERSKI: He said hired gun, I said
5 hitman because he said hitman and that's what he testified
6 to previously.

7 MR. ENGLE: And you'll notice I said I wasn't
8 sure whether it was you or Mr. Sullivan that said it.

9 MS. REZMIERSKI: Just making clear since
10 we're continuously laying a record.

11 MR. ENGLE: Yeah, I have --

12 MR. PERLOS: I don't want to muddy up the
13 water, but it's -- now we're up to five murders and we're up
14 to him being -- having an ongoing criminal -- six murders,
15 I'm sorry, ongoing --

16 MS. REZMIERSKI: Let's not forget Frannie.

17 MR. PERLOS: -- ongoing criminal type of
18 enterprise of being a hired gun, hitman that I never heard
19 before. So I don't know how any instruction's gonna correct
20 this.

21 THE COURT: Okay.

22 MR. ENGLE: Your Honor, if I recall my client
23 it's the only thing I can do to say no, I didn't confess to
24 that. And --

25 MS. REZMIERSKI: He already said that, I

1 asked him that. That's what opened the door for me to be

2 MR. ENGLE: I gave --

3 THE COURT: No, let Mr. Engle finish.

4 Go ahead, Mr. Engle.

5 MR. ENGLE: He almost has to get up and
6 explain the fact that that statement was made based more on
7 what he'd seen on TV, he wasn't present when that homicide
8 occurred.

9 THE COURT: Well, he testified and then
10 they're allowed to do rebuttal. He doesn't get to go back
11 and then rebut their rebuttal.

12 MS. REZMIERSKI: Thank you.

13 MR. ENGLE: And also, the other things that,
14 frankly, were that we were notified of. Either they have to
15 be stricken or --

16 THE COURT: What specifically were you not
17 notified of --

18 MR. ENGLE: The hitman --

19 THE COURT: -- other than hit --

20 MR. ENGLE: -- the drug deals and being an
21 enforcer for drug dealers. I have no notification of that.
22 And it's now the eleventh hour, so to speak.

23 THE COURT: All right.

24 MR. ENGLE: I think maybe the appropriate
25 thing is just to cut this off, say this is -- I don't know

1 how else to do it other than just say this is the end of it
2 or grant a mistrial, one of the two.

3 THE COURT: Well, Mr. Engle, you opened the
4 door when your client took the stand and made the
5 statements.

6 Do not characterize him as a hitman unless
7 you can point to someplace where he stated it.

8 MS. REZMIERSKI: I will not use the phrase
9 again in questioning. He confessed --

10 THE COURT: And I can't --

11 MS. REZMIERSKI: -- and it was --

12 THE COURT: -- and I corrected her on the
13 record too in front of the jury, I said that was mis -- as I
14 under -- I said Ms. Rezmierski's characterization.

15 MS. REZMIERSKI: Yes, you did say that.

16 THE COURT: Mr. Perlos?

17 MR. PERLOS: I don't know, Judge, I'm asking
18 again for a mistrial. I don't know how we are ever gonna
19 correct --

20 THE COURT: Is there something new that
21 you've got to add that you haven't said five times already?

22 MR. PERLOS: I'll sit down, it's on the
23 record now.

24 THE COURT: I know it's on the record, but
25 you just keep saying the same thing. If you've got

1 something to add I am more than happy to hear it.

2 MR. ENGLE: All, I'm saying, your Honor, is
3 that it appears to be a good time to say that's enough,
4 because I'm not sure that anything else that goes in is
5 gonna be anything other than the same objection, the same
6 problem, and if it is, then it's time to call it quits right
7 now.

8 THE COURT: Why? They've still got the right
9 to rebut.

10 MS. REZMIERSKI: It wasn't gonna be much
11 more, just trying to finish up the details of what he
12 confessed to.

13 THE COURT: Then stick specifically to the
14 facts --

15 MS. REZMIERSKI: Absolutely.

16 THE COURT: -- and what they said, not
17 characterizations.

18 MS. REZMIERSKI: My apologies. Did not mean
19 to.

20 THE COURT: Bring in the jury.

21 MR. ENGLE: Is your witness willing to
22 testify that he wasn't ever charged with this?

23 MS. REZMIERSKI: Sure, we feel comfortable
24 saying that. I'm good with that.

25 MR. BUTLER: No, we not good with that.

1 THE COURT: Bring them in.

2 MR. ENGLE: You know, I think my client still
3 has to get back on the stand, your Honor. I don't know how
4 we avoid it.

5 THE CLERK: All rise for the jury.

6 (At 2:34:47 p.m., jury returned)

7 THE COURT: Merritt (ph)? Oh, don't sit down
8 again before they -- go ahead -- please be seated.

9 Whenever you're ready.

10 MS. REZMIERSKI: Thank you.

11 BY MS. REZMIERSKI:

12 Q Detective, I believe I was asking you for the specifics of
13 the triple homicide that Mr. Butler confessed to on December
14 16th.

15 A Yes.

16 Q Tell us what he said.

17 A Mr. Butler told Detective Merritt and I that he was hired
18 with three other individuals that he didn't know to go rob a
19 drug house. When they went to do the robbery things went
20 bad and a large shootout entailed and three people were
21 killed.

22 Q To the best of your knowledge, Detective, has Cortez Butler
23 ever been charged with that?

24 A No, he has not.

25 Q Detective, thank you very much.

1 MS. REZMIERSKI: Nothing further, Judge.

2 THE COURT: Cross?

3 CROSS-EXAMINATION

4 BY MR. ENGLE:

5 Q Detective, did you convey that information to the Detroit
6 Police Department?

7 A I personally did not.

8 Q Was it conveyed to them?

9 A Yes, it was.

10 Q The next day?

11 A Yes.

12 Q Or shortly thereafter?

13 A Shortly after. I believe it was the next day.

14 Q There is no witness here today who was actually part of that
15 investigation as far as this homicide in Detroit goes, would
16 that be correct?

17 A Correct.

18 MR. ENGLE: I have no further questions.

19 THE COURT: Anything further from anyone?

20 MS. REZMIERSKI: No.

21 THE COURT: You can step down.

22 THE WITNESS: Thanks, Judge.

23 (At 2:37:34 p.m., witness excused)

24 MS. REZMIERSKI: No further rebuttal. Thank
25 you.

1 THE COURT: How long are closings going to
2 take?

3 MS. REZMIERSKI: Not too terrible long.

4 THE COURT: Think we can do them in two and a
5 half hours?

6 MS. REZMIERSKI: I'm willing to try.

7 MR. ENGLE: I -- your Honor, I would offer my
8 client but I believe the court's already ruled, he cannot
9 get back on the stand.

10 THE COURT: We got the testimony. If
11 something comes up you get a chance to rebut, there's
12 nothing that provides for him going back on the stand again.

13 MS. REZMIERSKI: I'm sure willing to try.
14 I'm only one person though.

15 THE COURT: Gentlemen, how long do you think
16 your closings are gonna be?

17 MR. BRANDT: You -- you want to finish by
18 5:00?

19 THE COURT: Preferably. I mean, the jury's
20 been pretty patient, they've been here multiple days. I'm
21 sure they'd like to be out of here by 5:00. I'll stay til
22 10:00 or 11:00, I don't care, I've done it before.
23 Seriously. We were here til like 11:00 --

24 I thought you were gonna kill me that night.
25 The -- but -- or you want to just have time

1 to prepare given some of the -- do you want time to do
2 additional preparation and just do them all tomorrow? First
3 thing?

4 MR. BRANDT: What do you have in the morning?

5 THE COURT: Well, it's Wednesday, we have a
6 wide -- no, it's wide open. I'll do some arraign -- we
7 could start at 9:00 o'clock and just go til we're done.

8 MR. BRANDT: And we'll do jury instructions
9 -- we can do those this afternoon before we leave?

10 THE COURT: We'll do -- work on the jury
11 instructions if I dismiss the jury today.

12 MR. BRANDT: Yeah, that'll work.

13 THE COURT: Because that often takes quite a
14 while, so what happens, a lot of times is you hear the
15 closing arguments and then you go back and sit for an hour
16 or so while we finish up on working through jury
17 instructions, where, if I let you go tonight I'll have the
18 attorneys stay, we'll work on jury instructions so that
19 they're ready to go after the closings tomorrow. Why don't
20 we do that? We'll do closings tomorrow at 9:00 o'clock and
21 at that point -- the attorneys will stay today and we'll
22 work on jury instructions.

23 So, again, there is -- 9:00 o'clock -- there
24 is gonna be stuff in the news, on different TV stations, on
25 MLive, do not look at it, do not read it, turn it off. If

1 you want to have somebody record it for later.

2 And wait until -- you know, keep your mind
3 open until you hear the final arguments and we'll see
4 everybody tomorrow at 9:00 o'clock.

5 THE CLERK: All rise for the jury.

6 (At 2:40:43 p.m., jury excused)

7 THE COURT: Put together your packets and
8 I'll see counsel in chambers when you're ready to start
9 going through them. If you've got them partially worked
10 out, great; if not...

11 MR. BRANDT: Here we go.

12 (At 2:41:15 p.m., hearing concluded)

CERTIFICATION

This is to certify that the attached electronically recorded proceeding, consisting of one hundred and fifteen (115) pages, before the 4th Judicial Circuit Court, Jackson County, Michigan:

PEOPLE OF THE STATE OF MICHIGAN

v

CORTEZ ANTONIO BUTLER,
CLIFFORD DURELL MCKEE and
RODNEY JAMAR MCKEE

_____/

Location: Circuit Court

Date: Tuesday, April 5, 2016

was held as herein appeared and that this is testimony from the original transcript of the electronic recording thereof, to the best of my ability.

I further state that I assume no responsibility for any events that occurred during the above proceedings or any inaudible responses by any party or parties that are not discernible on the electronic recording of the proceedings.

s\ **Sally Fritz**
Sally Fritz, CER #7594
Certified Electronic Recorder

Dated: November 10, 2016

Theresa's Transcription Service, P.O. Box 21067
Lansing, Michigan 48909-1067 - 517-882-0060

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF JACKSON

PEOPLE OF THE STATE OF MICHIGAN,

HON. THOMAS D. WILSON

Plaintiff,

File No. 15-2788-FC
15-2787-FC
15-2789-FC
14-4196-FC

v

RODNEY McKEE,
CLIFFORD McKEE and
CORTEZ BUTLER,

MOTION TO SEVER

Defendants.

PROSECUTING ATTORNEY'S OFFICE

By: Kati Rezmierski (P51926)
Chief Assistant Prosecuting Attorney
312 South Jackson Street
Jackson, MI 49201
517-788-4283

BRANDT & DEHNCKE, PLLC

By: Alfred P. Brandt (P38586)
Attorney for Clifford McKee
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JACOBS & ENGLE, P.C.

By: Jerry Engle (P13194)
Attorney for Cortez Butler
1104 West Michigan Avenue
Jackson, MI 49202
517-782-9459

CHARLES A. PERLOS (P37963)

Attorney for Rodney McKee
154 West Michigan Avenue
Jackson, MI 49201
517-787-4744

NOW COMES the Defendant, Clifford McKee, by and through his attorneys, the Law Offices of Brandt & Dehncke, PLLC, who hereby moves this court to grant this Motion to Sever, stating unto this Honorable Court as follows:

1. Defendant is charged with Conspiracy to Commit Homicide - Murder First Degree - Premeditated (MCL 750.316), Homicide - Solicitation of Murder (MCL 750.157b(2)), Homicide - Open Murder - Statutory Short Form (MCL 750.316),

Home Invasion - 1st Degree (MCL 750.110a(2)), and as a Habitual Offender, Fourth Offense Notice - Mandatory 25 Year Sentence (MCL 769.12).

2. These charges arise out of the death of Frances Craig who was murdered on or about August 10, 2014. Further, these charges stem from a one man Grand Jury before Circuit Court Judge John G. McBain. The charges against Defendant Clifford McKee were made at the conclusion of the Grand Jury on October 6, 2015.
3. The basis of the charges against Defendant Clifford McKee, in part, are as a result of statements made by Defendant Cortez Butler to law enforcement wherein he admitted to killing the victim, Frances Craig.
4. On information and belief, the Jackson County Prosecuting Attorney's Office is going to seek to admit those statements against Defendant Clifford McKee.
5. MCR 6.121 governs the joinder and severance of Defendants for Trial on related charges.
6. The decision to try to co-defendants together or separately is ultimately in the discretion of this Court. See MCL 768.5.
7. Co-defendants have the right to sever their Trial if they if they can demonstrate to the Court that the severance is necessary "to avoid prejudice to substantial rights of the defendant." MCR 6.121(C). See *People v Hana*, 447 Mich 325 (1994).
8. Severance of Trials is required if the Trial Court finds that "a serious risk that a joint trial would compromise a specific trial right of one of the defendants" or would "prevent the jury from making a reliable judgment about guilt or innocence." See *Zafiro v United States*, 506 US (1993).

9. The burden is on the Defendant to show that joinder will prejudice substantial rights.
10. Severance is virtually necessary when the Prosecuting Attorney attempts to use a co-defendant's confession implicating a Defendant at a joint Trial. This practice of joint Trials and using co-defendant's confessions will, in fact, constitute prejudicial error even if the Court gives clear, concise and understandable instructions to the jury regarding the use of testimony against a non-confessing Defendant. See *Bruton v United States*, 391 US 123 (1968).
11. The primary concern of the Court is avoid a situation where each Defendant is placed in a position where they must seek to convict the other, in defending turn against the other's antagonistic defense, while also defending against the prosecution's case. See *People v Hana*, 447 Mich 325, at 349 quoting *State v Kinkade*, 140 Ariz 91, 93; 680 P2d 801 (1984). See also *Hana* at 347, footnote 8, quoting *United States v Tootick*, 952 F2d 1078, 1082 (CA 9, 1991).
12. Under *Hana* tension between Defendants must be so great that the jury would pit one Defendant against another Defendant. It is the antagonistic situation we have here.
13. In this case, Defendant Cortez Butler has stated to the police that he killed the victim because he was paid to do so by co-defendants Rodney McKee and Clifford McKee. Both Defendants Rodney McKee and Clifford McKee pled not guilty to the charge and deny the statements made by Defendant Butler as being untrue.

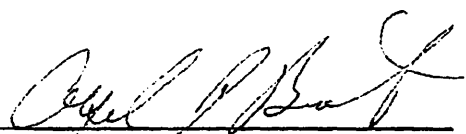
14. In essence, a jury would have to decide whether Defendant Butler is lying about who paid him or whether Defendant Rodney McKee or Defendant Clifford McKee is lying about the fact that they never paid Defendant Butler. This is exactly the situation that *Hana* indicated should not occur.

WHEREFORE, the Defendant respectfully requests this Honorable Court grant his Motion to Sever and set these matters for separate Trials.

Respectfully Submitted,

Date: February 4, 2016

BRANDT & DEHNCKE, PLLC


By: Alfred P. Brandt
Attorney for Defendant Clifford McKee

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF JACKSON

PEOPLE OF THE STATE OF MICHIGAN,

HON. THOMAS D. WILSON

Plaintiff,

File No. 15-2788-FC
15-2787-FC
15-2789-FC
14-4196-FC

v

RODNEY McKEE,
CLIFFORD McKEE and
CORTEZ BUTLER,

PROOF OF SERVICE

Defendants.

PROSECUTING ATTORNEY'S OFFICE

By: Kati Rezmierski (P51926)
Chief Assistant Prosecuting Attorney
312 South Jackson Street
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517-788-4283

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Attorney for Cortez Butler
1104 West Michigan Avenue
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CHARLES A. PERLOS (P37963)

Attorney for Rodney McKee
154 West Michigan Avenue
Jackson, MI 49201
517-787-4744

Beth A. DeRossett deposes and states that on February 5, 2016, she served the following document:

Motion to Sever

upon the Prosecuting Attorney's office via email and upon Jerry Engle via facsimile transmission to 517-782-0094, a copy of same upon Charles A. Perlos, via facsimile transmission to 517-787-4770.

I DECLARE THAT THE STATEMENTS ABOVE ARE TRUE TO THE
BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.



Beth A. DeRossett
Legal Assistant

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF JACKSON

PEOPLE OF THE STATE OF MICHIGAN,

HON. THOMAS D. WILSON

Plaintiff,

File No. 15-2788-FC
15-2787-FC
15-2789-FC

v

**RODNEY McKEE,
CLIFFORD McKEE and
CORTEZ BUTLER,**

**ANSWER TO MOTION TO ADMIT
EVIDENCE**

Defendants.

PROSECUTING ATTORNEY'S OFFICE

By: Kati Rezmierski (P51926)
Chief Assistant Prosecuting Attorney
312 South Jackson Street
Jackson, MI 49201
517-788-4283

BRANDT & DEHNCKE, PLLC

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517-782-9459

CHARLES A. PERLOS (P37963)

Attorney for Rodney McKee
154 West Michigan Avenue
Jackson, MI 49201
517-787-4744

NOW COMES the Defendant, Clifford McKee, by and through his attorneys, the Law Offices of Brandt & Dehncke, PLLC, and, in answer to the Prosecuting Attorney's Motion to Admit Evidence, states unto this Honorable Court as follows:

1. Defendant Clifford McKee admits the allegation contained in paragraph 1.
2. Defendant Clifford McKee admits the allegation contained in paragraph 2.

3. Defendant Clifford McKee admits the allegation contained in paragraph 3.
4. Defendant Clifford McKee admits the allegation contained in paragraph 4.
5. Defendant Clifford McKee admits that, initially, the police investigated Eric Wolfe as the suspect in Frances Craig's death.
6. Defendant Clifford McKee admits that on September 19, 2014, the Michigan State Police Crime Lab indicated that there was DNA present on the zip ties that were found on the victim's wrists. Further, that there were at least two DNA donors; however, the primary suspect, Eric Wolfe, was excluded as having any DNA on the zip ties.
7. Defendant Clifford McKee admits that on November 17, 2014, the Michigan State Police Crime Lab produced a report regarding the DNA on the zip ties. That report indicated that there had been a search of CODIS and that CODIS indicated there was "an association" between that DNA and a Cortez A. Butler, date of birth October 7, 1972.
8. Immediately, all of the investigators in this case began to review the background of one Cortez Butler. Further, the Michigan State Police investigators looked through Cortez Butler's cell phone records. Upon reviewing those records, Michigan Specialist Paul Gonyeau found that Cortez Butler called one Clifford McKee on numerous occasions. Further, that the Michigan State Police, through a software program, were able to confirm that Cortez Butler and Clifford McKee left Detroit at the same or similar times and arrived in Jackson at the same or similar times and returned to Detroit at the same or similar times. At this point,

investigators began looking at Cortez Butler as having been the perpetrator of the crime and his relationship with Clifford McKee.

9. Defendant Clifford McKee admits that the Michigan State Police looked through Cortez Butler's cell phone records and were able to confirm that he came to Jackson from Detroit on at least on one, if not two occasions, at virtually the same time as Cortez Butler.
10. Defendant Clifford McKee admits the allegation contained in paragraph 10.
11. Defendant Clifford McKee admits the allegation contained in paragraph 11.
12. Defendant Clifford McKee admits that investigators were unable to make any connection between Cortez Butler, Eric Wolfe or Frances Craig. In fact, the only connection that they have come up with is between Cortez Butler and Clifford McKee.
13. Defendant Clifford McKee admits that the Michigan State Police have looked through Cortez Butler's cell phone records and indicated that there had been 200 contacts with Clifford McKee.
14. Defendant Clifford McKee neither admits nor denies the allegation contained in paragraph 14 and leaves Plaintiff to her proofs.
15. Defendant Clifford McKee denies the allegation contained in paragraph 15 as being deceitful. In point of fact, on December 11, 2014, while watching Defendant Clifford McKee's phone, investigators in Jackson County became aware that the phone was in fact in Jackson County. Further, Detective Jakkola and Detective Sergeant Huttenlocker of the Jackson County Sheriff's Department approached Clifford McKee at the Westwood Mall located in Jackson where they

handcuffed and detained him without an arrest warrant or search warrant. While handcuffed, he was taken to another location where he was interrogated by another detective. At that point, no attempt was made to get an arrest warrant or search warrant for Defendant Clifford McKee or his cell phone. In point of fact, three cell phones were taken from Defendant Clifford McKee without the benefit of an arrest warrant or search warrant. Those items were turned over to the Michigan State Police and a search warrant was actually typed the next day on December 12, 2014, to look through Defendant Clifford McKee's cell phone. Defendant Clifford McKee has filed, by way of separate Motion, a request for this Court to suppress any evidence that was found as a result of the illegal detention of Defendant Clifford McKee on December 11, 2014, as it was done without an arrest warrant or search warrant for those items.

16. Defendant Clifford McKee admits that within a couple of days in early December of 2014, investigators with the Michigan State Police had full knowledge of Clifford McKee's cell phone records and how they correlated to Cortez Butler's cell phone records.
17. Defendant Clifford McKee neither admits nor denies the allegation contained in paragraph 17 and leaves Plaintiff to her proofs.
18. Defendant Clifford McKee admits that he is in receipt of a report that indicated that Detective Sullivan and Detective Boulter interviewed Defendant Cortez Butler on or about December 11, 2014, in Detroit as it related to the death of Frances Craig.

19. Defendant Clifford McKee admits the allegation contained in paragraph 19, that is that Defendant Butler denied any involvement in the death.
20. Defendant Clifford McKee neither admits nor denies that the statement made by Defendant Butler was "spontaneous" and leaves Plaintiff to her proofs.
Defendant Clifford McKee admits that the report filed by the detective indicates the statement was spontaneous; however, there was no admission by Defendant Butler.
21. Defendant Clifford McKee admits that he is in receipt of a report that indicates that Defendant Butler was approached on December 16, 2014, by Detective Sullivan and Detective Merritt who were investigating the death of Frances Craig.
22. Defendant Clifford McKee denies the allegation contained in paragraph 22 as being misleading. By December 16, 2014, investigators both locally and with the Michigan State Police were well aware that Defendant Butler's DNA was on the zip ties on Frances Craig's wrists. They were also well aware that in the particular time period during which the homicide occurred, Defendant Cortez Butler had communicated over 200 times with Defendant Clifford McKee.
Further, at no point did the investigators have any information, whatsoever, that Mr. Wolfe was connected to Defendant Butler or Defendant Clifford McKee. **In point of fact, on December 16, 2014, the primary suspects were Cortez Butler and Clifford McKee.**
23. Defendant Clifford McKee denies the allegation contained in paragraph 23, again, as being misleading. While it is true that Mr. Wolfe was their primary suspect initially, by the time of Defendant Butler's interview on December 11,

2014, and law enforcement obtaining phone records from Defendant Butler and Defendant Clifford McKee between December 11, 2014, and December 16, 2014, the primary suspects had been shifted to Cortez Butler and Clifford McKee. **In fact, Eric Wolfe was absolutely innocent of the charges.** This is a father who simply wanted to see his daughter. Defendant Clifford McKee agrees that, in all likelihood, there was an agreement with DHHS relative to the placement of Mr. Wolfe's daughter, Alexis. However, no charges have ever been made against Mr. Wolfe.

24. Defendant Clifford McKee neither admits nor denies that Mr. Wolfe, a father who is innocent of any wrongdoing, demanded that he see his daughter because he had committed no crime. Defendant Clifford McKee neither admits nor denies there was a process of supervised visits with a therapist and leaves Plaintiff to her proofs. However, the Court should be aware that, at this point, on December 16, 2014, there was absolutely no evidence that Mr. Wolfe was involved in this homicide and, in fact, all of the efforts of the investigators were directed to Defendant Cortez Butler and Defendant Clifford McKee.
25. There is absolutely no evidence in the material given to defense counsel that any of the statements in paragraph 25 are true. Rather, they are self-serving to the Prosecuting Attorney in her attempt to justify using Cortez Butler's statements against co-defendants Rodney McKee and Clifford McKee. Defense counsel for Clifford McKee has absolutely no evidence provided to him that investigators had this concern, rather **every single police report from early December of 2014, through and until December 16, 2014, reflect a concerted effort toward and**

only toward Defendants Cortez Butler and Clifford McKee. In point of fact, the police investigators had Defendant Butler's DNA on the zip ties, they had evidence that Defendant Butler and Defendant Clifford McKee were in constant contact leading up to and around the time of the murder and that the Michigan State Police was well aware that the cell phones Defendant Butler and Defendant Clifford McKee had traveled from Detroit to Jackson at virtually the same time, along the same path on at least two separate occasions leading up to the murder.

26. Defendant Clifford McKee admits that on December 16, 2014, detectives approached Defendant Cortez Butler with a search warrant for a DNA sample to confirm the CODIS hit they had. Not a single police report filed in this matter indicated that they had to have information on December 16, 2014, from Defendant Butler or Alexis Wolfe would be returned to her father. In fact, there were numerous steps that could be taken to prevent Mr. Wolfe from seeing his daughter.
27. Defendant Clifford McKee admits that the police reports say that Defendant Cortez Butler was not read his miranda rights on December 16, 2014, and that, in part, they were not read to him because the detectives indicated that any statements he made would not be used against him which, of course, is not true.
28. Defendant Clifford McKee neither admits nor denies the allegation contained in paragraph 28 as it would appear to be a self-serving statement solely for the purpose of establishing an emergency situation to justify the admission of Defendant Cortez Butler's statement. Again, Mr. Eric Wolfe, the innocent father

to Alexis Wolfe, simply was asking to see his daughter. All of the work of all of the investigators in this matter for five days had focused solely and exclusively on Defendant Cortez Butler and Defendant Clifford McKee.

29. Defendant Clifford McKee neither admits nor denies the allegation contained in paragraph 29 although police reports indicated that he had been in contact with a "Dorito Johnson". Defendant Butler claims and the police report went on to indicate that Mr. Dorito Johnson knew an individual in the area of Jackson who was very large who wanted a person by the name of Ryan Marshall killed as Mr. Marshall was a witness against Dorito Johnson's friend.
30. Defendant Clifford McKee admits that there is within the police report an alleged statement made by Defendant Butler relative to him murdering Frances Craig.
31. Defendant Clifford McKee admits that, subsequent to the grand jury, he was charged with Solicitation of Murder.
32. Defendant Clifford McKee admits that the Prosecuting Attorney is seeking the admission of Defendant Butler's non-miranda statements at Trial to use against him.
33. Defendant Clifford McKee neither admits nor denies the allegation contained in paragraph 33 as it pertains solely to co-defendant Rodney McKee.
34. Defendant Clifford McKee neither admits nor denies the allegation contained in 34 as the allegation pertains to Defendant Cortez Butler.
35. Defendant Clifford McKee admits that the Prosecuting Attorney seeks to admit other acts evidence against Defendant Butler and Defendant Clifford McKee, specifically that they had been previously convicted of Second Degree Murder

and that Defendant Clifford McKee knew Defendant Cortez Butler. Defendant Clifford McKee denies that is admissible.

Admissibility of Cortez Butler's Confession Against Cortez Butler Himself

36. Defendant Clifford McKee neither admits nor denies the allegations contained in paragraph 36 as it deals with the admissibility of Defendant Cortez Butler's statements against himself.
37. Defendant Clifford McKee neither admits nor denies the allegations contained in paragraph 37 as it deals with the admissibility of Defendant Cortez Butler's statements against himself.
38. Defendant Clifford McKee neither admits nor denies the allegations contained in paragraph 38 as it deals with the admissibility of Defendant Cortez Butler's statements against himself.
39. Defendant Clifford McKee neither admits nor denies the allegations contained in paragraph 39 as it deals with the admissibility of Defendant Cortez Butler's statements against himself.
40. Defendant Clifford McKee neither admits nor denies the allegations contained in paragraph 40 as it deals with the admissibility of Defendant Cortez Butler's statements against himself.
41. Defendant Clifford McKee neither admits nor denies the allegations contained in paragraph 41 as it deals with the admissibility of Defendant Cortez Butler's statements against himself.

42. Defendant Clifford McKee neither admits nor denies the allegations contained in paragraph 42 as it deals with the admissibility of Defendant Cortez Butler's statements against himself.
43. Defendant Clifford McKee neither admits nor denies the allegations contained in paragraph 43 as it deals with the admissibility of Defendant Cortez Butler's statements against himself.
44. Defendant Clifford McKee neither admits nor denies the allegations contained in paragraph 44 as it deals with the admissibility of Defendant Cortez Butler's statements against himself.
45. Defendant Clifford McKee neither admits nor denies the allegations contained in paragraph 45 as it deals with the admissibility of Defendant Cortez Butler's statements against himself.
46. Defendant Clifford McKee neither admits nor denies the allegations contained in paragraph 46 as it deals with the admissibility of Defendant Cortez Butler's statements against himself.
47. Defendant Clifford McKee neither admits nor denies the allegations contained in paragraph 47 as it deals with the admissibility of Defendant Cortez Butler's statements against himself.
48. Defendant Clifford McKee neither admits nor denies the allegations contained in paragraph 48 as it deals with the admissibility of Defendant Cortez Butler's statements against himself.

49. Defendant Clifford McKee neither admits nor denies the allegations contained in paragraph 49 as it deals with the admissibility of Defendant Cortez Butler's statements against himself.
50. Defendant Clifford McKee neither admits nor denies the allegations contained in paragraph 50 as it deals with the admissibility of Defendant Cortez Butler's statements against himself.
51. Defendant Clifford McKee neither admits nor denies the allegations contained in paragraph 51 as it deals with the admissibility of Defendant Cortez Butler's statements against himself.
52. Defendant Clifford McKee neither admits nor denies the allegations contained in paragraph 52 as it deals with the admissibility of Defendant Cortez Butler's statements against himself.

Admissibility of Cortez Butler's Confession Against Clifford and Rodney McKee

53. Defendant Clifford McKee denies that the statement made by Defendant Cortez Butler is admissible against him.
54. Defendant Clifford McKee would admit that MRE 804(b)(3) allows for Defendant Butler's statements to be used against him but there is nothing in that Rule of Evidence to indicate that those statements are admissible against Defendant Clifford McKee or Defendant Rodney McKee.
55. Defendant Clifford McKee admits that MRE 804(b)(3) allows for the statement to be admissible against the declarant.
56. Defendant Clifford McKee admits that MRE 804(a) defines, in part, unavailability to include if that person declares privilege.

57. Defendant Clifford McKee admits that Defendant Cortez Butler asserted his Fifth Amendment at the grand jury.
58. Defendant Clifford McKee admits that in *Crawford v Washington*, 541 US 36 (2004) the Confrontation Clause bars admission of testimonial statements of an unavailable witness, unless the Defendant had a prior opportunity to cross-examine. In *People v Fackelman*, 489 Mich 515 at 562 (2011), the Michigan Supreme Court said that inquiry into the Confrontation Clause requires the Court to answer two questions: (1) Does the person in controversy comprise a "witness against" the accused against the confrontation clause? Defendant Clifford McKee would answer this question yes. (2) If so, has the accused been afforded an opportunity to confront the witness under the Confrontation Clause? Testimonial hearsay is not admissible against a criminal Defendant unless (1) the declarant is unavailable to testify at Trial and (2) the Defendant had an opportunity to cross-examine the declarant. See *Crawford v Washington*, 541 US 36 at 68 (2004). Note, the Rules of Evidence do not trump the Confrontation Clause. In *Fackelman*, the Michigan Supreme Court ruled "The Rules of Evidence cannot override the Fifth Amendment and cannot be used to admit evidence that would otherwise implicate the Fifth Amendment." See *People v Fackelman*, 489 Mich 515 at 545 (2011). The issue for this Court is what is the definition of testimonial. It includes, at a minimum, prior testimony at a preliminary hearing before a grand jury or at a former trial and police interrogations. See *Crawford v Washington*, 541 US 36 at 68 (2004). If this Court finds that Defendant Butler's statement is testimonial evidence and the

Defendant is unavailable, the statement is not admissible. "A testimonial statement" is best defined as a statement about a past event or fact that the declarant would reasonably expect to be used later in criminal prosecution when made." See *Confrontation in Crawford*, the Honorable Mark A. Randon, Michigan Bar Journal, 2007, page 26.

59. Defendant Clifford McKee would point out that the statement of and by Defendant Butler is testimonial hearsay, not non-testimonial hearsay pursuant to *Crawford v Washington*.
60. Defendant Clifford McKee would point out that the statement by Defendant Butler was in response to police questioning, police interrogation and is, in fact, testimonial pursuant to *Crawford v Washington*.
61. Defendant Clifford McKee agrees that Defendant Butler's statement is against his penal interest and would reasonably expect it to be used in later criminal prosecution when he made that statement. As such, it is clearly a testimonial statement.
62. Defendant Clifford McKee agrees that Defendant Butler's statement is against his penal interest.
63. Defendant Clifford McKee disagrees that, in fact, this is an issue of a testimonial statement not a non-testimonial statement.
64. Defendant Clifford McKee would point out that the statements made are **not** in response to an ongoing emergency by any definition and are further testimonial in nature. Testimonial statements are typically defined as (1) statements made as a result of police questioning or interrogation, (2) prior testimony, (3) plea

allocation, (4) depositions. Non-testimonial statements are typically defined as (1) casual remarks to an acquaintance, (2) offhand remarks overheard by another, (3) statements in furtherance of a conspiracy, (4) statements unwittingly made to an informant, (5) business records.

65. Defendant Clifford McKee would point out that this is not defined as an ongoing emergency based on case law in the State of Michigan. In *People v Bryant*, 562 US 344 (2011), the Court held that a pre-death statement to the police by a gunshot victim in which she identified the shooter and the location of the shooting was non-testimonial and the admission did not violate the Confrontation Clause because the statement took place as part of an ongoing emergency. In *People v Jordan*, 275 Mich App 659 (2007), a 73 year old rape victim who made statements about her rape and robbery was in fact an ongoing emergency as it related to those statements. The statements themselves were used to resolve the ongoing emergency at the time which was finding the rapist who was at large. An ongoing emergency has been defined by the courts to involve pre-death statements made by gunshot victims as to the shooter's location and a 73 year old rape victim who gave statements as to who her rapist was prior to her death.
66. As was previously stated by Defendant Clifford McKee, there was no ongoing emergency in this case. By December 11, 2014, all police investigations had turned toward Defendant Cortez Butler as the perpetrator of the murder and that he had a relationship with Defendant Clifford McKee. Mr. Eric Wolfe was an innocent father who wished to see his daughter. The Prosecuting Attorney had ample opportunity to file with the Court an abuse and neglect case which would

have prevented Mr. Wolfe from seeing his daughter but that would have been a determination made by a Judge but they never sought that protection.

67. Defendant Clifford McKee agrees that in 2015 the US Supreme Court addressed the issue of ongoing emergencies; however, that case noted the fact that the confrontation clause did not prevent the Prosecuting Attorney from introducing the child's statements made to teachers which identified the Defendant as an abuser. In Criminal Sexual Conduct cases, child statements are never testimonial when made for the sole purpose of identifying their abuser.
68. Defendant Clifford McKee disagrees that *Ohio v Clark* has anything whatsoever to do with the case at bar. That involved a specific statement from a child to her teacher as to who her sexual abuser was. The purpose of the statement was non-testimonial.
69. Defendant Clifford McKee neither admits nor denies the allegation contained in paragraph 69 as at most it is a ruse to get Defendant Butler's statement admitted in Court and is not based in fact.
70. Defendant Clifford McKee admits that Defendant Butler admitted to killing Frances Craig.
71. Defendant Clifford McKee agrees with the statement quoted from *Bryant*; however, it is taken out of context in that the statement from *Bryant* was given by a victim who gave the statement to police to identify the shooter and the location of the shooter.

72. Defendant Clifford McKee denies the statement made by the Prosecuting Attorney in that the investigation had already focused on Defendant Cortez Butler as the murderer, not on any connection between Defendant Butler and Mr. Wolfe.
73. Defendant Clifford McKee denies the statements are admissible as they are initially testimonial and further were not made to address an ongoing emergency.

Admissibility of 404(b) Evidence

74. Defendant Clifford McKee neither admits nor denies the allegation contained in paragraph 74 as it relates to Rodney McKee and leaves Plaintiff to her proofs.
75. Defendant Clifford McKee neither admits nor denies the allegation contained in paragraph 75 as it relates to Rodney McKee and leaves Plaintiff to her proofs.
76. Defendant Clifford McKee denies the allegation contained in paragraph 76.
77. Defendant Clifford McKee admits 404(b) is a rule of inclusion, not exclusion.
78. Defendant Clifford McKee admits that *People v VanderVliet*, 444 Mich 52 (1993) and MRE 404(b) provides that other acts evidence is prohibited if it is offered solely to show the propensity of an individual to establish that he acted in conformity therewith."
79. Defendant Clifford McKee admits that *VanderVliet* held that 404(b) permits the judge to admit other acts if it is relevant on a non-character theory. The analysis under *VanderVliet* is (1) Is the evidence material under MRE 401 and (2) Is it of probative value? Further, under MRE 402 *Crawford* evidence must be relevant, that is, whether the evidence is important enough to be considered in a case to prove or disprove a fact in dispute. Further, under MRE 403, even if it is relevant, it may be excluded if the probative value substantially outweighed by the danger

of unfair prejudice. In determining whether or not the evidence is admissible under MRE 403, the Court must do this on a case by case basis. In determining the admissibility of such evidence, the Court must balance many factors including...how directly it tends to prove the fact in support of which it is offered... See *People v Oliphant*, 399 Mich 472 at 490 (1976), and *People v Blackston*, 481 Mich 451, 462 (2008). The issue of what is, in fact, unfair prejudice has been defined by our Courts in *Bradbury v Ford Motor Company*, 123 Mich App 179 at 185 (1983). In that case the court held (1) the danger that marginally probative evidence will be given undue or preemptive weight by a jury, (2) the idea of unfairness-in that it would be inequitable for the proponent of the evidence to use it. The issue under 404(b) most distinctly allows the administration of acts evidence when one or more of the matters is "material." Material would mean admissible as to motive, intent, the absence of mistake, or accident on the Defendant's part or the Defendant's scheme, plan, or system in doing the act is material to the case. In determining probative value versus prejudicial effect, the Court has a number of factors to consider. (1) Dissimilarity of the other act and the crime charged, (2) the temporal proximity of the other act to the charged crime, (3) the infrequency of the other acts, (4) the presence of intervening acts, (5) the lack of reliable evidence supporting other acts, (6) the lack of need for evidence beyond the Complainant's and the Defendant's testimony. See *People v Watkins*, 492 Mich 450 (2012).

80. Defendant Clifford McKee neither admits nor denies the allegations contained in paragraph 80 and leaves Plaintiff to her proofs.

81. Defendant Clifford McKee neither admits nor denies the allegations contained in paragraph 81 and leave Plaintiff to her proofs.
82. Defendant Clifford McKee neither admits nor denied the allegations contained in paragraph 82 and leaves Plaintiff to her proofs.
83. Defendant Clifford McKee admits that the *VanderVliet* test points out four criteria for admissibility and those are (1) the evidence must be for a purpose other than propensity, (2) the evidence must be relevant under MRE 402 to an issue or fact of consequence at Trial, (3) the Court must consider MRE 403 that the danger of undue prejudice substantially outweighs the probative value of the evidence, (4) that there may be a limiting instruction. Defendant Clifford McKee would note that under MRE 404(b) the Prosecuting Attorney must articulate a proper non-character purpose for the evidence and mere repetition of one of the enumerated purposes is not enough. Even though knowledge and intent were an issue at Trial and therefore material, similar act testimony must truly be probative of something other than propensity. See *People v Crawford*, 458 Mich 376 (1998). In the case at bar, the Prosecutor simply wants to blurt out that Defendant Clifford McKee was previously convicted of murder. The prejudicial effects of that far outweigh the probative value of any issue before the Court. Further, the Prosecuting Attorney has not laid out the non-character purpose for which the evidence is being sought to be admitted.
84. Defendant Clifford McKee neither admits nor denies the allegations contained in paragraph 84 as it involves statements made by Defendant Cortez Butler.

85. Defendant Clifford McKee neither admits nor denies the allegation contained in paragraph 85 as it involves statements made by Defendant Cortez Butler.
86. Defendant Clifford McKee denies that there is any need to explain how Defendant Butler's statement "came about."
87. Defendant Clifford McKee would point out that this paragraph absolutely points out why Defendant Clifford McKee's Motion to Suppress Statements before the grand jury is important. The Prosecuting Attorney is using Defendant Clifford McKee's statements made to the grand jury after having asserted his Fifth Amendment rights against him in this case. Defendant Clifford McKee and his attorney Craig Pappin asserted the statement should have been suppressed by the Court at the grand jury level.

WHEREFORE, Defendant Clifford McKee respectfully this Honorable Court deny the Prosecutor's Motion finding that Defendant Butler's statement to the officers was testimonial in nature and that it was not made in reference to an ongoing emergency as defined by case law. Further, that the Court deny the Prosecutor's Motion to admit Defendant's prior conviction because it is more prejudicial than probative.

Respectfully Submitted,

Date: February 12, 2016

BRANDT & DEHNCKE, PLLC



By: Alfred P. Brandt
Attorney for Defendant Clifford McKee

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF JACKSON

PEOPLE OF THE STATE OF MICHIGAN,

HON. THOMAS D. WILSON

Plaintiff,

File No. 15-2788-FC
15-2787-FC
15-2789-FC
14-4196-FC

v

**RODNEY McKEE,
CLIFFORD McKEE and
CORTEZ BUTLER,**

PROOF OF SERVICE

Defendants.

PROSECUTING ATTORNEY'S OFFICE

By: Kati Rezmierski (P51926)
Chief Assistant Prosecuting Attorney
312 South Jackson Street
Jackson, MI 49201
517-788-4283

BRANDT & DEHNCKE, PLLC

By: Alfred P. Brandt (P38586)
Attorney for Clifford McKee
180 W. Michigan Ave., Suite 509
Jackson, MI 49201
517-787-8041

JACOBS & ENGLE, P.C.

By: Jerry Engle (P13194)
Attorney for Cortez Butler
1104 West Michigan Avenue
Jackson, MI 49202
517-782-9459

CHARLES A. PERLOS (P37963)

Attorney for Rodney McKee
154 West Michigan Avenue
Jackson, MI 49201
517-787-4744

Beth A. DeRossett deposes and states that on February 12, 2016, she served the following document:

Motion to Suppress Evidence

upon the Prosecuting Attorney's office via email and upon Jerry Engle via facsimile transmission to 517-782-0094, a copy of same upon Charles A. Perlos, via facsimile transmission to 517-787-4770.

I DECLARE THAT THE STATEMENTS ABOVE ARE TRUE TO THE
BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.



Beth A. DeRossett
Legal Assistant

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF JACKSON

PEOPLE OF THE STATE OF MICHIGAN,

HON. THOMAS D. WILSON

Plaintiff,

File No. 15-2788-FC
15-2787-FC
15-2789-FC
14-4196-FC

v

RODNEY McKEE,
CLIFFORD McKEE and
CORTEZ BUTLER,

MOTION TO SUPPRESS DEFENDANT
CORTEZ BUTLER'S STATEMENTS

Defendants.

PROSECUTING ATTORNEY'S OFFICE

By: Kati Rezmierski (P51926)
Chief Assistant Prosecuting Attorney
312 South Jackson Street
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BRANDT & DEHNCKE, PLLC

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Attorney for Cortez Butler
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Jackson, MI 49202
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Attorney for Rodney McKee
154 West Michigan Avenue
Jackson, MI 49201
517-787-4744

NOW COMES the Defendant, Clifford McKee, by and through his attorneys, the Law Offices of Brandt & Dehncke, PLLC, who hereby moves to suppress statements made by Defendant Cortez Butler as being admissible against Defendant Clifford McKee, stating unto this Honorable Court as follows:

1. Defendant is charged with Conspiracy to Commit Homicide - Murder First Degree - Premeditated (MCL 750.316), Homicide - Solicitation of Murder (MCL 750.157b(2), Homicide - Open Murder - Statutory Short Form (MCL 750.316), Home Invasion - 1st Degree (MCL 750.110a(2), and as a Habitual Offender, Fourth Offense Notice - Mandatory 25 Year Sentence (MCL 769.12).
2. These charges stemmed from a one man Grand Jury before Circuit Court Judge John G. McBain. The charges against Defendant Clifford McKee were made at the conclusion of the Grand Jury on October 6, 2015.
3. The basis of the charges against Defendant Clifford McKee, in part, are as a result of statements made by Defendant Cortez Butler to law enforcement.
4. The statements made by Defendant Cortez Butler are not admissible as it relates to Defendant Clifford McKee pursuant to a United States Supreme Court holding in *Bruton v US*, 391 US 123 (1968).
5. In *Bruton*, the United States Supreme Court held that the admission into evidence of a non-testifying Defendant's confession, which implicated a co-defendant, deprived that co-defendant of the Sixth Amendment right even though the jury had been instructed to disregard the confession as hearsay evidence in their consideration of the guilt or innocence of the co-defendant. The Court went on to say that the Court cannot accept a limited instruction as an adequate substitute for petitioner's constitutional right of cross-examination.
6. More recently, the United States Supreme Court in *Crawford v Washington*, 541 US 36 (2004), held that the confrontation clause itself bars admission of testimonial statements against a Defendant where the declarant of the statement

is unavailable as a witness at Trial and that the Defendant has no prior opportunity for cross-examination of that witness.

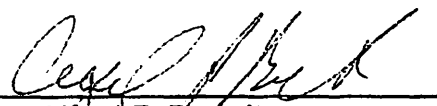
7. The Court went on to talk about examples of statements which would clearly be testimonial and those are:
 - a. Testimony given at a prior proceeding where the Defendant had no opportunity for cross-examination;
 - b. Official statements given to government officials such as affidavits, depositions of confessions; and
 - c. Statements made to police in response to questions.
8. Any admission of a co-defendant's statement implicating the Defendant, made by a co-defendant who subsequently chooses not to testify, constitutes prejudicial error and the violation of the right to constitution. See generally *Bruton v US*, 391 US 123 (1968), *People v Ochko*, 88 Mich App 737 (1979). Further, a limiting instruction is not sufficient to cure a violation of the *Bruton* rule. See *People v Teal*, 20 Mich App 176 (1969).

WHEREFORE, the Defendant respectfully requests this Honorable Court suppress any statements made by co-defendant Cortez Butler in any Trial as a violation of the *Bruton* and *Crawford* rules.

Respectfully Submitted,

Date: February 4, 2016

BRANDT & DEHNCKE, PLLC


 By: Alfred P. Brandt
 Attorney for Defendant Clifford McKee

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF JACKSON

PEOPLE OF THE STATE OF MICHIGAN,

HON. THOMAS D. WILSON

Plaintiff,

File No. 15-2788-FC
15-2787-FC
15-2789-FC
14-4196-FC

v

RODNEY McKEE,
CLIFFORD McKEE and
CORTEZ BUTLER,

PROOF OF SERVICE

Defendants.

PROSECUTING ATTORNEY'S OFFICE

By: Kati Rezmierski (P51926)
Chief Assistant Prosecuting Attorney
312 South Jackson Street
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CHARLES A. PERLOS (P37963)

Attorney for Rodney McKee
154 West Michigan Avenue
Jackson, MI 49201
517-787-4744

Beth A. DeRossett deposes and states that on February 5, 2016, she served the following document:

Motion to Suppress Defendant Cortez Butler's Statements

upon the Prosecuting Attorney's office via email and upon Jerry Engle via facsimile transmission to 517-782-0094, a copy of same upon Charles A. Perlos, via facsimile transmission to 517-787-4770.

I DECLARE THAT THE STATEMENTS ABOVE ARE TRUE TO THE
BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.


Beth A. DeRossett
Legal Assistant

STATE OF MICHIGAN

4TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF JACKSON

PEOPLE OF THE STATE OF MICHIGAN

v

CLIFFORD MCKEE,
RODNEY MCKEE,
CORTEZ BUTLER,

File No. 2015-2787-FC
File No. 2015-2788-FC
File No. 2015-2789-FC

Defendants.

_____ /

WALKER HEARING REGARDING STATEMENTS

BEFORE THE HONORABLE THOMAS D. WILSON, CIRCUIT COURT JUDGE

Jackson, Michigan - Monday, February 29, 2016

APPEARANCES:

For the People:

MARY K. HANNA-REZMIERSKI (P51926)
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(517) 788-4283

For Rodney McKee:

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154 W. Michigan Avenue
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(517) 787-4744

For Clifford McKee:

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740 W. Michigan Avenue, PO Box 128
Jackson, MI 49204
(517) 787-8041

TRANSCRIBED BY:

THERESA'S TRANSCRIPTION SERVICE
Sally Fritz, CER #7594
P.O. Box 21067
Lansing, Michigan 48909-1067

APPEARANCES, Continued:

For Cortez Butler: JERRY M. ENGLE (P13194)
Jacobs & Engle
1104 W. Michigan Avenue
Jackson, MI 49202
(517) 782-9459

TABLE OF CONTENTS

WITNESSES: PEOPLE

PAGE

None

WITNESSES: DEFENDANT

None

OTHER MATERIAL IN TRANSCRIPT:

None

EXHIBITS:

INTRODUCED

ADMITTED

None

1 Jackson, Michigan

2 Monday, February 29, 2016 - 1:42:45 p.m.

3 THE COURT: Let's see here, the facts as I've
4 read from the exhibits that were admitted, as well as the
5 testimony, indicate that on or about August 10th, 2014
6 Frances Craig was found dead on the bedroom floor with
7 approximately 20 stab wounds to her neck and chest. Now,
8 Frances resided in the home with her fiancé, Eric Wolfe,
9 and three minor children. Frances was found in the morning
10 on the floor wrapped in sheets next to her bed in a pool of
11 her own blood. She had been gagged with a scarf and her
12 wrists had been bound with zip ties.

13 It appeared that Eric Wolfe had an alibi
14 having been at work at the time the murder was committed,
15 however, he was still considered the prime suspect as it
16 was believed that he had hired someone to kill Frances
17 Craig. He was acting strangely, in the officer's opinion,
18 after the murder. He fell asleep while waiting for the
19 police to process the home. He stated that when he got
20 home he had seen her lying on the floor, made comments that
21 he originally thought she may have been drunk and fell on
22 the floor, later stated she doesn't drink.

23 He also made comments that she may have
24 committed suicide, that now he could move to somewhere
25 warm.

1 The court also heard testimony from Andrew
2 Sullivan, who was the lead detective as part of the Major
3 Crimes Task Force. Detective Sullivan testified that based
4 on the statements of Eric Wolfe and the circumstances of
5 the crime, that he was the prime suspect in the murder.

6 Then he testified that the crime lab found
7 DNA of a known offender on the zip ties. That later was
8 determined to be Cortez Butler and that Cortez Butler was
9 on parole for a murder in Wayne County. However, after
10 discovering that Cortez Butler's DNA was on the zip ties,
11 they could make no connection between Mr. Butler or anyone
12 or anything located in Jackson County.

13 Thereafter, a search warrant was obtained for
14 Cortez Butler's cell phone which indicated that he was in
15 Jackson on August 6th, August 8th, and more importantly, he
16 was in Jackson in the early morning hours of August 10th,
17 the date Frances Craig was murdered.

18 The Major Crimes Task Force was attempting to
19 find a connection between Cortez Butler, Eric Wolfe and
20 Frances Craig. Now, it was unknown at the time why his DNA
21 was on the zip ties that bound Frances Craig's wrists. A
22 review of Cortez Butler's cell phone records revealed that
23 he had had over 200 contacts with Clifford McKee. When
24 Cortez Butler was taken into custody by the Detroit police
25 detectives, Detective Boulter and Detective Sullivan

1 interviewed Mr. Butler who stated he had never been to
2 Jackson, had no family or close friends in Jackson.

3 It should be noted that Cortez Butler was
4 Mirandized during this interrogation. Mr. Butler further
5 stated he did not know Frances Craig or Eric Wolfe. He was
6 informed they had GPS records showing that his phone was in
7 the Jackson area at the time. Now, after the interview
8 concluded, as they were walking back with Cortez, he
9 stated, "If the federal prosecutor was involved that maybe
10 he could help them."

11 He was again interviewed on December 16th,
12 2014 by Detective Sullivan and Merritt. The court heard
13 testimony from Detective Sullivan and Detective Merritt
14 leading up to the December 16th interview, that Eric Wolfe
15 remained the prime suspect in the murder. Detective
16 Merritt indicated further there were multiple names that
17 they were investigating at the time and they still could
18 not make a connection between Mr. Butler's DNA on the zip
19 ties and Frances Craig.

20 The court further heard testimony from both
21 detectives there was concern with Alexis's (ph) well-being
22 and that she may be returned to Eric Wolfe, as she was the
23 individual who distuf -- discovered Ms. Craig's murdered
24 body. She was also the last person to see her the night
25 before. Alexis apparently had slept on the couch in the

1 living room and it was unknown whether she had seen or
2 heard anything of importance.

3 The police, in doing a background check on
4 Clifford McKee, found that he had done prison time at the
5 same time as Cortez Butler, and on December 16th, Detective
6 Merritt and Detective Sullivan went to the Wayne County
7 Jail to interview Cortez Butler once again.

8 The court heard testimony from both Detective
9 Sullivan and Detective Merritt that there was an extreme
10 concern about sending Alexis back to her father as she was
11 still -- he was still the prime suspect. Likewise, Eric
12 Wolfe had began to demand contact with his daughter and
13 made unsupervised contact with her on a number of
14 occasions.

15 The officers met with Cortez Butler in his
16 cell at the Wayne County Jail. At the time it was not
17 recorded and Mr. Butler apparently questioned whether or
18 not they were recording the conversation. Also, the
19 detective had pulled out a Miranda form and was getting
20 ready to read Mr. Butler his Miranda rights, at which time
21 Mr. Butler indicated, "Bro, I know my rights."

22 After Mr. Butler had indicated he knew his
23 rights and confirmed that they were not recording the
24 conversation the officers, as part of their interrogation,
25 asked if they were on the right track with Eric Wolfe as

1 the suspect. Mr. Butler indicated they were not on the
2 right track and that an individual by the name of Dorito
3 Johnson, which was Mr. Clifford McKee's street name, had
4 contacted him and wanted a hit done in Jackson.

5 Cortez Butler came to Jackson, he wanted to
6 meet with the individual who wanted the hit done. He
7 described him as a large individual being 6'5" to 6'6"
8 weighing approximately 400 pounds. He further stated that
9 this individual drove a white SUV. This individual stated
10 he wanted Mr. Butler killed. The individual he wanted to
11 kill was named Ryan Marshall, who was a witness against him
12 in a case.

13 Both officers testified that the inquiry of
14 Mr. Butler about the details of the -- they inquired about
15 details of the murder, which had not been made public. Mr.
16 Butler indicated he'd gone to the house to find Ryan
17 Marshall. As he was going through the house he located
18 Frances Craig lying on the bed in her bedroom. He told
19 detectives he'd bound her with a scarf over her eyes in an
20 effort to keep her from being able to identify him. Mr.
21 Butler indicated she kept moving her head around trying to
22 get the scarf off her eyes and he believed that she had
23 seen him at some point so he decided to take her out.

24 In describing how he killed Frances Craig
25 Detective Merritt stated the Cortez Butler had made the

1 comment, "I damn near cut the Bitch's head off." He also
2 went on to describe a microwave oven and the time that he
3 saw in the kitchen, which were accurate.

4 Now, the primary question here is not the
5 interviews -- the primary question here is the interview of
6 December 16th. There seems to be no question with regard to
7 the interviews of December 11th or January -- December 11th,
8 2014 or January 6th, 2015. And the issues of the
9 admissibility of Cortez Butler's statements and confession
10 made on December 16th, 2015 -- or '14.

11 Now, defense has argued that it's a bright
12 line test, and because Miranda was not read to defendant
13 Butler on 12/16/14 that his statements must be suppressed,
14 that at some point Butler had said, "I'm not waiving those
15 rights."

16 Further, it appears that Detective Merritt
17 stated to Butler at the time he wasn't -- or at this time
18 -- or, let me get this right, at the time he was not
19 planning on using his statements against him.

20 Now, counsel cites *US v Pantane*, 542 US 630
21 (2004), that the Miranda rule creates a presumption of
22 coercion and custodial interrogations. And also citing *US*
23 *versus Hubbell*, 520 US 27, that statements can only be --
24 cites that case also, also that statements can only be used
25 to impeach, and cites *Michigan versus Tucker*, 417 US 437.

1 Now, the prosecution also cites *Howes v*
2 *Fields*, 132 S Ct 1181 (2012). That an inmate incarcerated
3 for an offense unrelated to the offense which they are
4 being questioned or interviewed on is not necessarily in
5 custody for Miranda purposes.

6 Now, on Detective -- or on December 16th the
7 detectives went to Mr. Butler's cell at the Wayne County
8 Jail. It appears that no one else was in the cell at that
9 time. Mr. Butler was looking at the detective's cell phone
10 and Detective Merritt's bag. He asked if they were
11 recording him. Detective Merritt told him no and offered
12 to allow him to look into his bag, which Mr. Butler
13 declined.

14 Now, it appears that it was somewhere around
15 this time that the Miranda form was brought out, and there
16 appears to have been some discussion about his Miranda
17 rights and that's when Mr. Butler made the comment that I
18 referenced earlier, "Bro, I know my rights," and that he
19 was not signing the waiver.

20 Now, Mr. Butler did, indeed, appear to know
21 his rights. He was on parole for second-degree murder, he
22 was under arrest for murder in Detroit -- a murder in
23 Detroit. When he didn't want to answer questions he didn't
24 answer them, when he was being recorded he wouldn't really
25 -- he refused to say anything, such as on the January 6th,

1 2015 interview, he said he didn't want to talk.

2 While walking back to his cell on that date
3 he said to the detective, "Did you really think I was going
4 to admit on the record," or on 12/17/14 when his attorney
5 was present said he wasn't going to talk, came and talked
6 to the detectives and said Mr. Butler wasn't going to talk
7 to them. Then Mr. Butler indicated he wanted to talk to
8 the detectives but he didn't want to talk to them about the
9 previous conversation, he wanted information on his
10 girlfriend, Pam, and what had been done.

11 It appears to the court that he clearly knew
12 his Miranda rights and understood them, and failure to
13 actually read them should not be a basis to suppress his
14 statements in this matter.

15 Now, the court must also consider whether his
16 statements were voluntary. Detective Merritt told Butler
17 he was not intending on using the statements against him.
18 He further testified at the time that he was not intending
19 to use the statements against Mr. Butler but worded it very
20 specifically because he didn't know what he was going to
21 say.

22 And because of his presence in Jackson, based
23 on the phone records and the DNA on the zip ties, he was a
24 suspect but the officers could not figure out any
25 connection between Butler and Frances Craig. Eric Wolfe

1 was still there prime suspect and they were -- there were
2 concerns about Lexie at that time being of the utmost
3 importance to the detectives.

4 Now, as Eric Wolfe was still the prime
5 suspect, as noted previously, when he got home he had seen
6 her lying on the floor wrapped in the sheets and made a
7 number of what would be considered very odd statements, at
8 best. Everything from, she may have been -- committed
9 suicide, to, she may be drunk, when she didn't drink, the
10 falling asleep, that he can move somewhere warm, the fact
11 that he was seeing other women.

12 Alexis, in her psychological exam, also
13 indicated the night of Frances Craig's funeral he spent the
14 night with another woman, and she was worried her dad may
15 have been involved with Ms. Craig's murder.

16 Lexie was asleep on the couch downstairs and
17 was a potential witness, or may have heard something. And
18 at the time, Eric Wolfe was violating the safety plan for
19 Alexis who, at the time, was probably around 10 to 11 years
20 old, and he was demanding his daughter back.

21 It appears that during the conversation
22 Detective Merritt explained to Mr. Butler that Eric Wolfe
23 was there prime suspect, wanted to know if he knew whether
24 or not they were on the right track. Now, the prosecution
25 in this matter has cited -- cited *People versus Cip* -- *Cip*

1 -- *Cipripriano* (sic), 431 Mich 315 (1988) as the case for
2 determining whether Mr. Butler's statement was voluntary.

3 Prosecution has questioned both Detective
4 Sullivan and Detective Merritt on various factors that are
5 to be considered. Mr. Butler was approximately 42 years
6 old, had no problems understanding them, he's had multiple
7 contacts with the police. His interview was approximately
8 45 minutes long, did not appear to be high or drunk, was
9 not sleep deprived, never threatened or abused, not
10 injured, never said he wanted to stop talking. In fact, it
11 was Detective Merritt who had stopped the interview.

12 As noted previously, it is the opinion of the
13 court that Mr. Butler understood his rights, knew he was
14 not being recorded and voluntarily told the detective's how
15 Clifford McKee had contacted him to kill Ryan Marshall, a
16 witness against Rodney McKee, and therefore, the court does
17 find that Mr. Butler voluntarily made those statements.

18 Now, one of the other issues that has come up
19 and it was argued is as to the admissibility of the
20 statements with regard to Clifford and Rodney McKee. The
21 statements in this particular matter made by Mr. Cortez
22 Butler were against his penile interest under MRE
23 804(b)(3). Third (ph), Mr. Butler's Fifth Amendment
24 privilege will make him unavailable as a witness. Now, at
25 the time of making these statements the court would note

1 that the primary suspect in this matter was Eric Wolfe,
2 that although the officers were going down to investigate,
3 their primary focus was making a connection between Eric
4 Wolfe and Cortez Butler, who they knew to be in Jackson at
5 the time of Ms. -- of Frances's death.

6 Based on the testimony of the detectives the
7 believed that there was a real likelihood that Alexis could
8 be going back to her father and that Lexie was described as
9 shut down during the first two interviews.

10 Now, on November 7th, 2014, which is the date
11 on which DS -- DHS actually received the psychological
12 evaluation, I did not -- it may have been in my notes but I
13 didn't spot it, when the police or the prosecutor's office
14 received the psychological evaluation, but she believed
15 that her father also had something to do with the murder of
16 Frances Craig.

17 Given all of those factors and the fact that
18 she was sleeping on the couch when it occurred, she was
19 also a potential witness in the case. The concern for
20 Alexis's well-being the court finds created an emergency
21 situation and therefore, the confrontation clause does not
22 apply and the statements are non-testimonial and will (ph)
23 be admitted against all three.

24 MS. REZMIERSKI: Thank you.

25 THE COURT: Anything further?

1 MS. REZMIERSKI: On that issue, no. Court's
2 pleasure as to the remainder of the motions?

3 THE COURT: Let's take a short break, let the
4 attorneys talk to their clients and then we'll go forward.

5 MS. REZMIERSKI: Thank you.

6 (At 2:03:53 p.m., hearing concluded)
7

CERTIFICATION

This is to certify that the attached electronically recorded proceeding, consisting of sixteen (16) pages, before the 4th Judicial Circuit Court, Jackson County, Michigan:

PEOPLE OF THE STATE OF MICHIGAN

V

RODNEY MCKEE, CLIFFORD MCKEE and
CORTEZ BUTLER

_____ /

Location: Circuit Court

Date: Monday, February 29, 2016

was held as herein appeared and that this is testimony from the original transcript of the electronic recording thereof, to the best of my ability.

I further state that I assume no responsibility for any events that occurred during the above proceedings or any inaudible responses by any party or parties that are not discernible on the electronic recording of the proceedings.

\s\ Sally Fritz
Sally Fritz, CER #7594
Certified Electronic Recorder

Dated: March 12, 2016

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STATE OF MICHIGAN

4TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF JACKSON

PEOPLE OF THE STATE OF MICHIGAN

v

CLIFFORD MCKEE,
RODNEY MCKEE,
CORTEZ BUTLER,

File No. 2015-2787-FC
File No. 2015-2788-FC
File No. 2015-2789-FC

Defendants.

_____ /

MOTION TO ADMIT EVIDENCE

BEFORE THE HONORABLE THOMAS D. WILSON, CIRCUIT COURT JUDGE

Jackson, Michigan - Wednesday, March 2, 2016

APPEARANCES:

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TABLE OF CONTENTS

WITNESSES: PEOPLE

PAGE

None

WITNESSES: DEFENDANT

None

OTHER MATERIAL IN TRANSCRIPT:

None

EXHIBITS:

INTRODUCED

ADMITTED

None

1 Jackson, Michigan

2 Wednesday, March 2, 2016 - 1:48:08 p.m.

3 THE COURT: Whenever you're ready, counsel.

4 MS. REZMIERSKI: Thank you, Judge. There's
5 still a fair number of motions out there, but if we are
6 starting with my main motion to admit --

7 (Transcriber Note: Judge Turned Microphone
8 Off)

9 MS. REZMIERSKI: -- evidence and continuing
10 through that, then the next set of issues are basically
11 404(b) arguments. They're contained in the same, like I
12 said, basic motion to admit evidence that we've already
13 been working with for the statements. I'm certain the
14 court has read the motion, understands the issues. Just so
15 that I can remind myself of what I'm asking for.

16 Essentially, the -- the other act evidence at
17 issue is the arson in question, and if the court needs any
18 further argument or -- or factual information about that,
19 just let me know, but that is the one that was committed by
20 Rodney McKee on 705 Steward Street here in town where Ryan
21 and Donna Marshall lived. It was on March 4th, 2014.

22 THE COURT: As I understand it, he wanted her
23 cell phone with the contacts, the -- she was -- (inaudible)
24 -- at one point, there was a bomb placed someplace, she had
25 somebody else go to that location. Then she came

1 downstairs the one day, opened the door, she saw Mr. McKee
2 coming up to the house, opens the door, smells gas, runs
3 shuts the door, locks it and runs back in. It was soon
4 after the fire then starts to engulf the basement and sees
5 Mr. McKee walking away from the house. I about got it?

6 MS. REZMIERSKI: Indeed. You do. And thank
7 you for reminding me, your Honor. We had previously
8 provided the court with, I believe, copies of the grand
9 jury transcript for pertinent -- pertinent testimony to all
10 of these motions, copy of the relevant portions of the DPD
11 police reports pertaining to this arson where I believe
12 Ryan and Donna Marshall were both interviewed and
13 questioned about that. Anything else that we provided the
14 court with?

15 MS. MCKINNIE: The JNET police report.

16 MS. REZMIERSKI: Okay. As it pertains to the
17 arson I think it was just of those two documents.

18 Then also we are seeking admission of Rodney
19 McKee's delivery of heroin and subsequent raid on his home
20 by JNET on November 26th, 2014 and his arrest almost
21 immediately -- excuse me, the arrest for the arson was the
22 one that involves the CCW where Mr. McKee -- Rodney McKee
23 had -- had a handgun in the car when they arrest him. So
24 we are seeking evidence of the -- the arson, of the CCW
25 when he's arrested, Ryan Marshall testifies at the grand

1 jury about Rodney McKee threatening him with a weapon at
2 some point in the -- in the city, at some point after the
3 arson when he's out jogging around the city, and I believe
4 those are the basics that we're looking for as it pertains
5 to Rodney McKee.

6 There are a couple other 404(b)'s that have
7 more to do with Cortez Butler and Clifford McKee, but their
8 arguments are a little bit different. The arguments for
9 admissibility as to the arson and the delivery of heroin
10 and -- and the CCW and the brandishing a weapon and
11 threatening Rodney (sic) basically all come down to the
12 argument that there are admissible because they go to show
13 motive, motive and intent. Motive -- evidence of motive
14 is, quite frankly, always admissible. You're talking
15 conspiracy to commit first-degree murder, solicitation of
16 murder, open murder, which includes obviously first-degree
17 murder, so motive is always relevant, intent is always
18 relevant.

19 And Judge, I'm certain you are well
20 acquainted with *People v VanderVliet*. And you don't
21 necessarily need me to run down everything that I've argued
22 and laid out case law wise in the motion. If you do, just
23 let me know.

24 THE COURT: Why the CCW?

25 MS. REZMIERSKI: Good question. Because

1 Donna Marshall testified that -- and -- and speaks in her
2 interviews about Mr. McKee, Rodney McKee threatening her to
3 sell the hair.

4 THE COURT: Has a very large gun, she thought
5 it was --

6 MS. REZMIERSKI: Magnum I think she --

7 THE COURT: -- Magnum.

8 MS. REZMIERSKI: -- saw the word Magnum on
9 it.

10 THE COURT: Magnum.

11 MS. REZMIERSKI: She called it blackish, it's
12 large, he always had it with him, always had it, you know,
13 made her feel afraid. Ryan Marshall testifies about him
14 threatening him with a gun also at some point after the
15 arson. Obviously, the arson itself is -- is a threat if
16 not an actual outright attempt on both of their lives. So
17 being subsequently arrested with the weapon in his car
18 gives credibility to what they are saying about all of
19 these threats involving the gun.

20 Same I guess is the argument for the
21 admissibility of the delivery of heroin.

22 THE COURT: Delivery and manufacture of
23 heroin.

24 MS. REZMIERSKI: Yep.

25 THE COURT: Response?

1 MR. ENGLE: Your Honor, first of all, the
2 delivery of heroin was dismissed. I don't remember the
3 date but it may have been dismissed even before the arson
4 issue.

5 MS. REZMIERSKI: It's not dismissed.

6 MR. ENGLE: Whether it was or wasn't --

7 THE COURT: She just said it wasn't
8 dismissed.

9 MS. REZMIERSKI: It's not.

10 MR. ENGLE: It wasn't?

11 MS. REZMIERSKI: No.

12 MR. ENGLE: None of this has anything to do
13 with the date that the conspiracy begins. The conspiracy
14 -- or the allegation of conspiracy is only based on the
15 fact that Rodney had charges pending and allegedly wanted
16 to get rid of this other witness. That is the extent to
17 which it's relevant.

18 You know, you bring in enough dirt and throw
19 enough dirt and obviously some of it starts sticking all
20 over the place. There is no allegation that either
21 Clifford or Mr. Butler had anything to do with -- or even
22 had any knowledge of the delivery of heroin or the arson.
23 They just have nothing to do with it. And to bring in all
24 of this really creates a separate issue. The only thing
25 that's relevant to the conspiracy is, there was a reason

1 that, you know, you can bring in that this charge was
2 pending, he's on the witness list on the charge. You know
3 --

4 THE COURT: When you say this charge is
5 pending, what do you mean?

6 MR. ENGLE: Well, the charge of arson is
7 pending, and he's a witness in. That's the only thing
8 that's relevant, the charge of -- the charge of heroin is
9 dismissed, and if --

10 MS. REZMIERSKI: It's not.

11 MR. ENGLE: Well, it may not be dismissed at
12 that point, but irregardless of --

13 MS. REZMIERSKI: It's still not dismissed.

14 MR. ENGLE: -- you know, maybe you can bring
15 in there was a pending charge if, indeed, that guy is a
16 witness in that charge. If he's not a witness I don't
17 think it's relevant at all. Also, you have the problem
18 that all of this is before the conspiracy, so as to these
19 two gentlemen on the end, doesn't know anything about. And
20 it's hard to instruct the jury to say you have to totally
21 ignore that evidence as to the other two, except for the
22 fact that it existed, and somehow or other the juries got
23 to know that that is not part of either of their cases.
24 It's only that the charge existed.

25 And, you know, if he's going to threaten

1 prior to this, he's going to threaten this guy, so be it,
2 but it's prior to the conspiracy. Unless it is part of the
3 conspiracy, or just a very bare boned basis for the request
4 by Rodney to allegedly kill this other guy, then I don't
5 know how it would be relevant to the two of them, and I
6 don't know how you keep it separate from the two of them,
7 and that's the biggest part is, how do you keep it from not
8 prejudicing the trial in regard to the other two
9 defendants?

10 THE COURT: Any other argument?

11 MR. PERLOS: Judge, I don't know but from
12 what I understand that CCW case related to a gun that was
13 in the car which was broke down that was in a glove box.
14 What it has to do with -- with any motive in this -- in
15 this case is beyond me. It seems extremely prejudicial.

16 Also, as it relates to the -- (multiple
17 speakers) --

18 THE COURT: Well, I'm gonna stop you for a
19 second. You know, with the gun, why can't you just put
20 Marshall on to say, yeah, I was threatened with a gun?

21 MS. REZMIERSKI: And -- and I intend to and
22 am asking you to allow me to do that as well. It lends
23 obvious credibility to what he's saying if he is
24 subsequently found with a gun in his car by a police
25 officer. Then it's not just Ryan and Donna Marshall

1 talking about a gun.

2 THE COURT: Mr. Perlos, go ahead.

3 MR. PERLOS: What it has to do with the
4 motive in this case is beyond me. It just seems extremely
5 prejudicial. The -- the arson conviction is a pending,
6 ongoing trial, and that in itself has nothing -- in that
7 case, right, I can understand where that goes to the
8 elements of the specific crime in that case that's pending
9 but again -- and that's set forth in my response to the
10 prosecutor's motion, that it is, again, extremely
11 prejudicial.

12 THE COURT: Anything, Mr. Brandt?

13 MR. BRANDT: Your Honor, I agree with that,
14 so.

15 THE COURT: Yeah.

16 MS. REZMIERSKI: Your Honor, if I may just
17 briefly?

18 THE COURT: Mm-hmm.

19 MS. REZMIERSKI: I think the way it's been
20 helpful for me to think about this is to think about what
21 we would be arguing if it were Ryan Marshall that had wound
22 up as the homicide victim, because he was, in fact, the
23 intended homicide victim. And so because we have
24 conspiracy and solicitation of murder one of Ryan Marshall,
25 then any and all evidence that goes to prove the motive and

1 intent for those crimes should be relevant and admissible.
2 I guess that's the way I break it down, Judge.

3 THE COURT: Okay.

4 MR. PERLOS: You know, the other thing,
5 Judge, is -- and I don't represent him on that CCW case,
6 but he's telling me that that gun was in the glove box
7 where there was a lock on the glove box and the clip was
8 separated in another box. And if so he's gonna open carry
9 if he's going to the shooting range or he's going back and
10 forth to the gun store, I don't know whether or not that's
11 a crime.

12 THE COURT: Well, the arson is part and
13 parcel of what the whole conspiracy evolved out of. I
14 think it is extremely relevant to put it in context for the
15 jury. It would go to show why -- what the motive was, what
16 the intent was.

17 The delivery and manufacturing of the heroin
18 and the CCW, I think they can testify that they were
19 threatened by a weapon, what they used to do, but as far as
20 bringing in pending -- those pending charges, not under
21 404(b). You can bring in the arson.

22 MS. REZMIERSKI: Thank you, Judge.

23 THE COURT: Next?

24 MS. REZMIERSKI: Your Honor, my 404(b)
25 portion of the motion also addressed -- (multiple speakers)

1 --

2 MR. ENGLE: Your Honor, may I -- I just want
3 to understand what the ruling there was. This -- she can
4 bring in the arson but nothing else?

5 MS. REZMIERSKI: Not the CCW and the heroin

6 MR. ENGLE: Nothing --

7 THE COURT: Not the delivery/manufacture
8 charge and not the --

9 MR. ENGLE: Not the heroin charge?

10 THE COURT: Not the heroin charge and not the
11 CCW charge.

12 MS. REZMIERSKI: Your Honor, my 404(b) motion
13 also seeks admission of, in part, Cortez Butler's December
14 2014 Detroit homicide only through the testimony of one
15 individual, and that is his co-defendant in that case, Dale
16 Morgan. The way I recall the testimony coming in at grand
17 jury --

18 THE COURT: See, I -- I know what I'm doing,
19 I just cut some Bitch up in Jackson a week ago, or
20 something like that.

21 MS. REZMIERSKI: And it's --

22 THE COURT: Close to that.

23 MS. REZMIERSKI: Very close to that. And
24 it's as Dale is talking to him about basically, why'd you
25 shoot that guy, why'd you do it in my truck, and oh, take

1 the battery out of my phone after you're done talking to
2 me, basically, do it this way or you're going to get
3 caught. And that's why he says what he says. So, from our
4 perspective it is virtually impossible to separate portions
5 of that conversation out and to -- to leave it to making
6 any sense, to leave that last confessional statement as
7 making any sense.

8 "Shut the F up, I know what I'm doing, I just
9 got done shopping a Bitch up in Jackson."

10 THE COURT: Mr. Engle?

11 MR. ENGLE: Well, number one, I really am
12 having difficulty as to how that can be admitted, and this
13 gets beyond my client how that can be admitted against the
14 other two, and at what point all of this is overkill. Dale
15 -- several statements were brought in by Dale Morgan. I
16 think some of them -- and -- now, if I understand Kati's
17 motion, the only thing she's trying to get in on Dale
18 Morgan is the statement regarding stabbing the girl in
19 Jackson.

20 THE COURT: No, she wants more than that, she
21 wants to bring up that he was charged with a homicide in
22 Detroit and the facts that your client had shot the guy --
23 allegedly had shot the guy in his truck and --

24 MR. ENGLE: Well, you know, again, it --
25 there's a lot that Dale Morgan says. I have a motion on

1 the same thing, and, you know, number one, Dale Morgan says
2 things like "Well, Cortez said he was doing other jobs."
3 "What did you mean by other jobs?" "I took it to mean he
4 was doing murders." I don't think that's admissible at
5 all. He doesn't know what it is.

6 He goes on to say, "I don't know for sure,
7 I'm just assuming that's what it was." He says, among
8 other things, that he's at the back of a courtroom when
9 Cortez makes some sort of statement to him. I think there
10 is some real issue of whether they were even together. I
11 don't know why in the world even in Detroit that they would
12 put together these two when he's already agreed to testify
13 against my client in return for a five year charge on a
14 homicide case.

15 Secondly -- or thirdly on this, when you get
16 down to the statements where he says -- or supposedly says
17 something about almost chopping the girl's head off, if I
18 remember the statement, and I'm not quoting it directly
19 from my notes --

20 THE COURT: Seems like, I -- "I just cut
21 some" --

22 MR. ENGLE: But it is -- how do we make the
23 whole case relevant? It's not -- the whole case isn't
24 relevant, all that's relevant that I can see is one, he's
25 with Cortez. The case happens with him, he makes a comment

1 and Cortez makes the comment back. To the extent you get
2 beyond that, where do we -- where do we stop? Where do we
3 say in a trial, well, let's just -- everything that we can
4 say bad about somebody, by God, let's get it into the
5 trial. Does it have anything to do with whether he killed
6 this lady? No, it doesn't. And I think that what the best
7 ruling on this is, you know, the court has already allowed
8 my client's statement in, allowing this in just drags in
9 stuff that has so much prejudicial effect that it certainly
10 outweighs, at this point, any evidentiary value.

11 THE COURT: You're talking about anything
12 beyond the statement that I've just cut somebody up?

13 MR. ENGLE: Anything beyond just the
14 statement that he made is -- appears to me to be just there
15 for prejudicial effect. There isn't any other reason to
16 have it then. And it doesn't appear to be -- it certainly
17 outweighs any value.

18 MR. PERLOS: Judge, the other -- that has
19 nothing to do with my client, and so besides the trying to
20 bring it under 404(b), it's so prejudicial. When you look
21 back and you think, okay, these two are having a
22 conversation about some other act had nothing to do with my
23 client, or Mr. Brandt's client, they're having conversation
24 about some other crime that has nothing to do with the
25 furtherance of the conspiracy that's been alleged, the

1 conspiracy is over, I can't cross-examine that individual,
2 I can't cross-examine Mr. Butler in light of the
3 confession, and so here we go again.

4 So it's the same argument that this
5 individual and Mr. Butler are talking about something that
6 has nothing to do with my client that is extremely
7 prejudicial after the conspiracy is ended. It's not in the
8 furtherance of the conspiracy and so here we go, it's a
9 violation of the confrontation clause all over again with
10 the same arguments we had last week.

11 THE COURT: Ms. --

12 MR. PERLOS: Besides, the 404(b) has nothing
13 to do to prove any motive or -- or any of the elements as
14 it relates to either of the McKees, and it is so
15 prejudicial that there's no way my client can get a fair
16 trial, and to start bringing in that kinda stuff, like here
17 we go, they're all just bad, bad people.

18 THE COURT: Mr. Brandt?

19 MR. BRANDT: I briefed this paragraph 78
20 through 84, I don't need to add anything.

21 THE COURT: I'm gonna look at it but I read
22 them all. Let me just take a look at yours again.

23 MR. ENGLE: Your Honor, I'd also note there
24 was a statement by Mr. Morgan that the case took place
25 months before the statement, which was allegedly just two

1 or three months after the incident, and I just -- again, it
2 goes back to Mr. Morgan has a reason for saying what he
3 did, he got a hell of a deal in that case. And secondly,
4 think he's just plain lying, but that's beyond the issue of
5 -- (undecipherable) -- well, it goes to the issues here.

6 Also, your Honor, I guess if, indeed, he's
7 going to say that he was not kept separate from Mr. Butler
8 I would like the time to go down to Detroit, pull the
9 transcripts and see, because I don't think there's any
10 chance they were going to let him and Mr. Butler stand
11 together. He's testifying against him, if he hasn't
12 testified against him, they're getting a chance of threats.
13 You have -- my client says it never happened and the
14 incident then would be to say, well, let's pull the tape,
15 see if they ever did it. Pull in the officers, did they
16 ever let them talk?

17 THE COURT: Okay. Anything further, Ms.
18 Rezmierski?

19 MS. REZMIERSKI: Judge, just to make it
20 clear, there is a 404(b) aspect to this request and there's
21 then 804(b)(3) aspect to this request. There's a 404(b)
22 aspect to it in that his statement about killing Frances
23 Craig is intertwined with the conversation about the
24 December 2014 Detroit homicide. So, that's the 404(b)
25 aspect of it.

1 The 804(b)(3) aspect of it is squarely on
2 point with *People v Taylor*, the Michigan Supreme Court
3 2008. That's -- clearly, that Mr. Butler is making a
4 statement directly against his own penal interest. I just
5 killed this gal in Jackson, that makes it, therefore,
6 admissible and non-confrontation clause violative as
7 against the McKees because it's non-testimonial, it's made
8 to a co-defendant in his other case. It's -- it's not made
9 to police, it's not made in anticipation of testimony, it
10 doesn't implicate their confrontation clause rights. So,
11 there's an 804(b)(3) level of analysis and a 404(b).

12 As it pertains to Mr. Engle talking about all
13 of the Dale Morgan stuff, certainly, all of that goes to
14 weight, not admissibility. But just to make it clear for
15 both Mr. Engle and for the record, we checked to see if
16 Dale Morgan testified down there in the Detroit case
17 because he had requested a copy of the transcript, if that
18 had occurred. We've been informed he never testified,
19 which makes some sense to me because my understanding is
20 that they both pled. I mean, Mr. Butler pled to his second
21 second-degree murder conviction and picked up 20 to 40, and
22 so my understanding is, nobody ever testified.

23 MR. ENGLE: Your Honor, my client indicates
24 he did testify at the preliminary examination. There was a
25 plea by both of them in Circuit Court.

1 MS. REZMIERSKI: I can check again.

2 THE COURT: Well, the statement that he know
3 what he's doing because he just cut somebody up down in
4 Jackson can come in. The fact that he was involved in a
5 homicide in Detroit isn't coming in. Another homicide
6 afterwards that I think would be too prejudicial. And it
7 is clearly against penal interest, you can bring the
8 statement in but you're not gonna bring the rest of them.

9 MS. REZMIERSKI: Thank you, Judge.

10 The last portion, I believe, of my motions,
11 and I'll double check this before I'm done, is also 404(b)
12 in nature. It stems from seeking evidence and testimony.
13 Both Clifford McKee and Cortez Butler have made statements
14 about how they met one another and how they came to know
15 one another, and they seem to agree that they match in
16 prison while they were each doing time for their prior
17 murder convictions. I'm seeking admissibility of that
18 evidence at trial.

19 Judge, it goes to explain how it is that
20 these two individuals would know to connect with one
21 another about accomplishing a hit. Otherwise, the jury is
22 left with a posity (ph) of information as to how one person
23 knows to go to the other person, nose to go to the other
24 person to get somebody killed. Thank you.

25 MR. ENGLE: Your Honor, I would note my

1 client tells me, and I think that he's probably correct,
2 throughout the time period they were in prison he was in a
3 different level of where they're going to hold him from Mr.
4 McGee (sic), and they never met in prison.

5 Now, if the court's going to allow me to call
6 in all of the -- of course -- (undecipherable) -- call in
7 the Department of Corrections because once we get into the
8 fact that they were in prison, then we may as well tell the
9 world why, and then we may as well just kiss any fairness
10 in the trial goodbye. But, if they're going to say that
11 and my client says it just isn't -- this isn't and wasn't
12 physically possible because of their levels of where they
13 were being held, then I think we need the prison records
14 here too to determine -- I need to be able to get the
15 prison records of both of them to determine where they were
16 held and when they were held there.

17 THE COURT: Anything, Mr. Brandt or Mr.
18 Perlos?

19 MR. PERLOS: I don't know what it has to do
20 with my client, Judge, because I don't -- my client --

21 THE COURT: Mr. Brandt, anything?

22 MR. BRANDT: Yes, your Honor. As to the
23 statement I believe Madam Prosecutor is trying to get in
24 against my client, I believe that was made in the grand
25 jury. I have a separate motion to suppress that as my

1 client had attempted to assert his Fifth Amendment rights.
2 I think he's quite right that the statement that Madam
3 Prosecutor is using should not have come in, and the court
4 in that grand jury hearing, should have suppressed it and
5 it shouldn't come in because of that.

6 THE COURT: I agree with defense counsel on
7 this one. The fact that they were doing time together or
8 that they were -- Mr. Butler was in prison for another
9 murder previously is not coming in.

10 MS. REZMIERSKI: Thank you, your Honor. I
11 believe that's all I have motioned up thus far. I do,
12 before we're done, need to place just one discovery issue
13 on the record. It doesn't matter to me if we do it now or
14 if we do it --

15 THE COURT: Do it now.

16 MS. REZMIERSKI: Okay. We have in our
17 possession some of what we call TLO information. I
18 honestly am not positive what that stands for, but it's
19 similar to -- it's not exactly LEIN, but it's somewhat
20 similar to that. It's all police report activity connected
21 to a person, it's social security number, it's sometimes
22 financial information, it's -- it's fairly personal
23 background stuff, and I don't even know that I would be
24 overly concerned except there are -- I should have counted
25 them up before we came up here, and I apologize, so many

1 people who were investigated as a part of this
2 investigation in terms of their connection to Eric Wolfe
3 and Frances Craig and -- and just attempting to drum up any
4 leads that we could.

5 In particular, after we got Cortez Butler's
6 DNA and his information in trying to make a connection to
7 him to Jackson, there's actually a local high school kid
8 who bears that same name, and we did a TLO on him. Turns
9 out there's absolutely no connection, no relation
10 whatsoever.

11 We have already -- and wouldn't really have
12 done it if we'd thought about it, we have already turned
13 over one, two, three, four, five of those TLOs that we
14 have, but there's a list of TLOs that we have on a number
15 of other people, almost all of whom are utterly irrelevant
16 except there's also Ryan and Donna Marshall in that list.

17 I guess we are seeking a ruling from you,
18 we'd prefer not to have to turn over that personal
19 information on people who have nothing to do with the case,
20 but I'm happy to give you and defense counsel their names.
21 Obviously, it's up to you whether you turn -- we turn it
22 over or not, but we're just sort of trying to protect
23 people's privacy.

24 THE COURT: Anybody know anything about this?

25 MR. PERLOS: Well, I have several of those.

1 I put LEXIS -- Judge, and what part of LEXIS has is called
2 Accunet, you can run somebody's name and it'll give you
3 girlfriends, boyfriends, cousins, nieces, nephews. It
4 doesn't give Social Security numbers, there X'd out, so
5 there's names, but when you say private data, I mean, that
6 -- I don't know what I use it for but I would like to at
7 least know -- or have a list of who it was that was a
8 suspect or that was part of their ongoing investigation as
9 it related to the scheme of things.

10 Whether or not I need the whole pack -- I
11 mean, unless something comes up. I don't need the packet
12 but I'd like the list of who they investigated.

13 THE COURT: Anybody else?

14 MR. ENGLE: Your Honor, as far as we're
15 concerned, unless the person they had the information on is
16 going to be a witness, I don't care.

17 THE COURT: Mr. Brandt?

18 MR. BRANDT: I agree with Mr. Engle, if
19 they're not going to be called it's not an issue. The
20 problem is that evidently this is under the broad terms of
21 discovery, and I would like to take a look at it only
22 because I'm not sure what's in it. May not use it at all,
23 may take a look at it over the weekend and go, there's
24 nothing there, but I think on behalf of my client I have to
25 do that. Does that make sense?

1 THE COURT: Mm-hmm.

2 MR. BRANDT: I --

3 THE COURT: Because there's been a number of
4 references to the fact, and in the testimony of the
5 detectives, and I believe in the transcripts from the grand
6 jury, there was references to multiple people's names being
7 investigated trying to make connections between them.

8 MS. REZMIERSKI: Judge, will do whatever --
9 whatever way you want it. We're just trying to protect
10 people's privacy. It's going to be a bit of a pain to X
11 out soc numbers, but we'd prefer to not have to turn those
12 over.

13 MS. MCKINNIE: They're all printed out right
14 now, I don't have an electronic copy of it currently.

15 THE COURT: How many people we talking about?

16 MS. MCKINNIE: Fifteen?

17 MS. REZMIERSKI: One, two, three, four, five,
18 six, seven, eight, nine, ten, eleven, twelve, thirteen.
19 There's 13 and then there's also Ryan and Donna Marshall,
20 who would be the only on that whole list who are
21 anticipated to be witnesses, so 15 total. And they have
22 five of them already, the ones I told you we inadvertently
23 gave out.

24 MR. PERLOS: Well, I think -- if they'd let
25 me just see --

1 THE COURT: Just give him the names.

2 MS. REZMIERSKI: Sure.

3 THE COURT: The information, cross out the
4 social security numbers. You can just black those out.

5 MR. PERLOS: This is what you're talking
6 about?

7 MS. REZMIERSKI: Yes. Yep.

8 MS. MCKINNIE: That's it.

9 MR. PERLOS: That's fine, Judge.

10 MS. REZMIERSKI: We've got 13 more.

11 THE COURT: Give in the other 13 name --
12 given the name -- they're going to give you the names and
13 what other information but they're going to black out
14 Social Security numbers.

15 MR. PERLOS: Yes, that's fine.

16 MS. REZMIERSKI: Thank you, Judge.

17 THE COURT: Anything else?

18 MS. REZMIERSKI: That's all I have.

19 THE COURT: Anything?

20 MR. ENGLE: Your Honor, I think I had --
21 you've already answered one of them. The last motion I see
22 in my list of motions is a continuing -- the court had --
23 we brought this up orally but I thought I better bring it
24 up for purposes of the record, and that was a motion for a
25 preliminary examination in this matter. Mr. Brandt has

1 also brought up a corollary motion which was a motion to
2 suppress the grand jury's statements and request for
3 remand. As I see the grand jury's statements, and I ought
4 to ask about that right now, those statements, because they
5 were not cross-examined, would not be admissible in place
6 of the evidence of the witness that is supposed to be here
7 unless there's some specific reason that could be shown.
8 But, I think to the extent that any of those witnesses
9 testifies differently, that testimony could be used, and
10 I'd just ask the court for clarification, because that
11 would obviously be my intent.

12 And I have the motion for preliminary
13 examination, which is --

14 THE COURT: And per *People versus Glass*,
15 where they ruled there was no right to a preliminary exam
16 following a grand jury indictment, your motion for a
17 preliminary exam is denied.

18 MR. ENGLE: I believe Mr. Brandt though as
19 has his corollary motion with that.

20 MR. BRANDT: Your Honor, one -- one of the
21 issues that came up as I went through the discovery is --
22 my clients called in front of the grand jury. He is
23 afforded an opportunity to have counsel. I believe Mr.
24 Pappin was appointed by the court. In my motion there is a
25 back and forth between the court and my client as he gets

1 to a certain point, he's being asked questions. I believe
2 my client was correct in asserting his Fifth Amendment
3 right at the point he did in the transcript. I think Mr.
4 Pappin tried also and was brushed aside and the questions
5 were asked.

6 Now, the answers that my client gave
7 indicated his knowing defendant Butler, which I assume the
8 prosecutor will attempt to use in some manner and form at
9 the trial. I don't need it remanded if the court's going
10 to cross it out and say it's in violation of the Fifth
11 Amendment. I can live with that. But I think that's the
12 issue, that it's clearly going to be, at some level -- in
13 fact, the prosecutor's used it in their motion -- some of
14 the motions before the court. So I don't need to go -- I
15 know you've read it, that's -- that's the issue. It wasn't
16 for a prelim but it was to suppress those statements.

17 THE COURT: Go ahead, Ms. Rezmierski.

18 MS. REZMIERSKI: Thank you, your Honor. I'm
19 assuming the court has read the answer that I authored and
20 filed. I mean, obviously, it's not up to the witness, on
21 his or herself, exclusively about the Fifth Amendment. The
22 cases cited make it clear that it belongs to the court to
23 consider and to decide whether any direct answer can
24 implicate a witness. That's *In Re Schnitzer* I believe is
25 how you say that, 295 Mich 736.

1 A constitutional privilege against self-
2 incrimination must not be asserted by a witness too soon,
3 that is, where there is no reasonable basis for a witness
4 to fear incrimination from questions which are merely
5 preliminary. That's *People v Dyer*, 425 Mich 572.

6 Basically, the questions were, do you know
7 Cortez Butler, essentially. You've already ruled on how do
8 you know him, where did you meet him? I don't get to get
9 into prison and that they locked together for murder.

10 But the fact that he knows Rodney McKee and
11 is related to Rodney McKee, and the fact that he knows
12 Cortez Butler, those facts in and of themselves, are in no
13 way incriminating, even when you're talking about a
14 conspiracy case.

15 As I've indicated in my answer, I am --
16 presumably, there are thousands of people that Mr. McKee
17 knows and thousands of people that know Rodney McKee and no
18 Cortez Butler and have not conspired to commit murder. So,
19 Judge, I don't think there's any basis for him to have
20 asserted his Fifth and been denied that assertion based on
21 the case law.

22 Whether or not I -- I choose to use his
23 statements at grand jury about knowing his nephew and
24 knowing Cortez Butler, honestly, I don't know in the moment
25 whether I'm going to, but you've already ruled that I can't

1 and won't get into the fact of their prior incarceration
2 together for murder. Thank you, Judge.

3 MR. ENGLE: Your Honor, I guess I just
4 continued this, that is -- it may be usable at the grand
5 jury but the prosecutor chose to go the route of a grand
6 jury. And one of the issues when you go the route of the
7 grand jury is that you give up the right -- take away the
8 confrontation clause from the defendant who was the
9 defendant in the grand jury. And maybe you get in a lot of
10 other stuff that can't ordinarily be gotten in, and you may
11 not have been able to have a preliminary examination with
12 appointed counsel, you could not have called any of these
13 people to the stand.

14 They are also, to some extent, giving up
15 their Fifth Amendment right. To the -- in that grand jury
16 hearing, I forget exactly where, Judge McBain even refuses
17 to let counsel who wants to make an objection, make the
18 objection. He says you had your client -- you had the
19 chance to talk to your client, you got to answer the
20 question. And I don't think anybody -- any criminal
21 defendant is really smart enough, some may be I guess, to
22 sit in a court of law and when you're up there on the stand
23 make judgments about your rights and what you should be
24 answering and shouldn't be answering, whether it goes
25 beyond the Fifth, whether the prosecutor's going to use it

1 against you down the line, I just can't imagine how these
2 things would be usable.

3 THE COURT: Well --

4 MR. PERLOS: You know, Judge, I'm gonna
5 concur with Mr. Engle. I didn't watch the video but when
6 you read the transcript it sounds like they bullied him in
7 that.

8 THE COURT: The other statements about how
9 they may have known each other I've already ruled on.
10 Rodney McKee's statement that he knew Cortez Butler is the
11 only one that --

12 MS. REZMIERSKI: Clifford.

13 THE COURT: Or Clifford, yeah, I apologize,
14 I've --

15 MS. REZMIERSKI: Yep, that's fine.

16 THE COURT: -- Clifford McKee's statement.

17 MS. REZMIERSKI: Thank you, Judge.

18 THE COURT: But the rest would have been
19 protected by the Fifth anyway.

20 MS. REZMIERSKI: That's fine. Thank you.

21 MR. BRANDT: What was that, your Honor?

22 THE COURT: Only the statement that he knew
23 him.

24 MR. BRANDT: Yes --

25 THE COURT: Not how -- not how he knew him or

1 that they had done time together or anything like that.

2 MR. BRANDT: Only the statement that he knew
3 him is coming in.

4 MR. PERLOS: The rest is --

5 MR. BRANDT: Thank you.

6 MR. PERLOS: -- violates...

7 MR. BRANDT: Thank you.

8 THE COURT: Because I don't really see that
9 as an incriminating statement. Well, I guess --
10 (undecipherable). Obviously, they've got phones going back
11 and forth --

12 MR. BRANDT: I -- that's another --

13 THE COURT: -- and they conver --

14 MR. BRANDT: -- issue.

15 THE COURT: Yep, go -- moving on?

16 MR. PERLOS: Is she done?

17 MS. REZMIERSKI: I've been done, it's on to
18 you guys now.

19 MR. PERLOS: Judge, I filed a motion to sever
20 and I also filed a motion to suppress, and you pretty much
21 gutted that with your previous ruling, so.

22 THE COURT: They're not going to be severed.
23 Mr. Brandt?

24 MR. BRANDT: Your Honor, so --

25 THE COURT: I assume you want to get into the

1 arrest and the phone?

2 MR. BRANDT: I think that's the only one I
3 have left at this point. Ms. Rezmierski answered the Bill
4 of Particulars, so I'm gonna -- I am willing to leave that
5 the motion to sever.

6 But yes, as to the December 11th issue with
7 my client, I'd don't know if you want --

8 MS. REZMIERSKI: Well, and -- and forgive me
9 if I misunderstood, I did not bring in the two witnesses
10 for that today. I thought we were doing everything --

11 MR. BRANDT: Other than that.

12 MS. REZMIERSKI: -- but that.

13 MR. BRANDT: Yep.

14 MS. REZMIERSKI: And I apologize if I --

15 MR. BRANDT: No, because we -- we had talked
16 about that they might not be in, and so we will need that.
17 And do we need the other --

18 MS. REZMIERSKI: I'd leave that up to them.
19 I don't think so, but I'd leave that up to them as well.

20 MR. BRANDT: Because it is as to my client.

21 THE COURT: Right. Yeah, what we got going
22 Friday?

23 THE CLERK: I'm sorry?

24 THE COURT: I was asking what we had going
25 Friday, this --

1 MR. ENGLE: I would note, your honor, also
2 for the record, my client has requested that I file an
3 interim appeal regarding the admission of his statement.

4 THE COURT: I'm not giving you a stay. We're
5 going to move forward.

6 MR. ENGLE: So it would take the Court of
7 Appeals ruling to stay the --

8 THE COURT: Right. Usually they ask for a
9 stay here and then ask the Court of Appeals for a stay.
10 Now, if they want to grant a stay and deal with some of
11 these issues ahead of time, I'm more than happy to have
12 them tell me what I did right or what I did wrong.

13 MS. REZMIERSKI: Judge, also then brings to
14 mind, I meant to ask this before we were done, are we in a
15 position to set a trial date?

16 THE COURT: Mm-hmm.

17 MS. REZMIERSKI: Since we are supposed to do
18 our best to comply with that 180 day rule and that expires
19 on April 10th --

20 THE COURT: 10th.

21 MS. REZMIERSKI: -- which is a Sunday, so.

22 MR. ENGLE: Your Honor, I would note there is
23 one other issue with that trial date, we have requested the
24 phone records from at least one phone that was seized way
25 back when all the phones were seized, and I --

1 MS. REZMIERSKI: Detroit seized the four of
2 your client that remain and are being analyzed. We just
3 got our hands on them very recently, within the last
4 several weeks.

5 MR. ENGLE: And we had requested that phone
6 that -- those phone records --

7 THE COURT: You've got the records?

8 MS. REZMIERSKI: They're being analyzed as we
9 speak. As soon as we get them, they will have them. We --
10 he continues to reference wanting the actual physical phone
11 itself, we will remain an objection to turning over
12 anything.

13 MR. ENGLE: And if I have --

14 THE COURT: Who do you want to turn the phone
15 over to for analysis?

16 MR. ENGLE: There is -- there are some things
17 on that phone that may indicate -- or at least my client
18 tells me, there may be things that indicate he was not
19 where they're proposing to put him in this case on the --

20 THE COURT: Okay, what I want to know is, who
21 do you plan on having analyze the phone? Are you gonna
22 have Larry Dalman do it?

23 MR. ENGLE: Well, they already have it up at
24 the State Police Crime Lab.

25 THE COURT: I understand that, but if they

1 were to turn it over to you do you want -- who you gonna
2 have do it, Larry? I mean, he's about the only one that I
3 know in this state that would be able to compete. He's
4 probably -- he's the one that took down Kwame Kilpatrick.

5 MR. ENGLE: That -- whether he could get it
6 done any faster. Now, what they tell me is, it has been
7 what, analyzed you said? I forget the term.

8 MS. MCKINNIE: It's in the process of being
9 analyzed.

10 MS. REZMIERSKI: Yes.

11 MS. MCKINNIE: I mean, they have the phones,
12 they've gotten into them, they're --

13 THE COURT: When is it gonna be done?

14 MR. ENGLE: I don't know that I can get it
15 done faster than they can get it done at this point.

16 MS. REZMIERSKI: I can try to shoot an e-mail
17 right now as we're sitting here.

18 MR. BRANDT: Your Honor, if they -- if they
19 cloned it you could just give the clone to Larry.

20 THE COURT: Okay. Find out if they clone --
21 find out if they cloned it and give --

22 MR. BRANDT: That -- it will be easy.

23 THE COURT: I assume that's who you're gonna
24 want to hire?

25 MR. BRANDT: I'll help you.

1 MR. ENGLE: Yeah, if --

2 THE COURT: Yeah, show him who --

3 MR. BRANDT: Yep.

4 THE COURT: Dalman, besides the State Police
5 is probably the best phone expert. I don't know why the
6 cops don't use him more often, because he blows some of
7 these other -- I mean, I had him on the stand one time and
8 within 10 seconds he was able to give me the person's name
9 social security number, address, everybody they lived with
10 I mean, just with a phone number. He just got on it, bam.
11 I mean, it was -- he's probably the best expert. And he --
12 I think he worked for the State Police for about 20 years
13 doing it.

14 MR. ENGLE: Yeah, I -- I mean, I've got no
15 problem with the -- getting the analysis. I'm happy to
16 rely on them, it's just we need it before trial.

17 THE COURT: Because everybody thinks, yeah,
18 you delete it and it's gone, it ain't gone.

19 MS. REZMIERSKI: I'll let you know if he
20 responds.

21 THE COURT: Okay. Okay.

22 MR. ENGLE: Obviously, your Honor, if they
23 can get it to me, that's fine, but if they can't --

24 THE COURT: And if -- he can probably push
25 this --

1 MR. BRANDT: I'll call him this afternoon.

2 THE COURT: Find out when he can get it done.

3 MR. BRANDT: Yep. And I'm assuming the court
4 will afford Mr. Engle some money? Because that --

5 THE COURT: Yeah, the court'll --

6 MR. BRANDT: -- will be the first question.

7 THE COURT: -- pay for it, his -- the
8 evaluation.

9 MR. BRANDT: Thank you.

10 MS. REZMIERSKI: Al, are you saying that
11 Friday at 11:00 works for you?

12 MR. BRANDT: Yes. Yeah, I can -- I've got
13 9:30 --

14 MS. REZMIERSKI: Because I can also shoot an
15 e-mail right now just to make sure that they are available
16 at that point. Does Friday at 11:00 work for you, Judge?

17 MR. BRANDT: Have you figured out your
18 Friday?

19 THE COURT: Oh, I'll make it work somehow.

20 MR. BRANDT: We -- we can be here at 11:00.
21 We think there's only two witnesses.

22 MS. REZMIERSKI: Yes.

23 THE COURT: 11:00? Good, I can resolve this
24 -- I've got a divorce trial at 10:30, I'll resolve it by
25 11:00.

1 MR. BRANDT: And this -- this isn't going to
2 be --

3 MS. REZMIERSKI: No.

4 MR. BRANDT: -- long.

5 THE COURT: Long.

6 MS. REZMIERSKI: It is what it is.

7 MR. ENGLE: Your Honor, I guess my client is
8 -- he would prefer to be here if --

9 MR. BUTLER: No.

10 MR. ENGLE: -- this is another motion. No?

11 MR. BUTLER: No, I don't want to be here.

12 MR. ENGLE: Okay.

13 THE COURT: You don't want to be here?

14 MR. BUTLER: He's just -- yeah.

15 THE COURT: It really doesn't involve you.

16 MR. BUTLER: Yeah, I don't need to be here.

17 MR. BRANDT: Right, it has nothing to do...

18 MR. PERLOS: You can do it at 11:00?

19 THE COURT: Yeah.

20 MR. PERLOS: I got trial with Mr. McCord in
21 Charlotte. Nick has given his promise, he says it's gonna
22 get adjourned but I haven't seen the stip from the lawyer
23 from the plaintiff, so I'm gonna plan on being here, okay,
24 and then that'll -- (undecipherable) -- that problem.

25 THE COURT: Yeah, he -- I don't think he's --

1 (multiple speakers) --

2 MR. PERLOS: That'll just -- that'll take
3 care of both problems.

4 THE COURT: Can counsel be ready to go by the
5 28th of March?

6 MS. REZMIERSKI: Yes.

7 THE COURT: Start trial on the 28th of March.

8 MS. MCKINNIE: Did you know Hastings is set
9 that day?

10 THE COURT: Who?

11 MS. REZMIERSKI: I'm sorry?

12 MS. MCKINNIE: Hastings I believe is set that
13 day.

14 THE COURT: Who?

15 MS. MCKINNIE: Jonathan Hastings.

16 MS. REZMIERSKI: He's out on bond.

17 THE COURT: It'll have to be moved.

18 MS. MCKINNIE: Fair enough.

19 MS. REZMIERSKI: I can be ready, your Honor.

20 THE COURT: This one's gonna take a higher
21 priority.

22 MS. MCKINNIE: I just was making sure the
23 court was aware.

24 MR. ENGLE: Your Honor, I assume that -- the
25 only other trial I got on the 28th is in front of you, so I

1 assume it's not gonna go if this is going?

2 THE COURT: No, I'm making this -- it's much
3 more serious. This one's gonna get a priority. I'm gonna
4 push -- because I've got the other four, I'm doing one
5 right after one week and doing the next one the next week
6 and the next one the week after and the fourth one the week
7 after that, so.

8 MS. REZMIERSKI: That means the 30 day
9 witness list will be just a couple of days late, but I'll
10 get that done ASAP. Other than that, I'm ready.

11 THE COURT: Did you gentlemen hear that?

12 MR. ENGLE: Your Honor, I need a witness list
13 also --

14 MS. REZMIERSKI: That's what I just said.

15 MR. ENGLE: Oh, I'm sorry.

16 MR. BUTLER: That's what she just said.

17 MS. REZMIERSKI: I'll get it to you
18 forthwith.

19 MR. ENGLE: Okay. Your Honor --

20 MS. REZMIERSKI: It'll be obviously --

21 THE COURT: Because I'm setting the date
22 it'll be two or three days beyond the 30 days. Did you
23 hear that, Mr. Perlos?

24 MR. PERLOS: I did.

25 THE COURT: Mr. Brandt?

1 MR. BRANDT: Yes, your Honor.

2 MS. REZMIERSKI: I couldn't realistically
3 have filed one before we completed all these motions
4 because I didn't know what was coming in and what wasn't.
5 Thank you, Judge.

6 THE COURT: Okay, we'll go at 11:00 o'clock
7 this Friday.

8 MR. BRANDT: Thank you, your Honor.

9 THE COURT: Is there any reason -- we don't
10 need Mr. Butler, any reason for your client to be here?
11 Unless he wants to just hear what's going on? I guess they
12 can bring them both over.

13 You don't want to be here?

14 MR. BUTLER: No.

15 MR. ENGLE: I didn't hear your statement,
16 your Honor.

17 THE COURT: I asked Mr. Butler or you if you
18 want Butler here for this motion on Friday and there's
19 really no reason --

20 MR. ENGLE: He has indicated that -- that he
21 did not.

22 THE COURT: Yeah. I don't see any reason.

23 You can be ready to go on -- at 11:00 Friday?
24 Okay, and we'll do --

25 THE CLERK: (Inaudible) -- Friday.

1 THE COURT: -- then we'll start trial on the
2 twenty --

3 MR. BRANDT: You're -- you're gonna reach
4 those guys and let us know first thing tomorrow --

5 MS. REZMIERSKI: I e-mailed and I haven't
6 heard, but --

7 MR. BRANDT: Okay.

8 THE COURT: And they're gonna follow up with
9 a phone call.

10 MS. REZMIERSKI: Right.

11 THE COURT: Today.

12 MS. REZMIERSKI: Yes.

13 THE COURT: We'll see you Friday at 11:00
14 o'clock.

15 MS. REZMIERSKI: Can I place one more thing
16 on the record? And it's totally just housekeeping, you
17 don't have to make any ruling.

18 THE COURT: Yep.

19 MS. REZMIERSKI: Ms. McKinnie and I sat down
20 over at the sheriff's department this morning with an
21 intern from our office as well and literally went through
22 all of our binders, I think there's nine or ten of them,
23 page by page to compare to all of the sheriff's department
24 binders. We came across maybe, maybe 50 pages, probably
25 not even that, maybe more like 25 and one disc that I think

1 is utterly irrelevant but it exists, that we didn't have
2 that they had. We've already copied those things and we'll
3 get them to the defense before the end of the day.

4 I would like to make --

5 THE COURT: Is there anything that may be
6 relevant or --

7 MS. REZMIERSKI: No.

8 THE COURT: -- of concern?

9 MS. REZMIERSKI: No. Nothing that we -- just
10 a couple of random pages that we didn't have that -- that
11 they had.

12 THE COURT: Okay.

13 MS. REZMIERSKI: But I -- I would like to
14 make us available to any defense counsel at any time to
15 come and sit in our office, go through things page by page,
16 go through things electronically page by page, whatever way
17 is most convenient for defense counsel. We will be trying
18 to go through and make an index of everything we have and
19 numbering pages to make certain we get a copy to defense
20 counsel so that they can verify that. We're just trying to
21 make sure that we have all discovery --

22 THE COURT: Okay. Does defense counsel --

23 MS. REZMIERSKI: -- taken care of.

24 THE COURT: -- they're gonna make themselves
25 available so if defense counsel wants to go through all the

1 discovery page by page to make sure you got everything,
2 call the Prosecutor's Office.

3 MS. REZMIERSKI: Thank you, Judge. And we'll
4 get those TLOs to everyone immediately, Xing out the -- the
5 numbers.

6 THE COURT: Yes?

7 MS. MCKINNIE: Nothing.

8 THE COURT: Oh, okay. Okay.

9 MS. REZMIERSKI: Thank you.

10 THE COURT: Friday at 11:00, trial on the
11 28th.

12 MS. REZMIERSKI: Thank you. That's one jury,
13 one trial?

14 THE COURT: One jury, one trial.

15 (At 2:47:20 p.m., hearing concluded)

16

CERTIFICATION

This is to certify that the attached electronically recorded proceeding, consisting of forty-six (46) pages, before the 4th Judicial Circuit Court, Jackson County, Michigan:

PEOPLE OF THE STATE OF MICHIGAN

V

RODNEY MCKEE, CLIFFORD MCKEE and
CORTEZ BUTLER

_____ /

Location: Circuit Court

Date: Wednesday, March 2, 2016

was held as herein appeared and that this is testimony from the original transcript of the electronic recording thereof, to the best of my ability.

I further state that I assume no responsibility for any events that occurred during the above proceedings or any inaudible responses by any party or parties that are not discernible on the electronic recording of the proceedings.

\s\ Sally Fritz
Sally Fritz, CER #7594
Certified Electronic Recorder

Dated: March 12, 2016

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STATE OF MICHIGAN

4TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF JACKSON

PEOPLE OF THE STATE OF MICHIGAN

v

CORTEZ ANTONIO BUTLER
and
CLIFFORD DURELL MCKEE
and
RODNEY JAMAR MCKEE,

File No. 2015-2789-FC

File No. 2015-2787-FC

File No. 2015-2789-FC

Defendants.

JURY TRIAL - VOLUME VIII of IX

BEFORE THE HONORABLE THOMAS D. WILSON, CIRCUIT COURT JUDGE

Jackson, Michigan - Wednesday, April 6, 2016

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1 THE COURT: Please be seated.

2 You want to go ahead and bring in the jury?

3 THE CLERK: All rise for the jury.

4 (At 1:37:33 p.m., jury returned)

5 THE COURT: Please be seated.

6 Okay, I'm gonna go through a set of
7 instructions and then we'll send the whole packet back with
8 you that I'm gonna read through at this point.

9 Members of the jury, the evidence and
10 arguments in this case are finished. I will now instruct
11 you on the law. That is, I will explain the law that
12 applies to this case. Remember that you have taken an oath
13 to return a true and just verdict based only on the evidence
14 and my instructions on the law. You must not let sympathy
15 or prejudice influence your decision.

16 As jurors, you must decide what the facts of
17 the case are. This is your job and nobody else's. You must
18 think about all the evidence and then decide what each piece
19 of evidence means and how important you think it is. This
20 includes whether you believe what each of the witnesses
21 said. What you decide about any fact in this case is final.

22 Now, it is my duty to instruct you on the
23 law. You must take the law as I give it to you. If a
24 lawyer says something different about the law, follow what I
25 say. At various times I've already given you some

1 instructions about the law. You must take all of the
2 instructions together as the law you are to follow. You
3 should not pay attention to some instructions and ignore
4 others. To sum it up, it is your job to decide what the
5 facts of the case are, to apply the law as I give it to you
6 and in that way decide the case.

7 Now, a person who is accused of a crime is
8 presumed to be innocent. This means that you must start
9 with the presumption the defendants are innocent. This
10 presumption continues throughout the trial and entitles the
11 defendants to a verdict of not guilty unless you are
12 satisfied beyond a reasonable doubt that they are guilty.

13 Every crime is made up of parts called
14 elements. The prosecutor must prove each element of the
15 crime beyond a reasonable doubt. The defendants are not
16 required to prove their innocence or do anything. If you
17 find the prosecutor has not proven every element beyond a
18 reasonable doubt, then you must find the defendants not
19 guilty.

20 A reasonable doubt is a fair, honest doubt
21 growing out of the evidence or lack of evidence. It's not
22 merely an imaginary or possible doubt, but a doubt based on
23 reason and common sense. A reasonable doubt is just that, a
24 doubt that is reasonable after a careful and considered
25 examination of the facts and circumstances of this case.

1 Now, when you discuss the case and decide on
2 your verdict you may only consider the evidence that's been
3 properly admitted in this case. Therefore, it's important
4 for you to understand what is evidence and what is not
5 evidence. Evidence includes only the sworn testimony of the
6 witnesses, the exhibits admitted into evidence and anything
7 else I told you to consider as evidence.

8 Many things are not evidence and you must be
9 careful not to consider them as such. I'll describe some
10 things that are not evidence. The fact that the defendants
11 are charged with crimes and are on trial is not evidence.
12 The lawyers' statements and arguments are not evidence.
13 They are only meant to help you understand the evidence and
14 each side's legal theories. The lawyers' questions to
15 witnesses are also not evidence. You should consider these
16 questions only as they give meaning to the witnesses
17 answers. You should only accept things the lawyers say that
18 are supported by the evidence or by your own common sense
19 and general knowledge.

20 My comments, rulings, questions and
21 instructions are also not evidence. It is my duty to see
22 the trial is conducted according to the law, to tell you
23 that it applies to this case, and -- however, when I make a
24 comment or give an instruction I'm not trying to influence
25 your vote or express a personal opinion about the case. If

1 you believe I have an opinion about how you should decide
2 this case you must pay no attention to that opinion. You
3 are the only judges of the facts and you should decide this
4 case from the evidence.

5 Now, at time (ph) during the trial I have
6 excluded evidence that was offered or stricken testimony
7 that was heard. Do not consider those things in deciding
8 the case. Make your decision only on the evidence that I
9 let in and nothing else.

10 Your decision should be based on all the
11 evidence, regard of -- regardless of which party produced
12 it. You should use your own common sense and general
13 knowledge in weighing and judging the evidence but you
14 should not use any personal knowledge you may have about a
15 place, person or event. To repeat once more, you must
16 decide this case based only on the evidence admitted during
17 this trial.

18 As I said before, it's your job to decide
19 what the facts of the case are. You must decide which
20 witnesses you believe and how important you think their
21 testimony is. You do not have to accept or reject
22 everything a witness said. You are free to believe all,
23 none or part of any person's testimony. In deciding which
24 testimony you believe you should rely on your own common
25 sense and everyday experience. However, in deciding whether

1 you believe a witness's testimony you must set aside any
2 bias or prejudice you may have based on -- based on race,
3 gender or national origin of the witness.

4 There is no fixed set of rules for judging
5 whether you believe a witness but it may help you to think
6 about these questions: Was the witness able to see or hear
7 clearly? How long was the witness watching or listening?
8 Was anything else going on that might have distracted the
9 witness? Did the witness seem to have a good memory? How
10 did the witness look and act while testifying? Did the
11 witness seem to be making an honest effort to tell the truth
12 or did the witness seem to evade the questions and argue
13 with the lawyers? Does the witness's age and maturity
14 affect how you judge his or her testimony? Does the witness
15 have any bias, prejudice or personal interest in how this
16 case is decided? Have there been any promises, threats,
17 suggestions or other influences that affect how the witness
18 testified?

19 In general, does the witness have any special
20 reason to tell the truth or any special reason to lie? All
21 in all, how reasonable does the witness's testimony seem
22 when you think about all the other evidence in the case?

23 Now, sometimes the testimony of different
24 witnesses will not agree and you must decide which testimony
25 you accept. You should think about whether the disagreement

1 involved something important or not and whether you think
2 someone is lying or is simply mistaken. People see and hear
3 things differently and witnesses may testify honestly but
4 simply be wrong about what they thought they saw or
5 remembered.

6 It is also a good idea to think about which
7 testimony agrees best with the other evidence in the case.
8 However, you may conclude that a witness deliberately lied
9 about something that is important to how you decide the
10 case. If so, you may choose not to accept anything that
11 witness said. On the other hand, if you think the witness
12 lied about some things but told the truth about others, you
13 may simply accept the part you think is true and ignore the
14 rest.

15 Possible penalty should not influence your
16 decision. It is the duty of the Judge to fix the penalty
17 within the limits provided by law.

18 Now, facts can be proved by direct evidence
19 from a witness or an exhibit. Direct evidence is evidence
20 about what we actually see or hear. For example, if you
21 look outside and see rain falling, that is direct evidence
22 that it is raining.

23 Facts can also be proved by indirect or
24 circumstantial evidence. Circumstantial evidence is
25 evidence that normally or reasonably leads to other facts.

1 So, for example, if you see a person come in from outside
2 wearing a raincoat covered with small drops of water, that
3 would be circumstantial evidence that it is raining.

4 You may consider circumstantial evidence.
5 Circumstantial evidence by itself or a combination of
6 circumstantial evidence and direct evidence can be used to
7 prove the elements of a crime. In other words, you should
8 consider all of the evidence that you believe.

9 You should not decide this case based on
10 which side presented more witnesses. Instead, you should
11 think about each witness and each piece of evidence and
12 whether you believe them. Then, you must decide whether the
13 testimony and evidence you believe proves beyond a
14 reasonable doubt that the defendants are guilty.

15 You've heard testimony from witnesses who are
16 police officers. That testimony is to be judged by the same
17 standards you use to evaluate the testimony of any other
18 witness.

19 Now, every defendant has the absolute right
20 not to testify. When you decide the case you must not
21 consider the fact that a defendant did not testify. It must
22 not affect your verdict in any way.

23 The prosecutor must also prove beyond a
24 reasonable doubt that the crime occurred on or about August
25 6th, 2014 through December 11th, 2014 within Jackson County.

1 If the defendant -- this is transferred
2 intent. If the defendant intended to kill one person but by
3 mistake or accident killed another person, the crime is the
4 same as if the first person that actually been killed.

5 Now, you may consider whether the defendant
6 had a reason to commit the alleged crime, but a reason by
7 itself is not enough to find a person guilty of a crime.
8 The prosecutor does not have to prove that the defendant had
9 a reason to commit the alleged crime. She must only show
10 she only has to show that the defendant actually committed
11 the crime and that they meant to do so.

12 Now, the prosecution has introduced evidence
13 of a statement that it claims that was made by a defendant.
14 Before you may consider such out-of-court statement against
15 the defendant you must first find that the defendant
16 actually made the statement as given to you. If you find
17 the defendant did make the statement you may give the
18 statement whatever weight you think it deserves. In
19 deciding this you should think about how and when the
20 statement was made, and about all the other evidence in the
21 case. You may consider the statement in deciding the facts
22 of the case and in deciding if you believe the defendant's
23 testimony in court.

24 When the lawyers agree on a statement of
25 facts, these are called stipulated facts. You may regard

1 such stipulated facts as true but you are not required to
2 so.

3 You have heard that a lawyer or a lawyer's
4 representative talked to one of the witnesses. There is
5 nothing wrong with this. A lawyer or a lawyer's
6 representative may talk to a witness to find out what the
7 witness knows about the case and what the test -- witness'
8 testimony will be.

9 You must judge each defendant on the evidence
10 presented against that particular defendant, thus, for
11 example, you -- should you find that the evidence shows one
12 defendant to be guilty you should not thereby automatically
13 find the others guilty as well. Judge each defendant based
14 on the evidence presented against him. Just because some
15 evidence may tend to implicate one defendant does not
16 automatically mean that it implicates the other defendants
17 as well.

18 Certain information has been presented to you
19 showing that Cortez Butler may have been involved in certain
20 crimes in the past. Because this evidence has nothing to do
21 with either Rodney or Clifford McKee you are not to consider
22 it against either of them.

23 Now, the defendants statements can be used
24 against the other defendants if there statement mentions the
25 other defendants. If the statement does not mention the

1 other defendants it should be -- it should not be used
2 against them.

3 You have heard testimony from witness who --
4 witnesses who have given you their opinion as an expert in
5 the field of -- their field of expertise. Experts are
6 allowed to give opinions in court about matters they are
7 experts on. The following witnesses were qualified as
8 experts: Dr. Ruben Ortiz-Reyes in forensic pathology; Doc
9 or Detective/Sergeant Paul Gonya -- Gonyay (ph) in cell
10 phone forensics and cell phone GPS location; Deputy Fire
11 Chief Dave Warden -- Wooden, excuse me, and fire
12 investigations; Cassandra Deruiter in DNA detection,
13 serology and crime scene processing; and Scott -- is this
14 spelled right?

15 MS. REZMIERSKI: Herh-ka.

16 THE COURT: Herh-ka (ph).

17 MS. REZMIERSKI: It is spelled right,
18 surprisingly.

19 THE COURT: Hrcka, in fingerprints and crime
20 scene processing; Tony Ernst in ignitable fluid detection.
21 However, you do not have to believe an expert's opinion.
22 Instead, you should decide whether you believe it and how
23 important you think it is. When you decide whether you
24 believe an expert's opinion think carefully about the
25 reasons and facts he gave for his opinion, or her opinion,

1 and whether those facts are true. You should also think
2 about the expert's qualifications and whether their opinion
3 makes sense and think about all the other evidence in the
4 case.

5 Now, the defendants, Cortez Butler, Rodney
6 McKee and Clifford McKee are charged with home invasion in
7 the first degree. To prove this charge the prosecutor must
8 prove each of the following elements beyond a reasonable
9 doubt: First, that the defendant broke into a dwelling. It
10 does not matter whether anything was actually broken,
11 however, some force must have been used. Opening a door or
12 raising a window, taking off a screen are all examples of
13 enough force to count as breaking. Entering a dwelling
14 through an already open door or window without using any
15 force does not count as breaking.

16 Second, that the defendant entered the
17 dwelling. It does not matter whether the defendant got his
18 entire body inside. If the defendant put any part of his
19 body into the dwelling after breaking, that is enough to
20 count as entry.

21 Third, that when the defendant entered, was
22 present in or was leaving the dwelling he committed the
23 offense of murder, or, that when the defendant entered, was
24 present in or was leaving the dwelling either of the
25 following circumstances existed: he was armed with a

1 dangerous weapon, and/or another person was lawfully present
2 in the dwelling.

3 The defendants, Cortez Butler, Rodney McKee
4 and Clifford McKee are charged with the crime of first
5 degree premeditated murder. To prove this charge the
6 prosecutor must prove each of the following elements beyond
7 a reasonable doubt: First, that the defendant caused the
8 death of Frances Craig, that is, that Frances Craig died as
9 a result of multiple stab wounds.

10 Second, that the defendant intended to kill
11 Frances Craig.

12 Third, that this intent was premeditated,
13 that is, thought out beforehand.

14 Fourth, that the killing was deliberate,
15 which means that the defendant considered the pros and cons
16 of the killing and thought about and chose his actions
17 before he did it. There must have been real and substantial
18 reflection for long enough to give a reasonable person a
19 chance to think twice about the intent to kill. The law
20 does not say how much time is needed, that is for you to
21 decide that if enough time passed under the circumstances of
22 this case. The killing cannot be the result of a sudden
23 impulse without thought or reflection.

24 Fifth, that the killing was not justified,
25 excused or done under circumstances that reduce it to a

1 lesser crime.

2 Cortez Butler, Rodney McKee and Clifford
3 McKee are all on trial in this case, and the fact that the
4 are on trial together is not evidence that they were
5 associated with each other, or that either one is guilty.
6 You should consider each defendant separately. Each is
7 entitled to have his case decided on the evidence and law
8 that applies to him. If any evidence was limited to one
9 defendant you should not consider it as to any other
10 defendant.

11 The defendants, Cortez Butler, Rodney McKee
12 and Clifford McKee are charged with the crime of conspiracy
13 to commit murder. Anyone who knowingly agrees with someone
14 else to commit a crime is guilty of conspiracy. To prove
15 the defendants' guilt the prosecutor must prove each of the
16 following elements beyond a reasonable doubt: First, that
17 the defendant, or someone else, knowingly agreed to commit
18 murder.

19 Second, that the defendant specifically
20 intended to commit or help commit that crime.

21 Third, that this agreement took place and
22 continued during the period of August 6th, 2014 to December
23 11th, 2014.

24 Now, agreement is the coming together and
25 meeting of minds of two or more people. Each person

1 intending and expressing the same purpose. It is not
2 necessary for the people involved to have a formal agreement
3 to commit the crime, or to have written down how they were
4 going to do it. In deciding whether there was an agreement
5 to commit a crime you should think about how the members of
6 the alleged conspiracy acted, and what they said, as well as
7 all the other evidence.

8 To find the defendant of -- guilty of
9 conspiracy you must be satisfied beyond a reasonable doubt
10 that there was an agreement to commit murder. However, you
11 may infer that there was an agreement from the circumstances
12 such as how the members of the alleged conspiracy acted. If
13 there was a conspiracy, you must decide whether the
14 defendant was a member of it. You may only consider what
15 the defendant did and said during the time the conspiracy
16 took place.

17 A finding that the -- bleh. A finding that
18 the defendant was merely with other people who were members
19 of a conspiracy is not enough by itself to prove that the
20 defendant was also a member.

21 In addition, the fact that a person did an
22 act that furthered the purpose of the alleged conspiracy is
23 not itself -- is not enough by itself to prove that the
24 person was a member of the conspiracy. It is not necessary
25 for all the members to know each other or know all the

1 details of how the crime will be committed, but it must be
2 shown beyond a reasonable doubt that the defendant or
3 defendants agreed to commit the crime and intended to commit it
4 or help commit it.

5 The defendants are not responsible for the
6 acts of other members of the conspiracy unless those acts
7 are part of the agreement or further the purpose of the
8 agreement. If the defendants agreed to commit a completely
9 different crime than they are not guilty of conspiracy to
10 commit murder. A person who joins a conspiracy after it's
11 already been formed is only responsible for what he agreed
12 to -- agreed to when he joined, not for any agreement made
13 by the conspiracy before he joined.

14 You may consider evidence of what the other
15 members of the alleged conspiracy did or said before the
16 defendant became a member, but only in order to determine
17 the nature and purpose of the conspiracy after the defendant
18 joined. Members of a conspiracy are not responsible for
19 what other members do or say after the conspiracy ends.

20 Each defendant in this case is entitled to
21 have his guilt or innocence divided -- decided individually.
22 You must not decide whether each defendant was a member of
23 the alleged conspiracy -- or, you must decide whether each
24 defendant was a member of the alleged conspiracy as if he
25 were being tried separately. To determine whether each

1 defendant was a member of the alleged conspiracy you must
2 decide whether each member -- whether each individual
3 defendant intentionally joined with anyone else to commit
4 murder. In conspiracy case -- cases it is often difficult
5 to decide each defendant's case on its own because of the
6 amount of evidence that is admitted against the other
7 defendants. If any evidence was limited to one defendant,
8 or some defendants, you should not consider it as to the
9 other defendants. It is not enough to find that there was a
10 criminal agreement to commit murder. Even if you do find
11 there was a conspiracy, you must still determine whether
12 each defendant separately was a member of that conspiracy.

13 The defendants, Clifford McKee and Rodney
14 McKee are charged with solicitation to commit murder. To
15 prove the defendants' guilt the prosecutor must prove each
16 of the following elements beyond a reasonable doubt: First,
17 that the defendant, through words or actions, offered,
18 promised or gave money, services or anything of value to
19 another person.

20 Second, that the defendant intended that what
21 he said or did would cause a murder to be committed. The
22 prosecutor does not have to prove that the person the
23 defendant solicited actually committed, attempted to commit
24 or intended to commit murder.

25 The defendants, Clifford McKee and Rodney

1 McKee, are both charged with solicitation of murder and all
2 three defendants are charged with crimes of conspiracy to
3 commit homicide, open murder and home invasion first degree.
4 These are separate crimes and the prosecutor is charging
5 that each defendant committed each of them. You must
6 consider each crime separately in light of all the evidence.
7 You must return a separate verdict for each defendant.

8 For each defendant you may return a verdict
9 of guilty of one or more of the alleged crimes, guilty of
10 less serious crime, or not guilty. Remember that you must
11 consider each defendant separately.

12 The defendants Cortez Butler, Rodney McKee
13 and Clifford McKee are charged with first -- first degree
14 felony murder. To prove this charge the prosecutor must
15 prove each of the following elements beyond a reasonable
16 doubt: First, that the defendant caused the -- first, that
17 the defendant caused the death of Frances -- Frances Craig.
18 That is, that Frances Craig died as a result of multiple
19 stab wounds.

20 Second, that the defendant had one of these
21 three states of mind: he intended to kill, or he intended to
22 do great bodily harm to Frances Craig, or he knowingly
23 created a very high risk of death or great bodily harm
24 knowing that such death or such harm would be the likely
25 result of his actions.

1 Third, that when he did the act that caused
2 the death of Frances Craig the defendant was committing, or
3 attempting to commit or helping someone else commit the
4 crime of home invasion first degree. For the crime of home
5 invasion first degree the prosecutor must prove each of the
6 elements of home invasion first degree beyond a reasonable
7 doubt.

8 Fourth, that the killing was not justified,
9 excused or done under circumstances that reduce it to a
10 lesser crime. The defendant must have been either
11 committing or helping someone else commit the crime of home
12 invasion. To help means to perform acts or give
13 encouragement before or during the commission of the crime
14 that aids or assists in its commission. At the time of
15 giving aid or encouragement the defendant must have intended
16 the commission of home invasion.

17 Now, there's a chart that'll show first
18 degree premeditated murder and second degree murder. Number
19 one is victim's death and second degree is the murder's the
20 same, death caused by the defendant, second degree murder is
21 the same. Third, the death is not justified or excused or
22 mitigated to manslaughter, second degree murder is the same.

23 Defendant actually intended to kill the
24 victim, and in the second degree murder the defendant
25 actually intended to kill the victim, or the defendant

1 intended to do great bodily harm to the victim, or defendant
2 knowingly created a very high risk of death or great bodily
3 harm knowing that death or such harm would be the likely
4 result of his actions.

5 And then under first degree murder death --
6 defendants premeditated -- premeditated the victim's death
7 and defendant deliberated victim's death. And it's a chart
8 it'll show you first degree premeditated and then it's got
9 second degree so you can compare the various elements of the
10 same.

11 And then we have a chart for first degree
12 felony murder and second degree murder. First degree is
13 victim's death, number one, and that's the same for second
14 degree. Two is death caused by defendant, same for second
15 degree. Three, death not justified or excused, it's the
16 same for second degree. Fourth, the defendant actually
17 intended to kill victim or defendant intended to do great
18 bodily harm to the victim, or defendant knowingly created a
19 very high risk of death or great bodily harm knowing that
20 death or such harm would be the likely result of his
21 actions. The same for second degree.

22 And a fifth element for first degree felony
23 murder; the defendant was committing or attempting to commit
24 a specified felony at the time of the act causing the
25 victim's death.

1 Now, you must think about all the evidence in
2 deciding what the defendant's state of mind was at the time
3 of the alleged killing. The defendant's state of mind may
4 be inferred from the kind of weapon used, the type of wounds
5 inflicted, the acts and words of the defendant, and any
6 other circumstances surrounding the alleged killing. You
7 may infer that the defendant intended to kill if he used
8 a dangerous weapon in a way that was likely to cause death.
9 Likewise, you may infer the defendant intended the usual
10 results that follow from the use of a dangerous weapon.

11 A dangerous weapon is any instrument that is
12 used in a way that is likely to cause serious physical
13 injury or death.

14 Premeditation and deliberation may be
15 inferred from any actions of the defendant which show
16 planning, or from any other circumstances surrounding the
17 killing. The prosecutor does not need prove a motive for the
18 killing but you may consider evidence of motive in deciding
19 if there was premeditation and deliberation. Motive by
20 itself does not prove premeditation and deliberation.

21 You may also consider the lesser charge of
22 second degree murder. To prove this charge the prosecutor
23 must prove each of the following elements beyond a
24 reasonable doubt: First, that the defendant caused the death
25 of Frances Craig. That is, that Frances Craig died as a

1 result of multiple stab wounds.

2 Second, that the defendant had one of these
3 three states of mind: he intended to kill, or he intended to
4 do great bodily harm to Frances Craig, or he knowingly
5 created a very high risk of death or great bodily harm
6 knowing that such death or such harm would be the likely
7 result of his actions.

8 Third, that the killing was not justified,
9 excused or done under circumstances that reduce it to a
10 lesser crime.

11 Now, if you find the defendant guilty of
12 murder you must state in your verdict whether it is murder
13 in the first degree or murder in the second degree.

14 You have been instructed on two types of
15 first degree murder. The two types are premeditated murder
16 and felony murder.

17 A verdict in a criminal case must be
18 unanimous. To be unanimous each of you must agree upon
19 which type of first degree murder has been proved, or that
20 both types of first degree murder have been proved. If you
21 return a verdict of guilty of first degree murder your
22 unanimous verdict must specify whether all of you have found
23 the defendant guilty of premeditated murder, or B, felony
24 murder, or both.

25 You must consider each defendant separately.

1 Each one is entitled to have his case decided on the
2 evidence and law that applies to him. It is not enough
3 merely to find the defendant agreed to commit the crime of
4 home invasion. Instead, you must determine as to each
5 defendant separately whether he intended to kill, whether
6 intended to do great bodily harm, or whether he created a
7 very high risk of death or great bodily harm knowing that
8 death or such harm was the probable result of what he did.

9 Now, when you go to the jury room you should
10 first choose a foreperson. That foreperson should see to it
11 that your discussions are carried on in a businesslike way,
12 that -- and that everyone has a fair chance to be heard. A
13 verdict in a criminal case must be unanimous. In order to
14 return a verdict it is necessary that each of you agrees on
15 the verdict. In the jury room you will discuss the case
16 among yourselves but ultimately, each of you will have to
17 make up your own mind. Any verdict must represent the
18 individual considered judgment of each juror.

19 It is your duty as jurors to talk to each
20 other, make every reasonable effort to reach agreement.
21 Express your opinions and the reasons for them but keep an
22 open mind as you listen to your fellow jurors. Re-think
23 your opinions and do not hesitate to change your mind if you
24 decide you were wrong. Try your best to work out your
25 differences. However, although you should try and reach

1 agreement, none of you should give up your honest opinion
2 about the case just because other jurors disagree with you
3 or just for the sake of reaching a verdict. In the end,
4 your vote must be your own and you must vote honestly and in
5 good conscience.

6 If you want to communicate with me while you
7 are in the jury room please have your foreperson write a
8 note and give it to the bailiff. It's not proper for you to
9 talk directly with the Judge, lawyers, court officers or
10 other people involved in the case. As you discuss the case
11 you must not let anyone, even me, know how your voting
12 stands. Therefore, until you return with a unanimous
13 verdict do not reveal this information to anyone outside the
14 jury room.

15 If you want to look at any or all of the
16 exhibits that have been admitted, just ask for them.

17 As I stated, I'll be sending a written copy
18 of the instructions you've just heard. As you discuss the
19 case you should think about the elements because they are
20 part of the law that you are to follow.

21 I prepared a verdict form listing possible
22 verdicts. The first one's People of the State of Michigan
23 versus Rodney McKee. We, the jury, find the defendant,
24 Rodney McKee, as follows: count one, conspiracy to commit
25 homicide, murder, first degree, premeditated; not guilty/

1 guilty.

2 Count two, homicide, solicitation of murder
3 not guilty/guilty.

4 Count three, first degree murder, not guilty/
5 guilty. If you return a verdict of guilty of first degree
6 murder your unanimous verdict must specify whether all of
7 you have found the defendant guilty of, and then you check
8 the boxes, premeditated murder, felony murder, or both.

9 If you find the defendant not guilty of first
10 degree murder you may consider the lesser offense of second
11 degree murder, not guilty/guilty.

12 And count four, home invasion, not
13 guilty/guilty. Have your foreperson sign it and date it.

14 And then we have People of the State of
15 Michigan versus Clifford McKee. We find -- we, the jury
16 find the defendant, Clifford McKee, as follows: count one,
17 conspiracy to commit homicide, murder, first degree,
18 premeditated; not guilty/guilty.

19 Homicide, solicitation of murder, count two;
20 not guilty/guilty.

21 Count three, first degree murder, not guilty/
22 guilty. And again, if you return the verdict of guilty of
23 first degree murder your unan -- your unanimous verdict must
24 specify whether all of you have found the defendant guilty
25 of, and then you check the box, premeditated murder, felony

1 murder, both.

2 If you find the defendant not guilty of first
3 degree murder you may consider the lesser offense of second
4 degree murder, not guilty/guilty.

5 And home invasion first degree, not
6 guilty/guilty. Have your foreperson sign and date it.

7 And then People of the State of Michigan
8 versus Cortez Butler. We find, the jury find the defendant
9 Cortez Butler, as follows: count one, conspiracy to commit
10 homicide, murder, first degree, premeditated; not
11 guilty/guilty.

12 Count two, first degree murder, not
13 guilty/guilty. If you return the verdict of guilty of first
14 degree murder your unanimous verdict must specify whether
15 all of you have found the defendant guilty of premeditated
16 murder, felony murder, or both.

17 If you find the defendant not guilty of first
18 degree murder you may consider the lesser offense of second
19 degree murder, not guilty/guilty.

20 Count three, home invasion first degree, not
21 guilty/guilty. Again, you have your foreperson sign and
22 date it.

23 Now, Michelle, you want to come up and be
24 sworn in?

25 THE CLERK: Do you solemnly swear that you

1 will, to the utmost of your ability, keep the jurors from
2 separating from each other, that you will not allow any
3 communication to be made to them, that you will not
4 communicate with them except under order of this court, or
5 to ask them if they have agreed upon a verdict and that you
6 will not, before they render their verdict, communicate to
7 any person the state of their deliberations or the verdict
8 they have agreed upon so help you God?

9 THE BAILIFF: I do.

10 (At 2:10:50 p.m., Bailiff Sworn)

11 THE COURT: Okay. Now at this point we're
12 gonna -- we've got all of your names in the box, we're gonna
13 shake it up, we're gonna draw two names out. Again, I've
14 got to reiterate this, whoever those two names are I have to
15 ask that you treat yourself just like you're on the jury.
16 You can't discuss the case with anyone at all. We will have
17 your personal information so that we can contact you
18 immediately as soon as a verdict is reached. The reason I
19 need you to treat yourself like you're still on the jury,
20 and this has happened a number of times, somebody's had a
21 family emergency, somebody's become ill and what we have to
22 do in those circumstances, since we're going to be drawing
23 two names off, we will shake the two names up in a box, have
24 the parties here present and will draw one of the two names
25 back out of the box and have that individual come back in

1 and then you begin your deliberations over.

2 And when I say it's happened a number of
3 times, it has happened a number of times where we've had to
4 call somebody back in. Mother or father's all of a sudden
5 in the hospital, they've got to be up there, child's become
6 extremely ill, there's been different things that have come
7 up.

8 So, whoever those two individuals are, please
9 do not discuss the case with any -- do not watch any news
10 reports, don't go back and look at any papers, anything like
11 that until you hear from us that a verdict has been reached.

12 Shake up the box.

13 THE CLERK: Juror number thirteen.

14 THE COURT: Okay, go ahead and shake up the
15 box again.

16 THE CLERK: Juror number ten.

17 THE COURT: Okay. All I can say is, I know
18 it's been a long period of time sitting here and again, we
19 thank you very much for your attention. These are not easy
20 cases, but please treat yourself like you're still on the
21 jury. Please -- you know, you never know, you very well
22 could -- one of the two of you could end up getting called
23 back in. Okay?

24 Michelle?

25 Just for the moment while she gets the

1 information I'm gonna have the other two of you accompany
2 the other jurors back there so you can gather your stuff and
3 she's gonna get your contact information from you, for
4 multiple reasons, okay?

5 And do not start doing any deliberations.
6 I'll send the packet back. As soon as you get the packet
7 back you can begin your deliberations when you get the
8 packet back in the jury room.

9 Okay, if you'd all go back with the bailiff
10 and --

11 THE CLERK: All rise for the jury.

12 (At 2:14:27 p.m., jury excused to begin
13 deliberations)

14 THE COURT: Please be seated.

15 MR. ENGLE: (Inaudible).

16 THE COURT: Hold on for a minute, I want that
17 door shut. Okay, problems with instructions or should I
18 send the packet back?

19 MS. REZMIERSKI: No, no, no objections.
20 Thank you, Judge.

21 MR. ENGLE: Your Honor, I have no objection
22 to the instructions. I would note, if I'm correct, that
23 number 13 is the only black juror and she's been taken off
24 the jury --

25 THE COURT: Completely --

1 MR. ENGLE: I just note because of all the
2 objections I had at --

3 THE COURT: I know, but that is a completely
4 random -- there's no way I could pull her -- I can't pull
5 her name out ahead of time and say we're gonna pick between
6 the --

7 MR. ENGLE: I'm not asking --

8 THE COURT: -- remaining jurors.

9 MR. ENGLE: -- that, I'm just noting it for
10 the record.

11 THE COURT: I know. But she's also on
12 standby and if anything happens we'll put the same two names
13 back in the box, we'll shake it up and Mr. Engle, if you
14 want to --(multiple speakers)-- I'll let you come up and
15 pick it out.

16 MR. ENGLE: I -- your Honor, I had another
17 thing, but they can --

18 THE COURT: Okay, anybody else have a problem
19 with --

20 MR. PERLOS: No.

21 THE COURT: -- the instructions as read?

22 MR. BRANDT: No, your Honor. Thank you.

23 THE COURT: Mr. Perlos?

24 MR. PERLOS: No.

25 MR. ENGLE: Your Honor, my client does not

1 wish to come back after today. He understands that I would
2 have to communicate the verdict by sending him a letter, but
3 he does not wish to come back after today, so I leave that
4 up to the court.

5 THE COURT: Let's see where they're at in
6 deliberations. I'll figure it out in a little bit. Okay.

7 Once she gets back I'll send the packet back
8 and they can begin their deliberations.

9 MS. REZMIERSKI: Thank you, Judge.

10 THE COURT: (Inaudible).

11 MR. BRANDT: Your Honor, and I forgot, in
12 there is there -- did we talk about they can take the
13 exhibits back?

14 MS. REZMIERSKI: Mm-hmm, it is an
15 instruction.

16 THE COURT: It was an instruction they could
17 ask for any or all of the exhibits --

18 MR. BRANDT: Thank you.

19 THE COURT: -- just send a note out.

20 MR. BRANDT: Thank you. So that's usually --
21 and Katie's pretty good about holding it somewhere.

22 THE COURT: Now, for the rest of you, if we
23 have -- I know we got family members from both sides, and
24 you may not want to sit around for a day or two at a time,
25 we will take one to two contact numbers from each side, but

1 once we call, you'll only have -- I'll give you about 15 to
2 20 minutes to get here, but that's about it. Okay? It'll
3 be your choice how you want to do it, but because this could
4 be a day or two, who knows? You know, they could be back in
5 a couple hours or they could be back a day and a half, two
6 days from now and to avoid you having just to sit here in
7 the hallways, we will take up to two numbers from each side,
8 contact those two numbers. If you don't answer, there's
9 nothing we can do about it, okay?

10 But we will try both numbers and we'll try it
11 a couple times and we'll give you about 20 minutes to get
12 back here once we've got a verdict. Okay? But just let the
13 bailiff know and I'll talk to her in just a moment about it.

14 THE CLERK: All rise.

15 MR. ENGLE: Your Honor, he would prefer just
16 to go back right now if that's okay?

17 MR. BUTLER: No, I --

18 MR. ENGLE: Okay.

19 THE COURT: I'll talk to --(inaudible).

20 (At 2:18:22 p.m., hearing concluded)

CERTIFICATION

This is to certify that the attached electronically recorded proceeding, consisting of one hundred and sixteen (116) pages, before the 4th Judicial Circuit Court, Jackson County, Michigan:

PEOPLE OF THE STATE OF MICHIGAN

v

CORTEZ ANTONIO BUTLER,
CLIFFORD DURELL MCKEE and
RODNEY JAMAR MCKEE

_____/

Location: Circuit Court

Date: Wednesday, April 6, 2016

was held as herein appeared and that this is testimony from the original transcript of the electronic recording thereof, to the best of my ability.

I further state that I assume no responsibility for any events that occurred during the above proceedings or any inaudible responses by any party or parties that are not discernible on the electronic recording of the proceedings.

s\ **Sally Fritz**
Sally Fritz, CER #7594
Certified Electronic Recorder

Dated: November 12, 2016

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