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STATE OF MICHIGAN
30th JUDICIAL CIRCUIT FOR THE COUNTY OF INGHAM
CRIMINAL DIVISION

THE PEOPLE OF THE
STATE OF MICHIGAN

v

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

JOHN C. KELSEY II,

Defendant.

_____ /

JURY TRIAL - VOLUME 2

BEFORE THE HON. JAMES S. JAMO, CIRCUIT JUDGE

Ingham County, Michigan - Thursday, May 28, 2015

APPEARANCES:

For the People:

JONATHAN C. ROTH (P72030)
Assistant Prosecuting Attorney
Ingham County Prosecutor's Office
303 W. Kalamazoo Street, 4th Fl.
Lansing, MI 48933

For the Defendant:

BRIAN P. MORLEY (P58346)
Fraser Trebilcock Davis & Dunlap, PC
124 W. Allegan Street
Suite 1000
Lansing, MI 48933

ALSO PRESENT:

John C. Kelsey II, Defendant
Detective Sergeant Kyle McPhee
Detective Trooper Troy Johnston

REPORTED BY:

Melinda I. Dexter, RMR, CSR-4629
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Official Court Reporter
313 W. Kalamazoo
P.O. Box 40771
Lansing, MI 48901-7971

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1 Ingham County, Michigan
2 Thursday, May 28, 2015 - At 8:37 a.m.
3 THE COURT: We are back on the record in the
4 matter of People versus John Kelsey -- it is File
5 No. 14-1380-FH -- for continuation of the jury trial in
6 this matter.
7 And I understand we have a few things we need
8 to put on the record. I also have a couple things I need
9 to bring to your attention as well.
10 MR. ROTH: As I understand it for today we only
11 have one small matter. People's Proposed Exhibit 21,
12 which is the in-car camera from Deputy Hoeksema's
13 vehicle, the parties are agreeing to stop it at 2:12 a.m.
14 There is not a way to actually cut the video,
15 and so we have to admit the whole thing. But what we're
16 going to do is stipulate that if during deliberations
17 they ask to see it again, either the court clerk can
18 supervise it, or they can be brought in the courtroom to
19 do it here. That way it doesn't go beyond that time.
20 THE COURT: Mr. Morley?
21 MR. MORLEY: That's accurate, Your Honor. And,
22 as I said the other day, just so it's clear, that's in
23 response to my previously filed motion in limine on that
24 issue, but we have since stipulated.
25 THE COURT: All right. Very good.

4

1 MR. ROTH: Nothing else in terms of preliminary
2 matters from the People.
3 THE COURT: Mr. Morley, do you have anything
4 preliminarily?
5 MR. MORLEY: I don't think so, Judge. Thank
6 you.
7 THE COURT: I have a couple of things we need
8 to bring to your attention. First, we have contact from
9 -- one of the jurors yesterday contacted the bailiff,
10 Juror No. 6, and indicated that she had seen a Facebook
11 post by her ex-sister-in-law by the name of Laurie Brooks
12 Weston and didn't think during the voir dire, didn't
13 connect it when I read the name Lauri Brooks because she
14 didn't know whether she's now going by Brooks or Weston.
15 And I also note the spelling is a bit different
16 between what the juror indicated and what is on the
17 witness list. I think she's on the witness list as
18 No. 96, at least the list that I'm operating from.
19 So I don't know how you want to handle that or
20 if you want to give some thought to that. I think -- I
21 don't think she's indicating -- at least from what was
22 sent to us, I don't think she's indicating that there was
23 any comment about this case. It was just when she saw
24 the name, it reminded her that I had read that same name.
25 MR. ROTH: I think the only prudent thing is to

5

1 bring her in here just for a couple questions to make
2 sure, first of all, that we're talking about the same
3 person. And, secondly, that it doesn't pose an issue.
4 She's not an insignificant witness; certainly one that
5 will actually be called.
6 MR. MORLEY: That's my same thought process,
7 Judge, except I'm wondering if it should be done in
8 camera. I'll leave that to you.
9 THE COURT: We can do it in camera. I don't
10 have an objection to that.
11 Do you, Mr. Roth? I don't know that it's
12 necessary.
13 MR. ROTH: I don't think it's necessary.
14 THE COURT: She -- she indicates that the
15 reason she's not certain is because of the change in
16 name. She said that she has been re -- she thinks
17 remarried and divorced since they were sister-in-laws.
18 It doesn't sound like it's much of a current
19 connection. Either way, why don't you think about it a
20 minute, the issue of whether to do it in camera or not,
21 because it may be more of an issue with the next one.
22 We've been informed this morning that
23 Juror No. 8, it did not occur to him during our voir dire
24 questioning to -- I guess it just didn't strike him as
25 something that he even thought about, but now he thinks

6

1 that he should disclose that his wife works for the
2 Fraternal Order of Police. So we're going to have to
3 address that issue.
4 MR. ROTH: My preference, Your Honor -- I think
5 we have to talk to both of them -- is to do it in the
6 courtroom, if only for efficiency. I don't think either
7 one deals with sensitive topics that need to be discussed
8 privately.
9 Ms. Dexter will need to break down her
10 equipment, reset it up in chambers, come back out, reset
11 it up. It's going to delay the proceedings.
12 MR. MORLEY: I'll defer to the Court, Judge.
13 THE COURT: All right. Let's do it that way
14 initially. If we get into territory that either of you
15 thinks -- in this questioning that either of you thinks
16 is problematic, we can stop the questioning here and then
17 move it in camera.
18 MR. ROTH: Thank you, Your Honor.
19 THE COURT: Fair enough.
20 MR. MORLEY: Yes, sir.
21 THE COURT: So I'll have --
22 Do have a preference as to who we bring out
23 first?
24 MR. MORLEY: No, sir.
25 MR. ROTH: No, Your Honor.

7

1 THE COURT: We'll bring out Juror No. 6, I
2 think, first.
3 Also we have several spectators in the audience
4 this morning. And I just want to remind everybody, if
5 they haven't already heard this rule, that cell phones --
6 those of you who are spectators, cell phones must be
7 turned off. Your electric devices have to be completely
8 off. That means not just that they're on silent mode but
9 completely off.
10 If you are -- and there are some exceptions,
11 including the attorneys who are here, but if you are
12 found to have your cell phone on, even if it's on silent
13 mode, if you have it on at all and you're found to have
14 it on, you will be removed from the courtroom. You will
15 not be allowed back in the courtroom today. So that's
16 the -- that's the rule. Everybody check your cell
17 phones. Make sure they are completely off, not just on
18 silent.
19 Let's bring No. 6 in, please.
20 (At 8:44 a.m., Juror No. 6
21 entered the courtroom.)
22 THE COURT: Please be seated, ma'am. You can
23 go right to your seat there in No. 6.
24 Good morning.
25 JUROR NO. 6: Good morning.

8

1 THE COURT: I wanted to take a moment to talk
2 to you and allow the jurors to talk with you as well
3 regarding the issue that you raised by way of e-mail to
4 Mr. Adkins yesterday about a potential witness in this
5 case, Lauri Brooks. And you have indicated that it
6 occurred to you by way of seeing a Facebook post, I
7 guess, the name just --
8 JUROR NO. 6: Mm-hmm.
9 THE COURT: -- that jogged the name in your
10 mind from a name that I had read from the witness list
11 and that you're uncertain whether this is the same
12 person.
13 And you also indicated you were not sure
14 whether she was going by the last name of Brooks or
15 Weston at this point. And you believe that she had been
16 remarried and maybe even divorced again since the two of
17 you were sister -- sisters-in-law.
18 JUROR NO. 6: Correct.
19 THE COURT: All right. First of all, let me
20 ask you, the post you saw, did it have anything to do
21 with this case, or was it just the name that jogged you?
22 JUROR NO. 6: It was just the name.
23 THE COURT: Okay. So it was not a post that
24 talked about this case?
25 JUROR NO. 6: No.

9

1 THE COURT: All right. And you indicate in
2 your e-mail that she spells her last name -- er, I'm
3 sorry, her first name L-A-U-R-I-E. Do you believe that
4 to be an accurate spelling of the first name?
5 JUROR NO. 6: Yes.
6 THE COURT: I'm not sure whether it is accurate
7 on our witness list or not, but the witness list
8 indicates a spelling of the first name without an E at
9 the end.
10 I'm going to allow Mr. Roth and Mr. Morley to
11 ask you a couple of questions because they're more
12 familiar with the witness and will be able to help us
13 determine whether it's the same person that you are
14 referring to or whether this is somebody different
15 altogether.
16 JUROR NO. 6: Okay.
17 THE COURT: Okay.
18 Mr. Roth?
19 MR. ROTH: Thank you, Your Honor.
20 Good morning, ma'am.
21 JUROR NO. 6: Good morning.
22 MR. ROTH: So I want to start by making sure
23 we're talking about the same person. We list her as
24 being -- having blonde hair, green eyes, 5' 7", birth
25 date in 1968. Does that sound right?

10

1 JUROR NO. 6: It could be because she has
2 blonde hair. I don't know the color of her eyes, and I'm
3 not sure -- I know she's younger than I am, but I'm not
4 sure --
5 MR. ROTH: All right. And this particular
6 Lauri Brooks worked at a bar as a waitress. Does that
7 sound right?
8 JUROR NO. 6: I don't know. I haven't spoken
9 to her in 14 years.
10 MR. ROTH: Certainly it's not a relationship
11 that's very close?
12 JUROR NO. 6: No.
13 MR. ROTH: Any bad feelings between the two of
14 you?
15 JUROR NO. 6: No.
16 MR. ROTH: Anything about that you think,
17 beyond sending the e-mail, would make you a bad juror in
18 this case?
19 JUROR NO. 6: No.
20 MR. ROTH: You'd be able to listen to her
21 testimony and evaluate it like everybody else?
22 JUROR NO. 6: Yes.
23 MR. ROTH: Very good.
24 I have nothing further.
25 THE COURT: Thank you, Mr. Roth.

11

1 Mr. Morley, do you wish to ask some questions?
2 MR. MORLEY: Thank you, Judge.
3 Ma'am, I appreciate your candor to the Court.
4 Let me see if I can ask this the right way. What caused
5 you to go to Facebook and that name? Was it last night,
6 or something to that effect?
7 JUROR NO. 6: It showed up on my news feed
8 because apparently her daughter is having a baby, and
9 they found out it was a boy. That's the only reason I
10 saw it.
11 MR. MORLEY: Just that simple?
12 JUROR NO. 6: Yeah. It just showed up on my
13 news feed.
14 MR. MORLEY: So it wasn't she's -- I'm not on
15 Facebook. But it wasn't that she's a friend or you're
16 connected or you communicate. I think you said you
17 hadn't talked to her in 14 years?
18 JUROR NO. 6: Right. She was a friend of mine
19 on Facebook but only for the convenience. I can see how
20 her children are growing and she can see mine, and that's
21 it. We've never really spoken to each other on Facebook.
22 MR. MORLEY: Has there been any communication,
23 e-mail, posting, anything in any way related to this
24 case?
25 JUROR NO. 6: Not that I have seen.

12

1 MR. MORLEY: That's all I have, Judge. Thank
2 you.
3 THE COURT: All right. Thank you.
4 Mr. Adkins, you may take Juror No. 6 back to
5 the jury room.
6 Thank you, ma'am.
7 (At 8:48 a.m., Juror No. 6 left
8 the courtroom.)
9 THE COURT: All right. Be seated.
10 Anything you want to put on the record
11 regarding that, Mr. Roth?
12 MR. ROTH: No, Your Honor, nor do I have any
13 objection.
14 THE COURT: Mr. Morley, any objection?
15 MR. MORLEY: No, sir. Thank you.
16 THE COURT: Mr. Adkins, if you'll please bring
17 in Juror No. 8.
18 (At 8:49 a.m., Juror No. 8
19 entered the courtroom.)
20 THE COURT: Sir, you can have a seat right
21 there in your regular seat there, Juror No. 8.
22 All right. Please be seated. Good morning,
23 sir.
24 JUROR NO. 8: Good morning.
25 THE COURT: We have brought you in this morning

13

1 to ask you a couple of questions about the information
2 that you disclosed to Mr. Adkins this morning. You have
3 indicated -- if I have it correct, you have indicated
4 that your wife works for the Fraternal Order of Police.
5 Is that correct?
6 JUROR NO. 8: Correct.
7 THE COURT: And when we were asking you
8 questions, I understand it didn't -- didn't strike you as
9 what we were talking about.
10 JUROR NO. 8: Exactly.
11 THE COURT: Okay. And so we're going to ask
12 you a couple of questions about that.
13 JUROR NO. 8: Sure.
14 THE COURT: And the attorneys will have an
15 opportunity as well. But, first of all, can you tell me
16 what your wife does, what her position is or role is with
17 the FOP?
18 JUROR NO. 8: It's her and another woman. It's
19 mostly secretarial. They set up different things around
20 the state, kind of, for awards banquettes for them. It's
21 mainly secretarial things. They -- taking their funds.
22 They take donations. That kind of thing.
23 THE COURT: So it's a clerical function that
24 involves also some events, putting together some events
25 and things?

14

1 JUROR NO. 8: It does involve events with
2 police officers. It doesn't involve really me but her.
3 THE COURT: And she works out of the FOP office
4 here in Lansing?
5 JUROR NO. 8: Yes. That's correct.
6 THE COURT: All right.
7 Mr. Roth?
8 MR. ROTH: Thank you, Your Honor.
9 Good morning, sir.
10 JUROR NO. 8: Good morning.
11 MR. ROTH: First of all, as it is relates
12 specifically to this case, have you and your wife talked
13 about it either through what you've seen in the media or
14 through anything that she's come across in her work?
15 JUROR NO. 8: No. But I -- she's -- we both
16 remember seeing the case back when it happened.
17 MR. ROTH: There is no influence from her work
18 to your ability to serve as a juror in this case?
19 JUROR NO. 8: No, I wouldn't say so.
20 MR. ROTH: You would be okay not talking to her
21 about the case as it goes on if you're sat as a juror?
22 JUROR NO. 8: Absolutely.
23 MR. ROTH: Very good. Any reason you couldn't
24 be fair and impartial based on that?
25 JUROR NO. 8: That I could or couldn't?

15

1 MR. ROTH: I'm sorry, could not be.
2 JUROR NO. 8: No.
3 MR. ROTH: Very good.
4 I have nothing further, Your Honor.
5 THE COURT: Mr. Morley, you may inquire.
6 MR. MORLEY: Sir, my understanding is that the
7 FOP here in town is kind of a lobbying organization,
8 isn't it?
9 JUROR NO. 8: Correct.
10 MR. MORLEY: All right. So this is, as opposed
11 to a lodge or something like that, she doesn't keep the
12 books at a particular lodge or anything like that?
13 JUROR NO. 8: Her and another woman do -- kind
14 of do books at the Lansing Lodge.
15 MR. MORLEY: Okay. So that's in addition to --
16 I think it's in Boji Tower, isn't it, the FOP?
17 JUROR NO. 8: It is in the Boji Tower, upper
18 floor.
19 MR. MORLEY: And they're in that building with,
20 if you will, the legislative or the lobbying arm, right?
21 JUROR NO. 8: Right.
22 MR. MORLEY: Also does one of the lodges here
23 in town?
24 JUROR NO. 8: Right. I think so.
25 MR. MORLEY: Okay. Do you -- I think you

16

1 mumbled it under your breath. You said words to the
2 effect of "Not me so much." Do you and your wife
3 socialize with police officers?
4 JUROR NO. 8: We have before when it came to
5 certain events that she would set up. I mean, I don't
6 know any of them per se, but, right, yes.
7 MR. MORLEY: That's fair. Is it just because
8 -- tell me if I'm oversimplifying this -- you got invited
9 to a free banquette every now and then?
10 JUROR NO. 8: Pretty much, yeah. Our family
11 would go along with her. Her and another lady set them
12 up and take care of everything.
13 MR. MORLEY: As you sit here today -- I think
14 everybody knows a cop. Is there any reason that your
15 wife's job would, in any way, affect your ability to be a
16 juror in this matter?
17 JUROR NO. 8: I don't think so.
18 MR. MORLEY: And no disrespect by this
19 question: It was simply oversight that you didn't
20 respond on Tuesday?
21 JUROR NO. 8: It really was. It wasn't until
22 after I thought about it, and I really felt bad.
23 MR. MORLEY: I understand. And I respect your
24 candor to the Court.
25 That's all I have, Judge. Thank you.

17

1 THE COURT: Thank you, Mr. Morley.
2 Anything further, Mr. Roth?
3 MR. ROTH: No, Your Honor. Thank you.
4 THE COURT: All right.
5 Mr. Adkins, you can take Juror No. 8 back to
6 the jury room.
7 Thank you, sir.
8 THE BAILIFF: All rise.
9 (At 8:53 a.m., Juror No. 8 left
10 the courtroom.)
11 THE COURT: Please be seated.
12 Mr. Roth, any objection or any issue with
13 regard to Juror No. 8?
14 MR. ROTH: No, Your Honor. Thank you.
15 THE COURT: Mr. Morley, any objection or issue
16 with regard to Juror No. 8?
17 MR. MORLEY: No, sir. Thank you.
18 THE COURT: Okay. The only other thing that
19 I'll mention on the record is that I did sign the capias
20 warrant yesterday. It is my understanding from the
21 arraignment list this morning that Mr. Hildabridle --
22 In case you don't know this yet, Mr. Morley,
23 Mr. Hildabridle has been taken into custody.
24 MR. ROTH: That is correct, Your Honor.
25 THE COURT: I guess we'll deal with that after

18

1 -- if we need to address that further, we'll address that
2 after we get through the morning with the jury.
3 Because, as I see at least from the preliminary
4 list for this morning, Mr. Roth, he is not on your
5 anticipated witness call today.
6 MR. ROTH: That's correct, Your Honor.
7 THE COURT: Mr. Morley, anything you need to
8 put on the record about that right now?
9 MR. MORLEY: No, sir. I appreciate it. Thank
10 you.
11 THE COURT: Okay. Are we ready to bring the
12 jurors in then?
13 MR. ROTH: Yes, sir.
14 MR. MORLEY: Yes, sir.
15 THE COURT: Okay.
16 (At 8:56 a.m., the jury entered
17 the courtroom.)
18 THE COURT: Please be seated.
19 Good morning, Ladies and Gentlemen of the Jury.
20 VARIOUS JURORS: Good morning.
21 THE COURT: We are ready to proceed this
22 morning, and we will start with the prosecutor's opening
23 statement.
24 Mr. Roth, you may present your opening
25 statement, sir.

19

1 MR. ROTH: Thank you, Your Honor.
 2 Good morning, Ladies and Gentlemen.
 3 VARIOUS JURORS: Good morning.
 4 MR. ROTH: Deputy Hoeksema got out of his
 5 patrol car desperately screaming for his partner, "Grant.
 6 Grant. Grant." He found Deputy Whitaker's patrol car on
 7 the side of the road sheared and shredded into three
 8 pieces. The motor had been ejected 60 feet forward.
 9 He found his partner, Deputy Grant Whitaker,
 10 buckled into his seat, no vitals, not breathing,
 11 non-responsive. He was pronounced dead one hour later.
 12 The evidence in this trial is going to consist
 13 of three parts:
 14 First, the fatal pursuit that led up to that
 15 moment.
 16 Second, the Michigan State Police investigation
 17 and the identification of the man that they were pursuing
 18 in that chase. Third, and finally, a reconstruction of
 19 the Defendant's evening leading up to that, which
 20 ultimately proved and provides his motive for fleeing
 21 from the police.
 22 The testimony in this trial will show that on
 23 December 7th, 2014, at approximately 2:02 a.m., Ingham
 24 County Sheriff's Uniform Deputies Grant Whitaker and Rick
 25 Hoeksema were stationed at the Mugg & Bopps Marathon

1 Station in the village of Stockbridge, Ingham County,
 2 Michigan. Deputy Whitaker was in a fully-marked Ingham
 3 County Sheriff's Office patrol car facing away from the
 4 road. Deputy Hoeksema was in a semi-marked Ingham County
 5 Sheriff's Department traffic vehicle facing towards the
 6 road. They were window to window.
 7 The Ingham County Sheriff's Office emblem was
 8 visible on Deputy Hoeksema's vehicle facing the east.
 9 And it was from that direction that Deputy Hoeksema saw a
 10 large white SUV coming, and he couldn't tell exactly what
 11 kind of vehicle it was, and he couldn't see the driver.
 12 He thought it might have been a Suburban. But
 13 Deputy Hoeksema estimated that it was traveling initially
 14 about 55 to 60 miles per hour in a 35-mile-per-hour zone.
 15 He looked at Deputy Whitaker and simply said, "Let's go."
 16 Deputy Hoeksema pulled out onto the road
 17 following that vehicle, immediately turning on his lights
 18 and sirens. As soon as he did that, the white SUV
 19 accelerated to more than 80 miles per hour. Deputy
 20 Whitaker turned his vehicle around, got on Morton Road,
 21 and followed in pursuit as well.
 22 The pursuit began going west on Morton Road.
 23 When Morton ended, the white SUV turned right onto
 24 Chapman Road, and the deputies followed. They
 25 accelerated to more than 100 miles per hour and gained

1 little or no ground on the white SUV. At no point in
 2 that pursuit were they ever able to get close to even see
 3 the license plate on that white SUV.
 4 On Chapman Road, pursuant to their department
 5 policy because Deputy Whitaker was in a fully-marked
 6 vehicle and Deputy Hoeksema was in a semi-marked vehicle,
 7 Deputy Hoeksema slowed down and yielded the primary
 8 pursuit to Deputy Whitaker, who passed him on the left.
 9 This served a couple functions: First,
 10 obviously the more visible fully-marked vehicle is in the
 11 front. And it allowed that vehicle to concentrate not on
 12 the radio but on following the vehicle and on road
 13 conditions.
 14 Secondly, Deputy Hoeksema, now the second
 15 vehicle, took over responsibilities of what's called
 16 calling the chase. What he did was he was describing
 17 where they're going, at what speeds to both his command
 18 officer as well as to the dispatch operator. You will
 19 hear that dispatch.
 20 When Chapman Road ended, the deputies followed
 21 the white SUV on a straightaway on Catholic Church Road.
 22 When that road ended, they all turned right onto Dexter
 23 Trail. And for those of you not familiar with that road
 24 or Stockbridge, Dexter Trail has a number of very serious
 25 turns and bumps that compromised both the driving

1 conditions as well as visibility.
 2 Deputy Hoeksema lost sight of the white SUV as
 3 well as his partner's vehicle in those turns. They
 4 remained in contact via radio. Deputy Hoeksema
 5 eventually heard Deputy Whitaker say that he briefly lost
 6 sight of the white SUV and picked him up again traveling
 7 east on Adams Road and then Brogan Road. That's the last
 8 anybody ever heard from Deputy Grant Whitaker.
 9 Deputy Hoeksema continued east on Dexter Trail
 10 and past an exhaust system in the road just before
 11 Brogan. He kept going, but having not been able to see
 12 the white SUV, not being able to hear from his partner,
 13 he turned around at Brogan and came back to the exhaust
 14 system. He frantically got out of his car calling for
 15 Grant. And he found the vehicle on the left shoulder of
 16 the road, the north side of the road. He eventually
 17 found Deputy Whitaker's vehicle sheared into
 18 three pieces. He found Deputy Whitaker still strapped in
 19 not breathing, no vital signs, non-responsive.
 20 Sergeant Every, the deputies' commanding
 21 officer, called for medics, who quickly arrived but were
 22 unable to resuscitate Deputy Whitaker. They transported
 23 him to Sparrow Hospital where he was pronounced deceased
 24 at 3:07 a.m.
 25 Michigan State Police Accident Investigator

1 Allan Avery will testify, and he will tell you that he
2 was not able to determine anything about the white SUV,
3 but between what we commonly call the black box and the
4 skid marks on the road, he was able to calculate that
5 Deputy Whitaker was driving at almost 120 miles per hour
6 on the roadway when he went over a bump on Dexter Trail.
7 And when he did that and came off the bump, his
8 suspension loaded. And what happened was it froze a
9 small left steering input, which carried Deputy Whitaker
10 off the left side of the road. As he passed into the
11 grass, his brakes caused him to start going
12 counterclockwise where he then struck a tree shearing the
13 vehicle and killing him instantly.

14 Michigan State Police also began their
15 investigation that day into who was driving the pursued
16 vehicle. And that started by putting out a press release
17 with a picture of the white SUV that was taken off of a
18 store near the Marathon station where this all began.

19 They asked for the public's help, and they
20 received a number of responses, several of which
21 implicated the Defendant, John Kelsey; that he was known
22 to drive a matching vehicle.

23 Michigan State Police checked Secretary of
24 State records and found a 2003 white GMC Yukon Denali XL
25 registered to the Defendant's father. They checked with

1 AAA and found that it was insured with them and that the
2 Defendant was an excluded driver on that policy because
3 his license had been suspended.

4 They also learned that the Defendant lived on
5 Morton Road in Stockbridge just a little bit west in the
6 direction that white vehicle was passing that night when
7 the officers attempted to pull him over. That white SUV
8 registered to the Defendant's father was never seen
9 again, not at the Defendant's address, not at his
10 father's address, not anywhere, not ever again.

11 Investigators quickly identified two bars that
12 the Defendant had visited on the evening of December 6th,
13 2014, and into the early morning hours of December 7th.
14 You will hear from witnesses at those bars. You'll see
15 surveillance videos from one of them. And what they will
16 tell you is that the Defendant went out that night with
17 friends. And starting at the Alley Bar in Pinckney, he
18 began drinking Budweiser beer.

19 And how did he get there? How did he get from
20 that bar to the next? In his white 2003 GMS Yukon Denali
21 XL. He took that vehicle from the Alley Bar to the Dam
22 Site Inn where he continued to drink. And just before
23 closing, he left the bar by himself and got in his white
24 2003 GMC Denali XL. You will see that on video.

25 At 1:53 a.m., he exited the parking lot going

1 west in the direction of Stockbridge. He passed another
2 patron of the bar several minutes later at a high rate of
3 speed, and then several minutes later he passed a
4 residential surveillance camera capturing him still going
5 at a high rate of speed still going west. And then,
6 finally, he's captured, same white SUV, same direction,
7 same high rate of speed passing the Shell gas station,
8 the L & B Outlet, and, finally, the Marathon station
9 where the pursuit began in Stockbridge.

10 Right after the crash, the Defendant made two
11 phone calls on his cell phone from the Stockbridge area.
12 The first one to his friend Tony Hildabridle, but Tony
13 didn't pick up. He was asleep for the night. His
14 girlfriend, Sandie Hale, picked up. And the Defendant
15 told her that he just fled from the police. She said she
16 would tell Tony when he woke up.

17 Then the Defendant called Brian Hildabridle,
18 Tony's brother, and also a close friend of the
19 Defendant's. And he told Brian Hildabridle that he just
20 fled from the police on the back roads in Stockbridge.

21 As a result of his actions, the Defendant is
22 charged with two crimes. The crimes are made up of
23 elements. And when you can check off each element of the
24 crime in your head or on a checklist, you must find the
25 Defendant guilty of that crime.

1 There are six elements to the first crime of
2 fleeing and eluding in the first degree. The first is
3 that a police officer was in uniform and was performing
4 his lawful duties and that the vehicle was adequately
5 marked as a law enforcement vehicle.

6 Second, that the Defendant was driving a motor
7 vehicle.

8 Third, that the officer ordered that the
9 Defendant stop his vehicle.

10 Fourth, that the Defendant knew of that order.

11 Fifth, that the Defendant refused to obey that
12 order by trying to flee or avoid being caught.

13 Sixth, and finally, that that violation
14 resulted in the death of another individual, in this case
15 Ingham County Sheriff's Department Deputy Grant Whitaker.

16 The second crime that the Defendant is charged
17 with is driving while license suspended causing death.
18 There are five elements to this crime.

19 First, that the Defendant was operating a motor
20 vehicle.

21 Second, that he was operating that vehicle on a
22 public road.

23 Third, that at the time his license was
24 suspended.

25 Fourth, that the Secretary of State had

1 notified the Defendant of his suspension. And you'll see
2 the records reflecting that.

3 Fifth, and finally, that the Defendant's
4 operation caused the death of another person.

5 By the end of this trial, after hearing about
6 the Defendant's actions on the evening of December 6th,
7 2014, into the early morning hours of December 7th, 2014,
8 hearing about the high speed and ultimately fatal pursuit
9 that he evaded that evening, as well as the ensuing
10 investigation, you will be armed with the facts necessary
11 to finish what Deputy Grant Whitaker and Deputy Rick
12 Hoeksema began that night.

13 And for those actions, we'll ask you to find
14 the Defendant guilty of fleeing and eluding in the first
15 degree and guilty of license while license suspended
16 causing death. Thank you, Your Honor.

17 THE COURT: Thank you, Mr. Roth.

18 Mr. Morley, do you wish to make an opening
19 statement at this time?

20 MR. MORLEY: I do. Thank you, Judge.

21 THE COURT: You may proceed.

22 MR. MORLEY: Ladies and Gentlemen of the Jury,
23 I introduced myself the other day. I'm Brian Morley.
24 I'm John Kelsey's attorney. And I'm going to say
25 something harsh right out of the gate. There is not a

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1 person in this courtroom that isn't upset that
2 Deputy Whitaker is dead, not me, not any of you, not the
3 court reporter, not the judge, not John Kelsey, not the
4 family, not anybody. This is bad stuff. It's a tough
5 time to be a cop. Cops aren't supposed to die.

6 With that said, it's your job, and that is --
7 it's a fascinating job. I've never sat on a jury, but
8 it's a fascinating job. It's your job to say, "God, I
9 agree with you, Morley. This is bad. And this SOB --
10 something's got to happen to him." It's your job to set
11 that aside. It's your job to tie all this together.

12 I'm not going to -- I'm not going to talk long
13 right here. Throughout this case, there is going to be a
14 lot of evidence. There is going to be a lot of
15 testimony. This is what I want you to focus on:

16 Unfortunately, one witness to this case. One
17 witness: Deputy Hoeksema. This case started with two
18 officers and a chase. One is not here. Deputy Hoeksema
19 will testify he cannot tell you what kind of car he was
20 chasing. He will tell you it could have been any number
21 of three different models of cars, three different makes
22 of cars. As a matter of fact, cannot give you an
23 identification of the driver, of any unique
24 characteristics of a license plate, nothing. Remember
25 that.

29

1 You're going to hear witness after witness
2 after witness after witness, and not one of them is going
3 to say the person or the vehicle that was in this chase
4 had this plate, had this driver, had this unique
5 characteristics, was this type of car.

6 It dovetails into my next. You're going to
7 see. And if you remember, I asked during jury selection
8 if anybody had any speciality in video or photographs.
9 You're going to see a lot of videos and a lot of
10 photographs. What you're not going to see is one
11 photograph of a vehicle after the chase started.
12 Remember that. It started a little after 2 o'clock in
13 the morning. You're not going to see a picture of an
14 identifiable vehicle.

15 You're going to see a lot beforehand. "This is
16 Kelsey's vehicle. This is the one we think he was
17 driving. Looks like he was the driver in this. Looks
18 like he was at the bar."

19 Nothing wrong with being at the bar. This is a
20 Saturday night in December shortly before Christmas.
21 You're going to see a lot of pictures beforehand. There
22 is not going to be one that says "This is our -- this is
23 our vehicle. This is the one we stopped."

24 There is three points. I saw you guys writing
25 down elements of the crime. And when the judge sends you

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1 back to deliberate whenever we're done, you'll have all
2 of that in writing. So if you missed any of it, you'll
3 get it. There are three questions that I'm asking that
4 as you sit here on a jury you contemplate throughout:
5 Who, what, why? Who, what, why? W, W, W.

6 Members of the media in the courtroom will tell
7 you it's who, what, why, where, when, and how. I want
8 who, what, and why. Who was driving that vehicle?
9 Nobody is going to tell you that. The closest you're
10 going to get is might have been involved. Nobody is
11 going to tell you who was driving it.

12 What were they chasing? The opening argument
13 here -- and you'll see it in the testimony. I'm not
14 making any of this up. This will all come out in the
15 testimony -- makes it sound like it was -- they're all
16 right neck and neck with each other during this chase,
17 and chases are high speed horrific events. This went on
18 for almost eight miles over twisty-turning back roads.
19 That they never got -- you're going to see a video.
20 You'll see. You'll see what Deputy Hoeksema is going to
21 tell you. "We can't see what kind of car we're chasing.
22 I don't know what vehicle we're chasing."

23 And then the why. And there is two parts to
24 the why. Why did they settle in on Kelsey? Because he
25 was at a bar? Because he got a white SUV? You're going

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1 to find that there was a whole lot of other information
 2 investigated in this matter or at least raised in this
 3 matter. It's a white SUV. Come on. We're in Michigan.
 4 We're in a motor vehicle state. There are a number of
 5 white SUVs.
 6 And then the harshest question to ask, and it's
 7 a harsh question: Why was Deputy Whitaker driving
 8 120 miles an hour on back roads chasing a vehicle he
 9 couldn't even see? It's harsh stuff. It's a harsh
 10 question. It's your job to set it aside. Who, what,
 11 why? Thank you.
 12 THE COURT: Thank you, Mr. Morley.
 13 Mr. Roth, you may call your first witness, sir.
 14 MR. ROTH: Thank you, Your Honor. People call
 15 Sergeant James Every.
 16 THE COURT: Please raise your right hand.
 17 Do you swear or affirm to tell the truth, the
 18 whole truth, and nothing but the truth?
 19 SERGEANT EVERY: I do, sir.
 20 THE COURT: Please be seated. State your full
 21 name and spell your last name, please.
 22 THE WITNESS: Sergeant James Every, E-V-E-R-Y.
 23 MR. ROTH: Thank you, Your Honor. Just one
 24 moment.
 25 JAMES EVERY

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1 called by the People at 9:15 a.m., sworn by the Court,
 2 testified:
 3 DIRECT EXAMINATION
 4 BY MR. ROTH:
 5 Q. Sergeant, where are you employed?
 6 A. **Sir, I'm sorry?**
 7 Q. I apologize. Take your time.
 8 A. **Ingham County Sheriff's Office, sir.**
 9 Q. In what capacity?
 10 A. **I work for -- I'm a sergeant on night shift.**
 11 Q. How long have you been with the sheriff's department?
 12 A. **About 12 years.**
 13 Q. In December of 2014, how specifically were you assigned?
 14 A. **I was assigned to out-county patrol and out-county**
 15 **command that night.**
 16 Q. Could you tell us what out-county consists of?
 17 A. **The sheriff's office is divided up in different sections**
 18 **and -- er, the county is for our patrol. Delhi has its**
 19 **own command at night, which is Delhi Township, which is**
 20 **the northwest corner. And the rest, 75 percent of the**
 21 **county is all controlled by the out-county. And that**
 22 **would be everywhere from Webberville to Stockbridge to**
 23 **Onondaga.**
 24 Q. And specifically as a sergeant, what were your
 25 responsibilities on the evening of December 6th into

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1 December 7th, 2014?
 2 A. **Well, at night, as our undersheriff says, we give you**
 3 **guys the keys to the county. You know, you guys are the**
 4 **ones who take control after all the administration and**
 5 **everybody else goes home. It's my job as command to**
 6 **oversee the patrol units that are patrolling the out-**
 7 **county area and to work with the corrections facilities**
 8 **inside of our department.**
 9 Q. Thank you. Were you working in that capacity in the
 10 early morning hours of December 7, 2014?
 11 A. **Yes, sir, I was.**
 12 Q. Do you recall what the hours of your shift were that day?
 13 A. **My shift starts at 6 p.m. and goes to 6 a.m. I usually**
 14 **get there about 5 p.m., an hour early, to get ready with**
 15 **the guys.**
 16 Q. What does that consist of "getting ready with the guys"?
 17 A. **I get there early so I can go through my e-mails, get**
 18 **dressed, and then get a brief from the night shift or the**
 19 **day shift to see how the day went before I start my**
 20 **shift.**
 21 Q. How many deputies were you supervising on this specific
 22 shift?
 23 A. **That night, I had three.**
 24 Q. Who were they?
 25 A. **I had -- I'm sorry, I had four of us that night.**

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1 Q. Go ahead.
 2 A. **So I had Rick Hoeksema, my traffic unit. Deputy Grant**
 3 **Whitaker. I had Deputy Chad Doyle. And, sorry, hang on.**
 4 Q. If you don't recall the fourth, that's okay.
 5 A. **Sorry.**
 6 Q. That's all right. Were their shift hours the same as
 7 yours?
 8 A. **Yes. There's one person that starts at 5 p.m., and the**
 9 **other one goes to 6 p.m. to 6 a.m.**
 10 Q. Who was the 5 p.m. one?
 11 A. **Grant Whitaker.**
 12 Q. Thank you. Each Deputy is assigned a specific patrol
 13 car. Is that correct?
 14 A. **Yes, sir.**
 15 Q. And on TV we always see there is two officers per patrol
 16 car. Is it different at the sheriff's department?
 17 A. **Yes, sir.**
 18 Q. In what way?
 19 A. **The sheriff's office, our staffing is minimal. So we**
 20 **don't have enough people to double up for cars.**
 21 Q. So one officer or one deputy per vehicle?
 22 A. **Yes, sir.**
 23 Q. Was Deputy Whitaker driving his normally assigned patrol
 24 car that evening?
 25 A. **Yes, sir.**

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1 Q. Did that car have an in-car camera?
 2 A. **No, it did not.**
 3 Q. Did Deputy Hoeksema's patrol car have an in-car camera?
 4 A. **Yes, it did.**
 5 Q. Why that difference?
 6 A. **It was just how our department slotted vehicles to get**
 7 **cameras. There is no reason why we had a camera in**
 8 **Rick's car compared to we didn't have one in Grant's car.**
 9 **I don't think we had the funding, I believe, to put the**
 10 **vehicle camera in it.**
 11 MR. ROTH: May I approach the witness,
 12 Your Honor?
 13 THE COURT: You may.
 14 BY MR. ROTH:
 15 Q. (Approaching the witness.)
 16 Showing you People's Proposed Exhibit 1.
 17 is that a fair and accurate representation of
 18 Deputy Grant Whitaker that evening?
 19 A. **Yes, it is.**
 20 MR. ROTH: Your Honor, I'd move for admission
 21 of People's Proposed Exhibit 1.
 22 THE COURT: Any objection, Mr. Morley?
 23 MR. MORLEY: No, sir.
 24 THE COURT: People's Exhibit 1 is admitted and
 25 received.

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1 (At 9:20 a.m., PX#1 is received.)
 2 MR. ROTH: Thank you.
 3 BY MR. ROTH:
 4 Q. I guess I should say this picture wasn't taken this
 5 evening, but he appeared the same?
 6 A. **Yeah. It looks exactly like Grant.**
 7 Q. Thank you. What were Deputy Whitaker's responsibilities
 8 during that particular shift?
 9 A. **Normal routine patrol that would -- traffic enforcement.**
 10 **Respond to calls for service.**
 11 Q. At some point during this shift, did you become aware of
 12 an ongoing pursuit involving Deputy Whitaker and Deputy
 13 Hoeksema?
 14 A. **Yes, sir.**
 15 Q. I said ongoing, but how early on in the chase did you
 16 become aware of it?
 17 A. **Immediately.**
 18 Q. Approximately what time of the shift was that?
 19 A. **Right around 2 a.m.**
 20 Q. How did you become aware of it?
 21 A. **I was in Delhi Township assisting the units up there with**
 22 **what we thought was a fire in an apartment. As we were**
 23 **clearing that call, Defendant Hoeksema initiated the**
 24 **pursuit on the radio and was with Deputy Whitaker.**
 25 Q. Could you tell the jury about the radio system that the

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1 deputies have to communicate with each other and with
 2 you?
 3 A. **We have -- we have in-car radios. We also have radios on**
 4 **our uniforms that we can communicate with each other on.**
 5 **We communicate through codes and a different type of**
 6 **language that we have so we can communicate with each**
 7 **other.**
 8 Q. When you become alerted that this pursuit is beginning,
 9 as the sergeant what are your responsibilities?
 10 A. **My responsibilities as a sergeant is to monitor radio**
 11 **traffic and to make sure the safe -- the pursuit is**
 12 **occurring in a safe manner, watching out for the public**
 13 **and for my own officers and the person that we're**
 14 **pursuing.**
 15 **As well as that, my job is -- logistics-wise, I**
 16 **need to look at what other departments need to get**
 17 **involved, if any; what other equipment I need; or what**
 18 **other things I need on scene or en route to the accident**
 19 **-- er, to the pursuit.**
 20 Q. Are you able to order the deputies to terminate the
 21 pursuit?
 22 A. **Yes.**
 23 Q. What factors do you consider in making that
 24 determination?
 25 A. **There are different factors we look at during the**

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1 **pursuit. Whether it's -- the time of day; that can**
 2 **change the pursuit. If it's more crowded during the**
 3 **daytime rather than nighttime. Road conditions; whether**
 4 **the road conditions are slippery or wet. Weather-wise**
 5 **out there; it could be the wintertime or summertime.**
 6 **Also if we know the identify of the person**
 7 **we're pursuing, if we know the identify of the person**
 8 **we're pursuing, that tends us to prosecute later without**
 9 **chasing them. We can stop a pursuit, or if I feel it's**
 10 **unsafe to do so at any point in time, I can terminate the**
 11 **pursuit.**
 12 Q. And I'm not sure if I heard you say it, do you consider
 13 pedestrian and vehicle traffic as well?
 14 A. **Yes, sir.**
 15 Q. Is there a certain amount of danger inherent in any
 16 police pursuit?
 17 A. **There is. There is a danger when I put my uniform on.**
 18 **It's police work today. It's dangerous. Not only is it**
 19 **dangerous for what I do on a daily basis, it's dangerous**
 20 **what I do or when my guys make traffic stops. Just to**
 21 **initiate a traffic stop, you never know what the public**
 22 **is going to do.**
 23 **And then take that to a point where the person**
 24 **doesn't stop. Good people don't run from the police. So**
 25 **when you look at that, it's dangerous when you're going**

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1 **to start chasing somebody. So, yes, very dangerous.**

2 Q. How does that risk of somebody fleeing from the police

3 change if that person is intoxicated?

4 MR. MORLEY: Objection, Your Honor.

5 Foundation.

6 THE COURT: Mr. Roth?

7 MR. ROTH: May we approach?

8 THE COURT: Sure.

9 Mr. Morley?

10 (At 9:23 a.m., an at-the-bench

11 discussion is held off the

12 record.)

13 THE COURT: Hold on one minute, Mr. Roth and

14 Mr. Morley.

15 Juror No. 14, if you'd please go with

16 Mr. Adkins for a minute.

17 (At 9:28 a.m., Juror No. 14 left

18 the courtroom.)

19 (At 9:29 a.m., Juror No. 14

20 entered the courtroom.)

21 THE COURT: All right. Mr. Roth, you may

22 proceed.

23 First, let me deal with the objection. I

24 believe the objection was foundation. However, I believe

25 the question --

40

1 And I'll have you restate the question,

2 Mr. Roth, but it is my understanding that the question is

3 hypothetical, not pertaining to this particular

4 Defendant. So the foundation objection, I think, is if

5 the question pertained to this Defendant.

6 So let's have you restate the question, and

7 we'll take it from there.

8 MR. ROTH: Thank you, Your Honor.

9 BY MR. ROTH:

10 Q. So we were talking about the inherent risk being in a

11 police pursuit. How does that risk change with a subject

12 who's been drinking alcohol?

13 A. **A person who has been drinking alcohol, their capacity to**

14 **drive changes. It's harder for a person to drive a car,**

15 **obviously, when they've been drinking alcohol.**

16 **Diminished capacity.**

17 Q. And we've talked about risk to officers. Drinking

18 alcohol, does that pose risk to other people as well?

19 A. **Yes, sir.**

20 Q. In what way?

21 A. **Because you may injure someone. Your response time and**

22 **actions in driving are slower and, in turn, you may not**

23 **perceive someone in front of you, or you may go off of**

24 **the road and hit someone as well.**

25 Q. Moving back to this specific pursuit, at any point did

41

1 you order your deputies to terminate their pursuit?

2 A. **No, sir.**

3 Q. Why not?

4 A. **That night in that area, the location, we look at**

5 **everything we take into a pursuit. And that night I had**

6 **Deputy Grant Whitaker who started his career in**

7 **Stockbridge. He knows the area. He grew up in**

8 **Stockbridge. He's from the area. It started in**

9 **Stockbridge.**

10 **I had a senior deputy with him, Deputy Rick**

11 **Hoeksema, one of my traffic guys who is very good at his**

12 **job. So I had two guys in the same area at 2 a.m. in the**

13 **morning. I couldn't have asked for a better location and**

14 **time to start a pursuit in that area.**

15 **Traffic was light, low. Never passed a car the**

16 **whole time. There was never a lot of traffic that ever**

17 **came into play with the pursuit. Looked at the road**

18 **conditions. The roads were dry. The weather was**

19 **perfect. It was a cold night. There wasn't any reason**

20 **for me to stop that pursuit at all.**

21 Q. You mentioned at the very beginning that Deputy Whitaker

22 started his career in Stockbridge. What did you mean by

23 that?

24 A. **He worked for Stockbridge Police Department before he**

25 **worked for us, sir.**

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1 Q. Thank you. I want to talk specifically about the final

2 portion of the pursuit when it gets to Dexter Trail.

3 What was your evaluation of the pursuit

4 conditions then?

5 A. **Actually, I was, I guess, happier, per se, because I know**

6 **the area down there. Dexter Trail is very curvy. There**

7 **is a lot of curves on that road. Even on our dispatch**

8 **tape when Grant was pursuing, Grant told Rick, he said,**

9 **"Watch the curve." The last curve before you get to**

10 **Dexter Trail -- before you get to M-52 and Dexter Trail,**

11 **it is very sharp.**

12 **So when Rick is telling -- er, when Grant is**

13 **telling Rick, "Hey, heads up." I know that area down**

14 **there personally. Those roads are windy. So when he**

15 **started going towards Dexter Trail and M-52, I was**

16 **relieved because the roads are straight now, and we can**

17 **get back to pursuing somebody on straight roads and get**

18 **out of the curves.**

19 Q. These straight roads are significantly safer?

20 A. **In general, yes.**

21 Q. Showing you People's Proposed Exhibit 2 and 3, have you

22 reviewed these items?

23 A. **Yes, sir.**

24 Q. Are they fair and accurate both recording and transcript

25 of the radio dispatch that evening?

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1 **A. Yes, sir.**
2 MR. ROTH: Your Honor, I'd move admission for
3 the admission of People's Proposed Exhibits 2 and 3.
4 MR. MORLEY: Approach real quick, Your Honor?
5 THE COURT: You may.
6 (At 9:33 a.m., an at-the-bench
7 discussion is held off the
8 record.)
9 MR. MORLEY: No objection, Your Honor.
10 THE COURT: All right. Thank you, Mr. Morley.
11 So People's Exhibits 2 and 3 are admitted and
12 received.
13 (At 9:33 a.m., PX#2 and PX#3 are
14 received.)
15 MR. ROTH: Thank you, Your Honor.
16 BY MR. ROTH:
17 Q. Before we listen to it, we're going to hear and see that
18 each deputy has a distinct call sign. Could you explain
19 exactly what those mean and are?
20 **A. Different areas through the county we have different call**
21 **signs. It's divided up into districts. Tom, which is**
22 **Deputy Hoeksema, Tom Unit, which is our traffic unit. So**
23 **he went by Tom 5, and 5 is the area; meaning, the whole**
24 **county. Basically he can run the whole area for us.**
25 **You have 5 Charlie 1. 5, meaning Ingham**

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1 **County. Different departments have different numbers.**
2 **The very first number signifies what department. So ours**
3 **is 5 for Ingham County. C is my call sign for Charlie,**
4 **which is command. And then 1 being there is only one**
5 **command on that next one, so I'm 5 Charlie 1.**
6 **Grant, he was 5 Adam 5, which meant he was**
7 **Ingham County 5, and Adam means he's a single person**
8 **unit, and then 5 means he can travel the whole county as**
9 **well. So we had Adam 5, Tom 5, and then I had a K9 unit**
10 **as well that night, which is Deputy Chad Doyle. He was**
11 **K9 5, which is 5 K9 5. So...**
12 Q. Generally could you describe for the jurors where the
13 area of pursuit was?
14 **A. The area of pursuit was Stockbridge, started inside the**
15 **village of Stockbridge, and then continued out east --**
16 **I'm sorry, west through our county and traveled north and**
17 **then back east.**
18 Q. And that is within Ingham County, Michigan?
19 **A. Yes, sir.**
20 MR. ROTH: May I approach the witness,
21 Your Honor?
22 THE COURT: You may.
23 BY MR. ROTH:
24 Q. (Approaching the witness.)
25 Showing you what's been marked as Proposed

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1 Exhibit 4. Is this a fair and accurate representation of
2 the pursuit path and the area?
3 **A. Yes, sir.**
4 MR. ROTH: Your Honor, I'd move for admission
5 of People's Exhibit 4.
6 THE COURT: Do you have any objection,
7 Mr. Morley?
8 MR. MORLEY: No, sir.
9 THE COURT: Okay. Thank you. People's
10 Exhibit 4 is admitted and received.
11 (At 9:35 a.m., the PX#4 is
12 received.)
13 BY MR. ROTH:
14 Q. Were you familiar with these roads?
15 **A. Yes, sir.**
16 Q. How was that?
17 **A. I myself grew up in Dansville. So I'm from the area.**
18 **I'm not far from Stockbridge. I traveled these roads for**
19 **almost 20 years of my life.**
20 Q. And you've patrolled them as well --
21 **A. Yes, sir.**
22 Q. -- as a deputy? As they're describing it over the radio,
23 are you able to visualize it in your mind, the road
24 conditions; where they are?
25 **A. Exactly.**

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1 Q. We have a couple things marked on here. What do we see
2 here?
3 **A. All right.**
4 Q. The Marathon here, where is that relative to the pursuit?
5 **A. Right where it began.**
6 Q. And then we see there is an address on Morton Road a
7 little bit further west?
8 **A. Yes, sir.**
9 Q. And then finally in the northeast corner, is this the
10 final -- I'm sorry, this is where the accident occurred?
11 **A. Yep. That's where the accident occurred, sir.**
12 MR. ROTH: Very good.
13 At this time, Your Honor, I'm going to play
14 People's Exhibit 2. I have copies of the transcript for
15 the jurors, if I may pass those out.
16 THE COURT: All right.
17 MR. ROTH: Would the Court like a copy?
18 THE COURT: Please. Thank you.
19 (At 9:39 a.m., PX#2 is played for
20 the jury.)
21 (At 9:45 a.m., PX#2 is stopped.)
22 MR. MORLEY: Judge, we need to approach.
23 (At 9:45 a.m., an at-the-bench
24 discussion is held off the
25 record.)

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1 THE COURT: Ladies and Gentlemen, we're going
2 to collect back the transcripts. Mr. Roth will take
3 those back from you. We'll have you go back to the jury
4 room with Mr. Adkins for a moment. You can just pass
5 them down.
6 THE BAILIFF: All rise.
7 (At 9:46 a.m., the jury left the
8 courtroom.)
9 THE COURT: You may be seated.
10 Mr. Roth and Mr. Morley, I'll indicate for the
11 record that during the playback of the audio, Mr. Morley
12 came to the bench and raised an issue as to where the
13 playing of the audio would stop and whether or not you
14 were both on the same page as to the stipulation that was
15 put on the record this morning.
16 So let's go back and visit that issue so we can
17 make a determination of what the status is or what your
18 agreement is or is not at this point.
19 MR. MORLEY: Thank you, Judge. The audio that
20 we're hearing from is the exact same audio that is in the
21 cruiser video, if you will. So if there is any assertion
22 that this is the audio and not the video, that's not
23 accurate.
24 Counsel to his credit when I filed my motion --
25 my motion was premised on a 403 issue; that it's

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1 prejudicial and irrelevant to go beyond the crash.
2 You'll notice that I stopped -- if you want to read the
3 transcript here, I stopped without being indelicate where
4 Deputy Hoeksema says:
5 I believe it's a K.
6 That's when I approached the bench. When I
7 filed my motion, counsel said, "I agree. It's
8 unnecessary. We'll stop."
9 This morning when it was put on the record, I
10 said, "Where -- are we stopping at about where he said,
11 'It's shredded,'" which would be the bottom of page 3:
12 Tom 5, car is shredded.
13 Deputy Hoeksema.
14 In informal discussions with counsel, he said,
15 "Yes, because I need to show the crash, and I need to
16 show the death." This goes on and on and on. This is
17 the end of -- this is near the end of the entire process.
18 So the assertion this morning where I said, "Are we
19 stopping at about where he said shredded?"
20 "Yes."
21 Well, that's not what happened. I'll agree if
22 we need to continue to where "It's a K" where I stopped,
23 and, again, without being indelicate a K means a
24 fatality, where it stopped there, that's the spirit of my
25 motion. That was the terms of the agreement placed on --

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1 er, in the discussions this morning.
2 THE COURT: All right. And I do believe that
3 we -- based on your approaching the bench, Mr. Morley, it
4 did essentially stop at that point as of right now,
5 correct?
6 MR. MORLEY: I think so, yes, sir.
7 THE COURT: Okay.
8 Mr. Roth?
9 MR. ROTH: First of all, we have to clear up a
10 huge factual inaccuracy here, which is that they're the
11 same audio. That's simply not true. The dispatch is a
12 recording of what is incoming to the dispatch center. It
13 is only when they activate their microphone to talk to
14 dispatch.
15 The in-car audio, there is a live mike in the
16 vehicle that records everything. And there is a lot of
17 what I will call 403 prohibitive items in that. And that
18 is why I stipulated to end that so much earlier.
19 With this, it is only things that are sent to
20 dispatch. Only things that are relevant to the
21 investigation. For example, we see on the next page,
22 they call for an accident reconstructionist. They divert
23 traffic in the area. One, I don't think it's terribly
24 403 problematic. But, two, it's material to the
25 investigation. It's wildly different than what is

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1 included in the MVR.
2 THE COURT: I understand your argument
3 regarding the difference between the in-car camera, the
4 audio that is played, and I think there is a broader
5 issue than that. Let's set that aside for a moment. I
6 understand Mr. Morley made that statement. You're
7 disagreeing with that statement. It's sort of
8 inconsequential to the determination of what we do with
9 this particular audio, which I think is the present
10 objection.
11 And while I understand, Mr. Roth, the -- and
12 maybe Mr. Morley will want to look at the latter part of
13 this transcript, perhaps, on page 6, but we are -- if you
14 look beyond the statement that Mr. Morley just
15 referenced, the point at about which I think we stopped,
16 where it says:
17 I believe it's a K.
18 On page 5. If you look at the rest of that
19 page, I think that may be the area that we have an issue
20 with, and maybe there is some way to address that.
21 MR. MORLEY: To the extent -- obviously, I
22 disagree. But to the extent necessary, I move now for
23 the exclusion beyond "K" on either 401 or 403 grounds.
24 This is wholly irrelevant. The investigation is the
25 accident reconstructionist. The accident

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1 reconstructionist doesn't care what happened at the crash
2 scene. It's irrelevant to his determination.
3 "There is a K." You have established your
4 element. It's significantly prejudicial to the jury and
5 to the Defendant to be able to -- unfortunately, there is
6 heart-wrenching things in here that shouldn't go to the
7 jury.
8 THE COURT: Mr. Roth?
9 MR. ROTH: Your Honor, we can't pretend that
10 Deputy Whitaker lived through this. I have stipulated to
11 not put in autopsy photos, which I would normally do.
12 MR. MORLEY: I'm going to object, Your Honor.
13 That wasn't a stipulation. That was a statement that "I
14 won't be submitting autopsy photos. Do you still want
15 them?"
16 There was no stipulation. I was told, "I'm not
17 doing it."
18 So let's keep things nice and tight here,
19 please.
20 MR. ROTH: In every other trial with a death, I
21 have admitted autopsy photos. They are relevant. I'm
22 not putting them in, in this case because I don't think
23 that they are worth it. I don't think that they are 403
24 worth this. But we can't pretend that Deputy Whitaker
25 lived through this.

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1 There are observations, for example, that he's
2 bleeding from the ears and mouth. Pupils are fixed and
3 dilated. That is an assessment that he's trained to make
4 in the field. It's not a prejudicial statement. It's a
5 factual observation. He can't pronounce death, but he
6 can give his observations.
7 Then they go on to say:
8 Start trying to perform medical.
9 They ask for troopers to get down there to help
10 with traffic. They say there is a fire. They say medics
11 arrive on scene. They ask for a reconstructionist, which
12 is obviously incredibly important. And it's also worth
13 pointing out that every stipulation, I've indicated that
14 it's as to the MRV that we would terminate early. I
15 never addressed the radio dispatch, not because I was
16 playing games, but I thought it was obvious that we were
17 speaking of different things.
18 MR. MORLEY: But that --
19 THE COURT: Let me have you approach a minute.
20 MR. MORLEY: Every one of these things --
21 THE COURT: We'll take a couple-minute break.
22 Mr. Roth and Mr. Morley, I'll see you in
23 chambers, so we'll take about five minutes.
24 (At 9:54 a.m., recessed;
25 reconvened at 10:19 a.m.)

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1 THE COURT: First of all, regarding the issue
2 of the recording, the audio recording, I believe we've
3 reached a compromise as to how to handle that. And that
4 is that the recording will stop where we have stopped it
5 at this point. It will not be further played.
6 Exhibit 3, which is a transcript that goes
7 beyond that recording, will still be admitted in its full
8 context, which is six pages.
9 Mr. Roth?
10 MR. ROTH: That's correct, Your Honor. On the
11 next break, what I'll do -- I guess after we break for
12 the day I will amend the audio regarding to conclude
13 after:
14 Yes, I have him. I believe it's
15 a K.
16 On page 5. And the stipulation on the record,
17 we'll swap out a new 3 for the old 3, and the transcript
18 will be redistributed to the jury when it returns.
19 THE COURT: Well, it will be new 2 for old 2
20 because 3 is the transcript.
21 MR. ROTH: New 2. I apologize.
22 THE COURT: Mr. Morley?
23 MR. MORLEY: That's accurate.
24 THE COURT: So neither side has any objections
25 to resolving the issue in that way.

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1 Correct, Mr. Roth?
2 MR. ROTH: That's correct, Your Honor.
3 THE COURT: Mr. Morley?
4 MR. MORLEY: That's accurate, Your Honor.
5 Thank you.
6 THE COURT: Okay.
7 And then for those of you in the audience, let
8 me emphasize one more time, since, perhaps, some people
9 came in after I said this earlier, you cannot have any
10 electronic devices on. No cell phones. No recording
11 devices that are not cell phones. There is to be no
12 audio or video recording. No cell phones. No electronic
13 devices on at all.
14 If you are found to have them on during the
15 proceedings while we are in the court during the
16 proceedings, you'll be removed from the courtroom and not
17 be allowed back in. So hopefully that's clear to
18 everyone.
19 All right. With that, are we ready for the
20 jury, Mr. Roth?
21 MR. ROTH: Yes, Your Honor.
22 THE COURT: Mr. Morley, are you ready, sir?
23 MR. MORLEY: Yes, sir.
24 THE COURT: Let's bring the jurors in.
25 (At 10:23 a.m., the jury entered

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1 the courtroom.)
2 THE COURT: Please be seated.
3 Mr. Roth, you may proceed, sir.
4 MR. ROTH: Thank you, Your Honor. I put the
5 transcripts back for the jurors.
6 BY MR. ROTH:
7 Q. Sergeant, where were you approximately when the pursuit
8 began?
9 A. **In Delhi Township, sir.**
10 Q. Did you begin driving to the location of the pursuit?
11 A. **Yes, I did.**
12 Q. At what point?
13 A. **Immediately once it was activated.**
14 Q. About how far is that distance and time-wise?
15 A. **For me to drive that distance, it's going to take me a**
16 **good 25 minutes to get there, and that's light and sirens**
17 **to get in the pursuit. It's probably about 20 miles.**
18 Q. And why were you heading in that -- why did you choose to
19 head in the direction of the pursuit?
20 A. **With us having minimal staff on and only two guys in**
21 **pursuit, I like to get myself set up in a spot where I**
22 **can deploy stop sticks or be closer to the area if one of**
23 **my guys need assistance in another way.**
24 Q. Could you explain what stop sticks are?
25 A. **Stop sticks are a device that we can put out in front of**

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1 **a vehicle to disable it, to flatten the tires on it.**
2 Q. You have to be in front of the vehicle to do that?
3 A. **Yes, sir.**
4 Q. I want to ask you about a couple of the things that we
5 heard during the dispatch recording during the pursuit.
6 At the beginning you tell Deputy Hoeksema:
7 Rick, you just drive. Let Grant
8 call it out.
9 Can you explain what that means?
10 A. **In a pursuit, there is a primary and a secondary. The**
11 **primary unit's job is to drive the vehicle, maintain eyes**
12 **on a suspect. The secondary unit will be the one that**
13 **calls out the pursuit so the driver of the first vehicle**
14 **can maintain eyes on the suspect vehicle that's fleeing.**
15 Q. What were the responsibilities or role in this specific
16 pursuit?
17 A. **Rick, who initiated the pursuit first, was in his semi-**
18 **marked car. So his job is to maintain eyes on a suspect.**
19 **And due to the fact that he's in a traffic vehicle, we**
20 **want to change out that vehicle and put a fully-marked,**
21 **white and black patrol car up front as soon as possible.**
22 **So I was having Rick just drive. And then as**
23 **soon as possible we got Grant up front so Grant could**
24 **take primary, and then Rick could assume the narrative**
25 **portion of it and just call it out. That's why I say**

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1 **later in that dispatch tape "Grant, just drive. Let Rick**
2 **talk for you."**
3 Q. At some point in the recording, you also asked dispatch
4 to contact Livingston County Sheriff. Why was that?
5 A. **The direction of pursuit was headed, that's close to our**
6 **border. The quicker we can give another department a**
7 **heads up in the area, maybe they can put stop sticks out**
8 **in front of us or continue the pursuit if we do not go**
9 **into the area.**
10 Q. It's another safety precaution that you, as a team, were
11 taking?
12 A. **Yes, sir.**
13 Q. Later on in the recording, you ask the deputies if they
14 could see the suspect vehicle. Why was that?
15 A. **Once again, I know the area. I know Dexter Trail has a**
16 **lot of curves in it. And if we can't see the suspect, if**
17 **we can't maintain eyes on him, there is going to be no**
18 **need for us to continue pursuit.**
19 Q. And how did Deputy Whitaker respond to that?
20 A. **He stated, "I see him coming up towards 52."**
21 Q. So he maintained to almost the location of the accident?
22 A. **Yes. I mean, he called out. Even after he said 52, his**
23 **last transmission was "Coming up to Brogan."**
24 Q. When Deputy Hoeksema dispatched that he observed that
25 brakes -- I'm sorry, that Deputy Whitaker's vehicle had

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1 been in an accident, you contacted or asked dispatch to
2 call for medics?
3 A. **Yes.**
4 Q. Did medics arrive before or after you on scene?
5 A. **Before I was on scene.**
6 Q. What did you observe when you first arrived at the crash
7 site?
8 A. **A car that had been shredded.**
9 MR. ROTH: May I approach the witness,
10 Your Honor?
11 THE COURT: You may.
12 BY MR. ROTH:
13 Q. (Approaching the witness.)
14 Showing you what's been marked as Proposed
15 Exhibits 5 through 8. Could you take a moment and look
16 at those? Are those fair and accurate pictures of your
17 observations at the scene that evening?
18 A. **Yes, they were.**
19 MR. ROTH: Your Honor, I'd move admission of
20 People's Proposed Exhibits 5 through 8.
21 THE COURT: Mr. Morley, any objection?
22 MR. MORLEY: No, sir.
23 THE COURT: People's Exhibits 5, 6, 7, and 8
24 are admitted and received.
25 (At 10:27 a.m., PX#5, PX#6, PX#7

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1 and PX#8 are received.)
2 BY MR. ROTH:
3 Q. Sergeant, I want to start with Exhibit 5. First of all,
4 what area of the road do we see?
5 A. **We're looking at the north side of Dexter Trail.**
6 Q. This would be the left shoulder if you're traveling in
7 the direction of the pursuit?
8 A. **Yes.**
9 Q. So comparing this with Exhibit 4, what we see, this is
10 the location that we see then in Exhibit 5?
11 A. **Yes, sir.**
12 Q. Off to the left of the road, what did you observe?
13 A. **When I got on scene, immediately I saw the trunk portion**
14 **of our vehicle. And then I saw that the car was**
15 **basically in four different sections. I then observed**
16 **Deputy Whitaker being removed from the driver's seat**
17 **portion of his vehicle and placed on the ground so we**
18 **could continue medical efforts to save his life.**
19 Q. Who was removing Deputy Whitaker from the patrol car?
20 A. **Deputy Hoeksema, and there are some medics involved as**
21 **well.**
22 Q. Thank you. Could you circle on the screen where it is
23 the closest piece of Deputy Whitaker's vehicle is?
24 A. **(Illustrating.)**
25 Q. Thank you.

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1 A. **I believe that's the trunk portion of it, which would be**
2 **the first one I saw.**
3 Q. Thank you. What do we see in Exhibit 6?
4 A. **A close-up of the trunk of the vehicle and the vehicle's**
5 **tire.**
6 Q. Exhibit 7?
7 A. **This is the passenger's side. If you look at where the**
8 **trunk was, that was -- when it hit the tree, the whole**
9 **passenger's side of the vehicle ripped to shreds.**
10 Q. And just to see how these link together, is this mark on
11 the tree in Exhibit 7 the one we see in Exhibit 6 in the
12 middle?
13 A. **Can you move that down just a little bit, Jonathan?**
14 Q. (Approaching the witness.)
15 I can actually hand them to you. That might be
16 easier.
17 A. **This tree is this tree.**
18 Q. Okay. Could you -- I'll hold them up. If you could show
19 the jury.
20 A. **The tree in the accident here is this second tree behind**
21 **there.**
22 Q. All right. And that's how the pictures fit together?
23 A. **Yes.**
24 Q. Thank you. And, finally, in Exhibit 8, what do we see?
25 A. **The seat -- a vehicle seat portion of Grant's car.**

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1 Q. Do you know which specific seat this is?
2 A. **I don't.**
3 Q. What did you do when you arrived on scene?
4 A. **I watched, like I said, them pull Grant from the vehicle.**
5 **My job as command is to try to maintain the crash site**
6 **for evidence at that point. And so we -- I ended up**
7 **taping off the scene with another sergeant.**
8 Q. Did you also secure Deputy Whitaker's firearm?
9 A. **Yes, I did.**
10 Q. Could you explain what that means?
11 A. **When we go to the hospital, hospitals don't like weapons**
12 **in the hospital most times. So if we can remove the**
13 **officer's sidearm, we'll take it. And Grant's happened**
14 **to be ripped off his belt. So Grant's sidearm was laying**
15 **next to where he would have been lying on the ground.**
16 Q. Thank you. You also indicated that you taped off the
17 scene. What does that involve?
18 A. **Our yellow caution tape that we have, we'll maintain the**
19 **scene for evidentiary purposes, try to keep everyone out**
20 **of it so we don't have anybody walking around the scene**
21 **who shouldn't be there.**
22 Q. And do we see that in each of these exhibits?
23 A. **It's in that one, Jonathan. I can't remember if it's in**
24 **every single one.**
25 Q. (Approaching the witness.)

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1 A. **Yep. Yep.**
2 Q. All right. And what did you do after that?
3 A. **It's my job at that point to coordinate with -- we**
4 **coordinate with Livingston County to see if we could --**
5 **anybody had eyes or anybody saw a suspect vehicle at that**
6 **point. And then it was to maintain the scene until the**
7 **accident reconstructionist gets there.**
8 Q. And just to be clear, in your communications with other
9 agency or officers nobody had eyes on the suspect vehicle
10 after that time, correct?
11 A. **No, sir.**
12 Q. Eventually that morning the investigation is turned over
13 to the Michigan State Police. Is that correct?
14 A. **Yes, sir.**
15 Q. Why was that?
16 A. **Michigan State Police would come in and handle our**
17 **serious incidents inside of our department so it's a**
18 **non-biased person taking over our scene.**
19 MR. ROTH: Thank you.
20 Your Honor, I have nothing further.
21 THE COURT: Thank you, Mr. Roth.
22 Mr. Morley, you may inquire of the witness.
23 MR. MORLEY: Thank you, Judge.
24 CROSS-EXAMINATION
25 BY MR. MORLEY:

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1 Q. Sergeant, earlier you were asked questions about what
 2 factors go into a chase or terminating a chase. Do you
 3 recall that?
 4 A. **Yes, sir.**
 5 Q. Those aren't your own factors, right?
 6 A. **No, sir.**
 7 Q. That's pursuant to department policy?
 8 A. **Yes, sir.**
 9 Q. And you study those. And as a supervisor, presumably,
 10 you have to know those backwards and forwards?
 11 A. **Yes, sir.**
 12 Q. All right. And are you -- do you have a copy of the
 13 Ingham County Sheriff's Office general order regarding
 14 operation of department vehicles?
 15 A. **On my person, sir?**
 16 Q. In your overall possession. I'm saying that sloppy.
 17 Your job as a supervisor, do you keep a copy of this, of
 18 the policy in your materials?
 19 A. **Yes, sir.**
 20 Q. And refer to it occasionally so you bone up on it?
 21 A. **Yes, sir.**
 22 Q. I'd like to show you what's been marked as Defendant's A.
 23 (Approaching the witness.)
 24 I'd ask if you recognize that.
 25 A. **Yes, sir.**

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1 Q. Can you tell me what that is, please?
 2 A. **This is Ingham County Sheriff's Office's general order.**
 3 **It's our Order No. 240, which is our operation of**
 4 **department vehicles.**
 5 Q. And it basically does exactly that: It details how to
 6 operate or the proper protocol and procedure for
 7 operating sheriff's vehicles --
 8 A. **Correct.**
 9 Q. -- including chases?
 10 A. **Pursuits, yes.**
 11 Q. Pursuits, right. What's the difference?
 12 A. **A pursuit.**
 13 Q. What's the difference?
 14 A. **That's what we call it; a pursuit.**
 15 Q. I understand. Any difference between a pursuit and a
 16 chase?
 17 A. **It's just the word we use in our general order.**
 18 Q. Okay. Is this a document created by the Ingham County
 19 Sheriff's Office?
 20 A. **Yes.**
 21 Q. And kept at the Ingham County Sheriff's Office?
 22 A. **Yes.**
 23 MR. MORLEY: Your Honor, I move for the
 24 admission of Defendant's A.
 25 THE COURT: Mr. Roth?

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1 MR. ROTH: Without objection, Your Honor.
 2 THE COURT: Defense Exhibit A is admitted and
 3 received.
 4 (At 10:34 a.m., DXA is received.)
 5 BY MR. MORLEY:
 6 Q. Sergeant, I'm right that throughout this entire pursuit,
 7 there was never a description of the vehicle other than,
 8 I think at the very outset, Deputy Hoeksema says words to
 9 the effect of a white Suburban going 80 miles an hour.
 10 That's the only description you ever had, right?
 11 A. **Correct.**
 12 Q. Do you ever -- as you sit here today, did you ever get a
 13 better description of the vehicle that Deputy Whitaker or
 14 Hoeksema were following?
 15 A. **No, sir.**
 16 Q. Do you know how close Deputy Whitaker or Deputy Hoeksema
 17 ever got to this vehicle?
 18 A. **During the pursuit or when it first started, sir?**
 19 Q. Good question. Both of them. How about the beginning of
 20 the pursuit? How close were they, do you know?
 21 A. **He went in front of his vehicle. I'm not sure how fast**
 22 **or how far, sir, right in front of his vehicle on the**
 23 **road. So the distance between the parking lot and the**
 24 **road?**
 25 Q. All right. What about during the teeth of the pursuit,

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1 if you will? Do you know any idea how close they ever
 2 got, either one of them?
 3 A. **No.**
 4 Q. Okay. You don't have any description of any driver of
 5 the vehicle, right?
 6 A. **No.**
 7 Q. That includes then and up until as you sit here today,
 8 right?
 9 A. **Correct.**
 10 Q. No license plate on the vehicle, right?
 11 A. **Correct.**
 12 Q. No description of occupants, right?
 13 A. **Correct.**
 14 Q. No distinguishing characteristics or anything like that
 15 on the vehicle, right?
 16 A. **Correct.**
 17 Q. Okay. You referenced earlier, and it's referenced under
 18 Defendant's A, the lead car drives and the back-up car
 19 calls it out, right?
 20 A. **Correct.**
 21 Q. That's primarily so the lead car can pay attention to
 22 driving, right?
 23 A. **Right.**
 24 Q. And, in fact, in this transcript that we've seen -- and
 25 do you have a copy with you?

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1 **A. I saw it earlier. I do not have a copy in front of me,**
2 **no.**
3 Q. Okay. Early on Deputy Hoeksema states:
4 Tom 5, I'll be calling it out
5 now. Adam 5 taking primary.
6 That would be in accordance with procedure,
7 right?
8 **A. Correct.**
9 Q. But then Deputy Whitaker goes on to keep talking. Should
10 he be?
11 **A. If he needs to update us on certain things, he can.**
12 Q. Okay.
13 **A. But that's why I say, "Just drive. We can take that."**
14 Q. And, in fact, Deputy Hoeksema -- er, excuse me, Deputy
15 Whitaker lost the vehicle, right?
16 **A. At some point during that, I'm guessing, on Dexter Trail**
17 **in the curves because it's a curvy road.**
18 Q. Well, you were going to terminate the pursuit, right?
19 **A. Are we on a different question or back on the other**
20 **question?**
21 Q. On to the next -- you're not done answering? I
22 apologize. Go ahead.
23 **A. Well, you said, "Did he lose him?"**
24 **I said, "He may not have lost him at that**
25 **point." Because during the curves, he may not have had**

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1 **eyes on it, but he had eyes on it once it crossed 52**
2 **there.**
3 Q. Eyes on, what? Did Deputy Whitaker ever call out the
4 type of car, a license plate, an occupant; anything like
5 that?
6 **A. Well, he was there when the chase started.**
7 Q. No. I understand that. But throughout the pursuit,
8 throughout this transcript that the jury has, Deputy
9 Whitaker never calls out and says, "I have eyes on a
10 white 2003 Yukon Denali," right, or anything close to
11 that, right?
12 **A. No. I wouldn't expect him to do that at that point.**
13 Q. And, in fact, you were going to terminate the pursuit,
14 right?
15 **A. No.**
16 Q. Well, you say --
17 **A. Can I be clear here?**
18 Q. Go ahead.
19 **A. There is different things that happen throughout that**
20 **dispatch tape that stated "We will discontinue." Rick**
21 **said, "We will discontinue if I don't have eyes on him**
22 **longer."**
23 Q. You're right. And having eyes is just a colloquy term of
24 saying, "I can't see him," right?
25 **A. Correct.**

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1 Q. And at one point, Hoeksema asks him -- him, Whitaker:
2 Do you still have eyes?
3 Negative. Adam 5, I lost...I'm
4 not sure if he took Adams Road.
5 Is that accurate?
6 **A. Correct.**
7 Q. Why don't you, as the supervisor, terminate a pursuit at
8 that time?
9 **A. The time frame between when Deputy Whitaker said, "I**
10 **don't see him," I'll give it a good -- you don't put a**
11 **time on it. You'll give it a minute. Maybe they're**
12 **going through another curve. At that time of day, there**
13 **is no other vehicles around. There is no pedestrian**
14 **traffic. So giving them a little bit of time to catch up**
15 **to the suspect.**
16 Q. Were you aware that Deputy Whitaker was travelling
17 between 110 and 120 miles an hour at the time of the
18 crash?
19 **A. No.**
20 Q. Would that have factored into your decision as to whether
21 to terminate a pursuit?
22 **A. No.**
23 Q. Why not?
24 **A. We drive vehicles fast. That's our job to drive vehicles**
25 **fast, safely, and appropriate. And if the --**

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1 Q. But the fact -- go ahead. I'm sorry.
2 **A. If I'm trying to chase a person going 100 at 55 miles an**
3 **hour, I'm never going to catch them.**
4 Q. So 110, 120 miles an hour on back roads doesn't factor
5 into your decision?
6 **A. That's not going to stop me in that area.**
7 Q. That's not my question. It doesn't factor into your
8 decision?
9 **A. Yes, it's a factor.**
10 Q. But it's not going to -- it's not a basis for terminating
11 this particular pursuit?
12 **A. Not at that time, no.**
13 Q. What do you mean "at that time"?
14 **A. At that time of the pursuit, I felt it was necessary for**
15 **them to continue.**
16 Q. But you didn't know he was going 110, 120, right?
17 **A. No.**
18 Q. You indicated earlier in kind of preparatory or
19 foundational testimony that Deputy Whitaker was driving
20 his assigned cruiser. Actually, his original cruiser
21 wasn't working that day. He got assigned to another one,
22 right?
23 **A. Yes, sir.**
24 Q. So why the disconnect there?
25 **A. Our vehicles need maintenance on them. If there is**

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1 **something wrong with it, they'll down the vehicle to have**
 2 **routine maintenance done on it, or even sometimes it's**
 3 **just for computer issues or if another vehicle has what**
 4 **we call LEIN access so we can run plates and vehicles, an**
 5 **officer may grab that plate or grab that car if it's**
 6 **available so he has more tools for him to use that night**
 7 **on the job.**
 8 Q. Is it sheriff's office policy to have a cruiser video, or
 9 whatever it's referred to?
 10 A. **No.**
 11 Q. You testified earlier to the effect that Deputy Whitaker
 12 was familiar with the roads out there. Deputy Whitaker,
 13 did he have any specialized training other than academy
 14 training in pursuit driving?
 15 A. **No, sir. Just academy.**
 16 Q. In fact, he'd only been an officer for a total of about
 17 two, three years, right?
 18 A. **It was almost three years.**
 19 Q. Okay.
 20 MR. MORLEY: Just a moment, Judge.
 21 THE COURT: No problem.
 22 BY MR. MORLEY:
 23 Q. Sergeant, if you recall, we were reading the transcript,
 24 or I was reading the transcript where Deputy Whitaker
 25 says, in relevant part:

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1 I lost --
 2 I'm on the bottom of page 2 for the record.
 3 I lost...I'm not sure if he took
 4 Adams Road.
 5 Did anybody check Adams Road to see if the car,
 6 whatever car it was, went there?
 7 A. **During that time, I can't say if he looked down it or**
 8 **not, but at that time of night with no vehicle traffic, I**
 9 **don't believe they saw any lights down that road, but I**
 10 **was never told they did.**
 11 Q. That's just speculation, right?
 12 A. **Yes, sir.**
 13 MR. MORLEY: All right. That's all I have.
 14 Thank you.
 15 THE COURT: Thank you, Mr. Morley.
 16 Mr. Roth, do you have any redirect examination?
 17 MR. ROTH: Yes, Your Honor. Thank you.
 18 REDIRECT EXAMINATION
 19 BY MR. ROTH:
 20 Q. First of all, the policy that you have, Defense Exhibit
 21 A, that's not a legal standard. That is just, for lack
 22 of a better term, a department policy, correct?
 23 A. **Guidelines, yes, sir.**
 24 Q. And when you talk about the second -- excuse me, the
 25 primary car focusing on the road and the pursuit, does

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1 that mean that they should be completely silent on the
 2 radio?
 3 A. **No.**
 4 Q. Why not?
 5 A. **This is a perfect case scenario. If you have two cars**
 6 **that are chasing a vehicle and only -- and both of them**
 7 **are in a straight line where they can see it, and this**
 8 **type of case here where you have curves in a road,**
 9 **Rick Hoeksema, Deputy Hoeksema, may not have seen Grant's**
 10 **car and may not have been able to see what was going on.**
 11 **So Rick listening to Grant at times even when**
 12 **Grant said, "Hey, heads up, you know, there is a curve**
 13 **here," that's Grant taking another chance to be safe and**
 14 **tell us, so I appreciate that.**
 15 Q. Mr. Morley asked if Deputy Whitaker ever gave a
 16 description of the vehicle during the pursuit and fair to
 17 say he did not, correct?
 18 A. **No, sir.**
 19 Q. That being said, throughout he talks about "the vehicle,"
 20 correct? He does describe it in that term.
 21 A. **Correct. When we chase a vehicle, pursue a vehicle, we**
 22 **have eyes on it. I don't expect the person to keep**
 23 **calling out "It's a white vehicle. It's a white vehicle.**
 24 **It's a white vehicle."**
 25 **If you find a plate on the vehicle or if you**

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1 **have occupant information, that's information I like to**
 2 **know, but I don't expect you to keep calling out the same**
 3 **information I already have. Airtime is very valuable,**
 4 **and I'm trying to get assets and people there, so we need**
 5 **the air.**
 6 Q. So once Deputy Hoeksema at the beginning describes it as
 7 a white SUV, there is no need for Deputy Whitaker to say
 8 it again?
 9 A. **Correct.**
 10 Q. Mr. Morley asked, at the bottom of page 2, "Did anybody
 11 check Adams Road?"
 12 On page 3, does Deputy Whitaker provide a
 13 different description of where the suspect vehicle has
 14 gone?
 15 A. **Yes. He tells it crossed 52 and going towards Brogan.**
 16 Q. In light of the fact that he notices the vehicle
 17 approaching 52 and Brogan, is there any reason to check
 18 Adams Road?
 19 A. **Negative.**
 20 Q. Mr. Morley asked if Deputy Whitaker was driving his
 21 normal vehicle that evening. I want to make a
 22 distinction. So while it wasn't his normal vehicle, was
 23 it the vehicle that he was assigned to drive that day?
 24 A. **Correct. All of our vehicles are set to a standard. If**
 25 **the vehicle is not mechanically sound, we're not going to**

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1 **drive the vehicle.**
 2 Q. Mr. Morley brought up the fact that Deputy Whitaker had
 3 only been an officer for two to three years. How much of
 4 that was with the Stockbridge Police Department?
 5 A. **Just over a year.**
 6 Q. And how much with the Ingham County Sheriff's Department?
 7 A. **Just under two.**
 8 Q. And during that time, did you find him to be a
 9 responsible and prudent officer?
 10 A. **Before I became a sergeant, I had the privilege to be a**
 11 **training officer for our department. So I spent three**
 12 **years in training. I got to know Grant through the whole**
 13 **process. I knew Grant because I trained Grant at the**
 14 **sheriff's office because they do county-wide training**
 15 **with us. So I knew Grant from there.**
 16 **I also knew Grant was a great officer for**
 17 **Stockbridge, so we wanted to bring him to the sheriff's**
 18 **office. So we basically recruited Grant to bring him to**
 19 **us because we had a lot of opportunity and a bigger**
 20 **department to bring to us. So it's fair to say that I**
 21 **knew Grant from the time he was in Stockbridge until the**
 22 **time he came to us, and I was very happy to have him on**
 23 **my shift.**
 24 MR. ROTH: Nothing further.
 25 THE COURT: Thank you, Mr. Roth.

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1 Sir, you may step down. Thank you, very much.
 2 (At 10:46 a.m., the witness
 3 stepped down from the witness
 4 stand.)
 5 THE COURT: Can I see counsel at the bench?
 6 (At 10:46 a.m., an at-the-bench
 7 discussion is held off the
 8 record.)
 9 THE COURT: Mr. Roth, you may call your next
 10 witness, sir.
 11 MR. ROTH: People call Deputy Rick Hoeksema.
 12 THE COURT: Right up here, sir.
 13 DEPUTY HOEKSEMA: Yes, sir.
 14 THE COURT: Please raise your right hand.
 15 Do you swear or affirm to tell the truth, the
 16 whole truth, and nothing but the truth?
 17 DEPUTY HOEKSEMA: I do.
 18 THE COURT: Please be seated. State your full
 19 name for us, and spell your last name, please.
 20 THE WITNESS: Deputy Richard, R-I-C-H-A-R-D,
 21 Hoeksema, H-O-E-K-S-E-M-A.
 22 MR. ROTH: Thank you.
 23 RICHARD HOEKSEMA
 24 called by the People at 10:47 a.m., sworn by the Court,
 25 testified:

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1 DIRECT EXAMINATION
 2 BY MR. ROTH:
 3 Q. Deputy, where are you employed?
 4 A. **With the Ingham County Sheriff's Office.**
 5 Q. In what capacity?
 6 A. **I'm a law enforcement officer and traffic deputy.**
 7 Q. How long have you been with the sheriff's department?
 8 A. **Approximately ten years.**
 9 Q. When you say that you are in traffic enforcement, what
 10 are your responsibilities?
 11 A. **My primary duties are enforcement of the motor vehicle**
 12 **code, laws of the State of Michigan in general.**
 13 Q. Do you wear a normal, fully-marked police uniform during
 14 that work?
 15 A. **Yes.**
 16 Q. Were you working on the early morning hours of
 17 December 7, 2014?
 18 A. **Yes, I was.**
 19 Q. What were the hours of your shift that day?
 20 A. **I worked 6 p.m. to 6 a.m.**
 21 Q. What was the name of your supervisor during that shift?
 22 A. **Sergeant Jim Every.**
 23 Q. How specifically were you assigned during that shift?
 24 A. **I have -- basically, my duties entail patrolling the**
 25 **entire county or the outlying townships.**

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1 Q. Even though, let's say, the title of your assignment is
 2 traffic, do you respond to non-traffic calls as well?
 3 A. **Yes, I do.**
 4 Q. Were you wearing a fully-marked Ingham County Sheriff's
 5 Department uniform during that shift?
 6 A. **Yes, I was.**
 7 Q. And that's similar to the one we see Deputy Whitaker
 8 wearing in Exhibit 1?
 9 A. **Yes.**
 10 MR. ROTH: Very good.
 11 May I approach the witness, Your Honor?
 12 THE COURT: You may.
 13 BY MR. ROTH:
 14 Q. (Approaching the witness.)
 15 I'm going to show you what's been marked as
 16 People's Proposed Exhibits 9, 10, 11 and 12. If you
 17 could take a moment and look at those. Generally, what
 18 is shown in those pictures?
 19 A. **A semi-marked Ingham County Sheriff's Office patrol**
 20 **vehicle.**
 21 Q. Now, let's be clear: This is not the exact one you were
 22 driving on that particular shift, right?
 23 A. **That is correct.**
 24 Q. What is the difference between the one you're driving on
 25 that shift and the one shown here?

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1 **A. The difference would be that my patrol car was silver in**
 2 **color with black markings on the side for contrast.**
 3 Q. And this one is black, we'll see?
 4 **A. Yes, sir.**
 5 Q. Other than that, is this a fair and accurate
 6 representation of what your vehicle appeared like that
 7 night?
 8 **A. Yes.**
 9 MR. ROTH: Your Honor, I'd move for the
 10 admission of People's Proposed Exhibits 9, 10, 11, and
 11 12.
 12 THE COURT: Mr. Morley, do you have any
 13 objection, sir?
 14 MR. MORLEY: Your Honor, I have to apologize.
 15 I was talking to my client. I didn't hear.
 16 THE COURT: Any objection to Exhibits 9, 10,
 17 11, and 12?
 18 MR. MORLEY: Apologize, Judge. No objection.
 19 THE COURT: People's Exhibits 9, 10, 11, and 12
 20 are admitted and received.
 21 (At 10:50 a.m., PX#9, PX#10,
 22 PX#11, and PX#12 are received.)
 23 MR. ROTH: Thank you, Your Honor.
 24 BY MR. ROTH:
 25 Q. Showing you People's Exhibit 9. Could you describe a

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1 traffic patrol vehicle, the one that you were driving
 2 that evening?
 3 **A. Yes, sir. As you can see in the photograph, the patrol**
 4 **car is marked -- I'm sorry, it's a slick top, which means**
 5 **it has no overhead emergency lights. The lights are**
 6 **subdued within the visor underneath the exterior mirrors**
 7 **and -- okay. And inside of the visor is where the lights**
 8 **are, red and blue. There are red and blue flashers**
 9 **inside the grill. There are also lights mounted**
 10 **underneath both exterior mirrors, as well as along --**
 11 **along the B pillar, which is the second pillar there. It**
 12 **would be separating the driver's door and passenger's**
 13 **door on both sides. And then there are light bars that**
 14 **you can see across the back of the car.**
 15 Q. Thank you. We see, again, in Exhibit 10 the passenger's
 16 side. What is on the side -- the passenger's side of
 17 these vehicles?
 18 **A. Markings that say the Ingham County Sheriff as well as**
 19 **the Michigan Sheriff's Association symbol and the words**
 20 **Traffic Unit.**
 21 Q. So that's on the passenger or right side it is marked or
 22 labeled?
 23 **A. Yes.**
 24 Q. And you indicate earlier on the exterior of the side view
 25 mirrors we have more lights -- more patrol lights?

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1 **A. That's correct.**
 2 Q. Very good. People's Exhibit 11, where -- what do we see
 3 in the rear the vehicle?
 4 **A. We see -- you see that there is a radar unit in the back**
 5 **as well as a light bar across the rear window that's**
 6 **still inside of the car, as well as down here where**
 7 **typically a third brake light would be mounted for most**
 8 **vehicles, that's a red and blue flasher as well. And**
 9 **then when lights are activated, the rear lights flash**
 10 **alternately as well.**
 11 Q. And we see on the driver's side there is no marking --
 12 **A. That's correct.**
 13 Q. -- for the sheriff's department?
 14 **A. That's correct.**
 15 Q. Now going inside of the vehicle. People's Exhibit 12,
 16 what do we see?
 17 **A. Up on the top here, these are where the alternating red**
 18 **and blue flashers are. This right here is the vehicle**
 19 **mounted -- I'm sorry, vehicle mounted camera as well as**
 20 **spotlights, and this is a radar readout, and this is a**
 21 **video readout. And underneath -- I don't think it's**
 22 **visible here, down underneath here is going to be the**
 23 **activation switch for the lights.**
 24 Q. Thank you. Your vehicle on this specific night had an
 25 in-car camera like this one?

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1 **A. Yes, sir.**
 2 Q. Could you describe how that works?
 3 **A. There are several ways to activate it, but usually the**
 4 **primary way to activate it is to turn on the emergency**
 5 **flashers. I can also activate it by hand, and I can**
 6 **activate it with the microphone that's mounted on my**
 7 **belt.**
 8 Q. And that is a stationary camera?
 9 **A. Yes, sir.**
 10 Q. Does your perspective as a human different -- differ from
 11 that perspective at times?
 12 **A. It does because the camera -- I can move the camera with**
 13 **my hand, but it typically stays in one position, so it**
 14 **doesn't obviously follow my head.**
 15 MR. MORLEY: Just the other car?
 16 MR. ROTH: Mm-hmm.
 17 MR. MORLEY: Thank you.
 18 MR. ROTH: May I approach the witness,
 19 Your Honor?
 20 THE COURT: You may.
 21 BY MR. ROTH:
 22 Q. (Approaching the witness.)
 23 Let me show you what's been marked as People's
 24 Proposed Exhibits 13, 14, 15, and 16.
 25 Generally speaking, what do we see there?

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1 **A. A fully-marked patrol car.**
2 Q. Now, obviously, this is not the one that Deputy Whitaker
3 was driving that night, but is it otherwise visually the
4 same?
5 **A. Yes, sir.**
6 MR. ROTH: Your Honor, I'd move for the
7 admission of Proposed Exhibits 13, 14, 15, and 16.
8 THE COURT: Mr. Morley?
9 MR. MORLEY: No objection, Your Honor.
10 THE COURT: People's Exhibits 13, 14, 15, and
11 16 are admitted and received.
12 (At 10:54 a.m., PX#13, PX#14,
13 PX#15, and PX#16 are received.)
14 MR. ROTH: Thank you, Your Honor.
15 BY MR. ROTH:
16 Q. Showing you starting with 13, could you please describe
17 the fully-marked patrol car that Deputy Whitaker was
18 driving that night?
19 **A. Yes, sir. As you can see, it's a white patrol car. On**
20 **both sides it has the Michigan Sheriff's Association**
21 **symbol as well as being marked as Ingham County Sheriff's**
22 **Office. On top, there is a light bar that's visible.**
23 Q. You talked about the sides. We see the driver's side in
24 Exhibit 14?
25 **A. Yes, sir.**

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1 Q. And what do we have on the side?
2 **A. Ingham County Sheriff and Michigan Sheriff's Association**
3 **symbol.**
4 Q. Same thing on the passenger side of Exhibit 16?
5 **A. Yes, sir.**
6 Q. Now, looking again at 13, where are the lights positioned
7 on this vehicle?
8 **A. Lights are simply along the top of the roof of the car.**
9 **When activated also the headlights -- headlights flash**
10 **alternately as well.**
11 Q. How did it differ from your traffic vehicle that evening?
12 **A. Primarily that the emergency lights are not mounted on**
13 **top of my vehicle. They are on his. And he does not**
14 **have lights mounted underneath each mirror as well as in**
15 **the B pillars, and then -- yeah.**
16 Q. Okay. Deputy Whitaker's car would be referred to as a
17 fully-marked and yours as a semi-marked?
18 **A. Yes, sir.**
19 Q. Very good. Showing you what has already been admitted as
20 Exhibit 4. At 2:03 a.m., where were you on December 7th,
21 2014?
22 **A. I was sitting at the Marathon gas station right down**
23 **here, Morton here, east of M-52.**
24 Q. In your patrol car?
25 **A. Yes, sir.**

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1 Q. Where was Deputy Whitaker?
2 **A. Deputy Whitaker was actually parked right next to me with**
3 **the rear of his car facing the roadway.**
4 Q. Why do officers sit like that?
5 **A. We were actually at a call earlier. We were just sitting**
6 **there discussing it, and he was actually getting**
7 **dispatched to a different call out of the -- further east**
8 **of where we were.**
9 Q. Are you lined up window to window like that?
10 **A. Yes, sir. Driver's window to driver's window.**
11 Q. Is that location in the village of Stockbridge, Ingham
12 County, Michigan?
13 **A. Yes.**
14 MR. ROTH: May I approach the witness,
15 Your Honor?
16 THE COURT: Yes.
17 BY MR. ROTH:
18 Q. (Approaching the witness.)
19 Showing you People's Proposed Exhibit 17. Is
20 that fair and accurate representation of the Marathon
21 station where you were?
22 **A. Yes, it was.**
23 MR. ROTH: Your Honor, I'd move for admission
24 of Proposed Exhibit 17.
25 THE COURT: Mr. Morley?

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1 MR. MORLEY: No objection.
2 THE COURT: People's Exhibit 17 is admitted and
3 received.
4 (At 10:57 a.m., PX#17 is
5 received.)
6 BY MR. ROTH:
7 Q. All right. So obviously this picture was taken at a
8 different time, correct?
9 **A. Yes, sir.**
10 Q. It's nighttime when you're there, and there is no MSP car
11 there?
12 **A. Correct.**
13 Q. Could you mark on the screen with an arrow where your
14 patrol car was positioned? I can clear that.
15 **A. I would say approximately right there, (illustrating) and**
16 **Grant's car was approximately right here with that cross**
17 **line being the front of the car.**
18 Q. Thank you. And this is the south side of Morton Road?
19 **A. Yes, sir.**
20 Q. Does that Marathon station in Stockbridge have another
21 name?
22 **A. I believe -- well, it used to be referred to what's**
23 **called Fast Tracks. I don't know if it's still called**
24 **that or not.**
25 Q. Is that also Mugg & Bopps?

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1 **A. I don't believe so. I know the Mugg & Bopps inside of**
2 **the village is a Sunoco gas station. It may have changed**
3 **ownership. I don't know.**
4 Q. Going back to Exhibit 4, where is this location relative
5 to Stockbridge?
6 **A. Well, the village actually is -- the entire village is**
7 **right through here (illustrating), and it kind of borders**
8 **up to -- M-52 is kind of like the borderline or the**
9 **village line.**
10 Q. So the Marathon is just west of the concentrated village
11 area?
12 **A. Yes, sir.**
13 Q. How much traffic was there at that location this time of
14 night?
15 **A. Very minimal.**
16 Q. And is Morton Road one of the main roads there?
17 **A. It is.**
18 Q. What about the weather conditions?
19 **A. It was dry. It was cold, but it was dry. Dry roadways.**
20 Q. Shortly after 2:03 a.m., what did you observe?
21 **A. I observed a vehicle pass from my right to left in front**
22 **of me at what I determined to be a high rate of speed.**
23 Q. Determining that it's a high rate of speed, was that
24 based on any of the instruments in your vehicle, or is
25 that an estimation visually?

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1 **A. Visual estimation.**
2 Q. Is that something that you're trained to do as an
3 officer?
4 **A. Yes.**
5 Q. Especially as a traffic patrol officer?
6 **A. Yes.**
7 Q. What is the speed limit in that area?
8 **A. 35 miles per hour.**
9 Q. And as best as you recall, how would you describe the
10 vehicle that you saw?
11 **A. You mean a physical description of the vehicle?**
12 Q. Yes.
13 **A. I could only describe it at the time as a white Suburban,**
14 **is what it looked like.**
15 Q. Now, when you say Suburban, how sure were you that it was
16 specifically a Suburban model?
17 **A. Not specific, no.**
18 Q. What led you to think Suburban or associate Suburban?
19 **A. Larger vehicle that did not appear to be a pickup and had**
20 **a closed bed area, so possibly a larger SUV.**
21 Q. So the distinction you make when you say Suburban is that
22 it was a very large SUV, not a small one?
23 **A. Correct.**
24 Q. Very good. How confident, if you could assign a number
25 to it, were you that it was specifically a Suburban?

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1 **A. Between a one to ten, I'd say a five.**
2 Q. So 50/50?
3 **A. Yes, sir.**
4 Q. Very good. This vehicle that you saw, it was traveling
5 from east to west, correct, on Morton?
6 **A. Yes.**
7 Q. And how fast did you believe that it was going?
8 **A. I believed it to be going between 50 to 60 miles per**
9 **hour, well in excess of the posted speed limit.**
10 Q. And that direction is the direction of -- east is
11 Pinckney?
12 **A. East is Pinckney, yes, sir.**
13 Q. So it's coming from that direction?
14 **A. Yes.**
15 MR. ROTH: May I approach, Your Honor?
16 THE COURT: You may.
17 BY MR. ROTH:
18 Q. (Approaching the witness.)
19 Showing you Proposed Exhibit 18. Is this a
20 fair and accurate still frame from your in-car camera?
21 **A. Yes, it is.**
22 Q. And that's as the white car crossed in front of your
23 vehicle?
24 **A. Yes.**
25 MR. ROTH: Your Honor, I'd move for admission

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1 of People's Exhibit 18.
2 MR. MORLEY: No objection.
3 THE COURT: People's Exhibit 18 is admitted and
4 received.
5 (At 11:02 a.m., PX#18 is
6 received.)
7 BY MR. ROTH:
8 Q. So this is taken from the in-car camera that we see,
9 correct?
10 **A. Yes.**
11 Q. What is the time stamp on it?
12 **A. Looks like 2:02 a.m.**
13 Q. And how many seconds?
14 **A. 41 seconds.**
15 Q. Thank you. How close was that vehicle to the front of
16 your car?
17 **A. I would say probably about between 15 and 20 feet away.**
18 Q. So pretty close?
19 **A. Fairly close, yes, sir.**
20 Q. In person, could you see it better than what we see in
21 this still frame?
22 **A. Yes.**
23 Q. The direction that it's coming from, what side of your
24 patrol car was visible to it?
25 **A. The passenger's side.**

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1 Q. All right. So in Exhibit 10, we see that's the marked
2 side of your vehicle?
3 A. **Yes, sir.**
4 Q. And Deputy Whitaker is on your driver's side?
5 A. **Correct.**
6 Q. Are there any impediments to seeing the sheriff's logo on
7 the right side or the passenger's side?
8 A. **Not that I know of.**
9 Q. When you first saw this vehicle driving, I think you said
10 about 55 to 60 miles per hour, were its headlights on?
11 A. **Yes.**
12 Q. What do you do once you saw it pass you?
13 A. **Once I saw it pass me, since Grant was sitting right next
14 to me, I just looked at him, and he looked at me, and I
15 said, "Let's go get him."**
16 Q. So at the very beginning of this pursuit, you have a
17 vehicle going 55 to 60 in a 35 zone. Does that pose a
18 safety risk?
19 A. **Yes, it does.**
20 Q. To whom?
21 A. **To myself, to Deputy Whitaker, to the driver of the
22 vehicle, and anyone else that could be in the area.**
23 Q. Who pulled out first after the vehicle?
24 A. **I did.**
25 Q. Did Deputy Whitaker follow?

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1 A. **Yes, he did.**
2 Q. Obviously your eyes are forward. Do you have an idea in
3 your mind of how closely behind he was at the very
4 beginning?
5 A. **No, sir, I do not.**
6 Q. But he had to turn around his patrol car?
7 A. **Yes.**
8 Q. Were you two in communication?
9 A. **Yes, we were.**
10 Q. Was that via the dispatch radio?
11 A. **Yes.**
12 Q. How quickly after you turned onto Morton Road to begin
13 your pursuit were your lights and sirens activated?
14 A. **Nearly immediately.**
15 Q. What's the purpose in doing that?
16 A. **To, first of all, initiate the traffic stop and to let
17 the person know that there is a police officer behind
18 them and they need to yield to that and also to alert
19 innocence or anyone else in the area that they need to
20 kind of steer clear or get out of the way, basically, to
21 yield the right-of-way.**
22 Q. So these lights are designed to be seen from great
23 distances, correct?
24 A. **Yes, sir.**
25 Q. And the sirens to be heard from great distances, correct?

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1 A. **Yes.**
2 Q. Did Deputy Whitaker turn on his lights and sirens as
3 well?
4 A. **Yes, he did.**
5 Q. Do you have any idea how quickly he did that once he got
6 onto the road?
7 A. **I don't know. I can only presume that he did it
8 immediately as soon as I did.**
9 Q. Once you turn onto Morton Road to begin the pursuit, did
10 the speed of the white SUV change at all?
11 A. **It appears it did, yes.**
12 Q. What led you to that conclusion?
13 A. **Because when I took off, as I called it out to dispatch,
14 immediately I was -- when I was able to get it out to
15 dispatch, I was approximately 80 miles per hour, and the
16 vehicle was still pulling away from me.**
17 Q. All right. So once you began, it went from 55 to 60 to
18 north of 80?
19 A. **Yes.**
20 Q. You indicated that at 80, it was still pulling away.
21 That leads you to believe that it's going faster than
22 you?
23 A. **Yes.**
24 Q. Did you ever at any point during the pursuit get close
25 enough to see its license plate number?

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1 A. **No, I did not.**
2 Q. What happened once you began your pursuit on Morton Road?
3 A. **I immediately notified dispatch that I had a car that was
4 not stopping going approximately 80 miles per hour.**
5 Q. Go ahead. What happened next?
6 A. **And I believe dispatch asked or put the information out.
7 And since Deputy Whitaker was with me, he immediately
8 confirmed that he was with me as well. The next
9 transmission I put out, I believe, was that it was
10 vehicles passing or I was passing Adams Road at over --
11 at 100 miles per hour, and the vehicle was still pulling
12 away from me.**
13 Q. What does that lead you to believe?
14 A. **That he is -- had no intention of stopping.**
15 Q. And if you're going 100 and he's still getting further
16 away, is he going more or less than your speed?
17 A. **More.**
18 Q. So now we've gone from 55 to 60 up to more than 100. How
19 does the risk to the community change at those speeds?
20 A. **Well, it -- in my opinion, it would increase
21 exponentially if -- the other driver wouldn't be able to
22 stop in time if a hazard presented itself, even a deer,
23 and different aspects from there that -- there is a
24 possibility the person could be intoxicated. There is
25 all kinds of possibilities.**

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1 Q. So we see Chapman Road -- I'm sorry, Morton Road goes to
2 Chapman Road, and the pursuit turns onto Chapman at that
3 point. Is that correct?
4 **A. That's correct.**
5 Q. Could you describe that intersection? Does Morton Road
6 go beyond there?
7 **A. No. Morton Road stops there. It is actually only -- I**
8 **believe only one -- one stop there. I can't -- I can't**
9 **remember exactly, but it's a very -- it's almost a**
10 **90-degree turn to go north onto Chapman Road.**
11 Q. What happened at that intersection?
12 **A. The driver turned north and continued -- continued**
13 **fleeing.**
14 Q. What happened on Chapman Road?
15 **A. Further up on Chapman Road after he had passed O'Brien**
16 **Road, I radioed to Grant that he would need to take**
17 **primary position.**
18 Q. First of all, what does that mean?
19 **A. Primary position is the person who is in lead during the**
20 **pursuit. Our policy states that a semi-marked patrol car**
21 **cannot be primary. A fully-marked patrol car has to take**
22 **primary position.**
23 Q. And that is why you had him take over?
24 **A. Yes.**
25 Q. Could you explain that process of physically what you two

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1 do on Chapman Road to accomplish that?
2 **A. At a point where it -- where it was safe to do so, I**
3 **slowed down enough to where Grant could overtake me and**
4 **take the primary position.**
5 Q. What side did he pass you on?
6 **A. He passed me on the left side, driver's side.**
7 Q. And at this point his lights and sirens are activated?
8 **A. Yes.**
9 Q. You talked earlier about road and weather conditions
10 being clear. Does that factor into how you pursue a
11 vehicle?
12 **A. Yes.**
13 Q. Could you explain that for us?
14 **A. Obviously if the roads were snow covered or wet or icy**
15 **and based on the speeds that we were traveling at, there**
16 **would be absolutely no reason to continue the pursuit if**
17 **the weather conditions or road conditions dictated that.**
18 Q. On this particular evening, how were they?
19 **A. The roadway was dry.**
20 Q. That was not an impediment or a factor in your pursuit?
21 **A. Correct.**
22 Q. What about the type of area that you're in?
23 **A. It's very rural. Houses do not sit directly on the**
24 **roadway. It's mostly farms, farmland and such, and a lot**
25 **of the houses that are along that route sit quite a**

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1 **distance off of the roadway. They have very long**
2 **driveways.**
3 Q. And is that a safety factor for you in pursuing?
4 **A. Yes, it is.**
5 Q. What other safety measures did you and Deputy Whitaker
6 account for as you pursued the suspect vehicle that
7 evening?
8 **A. We stayed in constant contact with dispatch, let them**
9 **know what we're seeing as well as that we were prepared**
10 **to terminate the pursuit. At one particular point in --**
11 **during the -- during the -- during the pursuit, we were**
12 **actually -- we were -- we were prepared to terminate at**
13 **one point because he had lost sight of the vehicle.**
14 Q. And then regained contact or sight?
15 **A. Yes, he did.**
16 Q. All right. The fact that it's nighttime, does that
17 increase or decrease your visibility?
18 **A. It decreases the visibility.**
19 Q. What about the lights, headlights of other vehicles?
20 **A. Headlights of other vehicles would possibly hinder our**
21 **own visibility coming at us and such, but I don't believe**
22 **that there was any additional or opposing traffic that**
23 **night.**
24 Q. Did you remain in communication about obstacles on the
25 pathway?

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1 **A. Yes.**
2 Q. For example?
3 **A. Deputy Whitaker communicated to me that there was a very**
4 **sharp curve on Dexter Trail and I needed to be aware of**
5 **it.**
6 Q. Were you each wearing your seatbelts throughout the
7 pursuit?
8 **A. Absolutely.**
9 Q. Were you aware of any familiarity Deputy Whitaker had
10 with the area?
11 **A. Yes, I was.**
12 Q. Could you please explain?
13 **A. Grant grew up there. He grew up in that area maybe a**
14 **mile or mile and a half away of where the crash occurred.**
15 **He went to school there. He was also a police officer**
16 **there prior to joining the sheriff's office.**
17 Q. Did that affect your comfort level with the pursuit?
18 **A. Yes, it did.**
19 Q. In what way?
20 **A. It made me more confident in Grant's abilities to know**
21 **where he was going and directions he was going and where**
22 **possibly it could go.**
23 Q. What about your familiarity with the area? Had you
24 patrolled this area before?
25 **A. I have.**

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1 Q. How comfortable were you with the area?
 2 A. **I was pretty comfortable with the area, and I'm very**
 3 **comfortable with my driving abilities.**
 4 Q. Very good. Once Deputy Whitaker takes over on Chapman
 5 Road, you began calling the chase?
 6 A. **We both do, but because they got far enough ahead of me**
 7 **at one point that I couldn't see either one of them, that**
 8 **-- so he started calling out information.**
 9 Q. Could you still see the white SUV on Chapman Road?
 10 A. **No, I couldn't -- oh, on Chapman Road, yes, I could.**
 11 Q. Where did the pursuit go after Chapman Road?
 12 A. **At the -- at the intersection where Chapman Road stops is**
 13 **Catholic Church Road, and once we got to Catholic Church**
 14 **Road, they turned east. They turned right.**
 15 Q. So on Chapman Road where it gets to Catholic Church Road,
 16 again we hit another one where the road you're on stops
 17 and you have to turn?
 18 A. **Yes.**
 19 Q. What is the speed limit on the part of Catholic Church
 20 Road where you first turn?
 21 A. **I believe it's 55 miles per hour.**
 22 Q. Is Deputy Whitaker still in front of you?
 23 A. **Yes, he is.**
 24 Q. Could you see his patrol car at that time?
 25 A. **I could.**

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1 Q. Could you still see the white SUV?
 2 A. **I could see some taillights, so, yes.**
 3 Q. At what point did you lose sight of the white SUV?
 4 A. **Somewhere along Dexter Trail, I believe, after they**
 5 **turned onto Dexter Trail.**
 6 Q. All right. So through Catholic Church Road, you can
 7 still see the white SUV?
 8 A. **I can still see part of it, yes.**
 9 Q. And can you still see Deputy Whitaker's car?
 10 A. **Yes.**
 11 Q. Where did the pursuit go after Catholic Church Road?
 12 A. **It turned south -- actually southeast onto Dexter Trail.**
 13 Q. Again, could you tell us about the intersection of Dexter
 14 Trail and Catholic Church Road?
 15 A. **Yes, sir. Again, that's a stop where Catholic Church**
 16 **ends there, and you either have to turn left or right.**
 17 Q. Could you tell us about the road conditions of Dexter
 18 Trail when you first make your, let's call it, a right
 19 turn onto it?
 20 A. **It's kind of -- kind of straight but it goes at an angle**
 21 **and it turns immediately, and then it kind of winds a**
 22 **little bit, but there are -- there are decent size**
 23 **straight-of-ways through there.**
 24 Q. When did you lose sight of the white SUV?
 25 A. **I would say shortly after it got onto Dexter Trail.**

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1 Q. And when did you lose sight of Deputy Whitaker?
 2 A. **After he turned, I guess it would have been -- well, he**
 3 **was following the roadway after he turned more to the**
 4 **east onto Dexter Trail.**
 5 Q. You eluded to this earlier, but there is a point where he
 6 initially tells you that he can't see the white SUV
 7 anymore, maybe it turned. And you said, "If you don't
 8 have them, we'll discontinue." Can you explain your
 9 thought process to the jury?
 10 A. **My thought process was that, first of all, there would be**
 11 **no need to continue a pursuit if there is nothing that we**
 12 **can see to pursue. We're not just going to drive fast**
 13 **out in the middle of nowhere just to drive fast and have**
 14 **lights and sirens going. It's stupid. So he thought**
 15 **that he lost visual at Adams Road, and I said, "If we**
 16 **lost -- if we lost visual, we need to discontinue."**
 17 Q. Did he update you after that?
 18 A. **Yes, he did.**
 19 Q. Saying, what?
 20 A. **Shortly after that he said that he had the vehicle**
 21 **crossing M-52.**
 22 Q. Could you give us an idea of how quickly after he
 23 initially says "I've lost sight" to then picking him up
 24 again?
 25 A. **Probably within five seconds.**

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1 Q. So with that in mind, there was no more reason to
 2 discontinue the pursuit at that time?
 3 A. **That's correct.**
 4 Q. What happened next?
 5 A. **As I approached M-52, I couldn't see either vehicle, but**
 6 **I heard Grant call out that he was passing South Main**
 7 **Street, which is east of M-52. And then his last**
 8 **transmission was at -- they were approaching Brogan Road.**
 9 Q. Could you show on the map approximately where Dexter
 10 Trail and Brogan Road is?
 11 A. **The center section right here (illustrating).**
 12 Q. So it is farther east than where the accident site
 13 occurs?
 14 A. **Yes, sir.**
 15 MR. ROTH: May I approach the witness,
 16 Your Honor?
 17 THE COURT: Yes.
 18 BY MR. ROTH:
 19 Q. (Approaching the witness.)
 20 Showing you People's Proposed Exhibits 19 and
 21 20. Are these fair and accurate pictures of that area of
 22 Dexter Trail?
 23 A. **Yes.**
 24 MR. ROTH: Move for the admission of 19 and 20.
 25 MR. MORLEY: Without objection, Your Honor.

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1 THE COURT: People's Exhibits 19 and 20 are
2 admitted and received.
3 (At 11:17 a.m., PX#19 and PX#20
4 are received.)
5 BY MR. ROTH:
6 Q. I want to step away from the pursuit for a minute and
7 talk about the terrain that you're on.
8 A. Okay.
9 Q. In Exhibit 19, just by way of a visual marker, there is a
10 yellow street sign right around the area of the crash
11 site, correct?
12 A. Yes.
13 Q. What were the road conditions here near where the crash
14 site occurs on Dexter Trail?
15 A. Still dry. It's a straightaway.
16 Q. Do we see any residences anywhere close?
17 A. No, sir.
18 Q. Your testimony earlier was that this occurs shortly after
19 2 a.m. As a traffic patrol deputy, is that a significant
20 time for you as it relates to traffic stops?
21 A. Yes, it is.
22 Q. In what way?
23 A. Well, most people know that bars close at 2 o'clock in
24 the morning, and I like to enforce operating-while-
25 intoxicated laws. The propensity, in my opinion, for

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1 people to be intoxicated after 2 a.m. out driving,
2 especially in the middle of nowhere, goes up
3 considerably.
4 Q. So taking that into consideration, in combination with
5 what you've observed so far during this pursuit, when you
6 get to this straightaway on Dexter Trail, did you believe
7 that this white SUV posed a risk?
8 A. Yes, I do.
9 Q. To whom?
10 A. To himself, to myself, and to Grant, and anyone else that
11 could possibly be in the area.
12 Q. Would his headlights being turned off affect that as
13 well?
14 A. Absolutely.
15 Q. In what way?
16 A. Again, it's 2 o'clock in the morning, and there are no
17 streetlights out there. There is nothing to illuminate
18 the roadway.
19 Q. Thank you. So going back to the pursuit, when you get to
20 this area, do you observe anything in the roadway?
21 A. I did.
22 Q. Showing you People's Exhibit 20. First, what did you see
23 in the roadway?
24 A. An exhaust system.
25 Q. Could you explain what that means?

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1 A. Muffler, exhaust pipe, and basically everything from the
2 engine manifold back.
3 Q. And on this picture, approximately where did you observe
4 that?
5 A. It would have been probably just -- just east of the no-
6 passing sign. Well, on this (illustrating) --
7 apparently, it's not calibrated very well, but --
8 essentially right in the center of the roadway.
9 Q. So almost on the yellow line?
10 A. Yes, sir.
11 Q. In the moment when you first see that muffler system,
12 that exhaust system, do you know where it comes from?
13 A. No.
14 Q. What did you see when you -- excuse me, what did you
15 think when you first saw it?
16 A. Some realization started to sink in that Grant didn't
17 call it out, and -- after he had earlier called out, you
18 know, "Sharp curve on Dexter Trail," and I should be
19 aware. So I called it out that there was an exhaust
20 system in the middle of the roadway. So I continued --
21 continued east to see if I could --
22 Q. At that time when you passed the exhaust system, could
23 you see Deputy Whitaker's patrol vehicle?
24 A. I did not see it, no.
25 Q. Could you see the white SUV?

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1 A. No, I did not.
2 Q. Did you ever hear from Deputy Whitaker on the radio
3 again?
4 A. No, sir.
5 Q. What happens once you pass the exhaust system in the
6 road?
7 A. I went up to Brogan Road, the next intersection east, and
8 turned around to go see if it was him or who it was in
9 the -- off the road.
10 Q. Why did you terminate your pursuit at that time?
11 A. Because we hadn't heard from Grant.
12 Q. Approximately how far is it from that accident site to
13 Brogan Road where you turned around?
14 A. I'd say half to three-quarters of a mile.
15 Q. How quickly do you get back once you turn around to the
16 crash site?
17 A. Less than a minute.
18 Q. When you get back to the crash site near the exhaust
19 system, what were your first observations of that area?
20 A. I could see lights.
21 Q. Headlights or the overhead lights?
22 A. No, the headlights.
23 Q. Very good. Go ahead.
24 A. And -- I could see Grant's -- pieces of Grant's car.
25 Q. How far off the road were they?

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1 **A. Probably not more than 30 feet.**
 2 Q. Did you exit your patrol car at that time?
 3 **A. Yes.**
 4 Q. We talked earlier about your in-car camera. Was this
 5 pursuit captured on your in-car camera?
 6 **A. Yes, sir.**
 7 Q. You indicated that it is most often activated with the
 8 overhead lights. Is there a mechanism in place where it
 9 will go back a bit?
 10 **A. Yes.**
 11 Q. Could you explain that for the jury?
 12 **A. The system is in place. It indexes back one minute prior**
 13 **to activation of the lights or activation of the camera.**
 14 **So whether I hit the record button or hit a button on my**
 15 **microphone to activate it or use the lights to activate**
 16 **it, everything prior to one minute up to the incident of**
 17 **what's recording is on -- is on video, if that makes**
 18 **sense.**
 19 Q. Is there a microphone component to this recording?
 20 **A. Yes.**
 21 Q. Could you explain that?
 22 **A. I have a microphone on my belt. It's just a portable one**
 23 **that goes with -- it just stays with me and picks up the**
 24 **audio.**
 25 Q. Is this different than what we would hear on the dispatch

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1 recording?
 2 **A. Yes.**
 3 Q. In what way?
 4 **A. It wouldn't -- it wouldn't have things that I transmitted**
 5 **-- things I transmitted on the radio would be picked up**
 6 **on there and as well as things that I did not transmit on**
 7 **the radio.**
 8 Q. So we will hear more about what's going on in the camera
 9 or in your immediate vicinity on the in-car video than by
 10 dispatch?
 11 **A. Yes.**
 12 MR. MORLEY: Approach, Judge?
 13 THE COURT: Yes.
 14 (At 11:23 a.m., an at-the-bench
 15 discussion is held off the
 16 record.)
 17 BY MR. ROTH:
 18 Q. (Approaching the witness.)
 19 I'm going to show you what's been marked as
 20 People's Proposed Exhibit 21. Is this the fair and
 21 accurate recording from your MVR that evening?
 22 **A. Yes, sir.**
 23 MR. ROTH: Your Honor, I'd move for the
 24 admission of Proposed Exhibit 21.
 25 MR. MORLEY: No objection, subject to the

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1 stipulation placed on the record earlier.
 2 THE COURT: All right. Thank you, Mr. Morley.
 3 People's Exhibit 21 is admitted and received.
 4 (At 11:24 a.m., PX#21 is
 5 received.)
 6 MR. ROTH: Thank you, Your Honor.
 7 THE WITNESS: Mr. Roth, when you play it, if
 8 you can uncheck the in-car MVLP-2, it will take down some
 9 of the noise.
 10 BY MR. ROTH:
 11 Q. I was just getting to that. So explain to the jury what
 12 we're seeing in the audio section here.
 13 **A. This is my patrol car facing north from the -- from the**
 14 **gas station. The road -- Morton Road is directly here in**
 15 **front of me. Deputy Whitaker is over here on my -- on my**
 16 **left. This set of headlights up here is a car traveling**
 17 **southbound on M-52.**
 18 Q. All right. Now let's talk about what information we have
 19 available here. VLP-1, VLP-2, and in-car audio. What
 20 does those mean?
 21 **A. VLP-1, I'm not sure what the exact --**
 22 Q. What it stands for?
 23 **A. -- indications are, but VLP-1 is my microphone that's on**
 24 **my belt. VLP-2 would be a second microphone for a second**
 25 **officer if they were assigned to my car as well. And**

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1 **in-car audio transmits everything from inside of the car.**
 2 **So it would pick up -- it may back feed with radio**
 3 **dispatch, and it also has a microphone mounted in the**
 4 **back of my patrol car for persons that are placed in the**
 5 **back.**
 6 Q. You were mentioning earlier that we'll be able to hear
 7 clearest with VLP-1?
 8 **A. That should be clearest, yes, sir.**
 9 Q. And then we also see down here -- what information do we
 10 get via GPS?
 11 **A. Latitude and longitude, as well as speed and heading.**
 12 Q. And, finally, we have the cause. What does that stand
 13 for?
 14 **A. It means that the reasons the lights were acti -- er, I'm**
 15 **sorry, the reason the camera was activated was because of**
 16 **the lights.**
 17 Q. And, finally, we have the time at the bottom of the
 18 screen?
 19 **A. Correct, of 2:02:42.**
 20 Q. Thank you.
 21 (At 11:27 a.m., PX#21 is played.)
 22 MR. ROTH: I apologize. I'll turn on the
 23 sound.
 24 (At 11:28 a.m., PX#21 is played.)
 25 MR. MORLEY: Your Honor, if I could?

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1 (At 11:37 a.m., PX#21 is
2 stopped.)
3 MR. MORLEY: Thank you. We were past --
4 MR. ROTH: Hmm-mm.
5 MR. MORLEY: Can we approach, Your Honor?
6 (At 11:37 a.m., an at-the-bench
7 discussion is held off the
8 record.)
9 (At 11:38 a.m., PX#21 is played.)
10 (At 11:38 a.m., PX#21 is
11 stopped.)
12 MR. ROTH: We stop it at 2:12.
13 BY MR. ROTH:
14 Q. I want to talk about a few things that we saw and heard
15 during that pursuit. First, at the very beginning, there
16 is another vehicle that goes in front in the same
17 direction as that -- as the white SUV that's pursued.
18 Does that appear to be traveling at an appropriate speed
19 for that area?
20 A. Yes.
21 Q. And how would you describe that car?
22 A. Just traveling --
23 Q. I apologize. Physically.
24 A. Oh, I think it was red SUV.
25 Q. We also see that you were yielding a number of the

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1 intersections where there is a four-way stop. Why is
2 that?
3 A. Because even though I have my emergency equipment
4 activated, I'm still required to drive with due care and
5 caution.
6 Q. That's how you were trained and how you two were driving
7 that evening?
8 A. Yes, sir.
9 Q. One of the things that we also notice in this video is
10 there are times that you testified that we're able --
11 excuse me, that you're able to see the pursuit vehicle,
12 the suspect vehicle, and in the video it's much harder to
13 see it. Is your vision also clearer in real life than it
14 is on the video?
15 A. Yes.
16 Q. What portion of the vehicle -- when you're able to see it
17 in real life, what portion are you able to see?
18 A. Just the taillights.
19 Q. The video stops shortly after you get out of the vehicle,
20 and then you turned around and you get what seems to be a
21 reflective vest. Why is that?
22 A. I -- I can't explain it. I've been told by people that I
23 was in shock and that I reverted back to my training,
24 which was to get my traffic vest during a traffic crash.
25 Q. Were you able to locate Deputy Whitaker?

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1 A. Yes, I was.
2 Q. As specific as possible relative to the road, where did
3 you locate him?
4 A. About 20 or 30 -- well, about -- about 30 feet off the
5 road, 30 to 40 feet off the road. Part of his car was
6 resting against a tree.
7 Q. And where was Deputy Whitaker relative to that piece of
8 car?
9 A. He was inside part of it.
10 Q. Was he still buckled in?
11 A. No, he was not. Not at that point.
12 Q. All right. What was Deputy Whitaker's condition at that
13 time?
14 A. He was deceased.
15 Q. What led you to that conclusion?
16 A. I've been on -- I've been --
17 Q. Let me ask it a different way. I apologize. What
18 physiological observations did you make?
19 A. He had fixed and dilated pupils that -- there was blood
20 coming from his ears and mouth, and there were no
21 respirations. He had no pulse.
22 Q. And what did you do at that point?
23 A. I notified that I had what we call a K.
24 Q. What does that mean?
25 A. It's short for killed. It's a death.

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1 Q. And your sergeant, Sergeant Every, had radioed for medics
2 already?
3 A. Yes, he did.
4 Q. How quickly did medics arrive on the scene?
5 A. I would say probably less than five minutes.
6 Q. Did you, to the extent possible, assist them in their
7 treatment?
8 A. Yes. Until they told me to get out of the way and so
9 they could do their job and basically keep me occupied.
10 Q. Very good. And at that point did they remove him from
11 the scene --
12 A. Yes.
13 Q. -- and transport him to Sparrow Hospital to the extent
14 possible for treatment?
15 A. Yes.
16 Q. At any point did you detect any vitals signs of
17 Deputy Whitaker?
18 A. I'm sorry, what was that?
19 Q. At any point after finding him, did you detect any vital
20 signs?
21 A. No, no.
22 MR. ROTH: I have nothing further of this
23 witness, Your Honor.
24 THE COURT: Thank you, Mr. Roth.
25 Mr. Morley, you may question the witness, sir.

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1 MR. MORLEY: Thank you, Judge.
 2 CROSS-EXAMINATION
 3 BY MR. MORLEY:
 4 Q. Deputy, you testified just a moment ago words to the
 5 effect of "In real life, the only thing you could really
 6 see were taillights." Do you recall what I'm talking
 7 about?
 8 A. **Yes, sir.**
 9 Q. Are you able to, probably just in your personal life, say
 10 what type of taillights? Do you know what I mean by
 11 that?
 12 A. **Yes, I know what you mean. And, no, I can't tell you**
 13 **what kind of taillights they were.**
 14 Q. Nothing distinguishing. Both taillights were working?
 15 A. **As far as I can recall, yes.**
 16 Q. And I mean no disrespect by this question, but when I'm
 17 watching that video, I don't ever see another car. Did
 18 you, other than at the outset of it where we see a car
 19 speeding by you when you're at the Marathon station? I
 20 don't see another car.
 21 MR. ROTH: Your Honor, Mr. Morley is not
 22 testifying. If there is a question, it needs to be in
 23 the form of the question.
 24 BY MR. MORLEY:
 25 Q. Did you?

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1 A. **I saw taillights ahead of me on Morton Road still.**
 2 Q. Okay. After Morton Road, did you ever see taillights
 3 again?
 4 A. **I believe I saw them turning east onto Catholic Church.**
 5 Q. So you lost it the whole time on Chapman. We go about
 6 1.7 miles west on Morton Road, right?
 7 A. **Approximately, yes.**
 8 Q. And then you go another, about a mile and a half,
 9 ballpark, north on Catholic Church, right?
 10 A. **Correct.**
 11 Q. Check that -- on Chapman.
 12 A. **Chapman Road, yes, sir.**
 13 Q. And Chapman has horrific curves, doesn't it?
 14 A. **It does have curves.**
 15 Q. And is it before I move -- well, to bring it home, we're
 16 going west, north, and then we're going to turn back west
 17 onto -- check that, east onto Catholic Church Road,
 18 right?
 19 A. **Correct.**
 20 Q. And you think you saw something on Morton Road. Is that
 21 your testimony?
 22 A. **I know I saw taillights on the vehicle, yes.**
 23 Q. Okay. Did you see taillights anytime on Chapman Road?
 24 A. **I don't recall.**
 25 Q. Okay. Did that video help you remember if you did or

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1 not?
 2 A. **No, because the video is only following the front of the**
 3 **car.**
 4 Q. That's fair. And to the extent I'm overlapping, you were
 5 asked how much is video and how much is your own personal
 6 knowledge. Either one is fine with me. When you're on
 7 Catholic Church, do you see taillights?
 8 A. **Briefly.**
 9 Q. How far away?
 10 A. **I can't give you an estimate, sir.**
 11 Q. Ballpark; 100 yards, mile and a half?
 12 A. **Half-mile.**
 13 Q. And, again, nothing distinguishing, right?
 14 A. **No, sir.**
 15 Q. And, in fact, and let's just clarify, you were
 16 interviewed shortly after, I think, two days after this
 17 incident, right?
 18 A. **Yes.**
 19 Q. And at that time -- you testified earlier on a scale of
 20 one to ten, about a five that it was a Suburban, right?
 21 A. **Yes, an SUV.**
 22 Q. And if anything has changed -- well, let me ask you,
 23 that's your testimony that it's 50 percent sure that it
 24 was an SUV?
 25 A. **Yes.**

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1 Q. If anything has changed as you sit here today, please
 2 tell me. Were you ever able to say what the license
 3 plate number was?
 4 A. **No.**
 5 Q. Any distinguishing characteristics?
 6 A. **No.**
 7 Q. Any occupants?
 8 A. **No.**
 9 Q. Any description of the driver?
 10 A. **No.**
 11 Q. In fact, you -- you previously testified, and you were
 12 interviewed that --
 13 MR. ROTH: Your Honor, I'm going to object.
 14 This is improper impeachment. If he's going to talk
 15 about prior testimony, he needs to commit him to a
 16 current statement first. There is a method to this.
 17 MR. MORLEY: I'll ask him.
 18 THE COURT: Sustained.
 19 BY MR. MORLEY:
 20 Q. Have you -- what other type of vehicle do you believe it
 21 could have been?
 22 A. **I believe when I was asked, I said it could have been**
 23 **possibly a pickup with a cap on it.**
 24 Q. Right. And anything else?
 25 A. **I don't recall.**

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1 Q. Would reviewing your report help you at all?
 2 **A. I didn't write a report, sir.**
 3 Q. Excuse me, would reviewing the report of your interview
 4 -- let me ask you this: Do you recall saying it might
 5 have been a Ford?
 6 **A. Sure.**
 7 Q. A Ford Flex, I believe?
 8 **A. I may have said that.**
 9 Q. All right. So could have been an SUV. Could have been a
 10 Suburban. Could have been a pickup with a capper on it.
 11 Could have been a Ford Flex. Were there any other cars
 12 that it could have been?
 13 **A. It's possible.**
 14 Q. Like, what?
 15 **A. I don't know, sir.**
 16 Q. Okay. As you sit here today, do you have any more
 17 clarity as to what the vehicle was that was involved than
 18 what we just saw?
 19 **A. No.**
 20 Q. Where this crash happened, this is a windy, kind of
 21 undulating roadway, isn't it?
 22 **A. Where the crash happened, no, sir. It was a**
 23 **straightaway.**
 24 Q. Well, there are pretty significant bumps right before,
 25 right?

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1 **A. There are some bumps.**
 2 Q. Pretty significant bumps, right?
 3 **A. Mm-hmm, yes.**
 4 Q. And, in fact, if you hit those at a high rate of speed,
 5 you have got to be careful with your driving, right?
 6 **A. Certainly.**
 7 Q. So they all are significant bumps. It's not just some
 8 bumps, right?
 9 **A. Sure, yes.**
 10 Q. And, in fact, those are what Deputy Whitaker went through
 11 immediately prior to his crash, right?
 12 **A. Correct.**
 13 Q. Am I right you were in Stockbridge -- you testified
 14 earlier that you worked the whole county, right?
 15 **A. Yes.**
 16 Q. You're in Stockbridge because there was a bar fight in
 17 town, right?
 18 **A. A bar fight had been called out, yes.**
 19 Q. And you did follow-up investigation on that, right?
 20 **A. Yes.**
 21 Q. Went to a victim's house?
 22 **A. Yes.**
 23 Q. And did you learn at some point --
 24 MR. ROTH: Your Honor, I'm going to object.
 25 Can we approach?

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1 THE COURT: Yes.
 2 (At 11:48 a.m., an at-the-bench
 3 discussion is held off the
 4 record.)
 5 THE COURT: Ladies and Gentlemen of the Jury,
 6 I'm going to have you go back to the jury room with
 7 Mr. Adkins, please.
 8 (At 11:53 a.m., the jury left the
 9 courtroom.)
 10 THE COURT: Please be seated.
 11 Mr. Roth, your objection, please? Let's have
 12 that stated on the record.
 13 MR. ROTH: Thank you, Your Honor. The question
 14 is or was going to be "Did you receive information that a
 15 white SUV was involved in that bar fight?" It is the
 16 People's position that that is a hearsay question. "Did
 17 you receive information" is the same as "Did somebody
 18 tell you this?"
 19 My objection, first of all, is hearsay, and,
 20 second of all, relevance because the follow-up is "Did
 21 you investigate this?" And he's not an investigating
 22 officer. He's put that on the record.
 23 My primary objection is as to the hearsay,
 24 though. To the extent that it is admissible only for the
 25 purpose of showing the effect on the listener of whether

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1 or not he did investigations, effect on the listener is
 2 not a hearsay exception such that it may be admitted for
 3 the truth of the matter asserted.
 4 THE COURT: Well, it's not hearsay at all.
 5 MR. ROTH: It's not hearsay at all, but it is
 6 then due a limiting instruction that it may not be
 7 considered for the truth of the matter asserted. I
 8 understand Mr. Morley disagrees. The case law is
 9 unequivocal. If we take a break, I will find it.
 10 THE COURT: We'll give you time to take a
 11 break, but we'll have Mr. Morley state his position on
 12 the record as well.
 13 MR. MORLEY: Judge, we addressed this. I can't
 14 find the transcript. I brought the transcript with me.
 15 There was what was an early motion in limine asking to
 16 exclude hearsay information relating to this. There is
 17 case law exactly on point that says if a question is
 18 being asked specific to law enforcement about what they
 19 did afterwards, if anything, comes in. It's not hearsay.
 20 Any type of limiting instruction or to suggest
 21 that it's not offered for the truth of the matter
 22 asserted is a mistake. And the Court ruled on this, and
 23 I have it somewhere. I brought the transcript for just
 24 this reason because, Judge, I said I'm being given too
 25 much credit for the type of questions I'm going to ask.

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1 I'm going to put a witness on the stand, and I'm going to
2 say, "I'm going to ask you, did you receive information
3 that there was a white SUV at 123 Main Street? Yes or
4 no? If it's yes, what did you do in response to that?"

5 Whether or not the person is an investigator is
6 entirely irrelevant. And a limiting instruction, to say
7 it's not for the truth of the matter asserted -- I'm
8 going to glom on to the Court's statement -- that would
9 require a limiting instruction on every hearsay
10 objection, and I think it's an improper limiting
11 instruction.

12 MR. ROTH: Let me be extremely clear on my
13 position. If it satisfies an 803 exception, then it is
14 admissible for the truth of the matter asserted. If it
15 is an exemption, in other words it's not offered -- if
16 it's offered for effect on listener, then it is not
17 admissible for the truth of the matter asserted. It is
18 only offered to show --

19 THE COURT: Well, it's also a hearsay
20 statement. It doesn't fit the definition of hearsay if
21 it is not offered for the truth of the matter asserted.

22 MR. ROTH: But Mr. Morley's position is if it's
23 offered to show effect on listener, then it is admissible
24 for the truth of the matter asserted.

25 MR. MORLEY: My position is --

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1 THE COURT: Wait. Wait a minute. Let's make
2 sure that that's Mr. Morley's position because that's
3 different than what I've heard.

4 MR. MORLEY: My position is if I were to say
5 I'm not offering it for the truth of the matter asserted,
6 that's wrong. It's being dishonest to the Court. My
7 position is a limiting instruction to the jury to say
8 it's not being offered for the truth of the matter
9 asserted is wrong. I am offering it for the truth of the
10 matter asserted to determine the effect on the
11 listener --

12 MR. ROTH: And that's where we differ.

13 MR. MORLEY: -- specifically with respect to a
14 law enforcement officer.

15 THE COURT: All right. We'll take a couple
16 minutes so that you both can pull together whatever else
17 you want to put on the record on this point. We need to
18 give the jury a break anyway. And why don't we take
19 about ten minutes, and we can reconvene on this issue.

20 MR. ROTH: Thank you, Your Honor.

21 MR. MORLEY: Thank you, Judge.

22 THE COURT: Does somebody have the transcript?

23 MR. MORLEY: Mr. Roth must have it.

24 (At 11:58 a.m., recessed;
25 reconvened at 12:17 p.m.)

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1 THE COURT: Be seated, please.

2 Mr. Roth?

3 MR. ROTH: Thank you, Your Honor. During the
4 break, I had an opportunity to get case law on the issue.

5 THE COURT: Is it any different than the case
6 law we argued at the motion that was heard on April 30th?

7 MR. ROTH: I assume it is because we're still
8 having this discussion.

9 THE COURT: Okay.

10 MR. ROTH: So I assume it must be.

11 *People v Gibson*, Court of Appeals No. 198977,
12 quoting:

13 These statements were not offered
14 to prove the truth of the matter
15 asserted, but rather, were
16 offered to show their effect on
17 the listener.

18 *People v Gaines*, 306 Mich App 289:

19 An out-of-court statement
20 introduced to show its effect on
21 the listener, as opposed to
22 proving the truth of the matter
23 asserted, does not constitute
24 hearsay; such statements are not
25 offered for a hearsay purpose

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1 because their value does not
2 depend upon the truth of the
3 statement.

4 Then we go to *Fisher*, 449 Mich 441:
5 An utterance or a writing may be
6 admitted to show the effect on
7 the hearer or reader when this
8 effect is relevant.

9 So my position is this: First of all, it is a
10 hearsay statement as currently constituted because
11 Mr. Morley wants to argue the truth of the matter
12 asserted. Then he would need an 803 exception to it. He
13 does not have that. There is an exemption; in that, it's
14 offered not for the truth of the matter asserted but for
15 its effect on the listener in furtherance of the
16 investigation. But the case law in *Fisher* says to do
17 that, it must be relevant -- if the effect on the
18 listener is relevant.

19 Asking Deputy -- excuse me, asking Deputy
20 Hoeksema if he followed up on this lead is akin to asking
21 the medical examiner if he followed up on this lead as
22 well. It's per se not relevant because neither of them
23 were investigators in this case. That question can be
24 asked all day long of the troopers who investigated the
25 case. But asking this deputy who has said, "I was not

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1 investigating this case," is not relevant. It is offered
2 for hearsay purposes.
3 To the extent that the Court does not agree
4 with that, at a minimum it is not offered for the truth
5 of the matter asserted, and the jury needs to be
6 instructed accordingly.
7 THE COURT: Well, Mr. Roth, I'm not -- I don't
8 think I said I was disagreeing with you as to what the
9 witness may say. My point was at the bench that although
10 he may have said something at a prior hearing, that
11 doesn't mean that's what he's going to say in this
12 hearing or that it doesn't answer the question, nor does
13 it answer the question that by saying that he was not an
14 investigator.
15 We need to get to the heart of what he actually
16 did. And what you have just outlined, I don't think is
17 any different than what we -- I'm not being critical of
18 you, Mr. Roth. I'm just saying I don't think it's any
19 different than what we dealt with on April 30th. As a
20 matter of fact, without specifically reading from the
21 transcript, some of what you just said is exactly what I
22 said on April 30th.
23 So you both have the transcript. I thought we
24 had resolved this issue. I'll hear from Mr. Morley, but
25 as I indicated before we took the break, the operative

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1 issue is, first of all, determining whether it is
2 hearsay. And whether it is hearsay depends upon -- among
3 other things, such as the declarant making an out-of-
4 court statement, depends upon, most relevantly for this
5 argument, whether it is offered in evidence to prove the
6 truth of the matter asserted.
7 If it's not offered for that purpose, it's not
8 hearsay to begin with, and so you don't have an issue.
9 That's why the case law leads to the conclusion that if
10 it's offered for the effect on the listener, and, more
11 specifically, for purposes of the issue in this case, the
12 effect on the listener being whether they took some
13 action -- the listener took some action to investigate or
14 do something in response to hearing the statement, then
15 it's not -- it's not a hearsay statement to begin with.
16 So it's not an exception to hearsay.
17 I understand that's what you're saying to begin
18 with, Mr. Roth.
19 MR. ROTH: I am in complete agreement with what
20 the Court just said. My issue is that Mr. Morley has
21 articulated several times today he intends to use it for
22 the truth of the matter asserted.
23 THE COURT: Okay. And that's what I'm going to
24 get to next --
25 MR. ROTH: Thank you, Your Honor.

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1 THE COURT: -- with Mr. Morley because that is
2 problematic because if it's being offered for the truth
3 of the matter asserted --
4 And I can't tell, Mr. Morley, whether you're
5 saying that it's -- that it's offered for the truth of
6 the matter asserted; meaning, that there was, in fact,
7 another vehicle or something else. So I guess I need to
8 hear from you on that. But, as I said on April 30th, now
9 that I've reviewed the transcript that I was provided, I
10 specifically said, "The rule is easy."
11 Now, I acknowledge that we might get into some
12 difficulty in the application of the rule, but we
13 actually sorted through that at the hearing by having
14 Mr. Morley identify specifically what he intended to ask
15 with regard to other tips and things of that nature.
16 So, Mr. Morley, go right ahead.
17 MR. MORLEY: Judge, I think my short answer is,
18 perhaps, a little simplistic. Let me start with what I
19 propose. I haven't been made privy to this case law. I
20 would suggest that the issue for the Court is whether or
21 not a limiting instruction is warranted. Give me some
22 time to research the case law that was out there, and
23 I'll give you my response.
24 With respect to the question itself, we've
25 already established that. The reason I said I'm not

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1 offering it for the truth of the matter asserted is --
2 er, that I am offering it for the truth of the matter
3 asserted is because, Judge, that's what precipitated the
4 underlying motion. "Morley said at a preliminary exam
5 'Well, I'm not offering it for the truth of the matter
6 asserted.' Well, sure you are."
7 So today, to correct that, I'm offering it for
8 the truth of the matter -- I don't care. I really don't.
9 Whether or not there was a white SUV or not, I don't
10 know. If he says, "Yes."
11 "Okay. What did you do in response?"
12 If that requires a limiting instruction --
13 We've already established that I can ask that
14 question.
15 THE COURT: Well, perhaps this will help you
16 formulate your question to eliminate the issue of the
17 objection, so I guess the question as posed for purposes
18 of offering it for the truth of the matter asserted -- in
19 other words, you want to ask this witness whether there
20 was information about another white SUV for the purpose
21 of having the jury take that as truth of the matter
22 asserted; that there was, in fact, another white SUV, it
23 is hearsay, and it's not admissible.
24 If you're asking it for purposes of the effect
25 on the listener, whether he undertook an investigation in

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1 response to receiving some information as opposed to
2 reaching the conclusion that it's true, there was some
3 other vehicle, then it's not offered for the truth of the
4 matter asserted, it's not a hearsay statement, and you
5 can have the officer answer as to what action was taken
6 in response to it.

7 MR. MORLEY: So --

8 THE COURT: I think the problem that you have
9 the way you've presented it -- and I understand
10 Mr. Roth's issue with it -- is that if you're asking him,
11 "Did you get information about another vehicle," and you
12 are suggesting that you want him to confirm that he got
13 other information so that we take that as truth of the
14 matter asserted that there is another vehicle, then it's
15 not admissible.

16 MR. MORLEY: So it's contingent on my second
17 question. We've established that I can ask the first
18 question in the April 30th motion. I can ask "Did you
19 get information there was a white SUV involved in the
20 Back Street fight?" Or "Did you use Tipsters, or
21 anything like that?"

22 I can ask that question. My follow-up will be
23 "Did you take any action with respect to that?" Clearly
24 that keeps aside hearsay. If my follow-up is, "Did you
25 believe that to be true?" or "Was that the car you were

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1 looking for?" or something like that, potentially that's
2 hearsay.

3 THE COURT: Mr. Roth?

4 MR. ROTH: The most important thing here is
5 whether it's being offered of the truth of the matter
6 asserted.

7 THE COURT: I agree.

8 MR. ROTH: If Mr. Morley intends to stand up in
9 closing argument and say, "Ladies and Gentlemen of the
10 Jury, you heard testimony from all of these people that
11 all of these other white SUVs could be it," that is per
12 se truth of the matter asserted. And so while it's not
13 critical at this moment, that is the road we're heading
14 down starting --

15 THE COURT: And we specifically addressed that
16 at the April 30th --

17 MR. ROTH: I thought so too.

18 THE COURT: -- hearing. And I thought it was
19 stipulated to that that's not what was going to happen.
20 That Mr. Morley indicated that he was not intending and
21 did not in his opening statement make that statement.

22 And you indicated, Mr. Roth, that the reason
23 you had brought the motion and heard it pretrial was
24 because you wanted to avoid him getting up and saying
25 that during the opening statement and then again at

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1 closing statement. So what I hear you saying, Mr. Roth,
2 unless I'm incorrect about this, is that you're in
3 agreement that Mr. Morley can ask that series of
4 questions, but he cannot argue that it is the truth of
5 the matter asserted either now or to the jury later.

6 MR. ROTH: Absolutely. And the only other
7 issue I have is that the jury will never know that
8 distinction unless we tell them that distinction. The
9 jury won't know these statements are not offered for the
10 truth of the matter asserted unless we tell them that.

11 THE COURT: You may be correct about that,
12 Mr. Roth, and unfortunately that is frequently an issue
13 or a problem, not with this specific hearsay issue, but
14 there are a lot of things the jury may not understand as
15 far as subtle nuances as to legal rulings.

16 I say with regard to that, Mr. Morley has asked
17 for an opportunity to research that issue as to
18 instruction. And I think that's fair because we're -- I
19 mean, I guess it depends on whether you're asking for the
20 instruction at this moment or later.

21 MR. ROTH: What I will say is that when I tried
22 a case in this specific court with Your Honor a year ago
23 and I impeached a witness, the jury was immediately told
24 not to consider that for the truth of the matter
25 asserted. I would only imagine the rule would apply in

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1 both ways in all trials. They're told immediately after
2 the statement and then again in closing instructions.

3 THE COURT: Well, it was a little different
4 context, but I understand what you're saying.

5 MR. MORLEY: If that's your practice, I'll
6 defer to the Court. I disagree. I think it's in closing
7 or prior to jury convening, but if it's your practice,
8 I'll --

9 THE COURT: But you're in agreement,
10 Mr. Morley, you're not going to argue that that factual
11 statement can be used for the truth of the matter
12 asserted in closing or at any other point.

13 MR. MORLEY: Well, see, this is how we went
14 down the primrose path this last time. Am I going to say
15 in closing that there were a number of other tips and
16 leads and vehicles that were testified to? Yes. And I
17 think I'm well within my right to say that. Am I going
18 to -- I don't know how I'm prohibited from not.

19 THE COURT: We'll have to take that issue up
20 then again at a later point in time. What we need to do
21 at this point is get through the testimony of this
22 witness.

23 As I hear Mr. Roth, you can ask the question in
24 the way that you have formulated it that -- the series of
25 questions and the way you have formulated it because it

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1 will not be offered for the truth of the matter asserted.
 2 MR. MORLEY: Thank you, Judge.
 3 THE COURT: And the issue of whether or not an
 4 instruction is given, I'll give an instruction at this
 5 point in time. We're going to need to determine as we go
 6 forward how we're going to handle this because I'm
 7 assuming this could get to be a recurring problem.
 8 MR. ROTH: It is, Your Honor. And to the
 9 extent that it helps, I honestly don't -- today is not a
 10 critical day for it. I don't need the instruction today.
 11 THE COURT: All right.
 12 MR. ROTH: Going forward when we have actual
 13 investigating officers, then it becomes critical, and
 14 that will be tomorrow. So if you formulate it for
 15 tomorrow, that's fine.
 16 THE COURT: So let's do that then. We'll give
 17 Mr. Morley an opportunity to take a look at it. We'll
 18 give you both a chance to work on a curative instruction,
 19 so to speak, and we'll deal with it, as far as
 20 instructing, after this witness.
 21 MR. ROTH: Thank you, Your Honor.
 22 THE COURT: Fair enough?
 23 MR. ROTH: Yes, Your Honor.
 24 MR. MORLEY: Yes.
 25 THE COURT: With that, are we ready to proceed?

1 MR. ROTH: Yes, Your Honor.
 2 MR. MORLEY: Yes.
 3 THE COURT: Can I just --
 4 Mr. Roth, obviously with some of these issues,
 5 we're not going to get through your list of witnesses
 6 that you had anticipated today. I assume we may only get
 7 through the deputy.
 8 MR. ROTH: I have two doctors here. I don't
 9 imagine Mr. Morley has very much cross, if any, for them.
 10 I don't know that we can get them again. They're also
 11 very expensive. I'd like to get them done today. They
 12 will be extremely brief.
 13 MR. MORLEY: Approach, Judge? Approach?
 14 THE COURT: Sure.
 15 (At 12:30 p.m., an at-the-bench
 16 discussion is held off the
 17 record.)
 18 THE COURT: Okay. Let's bring the jurors in.
 19 (At 12:32 p.m., the jury entered
 20 the courtroom.)
 21 THE COURT: Please be seated.
 22 Mr. Morley, you may proceed, sir.
 23 MR. MORLEY: Thank you, judge.
 24 BY MR. MORLEY
 25 Q. Deputy, that night between 1 and 2 o'clock, did you

1 receive information that there was a white SUV involved
 2 in a fight at the Back Street bar?
 3 A. **No. I don't recall that.**
 4 Q. Okay. As you sit here today, that's accurate as well?
 5 A. **Yes.**
 6 Q. If -- let me see if I can ask this question the right
 7 way. I don't get to Stockbridge much, but you're sitting
 8 in the gas station parking lot at the Marathon. That --
 9 it's a tri-section, I think, if you will. M-52 dead ends
 10 into -- going to the west is Morton Road and going to the
 11 east is Main Street, isn't it?
 12 A. **Well, M-52 stops there, but it's also Main Street, and it**
 13 **continues further on.**
 14 Q. Okay. But my -- here's my more specific question: If
 15 I'm headed -- you said you saw this vehicle speeding
 16 westbound on Main Street/52? Is that what it's called
 17 right in there?
 18 A. **Yes.**
 19 Q. It continues west on Morton Road, right?
 20 A. **Correct.**
 21 Q. But Morton is 55, right?
 22 A. **Yes.**
 23 Q. So it's reasonable to expect a car to pick up speed as
 24 it's hitting --
 25 Where you're sitting is a 35, right?

1 A. **Correct.**
 2 Q. And within, what, not 100 yards it becomes 55, right?
 3 A. **Correct.**
 4 Q. Okay. You indicated on the pursuit that you lost sight
 5 of, I believe, Deputy Whitaker because you had to slow
 6 down for the stop sign at 52 and Dexter Trail. Do you
 7 recall that?
 8 A. **Correct.**
 9 Q. Why did you have to slow down for the stop sign?
 10 A. **Because it's a stop sign. I still have to drive with due**
 11 **care and caution.**
 12 Q. Do you know whether or not Deputy Whitaker or the suspect
 13 vehicle stopped for the stop sign?
 14 A. **I have no idea.**
 15 Q. Okay. Your original reason for the stop was simply a
 16 motor vehicle code violation, right?
 17 A. **Correct.**
 18 Q. Speeding?
 19 A. **Yes.**
 20 Q. You were asked questions about alcohol or anything like
 21 that, but that wasn't -- this wasn't a suspected drunk
 22 driver in your estimation, was it?
 23 A. **No.**
 24 Q. Have you viewed videos or photographs from various
 25 businesses in the Stockbridge area?

1 **A. In regards to what, sir?**
2 **Q.** That's a sloppy question. You're right. Since this
3 incident happened, there's been evidence gleaned from
4 various videos and photographs. Have you looked at any
5 of those?
6 **A. I have not.**
7 **Q.** Okay. Specifically haven't or just haven't been asked
8 to?
9 **A. I haven't been asked to, and I specifically have not.**
10 **MR. MORLEY:** Okay.
11 Can I confer with counsel just briefly?
12 **THE COURT:** Sure.
13 **MR. MORLEY:** (Talking to Mr. Roth off the
14 record.)
15 Approach the witness, Your Honor?
16 **THE COURT:** You may approach.
17 **BY MR. MORLEY:**
18 **Q.** (Approaching the witness.)
19 Deputy, I'm going to show you what's been
20 marked as Defendant's B, which is actually four
21 photographs, and ask you to take a look at those, please.
22 As you can see, there is a time stamp on there
23 that says December 9th, I believe, but it -- you would
24 agree with me that it references a vehicle. Would you
25 call it an SUV?

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1 **A. Possibly, yes.**
2 **Q.** Is this the vehicle you were following that evening?
3 **A. I have no idea, sir.**
4 **MR. MORLEY:** Okay.
5 Approach the witness, Judge?
6 **THE COURT:** Yes.
7 **BY MR. MORLEY:**
8 **Q.** (Approaching the witness.)
9 Deputy, I'd like to show you what's been marked
10 as Defendant's C, which is actually, I believe, seven
11 photographs. Ask you to take a look at those.
12 You would agree with me that those are
13 photographs. They have a time stamp on them of
14 December 7th, 2014, at 1:59 in the morning?
15 **A. Yes.**
16 **Q.** Well, the first one doesn't, but the rest show a white
17 SUV and a guy getting out of it, right?
18 **A. Yes.**
19 **Q.** Is this the white SUV that you were following that night?
20 **A. I don't know.**
21 **Q.** Was this the driver you were following that night?
22 **A. I have no idea, sir.**
23 **MR. MORLEY:** Approach the witness, Your Honor?
24 **THE COURT:** Yes.
25 **MR. MORLEY:** Thank you.

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1 **BY MR. MORLEY:**
2 **Q.** (Approaching the witness.)
3 Show you what's been marked as Defendant's D,
4 which is actually three photographs. I ask you to take a
5 look at those, please. Those are actually photographs
6 from -- thank you -- of a couple of different dates. One
7 is December 9th of '14. Two are December 9th of 2014.
8 One is December 12th of '14.
9 You would agree with me that all three of those
10 show a white SUV in them?
11 **A. I'll agree that they show a light-colored SUV.**
12 **Q.** That's fair. Good call because these are black and
13 white. Is this the vehicle that you were following that
14 night?
15 **A. I don't know.**
16 **MR. MORLEY:** Approach the witness, Your Honor?
17 **THE COURT:** Yes.
18 **BY MR. MORLEY:**
19 **Q.** (Approaching the witness.)
20 Show you what's been marked as Defendant's E.
21 **MR. MORLEY:** E?
22 **THE COURT:** E.
23 **MR. MORLEY:** E. Thank you.
24 **BY MR. MORLEY:**
25 **Q.** Ask you to take a look at that, please. You would agree

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1 with me that that's time stamped December 6th of 2014?
2 **A. Yes.**
3 **Q.** At about 7:44 -- well, that says 07:44, which would be in
4 the morning. And it has -- you would agree with me that
5 appears to be an SUV in the upper, right-hand corner?
6 **A. It appears to be.**
7 **Q.** Was that the SUV that you were following that night?
8 **A. I don't know, sir.**
9 **Q.** At one point in this pursuit, there was indication by
10 Deputy Whitaker that he lost visual at Adams Road. Do
11 you recall that?
12 **A. I do.**
13 **Q.** Lost visual -- am I right in saying "lost visual" just
14 means "I can't see the car right now"?
15 **A. Correct.**
16 **Q.** Am I right -- I don't know the answer to this. Well, let
17 me ask you. Did you look down -- I think Deputy Whitaker
18 said, "He may have turned down Adams Road." Do you
19 recall that?
20 **A. I do.**
21 **Q.** Did you go down or check Adams Road?
22 **A. No.**
23 **Q.** Adams Road is hard to quick peek down, isn't it?
24 **A. Yes.**
25 **Q.** Because it's got kind of hills and whatnot?

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1 **A. Yes, it is.**
 2 Q. So you wouldn't know -- is it fair to say you wouldn't be
 3 able to see if a car went down that way?
 4 **A. Correct.**
 5 Q. Did you ever see -- see if I can ask it the right way --
 6 the vehicle that passed you when you were sitting at the
 7 Marathon station, did you ever at any time see it with
 8 its headlights off?
 9 **A. No, I did not.**
 10 Q. Did Deputy Whitaker ever convey that to you?
 11 **A. No, he did not.**
 12 Q. I may have asked you earlier, and I think I got
 13 misdirected, but the terrain -- not the -- this is a
 14 straight road where the crash happened, but it's hilly,
 15 undulating, bumpy. I did ask this earlier. You recall
 16 that?
 17 **A. Yes.**
 18 Q. And you didn't agree with the hilly, undulating part.
 19 Just the bumps part, right?
 20 **A. I agree there are bumps, yes, sir.**
 21 Q. Anything else about the road that should require some
 22 caution?
 23 **A. Not -- not that I can think of.**
 24 Q. Is the speed limit 55 through there?
 25 **A. Correct.**

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1 Q. Why were you prepared at one point to terminate the chase
 2 when Deputy Whitaker lost sight of the vehicle?
 3 **A. Because if we no longer were able to see the car, then**
 4 **there is no reason to continue the pursuit.**
 5 Q. But -- and I don't mean this as a smart-aleck question,
 6 you -- other than after the Marathon station, you never
 7 did see a car, did you? You just saw taillights.
 8 **A. I saw taillights from the only vehicle that was leaving**
 9 **the area, yes, sir.**
 10 Q. Okay. But it could have turned down Adams Road.
 11 **A. It's very possible.**
 12 Q. I think your statement earlier was no reason to continue
 13 a pursuit if there is nothing to see to pursue. Is that
 14 an accurate statement?
 15 **A. Correct.**
 16 Q. Do you have any -- any information that Deputy Whitaker's
 17 crash had another vehicle involved with it? You're a
 18 traffic officer. Do you know what I mean? This was a
 19 one-vehicle crash, right?
 20 **A. Correct.**
 21 Q. Were you aware that Deputy Whitaker was traveling between
 22 110 and 120 miles an hour at the time of the crash?
 23 **A. I wasn't aware of that, but I could see it happening,**
 24 **yes.**
 25 Q. Were you driving that fast?

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1 **A. I was driving about that fast, yes.**
 2 MR. MORLEY: Okay. That's all I have, Deputy.
 3 Thank you.
 4 THE COURT: Thank you, Mr. Morley.
 5 Mr. Roth?
 6 REDIRECT EXAMINATION
 7 BY MR. ROTH:
 8 Q. Deputy Whitaker indicated initially "Don't see him.
 9 Maybe he turned down Adams Road." Did he soon thereafter
 10 dispatch that he had found him again?
 11 **A. Yes.**
 12 Q. Where?
 13 **A. Crossing M-52.**
 14 Q. In light of that, was there any need to go down Adams
 15 Road?
 16 **A. No, sir.**
 17 Q. You indicated that you were 50 percent sure that it was,
 18 I believe, a Suburban, and you named some other vehicles
 19 that it might be similar to. What was the body style, so
 20 not the make or model, but what body style was it that
 21 you observed that you're comparing all these vehicles to?
 22 **A. A boxy style that could carry passengers, several**
 23 **passengers inside it. It was an enclosed rear end.**
 24 Q. All right. So let's talk about what you're sure of.
 25 Color?

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1 **A. Yes.**
 2 Q. What color?
 3 **A. White.**
 4 Q. Size; big or small?
 5 **A. Larger sized, yes.**
 6 Q. It certainly wasn't a sedan?
 7 **A. No, sir.**
 8 Q. Mr. Morley asked if there is any indication that -- from
 9 the outset that there could be alcohol involved. In your
 10 experience, do speeding, traffic stops sometimes, if not
 11 often, turn into OWI investigations?
 12 **A. Often.**
 13 MR. MORLEY: Objection, relevance.
 14 MR. ROTH: Mr. Morley asked the question.
 15 MR. MORLEY: It was a follow-up to the
 16 prosecutor's question, Judge.
 17 THE COURT: I'll overrule the objection.
 18 MR. ROTH: Thank you.
 19 BY MR. ROTH:
 20 Q. Go ahead.
 21 **A. Very often, yes.**
 22 Q. I'll turn on the video for another minute without the
 23 sound. And what I would like you to explain, once it
 24 comes up, is Mr. Morley makes a distinction between
 25 seeing the taillights and seeing the vehicle. First I

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1 want you to show the jury what it is, to the extent that
 2 it's captured in the video, that you are seeing as you
 3 pursue. Okay?
 4 **A. Okay.**
 5 **Q.** All right. So what is it that you can see as you're
 6 pursuing?
 7 **A. Taillights up ahead.**
 8 **Q.** Are they visible in the frame?
 9 **A. I'm not sure if that's -- if that's going to be visible**
 10 **or those are roadside reflectors.**
 11 **Q.** It's much easier to see in real person?
 12 **A. Yes, sir.**
 13 **Q.** All right. Are there other things that you're doing that
 14 aren't captured on the video or at least not clearly that
 15 the jury should be aware of as you're doing this pursuit,
 16 in terms of side roads or other outlets?
 17 **A. Yeah. Yes. I'm calling out that, you know, the roads**
 18 **that we're crossing, coming up to. And at the very**
 19 **beginning of this -- of this pursuit when there were no**
 20 **other cars headed westbound, you could clearly see his**
 21 **brake lights flashing at certain points and continuing**
 22 **going westbound. That's why we continued.**
 23 **During further on when we're on Chapman Road**
 24 **when I was slowing down for curves, there were points**
 25 **where it wasn't transmitted to dispatch, but I'm just**

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1 **doing it. I'm looking for indications that he went off**
 2 **the road, went into a driveway where it would be visible**
 3 **from either tire marks or from dirt being kicked up**
 4 **recently.**
 5 **Q.** And did you see at any point during your pursuit any of
 6 those indications that there was a turnout?
 7 **A. No, sir.**
 8 **MR. ROTH:** I have nothing further, Your Honor.
 9 Thank you.
 10 **THE COURT:** Thank you, Mr. Roth.
 11 You may step down. Thank you.
 12 **THE WITNESS:** Thank you, Your Honor.
 13 **MR. MORLEY:** Your Honor, I would like to
 14 reserve the right to recall this witness.
 15 **THE COURT:** Mr. Roth, no objection, I assume?
 16 **MR. ROTH:** None, Your Honor. I don't think I
 17 can.
 18 **THE COURT:** Very good. It's reserved.
 19 And you may step down.
 20 **THE WITNESS:** Thank you.
 21 (At 12:50 p.m., the witness
 22 stepped down from the witness
 23 stand.)
 24 **MR. ROTH:** People call Dr. Daniel Bouchard.
 25 **THE COURT:** Please raise your right hand.

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1 Do you swear or affirm to tell the truth, the
 2 whole truth, and nothing but the truth?
 3 **DR. BOUCHARD:** I do.
 4 **THE COURT:** Please be seated. State your full
 5 name for us, and please spell the last name.
 6 **THE WITNESS:** My name is Dr. Daniel Bouchard,
 7 B-, as in boy, O-U-C-H-A-R-D.
 8 **DR. DANIEL BOUCHARD**
 9 called by the People at 12:51 p.m., sworn by the Court,
 10 testified:
 11 **DIRECT EXAMINATION**
 12 **BY MR. ROTH:**
 13 **Q.** Thank you, Doctor.
 14 Doctor, where are you employed?
 15 **A. Sparrow Hospital.**
 16 **Q.** In what capacity?
 17 **A. I'm an emergency medicine physician.**
 18 **Q.** What are your responsibilities in that position?
 19 **A. To take care of all the patients that come through the**
 20 **emergency department.**
 21 **Q.** Were you working in the early morning hours of
 22 December 7th, 2014?
 23 **A. I was.**
 24 **Q.** And during that shift, did you treat a patient who was
 25 identified to you as Deputy Grant Whitaker?

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1 **A. I did.**
 2 **Q.** Was your treatment documented in a report?
 3 **A. It was.**
 4 **MR. ROTH:** Your Honor, I'd move for the
 5 admission of Proposed Exhibit 39.
 6 **MR. MORLEY:** Without objection, Your Honor.
 7 **THE COURT:** People's Exhibit 39 is admitted and
 8 received.
 9 (At 12:52 p.m., PX#39 is
 10 received.)
 11 **BY MR. ROTH:**
 12 **Q.** Showing you this on the screen in front of you. Is this
 13 a Sparrow Hospital ER report?
 14 **A. Yes. It appears to be.**
 15 **Q.** All right. And that documents Deputy Whitaker's
 16 treatment?
 17 **A. Yes, it does.**
 18 **Q.** I'm going to hand you the actual report. I think it will
 19 be easier to see.
 20 **A. Okay.**
 21 **Q.** (Approaching the witness.)
 22 What time did Deputy Whitaker present at the
 23 ER?
 24 **A. According to my chart, he came in at 3:01.**
 25 **Q.** How was he -- how did he arrive at the ER?

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1 **A. For all intents and purposes, he was --**
 2 Q. Let me ask it a different way. Not his personal
 3 condition but what vehicle?
 4 **A. He arrived via ambulance on a backboard.**
 5 Q. Thank you. And do you have a standard procedure that you
 6 take when you initially assess a patient at the ER?
 7 **A. Yes, we do.**
 8 Q. Could you describe that process?
 9 **A. The EMS people bring the patient in. We have a handoff**
 10 **from EMS with what occurred, what they've done, and what**
 11 **they found, medications they've given. And then we**
 12 **transport the patient from their stretcher onto ours and**
 13 **take over care at that point.**
 14 Q. And when you get to physically assessing that patient
 15 initially, what do you first look for?
 16 **A. Is the patient breathing? Do they have a pulse?**
 17 Q. And with Deputy Whitaker specifically, what were your
 18 initial observations?
 19 **A. The patient was -- had no spontaneous respirations, had**
 20 **no pulse, no signs of life.**
 21 Q. What does that mean?
 22 **A. That means that we would have initiated CPR at that time.**
 23 Q. Medically speaking, was he alive when he presented at the
 24 ER?
 25 **A. No.**

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1 Q. You start CPR anyway. Why is that?
 2 **A. Because that's protocol.**
 3 Q. How long did CPR go on for that morning?
 4 **A. We did one round of CPR, so about three minutes.**
 5 Q. Could you describe what is actually entailed in that?
 6 **A. Yeah. Someone pushes on the chest, and they have a --**
 7 **there was a tube that EMS had placed to help him -- to**
 8 **help ventilate. And we bagged breathed for him while we**
 9 **push on the chest, and then we stop and assess if there**
 10 **is any heart rhythm or check if there is any pulse.**
 11 Q. At any point did you detect any vital signs?
 12 **A. No, we do not.**
 13 Q. Did he ever regain consciousness?
 14 **A. Negative.**
 15 Q. I'm sorry?
 16 **A. No, he did not.**
 17 Q. Very good. And what time was he pronounced deceased?
 18 **A. According to the chart, 3:07.**
 19 MR. ROTH: Thank you.
 20 Your Honor, before I finish with this witness,
 21 we are going to stipulate to admit the pre-hospital care
 22 summary from the EMT who transported, Proposed
 23 Exhibit 38.
 24 MR. MORLEY: That's accurate, Your Honor.
 25 THE COURT: All right. People's Exhibit 38 is

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1 admitted and received.
 2 (At 12:55 p.m., PX#38 is
 3 received.)
 4 MR. ROTH: With that, I have nothing further of
 5 this witness.
 6 THE COURT: Thank you, Mr. Roth.
 7 Mr. Morley, do you have any questions for this
 8 witness?
 9 MR. MORLEY: I don't, Your Honor. Thank you.
 10 THE COURT: All right. Thank you.
 11 You may step down, Doctor. Thank you.
 12 (At 12:55 p.m., the witness
 13 stepped down from the witness
 14 stand.)
 15 MR. ROTH: People call --
 16 THE COURT: Mr. Roth --
 17 MR. ROTH: I'm sorry.
 18 THE COURT: That's all right. You can call
 19 your next witness.
 20 MR. ROTH: People call Dr. John Bechinski.
 21 Thank you, Doctor.
 22 THE COURT: Please raise your right hand.
 23 Do you swear or affirm to tell the truth, the
 24 whole truth, and nothing but the truth?
 25 DR. BECHINSKI: I do.

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1 THE COURT: Please be seated. State your full
 2 name for us, and spell your last name for us, please.
 3 THE WITNESS: Thank you, Your Honor. My name
 4 is John, J-O-H-N, Bechinski, B-E-C-H-I-N-S-K-I.
 5 JOHN BECHINSKI
 6 called by the People at 12:56 p.m., sworn by the Court,
 7 testified:
 8 DIRECT EXAMINATION
 9 BY MR. ROTH:
 10 Q. Thank you, Doctor. Where are you employed?
 11 **A. Sparrow Hospital in Lansing.**
 12 Q. In what capacity?
 13 **A. I'm a forensic pathologist and deputy medical examiner**
 14 **for eight counties, one of which is Ingham County.**
 15 Q. How long have you been employed in that capacity?
 16 **A. Since January of 2011.**
 17 Q. What are your responsibilities in that position?
 18 **A. Do post-mortem examinations and determine cause and**
 19 **manner of death for cases in which they fall under the**
 20 **jurisdiction of the medical examiner.**
 21 Q. Could you tell us generally what is forensic pathology?
 22 **A. Forensic pathology is essentially the study of disease,**
 23 **intoxications, and injuries and how they relate to death.**
 24 Q. Have you previously been recognized by courts as an
 25 expert in the field of forensic pathology?

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1 **A. Yes.**
 2 **Q.** Does that include in the 30th Circuit Court for Ingham
 3 County?
 4 **A. Yes.**
 5 MR. ROTH: Your Honor, at this time I'm going
 6 to move to recognize the doctor as an expert in the field
 7 of forensic pathology.
 8 THE COURT: Voir dire, Mr. Morley?
 9 MR. MORLEY: Thank you, Judge. Briefly.
 10 VOIR DIRE EXAMINATION
 11 BY MR. MORLEY:
 12 **Q.** Doctor, have you ever been offered as an expert and not
 13 accepted or so qualified?
 14 **A. No.**
 15 MR. MORLEY: No objection, Your Honor.
 16 Thank you, Doctor.
 17 THE WITNESS: You're welcome.
 18 THE COURT: All right. The witness then shall
 19 be permitted to testify as an expert in the field of
 20 forensic pathology.
 21 MR. ROTH: Thank you, Your Honor.
 22 DIRECT EXAMINATION (CONT'G)
 23 BY MR. ROTH:
 24 **Q.** On December 7th, 2014, did you perform a forensic autopsy
 25 on a person identified to you as Deputy Grant Whitaker?

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1 **A. I did.**
 2 **Q.** In general, is there a procedure for identifying bodies
 3 that come to the Sparrow Hospital morgue pending autopsy?
 4 **A. Yes. The identification, to my knowledge, was made in**
 5 **the emergency department, and the body was received in a**
 6 **body bag that had tags, identification tags, attached to**
 7 **the body bag as well as to the body.**
 8 **Q.** And in this specific case, that's how Deputy Whitaker was
 9 identified to you?
 10 **A. Yes.**
 11 **Q.** What condition was his body when it was presented to you?
 12 **A. I don't understand your question.**
 13 **Q.** I apologize. Any evidence of medical intervention still
 14 inside or attached to him?
 15 **A. Yes.**
 16 **Q.** Could you please explain what that means?
 17 **A. I will refer to the autopsy report that I authored.**
 18 **There is a heading Evidence of Therapeutic Intervention**
 19 **on page 3. A cervical spine immobilization collar was in**
 20 **place, which is a collar that holds the neck in place and**
 21 **keeps the head from moving.**
 22 **There was also an intravenous line present in**
 23 **the right antecubital fossa, which is a portion right in**
 24 **front of the right elbow. There was also an intraosseous**
 25 **line, which is a needle, that was placed into the bone of**

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1 **the lower right leg.**
 2 **There also were EKG leads present on the right**
 3 **and left chest and on the front of the right shoulder.**
 4 **Defibrillator pads were on the upper right and lower left**
 5 **chest.**
 6 **There was also a small cluster of abrasions on**
 7 **the central chest likely from chest compressions from**
 8 **CPR. And internally there were fractures with no to**
 9 **minimal associated hemorrhage of the bilateral**
 10 **anterolateral fourth through sixth ribs. And these**
 11 **fractures likely were sustained from CPR and chest**
 12 **compressions.**
 13 **Q.** Thank you. Is there a normal approach that you take in
 14 performing an autopsy procedure?
 15 **A. Yes.**
 16 **Q.** Could you please explain that to the jury?
 17 **A. An autopsy essentially consists of three parts. The**
 18 **first part is collection of information regarding the**
 19 **circumstances of death. And a medical examiner**
 20 **investigator investigated the death and gathered**
 21 **information and then forms a report or prepares a report,**
 22 **which I then review before performing the actual autopsy.**
 23 **Information is also received from law**
 24 **enforcement, as well as hospital and health care --**
 25 **health care workers in regards to treatment which may**

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1 **have been provided to a person in the emergency**
 2 **department or elsewhere in the hospital.**
 3 **The second part of the autopsy is the external**
 4 **examination. And during the external examination**
 5 **photographs are taking -- are taken of the body bag**
 6 **before it is opened to show the actual condition it is**
 7 **received, as well as the tags that are attached to the**
 8 **body bag.**
 9 **Upon opening the body bag, photographs are**
 10 **taken of the body before anything has been touched or**
 11 **altered in order to capture exactly how the body was**
 12 **received in the body bag. After those photographs are**
 13 **taken, then I examine the body, and I look for any**
 14 **evidence of trace evidence or other items which may be of**
 15 **value in collecting and retaining it as evidence.**
 16 **After I've examined the body as it has been**
 17 **received, then the clothes are normally taken off of the**
 18 **body, as well as other personnel effects. And the body**
 19 **is again examined before any cleaning is performed after**
 20 **I've examined the body. Then the body is normally**
 21 **cleaned. Additional photographs are then taken of the**
 22 **body. Photographs would also be taken of any injuries**
 23 **which may be present as well.**
 24 **The third part of an autopsy is the internal**
 25 **examination. And this is where we look at the inside of**

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1 the body looking for any evidence of trauma and/or
2 disease and making note of those items.

3 During the internal examination, specimens are
4 collected for toxicology testing. So we obtain blood, we
5 obtain urine, and we obtain vitreous fluid from the eyes,
6 and these are sent to a toxicology laboratory and tested.
7 Upon completion of all three parts, the determination as
8 to the cause and manner of death are made and a report is
9 then prepared and a death certificate is completed.

10 Q. Did you document all of your findings in a report?
11 A. I did.

12 MR. ROTH: Your Honor, I believe we're going to
13 move for the admission of Proposed Exhibit 40.

14 MR. MORLEY: Without objection, Your Honor.

15 THE COURT: People's Exhibit 40 is admitted and
16 received.

17 (At 1:02 p.m., PX#40 is
18 received.)

19 MR. ROTH: Thank you, Your Honor.

20 BY MR. ROTH:

21 Q. Doctor, is this your report?
22 A. Yes, it is.
23 Q. All right.
24 A. Well, this appears to be the first page of my report.
25 Q. Very good. Your -- excuse me, your findings are

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1 summarized on the front page?
2 A. Yes, they are.
3 Q. All right. I want to sort of follow your procedure of
4 doing the autopsy and how we discuss it. We've already
5 talked about the first segment so I want to talk about
6 the second segment, the external examination. What
7 external injuries did you observe to Deputy Whitaker?
8 A. First I would like to -- like to say that there was an
9 inherent problem with the program used in the generation
10 of this report. And so there are wide spacing errors on
11 the outline here and some places where it did not
12 correctly tab over.

13 Q. That's just a formatting problem, not content, correct?
14 A. Correct. Correct.
15 Q. Very good. Go ahead.
16 A. Of the external injuries that are present, the first
17 thing was that there was blood in the ear canals. And
18 this is frequently an indicator that there is a fracture
19 of the bottom of the skull also known as the base of the
20 skull.

21 Under B, under external injuries, there were
22 abrasions. An abrasion is a scrape. And so if an
23 individual, for example, falls on a sidewalk and they
24 scrape their knee on a concrete sidewalk, that would be
25 an abrasion. So abrasions were present on the lower lip;

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1 the right mandibular region, which would be the right jaw
2 region; on the left side of the chin; the left side of
3 the jaw and under the jaw; the side near the left eye; on
4 the upper right chest; the left shoulder; the back of the
5 right arm near the armpit, also known as the axilla; the
6 lower right abdomen; the right side of the back; the
7 inner and mid portion of the right side of the back, as
8 well as the lateral portion of the right back; the back
9 of the left wrist and hand; the front and the left wrist;
10 the back of the right forearm; the back of the right
11 hand; the front of the right leg; the front and side of
12 the left thigh; and the front and inner part of the left
13 knee; and the front part of the left knee.

14 Q. Thank you.
15 A. There were.
16 Q. Go ahead.
17 A. There were lacerations. Now, a laceration occurs when
18 the body is struck or the body strikes a blunt object,
19 and when that blunt object strikes the body, it causes a
20 tearing of the skin in the underlying soft tissues.
21 These are frequently referred to as cuts, which is an
22 incorrect term because a cut is a sharp force injury,
23 which we'll get into further down in the report, but a
24 laceration is a tearing of the skin due to a blunt force
25 impact.

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1 And the lacerations were present on the upper
2 lip, the right side/back of the head, and the side of the
3 right thigh.

4 The next item under 1(D) are contusions. And a
5 contusion is a bruise. A bruise results from blunt force
6 trauma; meaning, that the body either strikes or is
7 struck by something which causes a tearing and bursting
8 of the blood vessels in the soft tissue, which then
9 results in a bruise.

10 So bruises were present next to the left eye;
11 on the left frontal and temporal scalp, which would be
12 this portion of the forehead, which is the left forehead
13 and temporal region; the inner part of the right
14 antecubital fossa, which would be kind of just in front;
15 and the inner part of the right elbow; the back of the
16 right hand; the front and inner part of the right thigh;
17 the front upper -- upper front of the right knee; the
18 front of the right leg; and the front of the left leg.

19 The next item is 1(E), which is superficial
20 incised wound. An incised wound is a wound caused by a
21 sharp force; meaning, something like a knife or broken
22 glass or something like that, which actually cuts the
23 skin and the soft tissue. And a superficial incised
24 wound is a wound in which just the upper layers of skin
25 have been cut by something sharp. So the superficial

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1 incised wound was present behind the left ear.
 2 Under (F) there was a laceration with adjacent
 3 abrasions on the left occipital scalp, which would be the
 4 back left of the head. There are also clusters of
 5 abrasions on the left inguinal area, which is also known
 6 as the groin region; the lower right back; and the back
 7 of the right forearm.
 8 There was an incised wound, which is a cut,
 9 along with an abrasion on the outer part of the upper
 10 right back. And then there were clusters of bruises and
 11 abrasions on the lower right back and the right flank
 12 area, as well as the front and the left leg.
 13 There was another incised wound on the back of
 14 the right wrist. There was bruises and scrapes on the
 15 back of the right hand and front of the right knee and
 16 patchy scrapes and bruises on the right hip, the right
 17 thigh on the front of the right thigh.
 18 There were also closed fractures; meaning, the
 19 skin was not broken over these bones. Closed fractures
 20 of the lower part of the right fibula and tibia, which
 21 are the leg bones.
 22 Q. All of these injuries appear to be acute or recently
 23 received?
 24 A. Yes.
 25 Q. Now let's move to the third segment, the internal

1 injuries. What did you observe?
 2 A. Internally there was evidence of bleeding within the
 3 scalp, as well as the left temple temporalis muscle. The
 4 left temporalis muscle is on the front left side of the
 5 head. So there was evidence of bleeding within that
 6 muscle. There was also evidence of bleeding in the
 7 occipital scalp, which is the scalp on the back of the
 8 head, and the posterior right temporoparietal scalp,
 9 which would be kind of above and behind the right ear
 10 region.
 11 There were also patchy global subarachnoid
 12 hemorrhages, which means actual bleeding on the surface
 13 of the brain. There were cortical contusions, which are
 14 also known as bruises on the surface of the brain present
 15 on the bilateral inferior frontal and temporal lobes.
 16 There were hemorrhages within the mid brain and
 17 the pons, which are the upper portions of the brainstem.
 18 There was a depressed fracture of the left
 19 frontal temporal and parietal bones. So it would be this
 20 general area (demonstrating), the upper left side of the
 21 head, a depressed fracture, which then extended down and
 22 through the base of the skull clear to the right side of
 23 the head.
 24 There was also a transection of the distal
 25 aortic arch. The aorta is the main blood vessel that

1 carries blood away from the heart. And right after the
 2 arch starts making its downward turn, the aorta was
 3 literally torn into two separate pieces.
 4 There was evidence of bleeding next to the
 5 trachea and esophagus. There were diffuse bruises on the
 6 lungs as well as lacerations or tears of the upper and
 7 lower lobes of the right lung.
 8 There were lacerations present of the liver and
 9 the right adrenal glands. There were hemorrhages in the
 10 pelvis of the right kidney. The pelvis is the part where
 11 the ureter is exiting the kidney to take urine down to
 12 the urinary bladder, and the renal artery and vein enter
 13 at that point.
 14 There is also evidence of bleeding in the soft
 15 tissues of the pelvis and the soft tissues surrounding
 16 the urinary bladder.
 17 Contusions or bruises were present on the right
 18 testis; on the pericardium, which is the sack that
 19 surrounds the heart; the small intestine; the mesentery,
 20 which is the soft tissue which carries blood vessels to
 21 and from the intestines; and the omentum, which is a
 22 layer of fat which overlies the intestines in the
 23 peritoneal cavity.
 24 There were multiple fractures. The sternum was
 25 fractured at the level of the second ribs. The lateral

1 left fifth through eighth ribs were fractured. The
 2 posterolateral right second through twelfth ribs were
 3 fractured, as well as the lateral seventh rib.
 4 There was evidence of extensive bleeding into
 5 the left chest cavity. At autopsy there were
 6 approximately 970 milliliters of blood, which is almost
 7 one liter.
 8 Q. Thank you, Doctor.
 9 A. You're welcome.
 10 Q. Were all of these -- I apologize. The internal injuries
 11 as well appeared to be fresh or acute?
 12 A. Yes.
 13 Q. Were all of these injuries, internal and external,
 14 consistent with a high speed car crash?
 15 A. Yes.
 16 Q. We see a little bit lower on the page: Cause of death.
 17 What does that mean medically?
 18 A. Cause of death is the injury, the disease process, and/or
 19 intoxication that ultimately results in death. For
 20 example, if someone suffers multiple gunshot wounds
 21 during a shoot out and they die as a result of those
 22 gunshot wounds, the cause of death would be multiple
 23 gunshot wounds.
 24 If someone has lung cancer which spreads to the
 25 brain and to various other places of the body, the cause

1 of death would being metastatic lung cancer. And so
 2 that's what the cause of death is. And the cause of
 3 death here was multiple injuries.
 4 Q. Could you explain what that means?
 5 A. All of the injuries that I previously described are
 6 contributing injuries to death.
 7 Q. How quickly would any or all of those injuries prove to
 8 be fatal?
 9 A. Well, it's extremely difficult to say because --
 10 MR. MORLEY: I'm going to object on relevance,
 11 Your Honor.
 12 THE COURT: Mr. Roth?
 13 MR. ROTH: Whether he's alive for a period of
 14 time and is able to speak and give a statement to the
 15 deputy is certainly relevant. So the fact that these are
 16 what I think he's going to say is fairly quickly fatal is
 17 important.
 18 THE COURT: Overruled.
 19 MR. ROTH: Thank you, Your Honor.
 20 MR. MORLEY: Thanks, Judge.
 21 BY MR. ROTH:
 22 Q. So you were saying, Doctor, how quickly would any or all
 23 of these injuries prove to be fatal?
 24 A. Oh, as I said, it's extremely difficult to determine
 25 that. However, based upon the severity of the injuries

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1 and the constellation of them together, I would -- I
 2 would say death happened rather quickly.
 3 Q. Could you give us an idea of what "rather quickly" means?
 4 A. I would not say that death was immediate.
 5 Q. But shortly thereafter?
 6 A. But shortly thereafter.
 7 Q. Very good. And we see below cause of death, we have
 8 manner of death. Could you explain what that term means?
 9 A. Manner of death is used to describe the circumstances in
 10 which a death occurs. And it's used for statistical
 11 purposes by the state only. It's not meant to carry any
 12 legal significance. And we have to place a manner of
 13 death on the death certificates that we complete, as well
 14 as the reports that we prepare.
 15 We have five choices. The first choice we have
 16 is natural; meaning, death was due solely to natural
 17 causes. If someone has cancer, that would be a natural
 18 cause. If someone had a heart attack, the manner of
 19 death would be classified as natural.
 20 The second choice we have is accident; meaning,
 21 death was not the intended outcome of the activity.
 22 Frequently motor vehicle collisions are classified as
 23 accidents. The times in which we would not classify a
 24 motor vehicle accident as an accident would be if an
 25 individual was purposely using their vehicle as a weapon.

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1 For example, if someone attempts to run over someone to
 2 hurt them and they strike them and they die from
 3 injuries, that would be a homicide.
 4 If someone is driving down a back road at
 5 110 miles an hour and just called their boyfriend and
 6 said, "I'm going to kill myself," and they drive into a
 7 tree, then we would classify that death as a suicide.
 8 But in most motor vehicle accidents, the manner of death
 9 is classified as accident because that wasn't the actual
 10 intended consequence of the action.
 11 Homicide is when one person kills another
 12 person through a volitional act and the act is meant to
 13 either scare, harm, and/or kill that person.
 14 Suicide is one when person kills themselves.
 15 And the last category we have is known as
 16 indeterminate; meaning, the circumstances aren't clear
 17 enough for us to place it in one of the other categories.
 18 And a good example of that is someone found under a
 19 bridge and they have all of these injuries that are
 20 consistent with falling from a bridge, but we don't have
 21 a witness to tell us was that person in a fight and
 22 thrown from the bridge? Because then the manner would be
 23 homicide. Did the person -- was the person depressed and
 24 left a suicide note at their house that they were going
 25 to go jump off a bridge and kill themselves? Then it

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1 would be suicide.
 2 If they were just getting a little close to the
 3 edge and accidentally slipped off, the manner of death
 4 would be classified as accident. But without that
 5 investigative information, we wouldn't be able to
 6 classify it as any of those. Cases like that fall into
 7 the indeterminate realm.
 8 Q. What was your conclusion in this case?
 9 A. Accident.
 10 Q. And how did you reach that conclusion?
 11 A. Because the injuries that were sustained during the motor
 12 vehicle crash were of an accidental nature.
 13 MR. ROTH: I have nothing further of this
 14 witness, Your Honor.
 15 THE COURT: Thank you, Mr. Roth.
 16 Mr. Morley, do you have any questions for this
 17 witness?
 18 MR. MORLEY: Yes, sir.
 19 THE COURT: All right. You may proceed.
 20 CROSS-EXAMINATION
 21 BY MR. MORLEY:
 22 Q. Doctor, please tell me if I'm oversimplifying this.
 23 You're a lot smarter than I am. The forensic pathology
 24 part of it means that -- the pathologist is
 25 understandable. Pathologist. You did the autopsy or you

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1 do the tissue samples or things like that.
2 The forensic part is you try to match it to the
3 circumstances. Is that fair? Am I close?
4 **A. Well, in order to determine a manner of death, yes, we**
5 **have to know what the circumstances are surrounding the**
6 **death, or else most deaths would be indeterminate --**
7 **Q. Again --**
8 **A. -- unless they're purely natural.**
9 **Q. And, again, without oversimplifying, that's what elevates**
10 **you from -- I don't want to say "just a pathologist," but**
11 **from a pathologist to a forensic pathologist. You're**
12 **matching these injuries to this person. Manner of death**
13 **-- check that. "The cause of death was this. The manner**
14 **of death is consistent with what I'm told about the**
15 **underlying facts." Is that fair?**
16 **A. Somewhat. There are various aspects of pathology. For**
17 **example, when most people hear the word pathologist, they**
18 **think about a surgical pathologist that works in a**
19 **hospital and sits behind a desk with a microscope most of**
20 **the day looking at glass slides that have small pieces of**
21 **tissue on them and they're making a diagnosis of what it**
22 **is they're looking for.**
23 **For example, if someone has a colonoscopy done**
24 **and there is a polyp, they'll take -- they will remove**
25 **the polyp, and that will be sent to pathology for the**

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1 pathologist to say, "Yes, this is malignant, and we need
2 to do further treatment," or "This is a benign polyp, and
3 then further guide the gastroenterologist with their line
4 of treatment."
5 **Most people think of pathologists as that or**
6 **people that work in a laboratory that run the blood bank,**
7 **for example. Microbiology, they do clinical pathology.**
8 **And so in order to be a forensic pathologist,**
9 **you have to first complete a residency in anatomic**
10 **pathology. So you have to understand what it is you're**
11 **looking at under the microscope tissue-wise and be able**
12 **to diagnose various disease states and tumors.**
13 **And upon completing my residency in anatomic**
14 **pathology, I did a fellowship in forensic pathology where**
15 **I did the worst one to two cases almost every single day**
16 **in Detroit for an entire year. And that's what forensic**
17 **pathology is.**
18 **Q. In this case, did you meet with law enforcement or review**
19 **police reports or anything like that?**
20 **A. Yes, I did.**
21 **Q. When and how often, if you recall?**
22 **A. I don't recall off the top of my head. I do have the**
23 **police reports in my file.**
24 **Q. And that's common. There is nothing unusual about that,**
25 **is it, in a forensic pathological review?**

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1 **A. No. That's very common.**
2 **Q. Okay. You classified this as not a homicide; as an**
3 **accident, right?**
4 **A. Yes.**
5 **Q. Did you ever glean any information from any source, be it**
6 **your autopsy, law enforcement, otherwise, that this was**
7 **anything about a one-vehicle motor vehicle accident?**
8 **A. That's what it appears to be based upon the information I**
9 **have.**
10 **MR. MORLEY: That's all I have. Thank you.**
11 **THE WITNESS: You're welcome.**
12 **THE COURT: Thank you, Mr. Morley.**
13 **Mr. Roth?**
14 **MR. ROTH: No redirect.**
15 **THE COURT: All right.**
16 **Thank you. You may step down, Doctor. Thank**
17 **you, very much.**
18 **THE WITNESS: Thank you, Your Honor.**
19 **(At 1:21 p.m., the witness**
20 **stepped down from the witness**
21 **stand.)**
22 **THE COURT: You have the exhibit, Mr. Roth?**
23 **MR. ROTH: I do.**
24 **THE COURT: Okay.**
25 **All right. Ladies and Gentlemen, we are going**

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1 to recess for the day. First of all, I'd like you to
2 pass to the side of the jury box where Mr. Roth is
3 standing that copy of Exhibit 3 that we provided to you.
4 If you pass those along, Mr. Roth will collect those.
5 And we will have you report back tomorrow just
6 as you did today downstairs about 8:15. We'll shoot for
7 an 8:30 start. And I know we were behind that today, but
8 that's the objective. So we'll ask that you be here at
9 about 8:15. And, remember, for the reasons I indicated
10 to you earlier, you must not read, listen to, or watch
11 any news reports about this case while you're serving on
12 this jury, and you must not do any research on the
13 Internet.
14 And I think given the media coverage in this
15 case, it's probably best practice if you simply don't
16 watch the news at all or read any of the papers because
17 that will help eliminate the possibility of you seeing
18 something inadvertently. So if you would follow that,
19 that's probably the best practice at this point. And
20 we'll see you back here tomorrow morning and try to
21 operate on about the same schedule. We ran a little bit
22 late today, but we'll shoot for having you out of here at
23 about 1 o'clock tomorrow.
24 **THE BAILIFF: All rise.**
25 **(At 1:22 p.m., the jury left the**

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1 courtroom.)
2 THE COURT: You may be seated.
3 Is there anything that you'd like to put on the
4 record, Mr. Roth?
5 MR. ROTH: No, Your Honor. Thank you.
6 THE COURT: Mr. Morley?
7 MR. MORLEY: No, sir. Thank you.
8 THE COURT: I would ask that if we are going to
9 work towards resolving this issue of a jury instruction,
10 interim jury instruction, that you two, Mr. Roth and
11 Mr. Morley, get together on that.
12 And/or, Mr. Morley, present whatever you want
13 to present regarding that issue. But if you're in
14 agreement, let's have a form -- that instruction worked
15 out if you're able to do that.
16 MR. MORLEY: Yes, sir.
17 MR. ROTH: Thank you, Your Honor.
18 THE COURT: All right. We'll see you tomorrow
19 morning.
20 MR. ROTH: Thank you, Your Honor.
21 MR. MORLEY: Is the courtroom closed this
22 afternoon?
23 THE COURT: You want to leave some things?
24 You can leave things. We'll have you leave
25 them in the jury box, however, because we do have

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1 hearings this afternoon.
2 MR. MORLEY: Is that okay? Do you mind?
3 THE COURT: That's fine.
4 MR. MORLEY: Thank you.
5 (At 1:24 p.m., the matter was
6 concluded for the day.)
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1 STATE OF MICHIGAN)
) SS.
2 COUNTY OF INGHAM)

3
4 CERTIFICATE OF REPORTER

5
6 I, Melinda I. Dexter, Certified Shorthand
7 Reporter, do hereby certify that the foregoing
8 **177 pages** comprise an accurate, true, and complete
9 (Volume 2 of 9) transcript of the proceedings and
10 testimony taken in the case of the **People of the**
11 **State of Michigan** versus **John C. Kelsey II,**
12 **Case No. 14-1380-FH, on Thursday, May 28, 2015.**

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

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