

1 **IN THE COURT OF COMMON PLEAS OF HENRY COUNTY, OHIO**

2 **STATE OF OHIO,**

*

3 **Plaintiff,**

*

Case No. 15CR0082

4 **-VS-**

*

5 **CULLEN A. PARSONS,**

*

TRANSCRIPT OF PROCEEDINGS

6 **Defendant.**

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10 HEARD:

11 December 9, 2015

12 BEFORE:

13 HON. JOHN S. COLLIER,
14 JUDGE

15 - - - - -

16 **APPEARANCES:**

17 Hawken Flanagan, Henry County Prosecuting Attorney,
18 on behalf of PLAINTIFF

19 Lorin Zaner, Esq. and Molly Bligh, Esq.,
20 on behalf of DEFENDANT

21 - - - - -

22 Prepared by:

23 Andrea M. Burgel
24 Official Court Reporter
25 Court of Common Pleas
 Henry County Courthouse
 Napoleon, Ohio

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1 THE COURT: We are on
2 the record today in that matter of State of Ohio verses Cullen
3 A. Parsons in case number 15CR0082. Present in the courtroom
4 representing the State of Ohio would be Mr. Hawken Flanagan,
5 Assistant County Prosecutor. Representing Mr. Parsons would be
6 Lorin Zaner, Attorney at Law and Jill...

7 MR. ZANER: No, Molly
8 Bligh Judge, who's filed an entry of appearance.

9 THE COURT: Okay, Molly
10 Bligh, sorry Ms. Bligh. Representing Mr. Parsons who is
11 likewise present at this time. There was a Motion to Suppress
12 filed by defense counsel asserting that the seizure of the
13 motor vehicle, the seizure of a hand gun and the arrest of Mr.
14 Parsons were violated of the Fourth Amendment, thus asserting a
15 Constitutional argument. That being the case, the State then
16 bears the burden of going forward as well as the burden of
17 proof in this matter. Is there anything beyond that with
18 regard to this motion?

19 MR. ZANER: No Judge.

20 THE COURT: Okay. That
21 being the case, Mr. Flanagan would you call your first witness?

22 MR. FLANAGAN: Thank
23 you Your Honor, at this time the State would call Sheriff
24 Michael Bodenbender.

25 THE COURT: Please

1 raise your right hand. Do you swear or affirm the testimony
2 you are about to give is the truth?

3 SHERIFF BODENBENDER:

4 Yes I do.

5 THE COURT: Please be
6 seated.

7 MR. FLANAGAN: Would
8 you please state your first and last name?

9 SHERIFF BODENBENDER:
10 Michael Bodenbender.

11 MR. FLANAGAN: And by
12 whom are you employed?

13 SHERIFF BODENBENDER:
14 Henry County Sheriff's Office.

15 MR. FLANAGAN: And what
16 is your position there?

17 SHERIFF BODENBENDER:
18 I'm the Sheriff.

19 MR. FLANAGAN: Okay.
20 And were you so employed on September 2, 2015?

21 SHERIFF BODENBENDER:
22 Yes.

23 MR. FLANAGAN: And on
24 that date was law enforcement personnel from the Sheriff's
25 Office dispatched to Washington Township for a reported drive

1 by shooting?

2 SHERIFF BODENBENDER:

3 Yes.

4 MR. FLANAGAN: And were
5 you among the personnel who responded to that report?

6 SHERIFF BODENBENDER: I
7 did.

8 MR. FLANAGAN: Did you
9 travel to the location where the reporter was calling from?

10 SHERIFF BODENBENDER:
11 Yes.

12 MR. FLANAGAN: And at
13 that time did you come into contact with a Kyle Kern?

14 SHERIFF BODENBENDER:
15 Yes.

16 MR. FLANAGAN: And was
17 Kyle Kern the individual making the report?

18 SHERIFF BODENBENDER:
19 Yes.

20 MR. FLANAGAN: And did
21 you, at that time, along with other officers ask Mr. Kern what
22 had occurred that evening?

23 SHERIFF BODENBENDER:
24 Yes.

25 MR. FLANAGAN: Can you

1 provide me with a general description of what Mr. Kern
2 reported?

3 MR. ZANER: Your Honor
4 I would object, hearsay, I understand this is a motion hearing.

5 THE COURT: Overruled.

6 MR. FLANAGAN: Could
7 you go ahead and provide a general description of what Mr. Kern
8 reported?

9 SHERIFF BODENBENDER:
10 He said he was out jogging as he usually does in the evening
11 and a small silver Honda drove by him and fired off a shot. He
12 said he took off running and then several more shots were fired
13 after that.

14 MR. FLANAGAN: Okay.
15 And did he advise you with any additional information about the
16 vehicle or the driver of the vehicle?

17 SHERIFF BODENBENDER:
18 He said earlier in the evening he did see the same car and he
19 recognized the car because it is his neighbors, it was Cullen
20 Parsons driving it. After the shooting he said the car drove
21 down, continued on east bound, I think it's Rd S-3 I believe
22 and then turned and went south on what is now a dead end road,
23 County Road 4, sat there for a few minutes and then took off
24 and went north at a high rate of speed back down the same road
25 only heading north this time.

1 MR. FLANAGAN: Did Mr.
2 Kern, did he state that the vehicle that he observed at the
3 time of the shooting was the same vehicle that he had observed
4 earlier in the evening?

5 SHERIFF BODENBENDER:
6 Yes.

7 MR. FLANAGAN: That
8 Cullen Parsons was driving?

9 SHERIFF BODENBENDER:
10 Yes, he saw him go by earlier.

11 MR. FLANAGAN: Okay.
12 And that was approximately 10-15 minutes before the shooting
13 incident?

14 SHERIFF BODENBENDER:
15 Yes.

16 MR. FLANAGAN: While
17 you were speaking with Mr. Kern after the incident were there
18 any other individuals who provided information to you or other
19 law enforcement personnel?

20 SHERIFF BODENBENDER:
21 Well Ross was there, another deputy was there prior to me
22 getting there and he was talking to Kyle.

23 MR. FLANAGAN: Okay.

24 SHERIFF BODENBENDER:
25 And then a Jeremy Johnson pulled up and I did not speak to him.

1 He pulled up in a pick-up truck, I guess Kyle had called him.

2 MR. FLANAGAN: Okay,
3 after receiving information from Kyle was there a decision made
4 to travel to the residence of Cullen Parsons to try and locate
5 either Cullen or the vehicle?

6 SHERIFF BODENBENDER:
7 Yes.

8 MR. FLANAGAN: And did
9 you do that immediately?

10 SHERIFF BODENBENDER:
11 Yes we did.

12 MR. FLANAGAN: And, now
13 this was in the evening correct?

14 SHERIFF BODENBENDER:
15 Yes, I don't know the exact time but it was between 8:30 -
16 9:00, somewhere around there.

17 MR. FLANAGAN: When you
18 traveled to the residence where Cullen Parsons lived can you
19 describe what happened when you arrived?

20 SHERIFF BODENBENDER: I
21 was the first one in the driveway and as I pulled in he came,
22 Cullen came running out from what would have been my right
23 side. There was a pine tree, a large pine tree on this side
24 and I didn't see him, he came running, he ran right in front of
25 me, and then I stopped and he came up right to the door of my

1 patrol car and I had ordered him back, get back, get back,
2 because I couldn't even open my door, he was that close to me.
3 He had a Budweiser, a bottle of Budweiser in his hand and I
4 told him to get back, which he did, but as he did he turned
5 around and he threw something. I didn't know what it was so I
6 got out and ordered him to the ground, he complies, he gets
7 down on the ground and then one of the, I believe it was Ross
8 comes up and I said pat him down and handcuff him, I am going
9 to go see what he threw.

10 MR. FLANAGAN: Okay.

11 And did you locate anything where you observed him throw
12 something?

13 SHERIFF BODENBENDER: I
14 did locate car keys.

15 MR. FLANAGAN: And were
16 those car keys, did you also at the residence locate a vehicle
17 that matched the description provided by Kyle Kern?

18 SHERIFF BODENBENDER:
19 We did, as I pulled into the driveway it would have been
20 sitting up on my left hand side.

21 MR. FLANAGAN: Was that
22 right next to where Cullen was or was it further up the
23 driveway?

24 SHERIFF BODENBENDER:
25 It was further up the drive and closer to the house.

1 MR. FLANAGAN: Okay.

2 So did you and other law enforcement personnel approach the
3 vehicle to identify it essentially?

4 SHERIFF BODENBENDER:

5 We did, right.

6 MR. FLANAGAN: And did
7 you make any observations with respect to the vehicle when you
8 approached it?

9 SHERIFF BODENBENDER:

10 Ross, I believe it was Ross, felt the hood and said the hood
11 was warm..

12 MR. ZANER: Objection.

13 THE COURT: Sustained.

14 MR. FLANAGAN: Okay.

15 SHERIFF BODENBENDER:

16 Inside the car I could see that there was like a twelve pack of
17 Budweiser bottles that was open and how many was missing I
18 don't know.

19 MR. FLANAGAN: And it
20 was the same brand of beer that you observed him holding a
21 bottle?

22 SHERIFF BODENBENDER:

23 Same brand, same Budweiser bottles.

24 MR. FLANAGAN: Okay,

25 Your Honor I'd like to, if I could, I'd like to have him

1 respond to the question that was objected to, not for the truth
2 but I think it's important for...

3 THE COURT: Well, it is
4 a probable cause hearing. Rephrase the question and I'll allow
5 your objection.

6 MR. FLANAGAN: And
7 Deputy Saneholtz is here to verify that he made the statement
8 as well and can be crossed examined on it. But at any rate,
9 this is, it would be for state of mind.

10 THE COURT: Okay.

11 MR. FLANAGAN: Earlier
12 you were describing observations that Deputy Ross Saneholtz
13 made with respect to the vehicle. What exactly did he report
14 at that time?

15 SHERIFF BODENBENDER:
16 He felt the hood of the car and told me that the hood was warm,
17 the car had just been driven recently.

18 MR. FLANAGAN: Okay.

19 THE COURT: I'm, what
20 I'm going to do, I'm going to allow that to come in, I may or
21 may not consider that a fact that I would accept subject to...

22 MR. ZANER: I mean the
23 fact that it was warm, maybe. The fact that it had driven
24 recently, you can't assume that.

25 THE COURT: No, right,

1 I understand that.

2 MR. ZANER: All right.

3 THE COURT: There's
4 other foundational issues. Very good. Go ahead.

5 MR. FLANAGAN: Was it
6 at that point in time that you instructed other law enforcement
7 personnel on the scene to place Cullen under arrest?

8 SHERIFF BODENBENDER: I
9 don't know when the exact time was to be honest with you.

10 MR. FLANAGAN: Okay.
11 Well was it...

12 MR. ZANER: Your Honor
13 I would indicate as a matter of law the time my client was in
14 handcuffs he was under arrest.

15 THE COURT: Noted.

16 MR. FLANAGAN: Was it
17 after the observations that you described to me that you
18 instructed law enforcement officers to place Mr. Parsons under
19 arrest and take him into a patrol car?

20 SHERIFF BODENBENDER: I
21 don't know when he was cuffed because I was up by the car and
22 he was back by where I originally pulled in so I don't know
23 when he was cuffed to be honest with you.

24 MR. FLANAGAN: Now, and
25 I, setting aside the point in time when he was placed in

1 handcuffs, was there a point where you instructed deputies on
2 scene to quote unquote, "place Cullen under arrest"?

3 SHERIFF BODENBENDER:

4 When was the time? I don't know that I told them I think that
5 they just, once we identified the car as being there and found
6 the keys and the witness statement, I don't know when the cuffs
7 were actually put on.

8 MR. FLANAGAN: Okay.

9 Now, when you arrived on scene at the Parsons residence you
10 came there, is it accurate to say that at that point in time
11 Cullen was a suspect?

12 SHERIFF BODENBENDER:

13 Absolutely.

14 MR. FLANAGAN: Okay.

15 And the crime that was being investigated involved a shooting,
16 shots fired at another person.

17 SHERIFF BODENBENDER:

18 Yes.

19 MR. FLANAGAN: So when
20 you arrived on scene was there concern for safety of law
21 enforcement personnel?

22 SHERIFF BODENBENDER:

23 Absolutely.

24 MR. FLANAGAN: And is
25 it fair to say that... well I'll ask Officer Saneholtz further

1 questions in that regard.

2 SHERIFF BODENBENDER:

3 The whole scene was pretty chaotic. Mom and dad were very
4 agitated.

5 THE COURT: Sheriff
6 wait until there is a question.

7 SHERIFF BODENBENDER:

8 Okay.

9 MR. FLANAGAN: In
10 addition to the other information that we've gone over were you
11 aware at the time of this incident of a history of
12 disagreements between Mr. Kern and Cullen Parsons family?

13 SHERIFF BODENBENDER:
14 There have been several through the years.

15 MR. FLANAGAN: And you
16 were personally familiar with that in general?

17 SHERIFF BODENBENDER:
18 Yes.

19 MR. FLANAGAN: Okay. I
20 have no further questions at this time Your Honor.

21 THE COURT: Thank you.
22 Cross?

23 MR. ZANER: Thank you
24 Your Honor. Sheriff why do you do police reports?

25 SHERIFF BODENBENDER:

1 To report what happened.

2 MR. ZANER: And you
3 don't have a perfect memory I take it, correct?

4 SHERIFF BODENBENDER: I
5 do not have a perfect memory.

6 MR. ZANER: And so one
7 of the reasons you do a police report is to try to put down as
8 best you can and as close to when something happens as to the
9 facts and circumstances that occurred. Is that true?

10 SHERIFF BODENBENDER:
11 That is true.

12 MR. ZANER: And so when
13 the police report is completed, as far as in this specific
14 case, you put in, did you review the report when it was done?

15 SHERIFF BODENBENDER: I
16 don't remember reading it, no.

17 MR. ZANER: But there
18 is certain information that talks about things that you said
19 and what you've done, where did that come from?

20 SHERIFF BODENBENDER:
21 My memory.

22 MR. ZANER: So did you
23 dictate it to someone who would have typed it?

24 SHERIFF BODENBENDER:
25 No.

1 MR. ZANER: Did you
2 type it up?

3 SHERIFF BODENBENDER:
4 Anything from me in there, I typed.

5 MR. ZANER: And you
6 would have typed everything that you could recall that was
7 important and relevant to the facts and circumstances of that
8 evening, correct?

9 SHERIFF BODENBENDER:
10 Correct.

11 MR. ZANER: And if
12 there are things that aren't in there, that's because it
13 wouldn't have happened, right, or they weren't important, is
14 that true?

15 MR. FLANAGAN: Your
16 Honor I guess I would object for foundational purposes. If
17 there is a specific report that he is referencing because, I
18 don't think it's been established that Sheriff filed any report
19 in relation to this matter.

20 THE COURT: Well, I'll
21 wait til that question is asked then I'll rule on that at that
22 point. Go ahead and rephrase that question or restate that
23 question. I've not sustained any objection to that.

24 MR. ZANER: I got it
25 Judge, thanks. Do you recall whether or not you wrote a report

1 that night about the facts and circumstances that you recall?

2 SHERIFF BODENBENDER:

3 It is not uncommon for me not to put something in somebody
4 else's report. That's not uncommon.

5 MR. ZANER: Would you
6 have done your own report that evening?

7 SHERIFF BODENBENDER:

8 No I would not have.

9 MR. ZANER: Did you
10 have an opportunity to review this report at any time prior to
11 today?

12 SHERIFF BODENBENDER: I
13 haven't looked it over, no.

14 MR. ZANER: And if
15 there's information about what you did or may not have done
16 where would that information have come from?

17 SHERIFF BODENBENDER:
18 My memory.

19 MR. ZANER: But, if you
20 didn't type up the report who would have typed it up?

21 SHERIFF BODENBENDER:
22 Probably the other officers that were there.

23 MR. ZANER: And so you
24 would have provided them the information from yourself that you
25 thought was important for them to put it in the report,

1 correct?

2 SHERIFF BODENBENDER:

3 Not always, no.

4 MR. ZANER: Well then,
5 how would you remember because I take it you're involved in
6 numerous cases, right?

7 SHERIFF BODENBENDER:

8 Yes sir.

9 MR. ZANER: And once
10 again you've already testified that you do a report to better
11 refresh your recollection as to everything that occurred that
12 evening, true?

13 SHERIFF BODENBENDER: I
14 have a good memory.

15 MR. ZANER: You
16 certainly can't remember everything can you?

17 SHERIFF BODENBENDER: I
18 remember most of what happened that night.

19 MR. ZANER: But, did
20 you ever write out a report or provide any information to
21 anyone about everything that you were aware of at that time?

22 SHERIFF BODENBENDER: I
23 don't believe so.

24 MR. ZANER: And so if
25 you hadn't done that then you're saying the report may not be

1 complete?

2 SHERIFF BODENBENDER:

3 My information is what I still remember, if it's not in there,
4 it's not because I didn't put it in there. I would not have
5 those guys type up something that I did.

6 MR. ZANER: Well

7 Officer if I tell you there is absolutely nothing in this
8 police report that there was ever any statements from Kyle Kern
9 that he could identify Cullen Parsons as driving the vehicle
10 fifteen minutes earlier would that surprise you?

11 SHERIFF BODENBENDER:

12 Kyle Kern did not say that he could identify the driver. He
13 had seen him driving that car earlier.

14 MR. ZANER: Saw who
15 driving the car earlier?

16 SHERIFF BODENBENDER:

17 Cullen Parsons driving that car earlier in the evening.

18 MR. ZANER: And would
19 it surprise you, and that's pretty significant when it comes to
20 whether or not who was driving, allegedly driving, the vehicle
21 at the time this incident occurred, wouldn't you agree?

22 SHERIFF BODENBENDER:

23 Could you repeat that?

24 MR. ZANER: Sir isn't

25 it true that that's an important fact to have put in the report

1 that Kyle Kern allegedly identified who was driving a Honda
2 similar to what the Parsons owned fifteen minutes earlier?

3 SHERIFF BODENBENDER: I
4 don't know the time frame exactly, he just said he saw him
5 earlier in the evening driving that car.

6 MR. ZANER: Alright,
7 and don't you think that is an important fact that should be in
8 the police report?

9 SHERIFF BODENBENDER: I
10 don't know.

11 MR. ZANER: Well
12 Officer would you be surprised to know that there is nothing in
13 the police report that talks about Kyle Kern identifying Cullen
14 Parsons as driving the vehicle fifteen minutes, whatever,
15 earlier that evening? Don't you think that's significant that
16 it's not there?

17 SHERIFF BODENBENDER:
18 Not really.

19 MR. ZANER: Officer how
20 many of the, what kind of car was this?

21 SHERIFF BODENBENDER:
22 It was a Honda, a silver Honda.

23 MR. ZANER: And how
24 many Honda's are there in Henry County?

25 SHERIFF BODENBENDER: I

1 have no clue.

2 MR. ZANER: Hundreds?

3 SHERIFF BODENBENDER:

4 Could be.

5 MR. ZANER: Thousands?

6 SHERIFF BODENBENDER: I

7 don't know.

8 MR. ZANER: And isn't

9 it true that Mr. Kern could not identify who the person was
10 that was driving the vehicle at the time this alleged incident
11 occurred, isn't that true?

12 SHERIFF BODENBENDER:

13 That's true.

14 MR. ZANER: So, at the
15 time that you left to go over to the Parsons home, one, you
16 didn't know if it was actually, just because they had a vehicle
17 similar to one that was driving, you didn't know if it was
18 actually that vehicle, isn't that true?

19 SHERIFF BODENBENDER: I

20 was just basing it on what Mr. Kern told us.

21 MR. ZANER: But you
22 didn't know it was that vehicle because Mr. Kern said it was
23 similar but he couldn't identify who it was, isn't that true?

24 SHERIFF BODENBENDER:

25 He could identify the vehicle but not the driver.

1 MR. ZANER: He
2 identified a vehicle similar to what the Parsons owned. Did
3 you get a license plate?

4 SHERIFF BODENBENDER:
5 No, not to my knowledge.

6 MR. ZANER: Alright.
7 So, and you've already indicated there are hundreds of
8 thousands of Honda's in Henry County, and isn't it true...

9 MR. FLANAGAN: I'll
10 object that that is certainly a misstatement of the witness's
11 testimony.

12 THE COURT: I think he
13 characterized it as hundreds I don't think he got to the
14 thousands let alone hundreds of thousands.

15 MR. ZANER: That's
16 alright, hundreds is good. And Officer, it's hard to hear when
17 you have your hand in front of your face.

18 SHERIFF BODENBENDER:
19 I'm sorry.

20 MR. ZANER: Thanks.
21 And, Officer, isn't it true Kyle said it was a vehicle similar
22 to the Parsons. He could not identify saying it was the
23 Parsons vehicle. Isn't that true?

24 SHERIFF BODENBENDER:
25 He said it was Parsons vehicle, is what he said. He identified

1 Cullen as driving.

2 MR. ZANER: And if the
3 report in fact says a vehicle similar to Parsons, why would
4 that say that in the report?

5 SHERIFF BODENBENDER: I
6 don't know why. He told me it was Parsons vehicle.

7 MR. ZANER: Alright.
8 And you're friends with him, right?

9 SHERIFF BODENBENDER: I
10 am.

11 MR. ZANER: But he
12 couldn't identify who the driver was?

13 SHERIFF BODENBENDER:
14 That's true.

15 MR. ZANER: It could
16 have been Cullen. Could have been anybody, you don't know,
17 right?

18 SHERIFF BODENBENDER:
19 That's true.

20 MR. ZANER: Alright.
21 And isn't it true when you got to the scene first you
22 immediately told Cullen, when you observed Cullen, you told him
23 to get on the ground.

24 SHERIFF BODENBENDER:
25 Yes sir.

1 MR. ZANER: Alright.

2 And when he was on the ground he was not free to move, right?

3 SHERIFF BODENBENDER:

4 At that point I told the guys to watch him while I went and saw
5 what he threw.

6 MR. ZANER: Sir was he
7 free to get up and leave?

8 SHERIFF BODENBENDER:

9 No.

10 MR. ZANER: Alright.

11 So he was under arrest at that point yes?

12 SHERIFF BODENBENDER:

13 He was not handcuffed.

14 MR. ZANER: Sir you
15 don't have to be handcuffed to have your freedom withheld from
16 you so if he's on the ground and he's told he's got to be on
17 the ground he wasn't free to get up, isn't that true?

18 SHERIFF BODENBENDER:

19 If he would have got up after being told to stay there he would
20 have been arrested.

21 MR. ZANER: Well he was
22 already arrested at that point.

23 THE COURT: The Court
24 will make the determination as to the arrest. That's a legal
25 concept within my purview.

1 MR. ZANER: Thank you
2 Your Honor. And that was the very first thing you did with
3 Cullen right?

4 SHERIFF BODENBENDER:
5 Was?

6 MR. ZANER: When you
7 got to the scene you saw Cullen and you told him to get on the
8 ground.

9 SHERIFF BODENBENDER:
10 Because he was standing right beside my door.

11 MR. ZANER: You told
12 him to get on the ground.

13 SHERIFF BODENBENDER:
14 Yes I did.

15 MR. ZANER: You didn't
16 see a weapon on him?

17 SHERIFF BODENBENDER: I
18 first told him to back up.

19 MR. ZANER: You didn't
20 see a weapon on him?

21 SHERIFF BODENBENDER:
22 No I did not.

23 MR. ZANER: Okay and at
24 that time you had no knowledge as to whether or not he was the
25 one who was driving that car or not, right?

1 SHERIFF BODENBENDER: I
2 believed he was the one driving the car.

3 MR. ZANER: You had no
4 knowledge that he was the one who was driving that car, the one
5 who drove by Mr. Kern, did you? You didn't know.

6 SHERIFF BODENBENDER: I
7 had reason to believe he was driving that car.

8 MR. ZANER: How do you
9 know it was him as opposed to the man in the moon?

10 SHERIFF BODENBENDER:
11 Because...

12 MR. ZANER: How do you
13 know that? You have no information, you have no identity, you
14 don't know if it's a male, you don't know if it's a female, you
15 don't know how tall, you don't know what color eyes, you don't
16 know what color hair, you don't know what the person was
17 wearing, you knew nothing, isn't that true?

18 SHERIFF BODENBENDER: I
19 knew Cullen was there, I knew the car was there.

20 MR. ZANER: You knew
21 Cullen was at the house, right?

22 SHERIFF BODENBENDER:
23 He was standing beside my car.

24 MR. ZANER: Cullen was
25 at the house. And on his property right?

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SHERIFF BODENBENDER:

Yes.

MR. ZANER: So when you went there you essentially said he wasn't free to move, and the only information that you had was a car similar to Parsons, you don't know who was driving and you don't ...

SHERIFF BODENBENDER: I'll object, he's misstated, Sheriff was clear in testifying that Kyle Kern told him it was the Parsons vehicle. The only person who has repeatedly referenced the similar is counsel.

THE COURT: The Court will sort that out.

MR. ZANER: Well let me talk about the incident report. The victim advised he recognized the car and believed it was his neighbor's vehicle as they owned one identical to what was used during the offense. Kyle stated it was a silver Honda Civic and believed it to be his neighbor's car, Craig Parsons. Kyle advised he recognized the car and believed it was Parsons vehicle as they own one identical to what he saw. Officer, that's what is in the police report. Do you dispute what's in the police report?

SHERIFF BODENBENDER: Kyle told me it was Parsons...

MR. ZANER: Do you dispute what's in the police report?

1 THE COURT: You need to
2 allow him to answer the question.

3 MR. ZANER: Sure,
4 sorry. Do you dispute what's in the police report?

5 SHERIFF BODENBENDER:
6 Kyle told me it was Parsons car.

7 MR. ZANER: So you
8 dispute what your officers...

9 SHERIFF BODENBENDER: I
10 don't know what he told them, I'm telling you what he told me.

11 MR. ZANER: And he's
12 your friend, right?

13 SHERIFF BODENBENDER:
14 Yes he is.

15 MR. ZANER: Alright.
16 But once again you don't know who was driving the vehicle?

17 SHERIFF BODENBENDER:
18 He didn't see who was driving the vehicle.

19 MR. ZANER: And you
20 placed Cullen under arrest, he wasn't free to move, he was
21 eventually put in handcuffs. Did you have a discussion, did
22 you attempt to have a discussion with him at the scene?

23 SHERIFF BODENBENDER: I
24 never talked to him. Only to tell him to get back.

25 MR. ZANER: Did you

1 have a discussion with the, you said the parents were there, is
2 that correct?

3 SHERIFF BODENBENDER:

4 Yes they were.

5 MR. ZANER: Did you
6 have a discussion with the mother?

7 SHERIFF BODENBENDER:

8 Both her and her husband, several.

9 MR. ZANER: And they
10 told you that they wanted you off the property and you had no
11 authority to search isn't that true?

12 SHERIFF BODENBENDER:

13 That's true.

14 MR. ZANER: That's
15 true?

16 SHERIFF BODENBENDER:

17 That's true.

18 MR. ZANER: Alright.

19 And did you have any question with them as to whether or not
20 either of them were driving that vehicle earlier?

21 SHERIFF BODENBENDER:

22 They both said they had not driven that car.

23 MR. ZANER: So you
24 specifically asked them those questions?

25 SHERIFF BODENBENDER:

1 Yes.

2 MR. ZANER: Did you
3 ask, who else would have been on the premises?

4 SHERIFF BODENBENDER:
5 No.

6 MR. ZANER: Isn't it
7 true that Cullen has a sister?

8 SHERIFF BODENBENDER:
9 If he does I don't know his sister, so.

10 MR. ZANER: But you
11 don't know who else is on the property.

12 SHERIFF BODENBENDER: I
13 saw no one else.

14 MR. ZANER: You didn't
15 go into the house.

16 SHERIFF BODENBENDER: I
17 did not. I had no reason to go in the house.

18 MR. ZANER: From the
19 time that you received this phone call about the allegations
20 about the shooting, how long was it until you were on the
21 Parsons property?

22 SHERIFF BODENBENDER:
23 I'd say twenty minutes tops.

24 MR. ZANER: And how
25 long does it take for a vehicle to get from where this shooting

1 allegedly took place to the Parsons home?

2 SHERIFF BODENBENDER: I
3 have no idea.

4 MR. ZANER: Well you
5 know the area, is it five minute, is it an hour, how long?

6 SHERIFF BODENBENDER:
7 Five minutes, I don't know.

8 MR. ZANER: It's
9 further true that you searched Cullen, is that correct?

10 SHERIFF BODENBENDER: I
11 did not.

12 MR. ZANER: You did
13 not?

14 SHERIFF BODENBENDER: I
15 did not.

16 MR. ZANER: So if the
17 report indicates that you searched and secured Cullen then the
18 report is not accurate, is that what you're saying?

19 SHERIFF BODENBENDER:
20 I'm not saying who did, I'm just saying I didn't. As soon as I
21 ordered him to the ground I wanted to see what he threw.

22 MR. ZANER: And that
23 was a key.

24 SHERIFF BODENBENDER:
25 Keys. A key ring with keys.

1 MR. ZANER: And do you
2 know how many, did you check to see if that key worked on that
3 vehicle?

4 SHERIFF BODENBENDER: I
5 did not.

6 MR. ZANER: Okay. And
7 did you see, ask anyone how many car keys there are to this
8 vehicle?

9 SHERIFF BODENBENDER: I
10 did not.

11 MR. ZANER: So, the
12 fact that there was a car ring that was allegedly thrown by
13 Cullen doesn't mean it had anything to do with that car, you
14 never checked it, right?

15 SHERIFF BODENBENDER: I
16 did not.

17 MR. ZANER: Do you know
18 if anybody else did?

19 SHERIFF BODENBENDER: I
20 do not.

21 MR. ZANER: So if the
22 report says that Sheriff Bodenbender searched and secured
23 Cullen you are saying that is not accurate?

24 SHERIFF BODENBENDER: I
25 instructed one of the deputies, I don't remember which on it

1 was, to pat him down because I wanted to look and see what he
2 threw.

3 MR. ZANER: And you
4 also checked the Honda at that point correct? Or you had
5 somebody do it?

6 SHERIFF BODENBENDER:
7 As check it, what do you mean, just to see that car? We didn't
8 open the car. We saw the car there.

9 MR. ZANER: In fact
10 there were search warrants that were obtained that night
11 weren't there?

12 SHERIFF BODENBENDER:
13 There was a search warrant that night...

14 MR. ZANER: Yeah, there
15 was a search warrant that was obtained to search the vehicle?

16 SHERIFF BODENBENDER: I
17 don't know.

18 MR. ZANER: You don't
19 know.

20 SHERIFF BODENBENDER: I
21 don't know.

22 MR. ZANER: So you
23 don't know what your other officers did in this case.

24 SHERIFF BODENBENDER:
25 After, if they got a search warrant I didn't know about it. I

1 wouldn't have got, I'm not aware of that.

2 MR. ZANER: And isn't
3 it true that in fact Cullen was, before anyone went up to this
4 car, Cullen was on the ground and handcuffed, right?

5 SHERIFF BODENBENDER:
6 When he was handcuffed I don't know. I can't tell you that.
7 The last I saw him he was on the ground.

8 MR. ZANER: When you
9 went and got the keys did you then walk back?

10 SHERIFF BODENBENDER: I
11 think I walked towards the car. There was another deputy back
12 there with him.

13 MR. ZANER: So you
14 didn't observe Cullen anymore after that.

15 SHERIFF BODENBENDER:
16 No.

17 MR. ZANER: And you had
18 nothing else to do with Cullen at that point?

19 SHERIFF BODENBENDER:
20 No. Other than until we got to the office.

21 MR. ZANER: Isn't it
22 true that you informed the Parsons, Cullen's parents, what was
23 happening that night and they advised you that they would not
24 answer any questions, in fact, they asked you to leave, isn't
25 that true?

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SHERIFF BODENBENDER:

They answered lots of questions.

MR. ZANER: And you had
it taped?

SHERIFF BODENBENDER:

No, other than what she was taping. We weren't taping
anything.

MR. ZANER: You have
nothing to show what, if anything, they said, allegedly said.

SHERIFF BODENBENDER:

No.

MR. ZANER: When Mr.

Kern talked about this Honda was there any specific identifying
marks on this vehicle that he pointed out to that you can
recall?

SHERIFF BODENBENDER: I

don't remember.

MR. ZANER: I have

nothing further.

THE COURT: Any

redirect?

MR. FLANAGAN: Thank

you, no Your Honor.

THE COURT: You may

step down. Next witness?

1 MR. FLANAGAN: At this
2 time the State would call Deputy Ross Saneholtz.

3 THE COURT: Please
4 raise your right hand, do you swear or affirm the testimony you
5 are about to give is the truth?

6 DEPUTY SANEHOLTZ: I
7 do.

8 THE COURT: Please be
9 seated.

10 MR. FLANAGAN: Good
11 afternoon, could you please state both your first and last
12 name?

13 DEPUTY SANEHOLTZ: Ross
14 Saneholtz.

15 MR. FLANAGAN: And by
16 whom are you employed?

17 DEPUTY SANEHOLTZ:
18 Henry County Sheriff.

19 MR. FLANAGAN: What is
20 your position there?

21 DEPUTY SANEHOLTZ: I'm
22 a Deputy Sheriff.

23 MR. FLANAGAN: Were you
24 so employed on September 2, 2015?

25 DEPUTY SANEHOLTZ: Yes

1 I was.

2 MR. FLANAGAN: And were
3 you on duty on that date?

4 DEPUTY SANEHOLTZ: Yes
5 I was.

6 MR. FLANAGAN: And on
7 that date were you dispatched to Washington Township for a
8 reported drive by shooting?

9 DEPUTY SANEHOLTZ: Yes.

10 MR. FLANAGAN: And did
11 you respond to the location where the report came from?

12 DEPUTY SANEHOLTZ:
13 Correct.

14 MR. FLANAGAN: And at
15 that location did you come in contact with a Kyle Kern?

16 DEPUTY SANEHOLTZ: Yes
17 I did.

18 MR. FLANAGAN: And did
19 you speak with Mr. Kern? Was Mr. Kern the person who had
20 reported the incident?

21 DEPUTY SANEHOLTZ: Yes
22 he was.

23 MR. FLANAGAN: And did
24 you speak with Mr. Kern at that point?

25 DEPUTY SANEHOLTZ: Yes

1 I did.

2 MR. FLANAGAN: Can you
3 describe in general the report that Mr. Kern provided to you?

4 DEPUTY SANEHOLTZ: Mr.
5 Kern advised that he was jogging, he was jogging westbound on
6 Road S3, in between 3 and 4, he would have been on the south
7 side of the road. He advised he was running and he thought he
8 heard a couple of pops behind him, he describe them as what he
9 thought were fireworks at the time. As he turned around he saw
10 a silver Honda Civic 10-15 feet behind him and then he heard a
11 couple more pops and saw what described as a muzzle flash or
12 fireball coming from the driver's seat of the car and when he
13 saw that he realized he was getting shot at and kind of did a
14 duck-spin move and as the car continued past him westbound he
15 observed some more shots and could clearly state that it was
16 like a fireball coming out of the driver's side of the vehicle.
17 He said you could see the muzzle of what he believed to be a
18 firearm.

19 MR. FLANAGAN: Did he
20 provide any additional information about the vehicle that he
21 observed?

22 DEPUTY SANEHOLTZ: He
23 believed he recognized the vehicle to be owned by his
24 neighbors, the Parsons vehicle. He says he's familiar with the
25 vehicle and it was a silver Honda Civic.

1 MR. FLANAGAN: At the
2 time of the shots being fired did he indicated that he was
3 unable to identify the driver of the vehicle?

4 DEPUTY SANEHOLTZ: At
5 the time the shots were fire he said he did not know who was
6 operating the vehicle.

7 MR. FLANAGAN: Okay.
8 Did he indicate that he had seen the same vehicle earlier that
9 evening?

10 DEPUTY SANEHOLTZ: Yes,
11 he believed that when he was up on, it is a square block, so up
12 on Road T2 in between 3 and 4 he advised that same vehicle
13 passed him and at the time it was operated by Cullen Parsons.

14 MR. FLANAGAN: And was
15 that during the same jog that he was on when the shots were
16 fired?

17 DEPUTY SANEHOLTZ:
18 Right, all the same jog.

19 MR. FLANAGAN: So at
20 that time when the vehicle passed him he was able to positively
21 identify Cullen Parsons as the driver?

22 DEPUTY SANEHOLTZ: When
23 the vehicle passed him?

24 MR. FLANAGAN: Earlier
25 before the shots.

1 DEPUTY SANEHOLTZ: Yes.

2 MR. FLANAGAN: And did
3 he indicate that the vehicle that the shots were fired from was
4 the same vehicle he had seen Cullen operating earlier that
5 evening?

6 DEPUTY SANEHOLTZ: He
7 believed it to be.

8 MR. FLANAGAN: While
9 you were speaking with Mr. Kern did any other individuals
10 provide information to you or other law enforcement personnel?

11 DEPUTY SANEHOLTZ:
12 Correct, while we were standing, while I was speaking to Mr.
13 Kern we had a passerby, who would have been Jeremy Johnson,
14 advised he went by the residence and saw the silver Honda Civic
15 in the front yard with all four doors open.

16 MR. FLANAGAN: He saw a
17 silver Honda Civic in the front yard, can you be more specific?

18 DEPUTY SANEHOLTZ: It
19 would have been at the Parsons residence.

20 MR. FLANAGAN: And is
21 Mr. Johnson a resident of the area?

22 DEPUTY SANEHOLTZ:
23 Right, he lives relatively close to that area.

24 MR. FLANAGAN: At that
25 point was a decision made to travel to the Parsons residence to

1 further investigate the incident?

2 DEPUTY SANEHOLTZ: Yes
3 it was.

4 MR. FLANAGAN: And can
5 you describe what happened when you arrived at the residence?

6 DEPUTY SANEHOLTZ: The
7 Sheriff was in the lead I followed him in my patrol car, he was
8 in his own patrol car. As he approached the residence he had a
9 spotlight he was shining on the residence and as he turned into
10 the driveway a male subject appeared, he about hit him from the
11 way it looked, you know, he passed in front of the vehicle and
12 I just had enough room to pull my patrol car in behind his. So
13 I get out and he's ordering the individual to the ground and he
14 was identified as Cullen Parsons at that time. As he was going
15 to the ground under his own power the Sheriff observed him toss
16 something and when I got up there the Sheriff notified me of
17 what he saw and we secured Cullen at that time. Deputy
18 Birtcher arrived then and that's when the Sheriff and Deputy
19 Birtcher continued to pat him down and secure him and they were
20 the ones that actually placed the handcuffs on him at the time.

21 MR. FLANAGAN: Was
22 that, the Sheriff observed him toss something? You reported
23 observed him toss something?

24 DEPUTY SANEHOLTZ:
25 Right.

1 MR. FLANAGAN: Was it
2 the Sheriff or was it you that investigated what had been
3 tossed?

4 DEPUTY SANEHOLTZ: I
5 believe it was the Sheriff.

6 MR. FLANAGAN: And it
7 was after he had retrieved an object that he went back to pat
8 down Mr. Parsons?

9 DEPUTY SANEHOLTZ: When
10 that was recovered?

11 MR. FLANAGAN: Yes.

12 DEPUTY SANEHOLTZ: I
13 believe it would have been recovered, he would have already
14 been in handcuffs at that time and Deputy Birtcher would have
15 been back there when it was recovered.

16 MR. FLANAGAN: So at
17 this point, can you describe the driveway into the Parsons
18 residence?

19 DEPUTY SANEHOLTZ: The
20 driveway goes in and then it kind of bends slightly to the left
21 and meets up with the garage. It's like a stone drive and it's
22 got a little pull off on the other side so you can back up and
23 turn around.

24 MR. FLANAGAN: From the
25 roadway up to the garage, could you estimate, is it 10 yards,

1 20 yards?

2 DEPUTY SANEHOLTZ: From
3 the roadway to their actual garage if you follow the drive?

4 MR. FLANAGAN: Yes.

5 DEPUTY SANEHOLTZ:

6 Total distance might be 75 yards at the extreme.

7 MR. FLANAGAN: And you
8 indicated that when you came into contact with Cullen Parsons
9 at the residence it was immediately as you entered the
10 driveway?

11 DEPUTY SANEHOLTZ:

12 Right.

13 MR. FLANAGAN: While
14 you had just entered the driveway were you able to observe a
15 vehicle matching the description provided by Kyle Kern?

16 DEPUTY SANEHOLTZ:

17 Right.

18 MR. FLANAGAN: And
19 where did you observe that?

20 DEPUTY SANEHOLTZ: That
21 vehicle was like pulled off the driveway, like as the driver
22 makes the bend up to the garage there were two vehicles up
23 there then this white one was farther back closer to the road,
24 actually parked in the grass.

25 MR. FLANAGAN: And that

1 would, was that vehicle the Honda Civic?

2 DEPUTY SANEHOLTZ:

3 Right, that vehicle matched the description.

4 MR. FLANAGAN: When you
5 observed that vehicle did you or other law enforcement
6 personnel approach the vehicle at that time?

7 DEPUTY SANEHOLTZ:

8 Right, I did, and it was, as Mr. Parsons were being secured by
9 the Sheriff and Alex I approached the vehicles just to like
10 touch their hoods and see if they were driven recently. There
11 were three vehicles in the driveway at the time and the Honda
12 Civics' hood was the warmest out of all the vehicles.

13 MR. FLANAGAN: Okay.
14 Did you report that, did you...?

15 DEPUTY SANEHOLTZ:

16 Right, I notified, I informed the Sheriff that the Honda
17 Civics' hood was the warmest and it felt like it was recently
18 driven.

19 MR. FLANAGAN: If you
20 could estimate, how much further up the driveway was the
21 vehicle from where Cullen was at?

22 DEPUTY SANEHOLTZ:

23 maybe 25 yards at the most.

24 MR. FLANAGAN: Okay.

25 While you were at the vehicle, did you make any other

1 observations besides the warmth of the hood?

2 DEPUTY SANEHOLTZ:

3 While checking the area around the vehicle just to see what I
4 could see and looking inside the glass I happen to get on the
5 driver side of the vehicle and I just noticed, something caught
6 my eye on the ground, it looked like a piece of trash or paper
7 and I just happened to shine my light up and up from there,
8 maybe another 10-15 yards away there was a pine tree that was
9 cut up just a little bit and my light illuminated a handgun
10 laying on the ground.

11 MR. FLANAGAN: So a
12 handgun was 10 yards or so away from the vehicle?

13 DEPUTY SANEHOLTZ: 10-
14 15 yards I'd say is a safe estimate.

15 MR. FLANAGAN: Were you
16 walking around the property at that point in time looking for a
17 handgun?

18 DEPUTY SANEHOLTZ: No,
19 not necessarily, just mainly around the vehicle looking, you
20 know, just trying to look in the glass and see what we could
21 see in plain view.

22 MR. FLANAGAN: And so,
23 can you describe again, how was it that you happen to notice
24 the handgun?

25 DEPUTY SANEHOLTZ: I

1 was standing by the driver's side of that Honda Civic and just
2 happened to notice something on the ground, I think it was a
3 piece of trash or a paper, and as I was shining my light up it
4 met the bottom of the tree and it was just plain as day right
5 there, it was just obvious it was a black handgun.

6 MR. FLANAGAN: Okay.
7 And you could tell immediately from where you were standing
8 that it was a handgun?

9 DEPUTY SANEHOLTZ:
10 Right, I could immediately tell it was a gun and I notified,
11 alerted the Sheriff and Deputy Birtcher at that time that I got
12 a gun right up here.

13 MR. FLANAGAN: What is
14 your recollection as to whether you or any other law
15 enforcement personnel advised Cullen Parsons that he was under
16 arrest?

17 DEPUTY SANEHOLTZ: As
18 far as?

19 MR. FLANAGAN: Do you
20 recall anyone ever specifically saying you're under arrest?

21 DEPUTY SANEHOLTZ: I
22 recall the Sheriff was telling him you're under arrest and then
23 I believe Cullen asked what for and that's when he informed him
24 of Felonious Assault.

25 MR. FLANAGAN: Do you

1 recall a time frame when this happened?

2 DEPUTY SANEHOLTZ: That
3 would have been, we had him secured on the ground. I walked up
4 to check the cars right then and it was right after that when I
5 checked the car that I believe they also recovered the key
6 right in that time frame too.

7 MR. FLANAGAN: Now, is
8 it accurate that law enforcement personnel also that evening
9 seized the Honda Civic that was at the property?

10 DEPUTY SANEHOLTZ:
11 Right, we did.

12 MR. FLANAGAN: And did
13 you do that at the same time you were up there?

14 DEPUTY SANEHOLTZ: That
15 was shortly after.

16 MR. FLANAGAN: And what
17 was the reason for taking possession of the vehicle?

18 DEPUTY SANEHOLTZ: We
19 believed it was used in the commission of the crime and we
20 could locate further evidence inside the vehicle.

21 MR. FLANAGAN: Was
22 there any evidence in particular that you were interested in
23 locating potentially in the vehicle?

24 DEPUTY SANEHOLTZ: We
25 were hoping, at that time, we were going to find shell casings

1 or possibly even gunshot residue inside the vehicle.

2 MR. FLANAGAN: If
3 you're looking for gunshot residue is that something that you
4 can conduct a search for the next day or the day after?

5 DEPUTY SANEHOLTZ: Our
6 understanding is you have about a five hour window for gunshot
7 residue.

8 MR. FLANAGAN: And was
9 it, and was the vehicle actually swabbed subsequently for
10 gunshot residue?

11 MR. ZANER: Objection,
12 relative to the motion.

13 THE COURT: Yeah, we
14 are outside the scope of the Motion at this point. Sustained.

15 MR. FLANAGAN: Okay.

16 No further questions, thank you Your Honor.

17 THE COURT: Cross?

18 MR. ZANER: Deputy who
19 was the first person on the scene of as to where Kyle Kern was?

20 DEPUTY SANEHOLTZ: As
21 to where he was that night?

22 MR. ZANER: Yes.

23 DEPUTY SANEHOLTZ: I
24 was.

25 MR. ZANER: You were

1 the first person on the scene?

2 DEPUTY SANEHOLTZ: I
3 was the first deputy there.

4 MR. ZANER: And were
5 you the first person that had a conversation with him?

6 DEPUTY SANEHOLTZ: Yes.

7 MR. ZANER: And how
8 long were you with Mr. Kern, who was the next person that
9 arrived?

10 DEPUTY SANEHOLTZ: Next
11 person there was Sheriff Bodenbender.

12 MR. ZANER: And
13 approximately how much longer was it from the time that you
14 arrived until he arrived?

15 DEPUTY SANEHOLTZ: A
16 couple minutes, maybe five at the most, I'd have to refer to
17 the report for the exact times he signed out on scene.

18 MR. ZANER: You did the
19 report in this case correct?

20 DEPUTY SANEHOLTZ:
21 Correct.

22 MR. ZANER: And when
23 you did the report did you have a conversation with the Sheriff
24 about his observations and what he recalled what happened that
25 evening?

1 DEPUTY SANEHOLTZ:

2 While I was typing the report or?

3 MR. ZANER: At any
4 time?

5 DEPUTY SANEHOLTZ: We
6 were discussing it as we were going throughout the whole scenes
7 of events that night, I was pretty close to him about the whole
8 time.

9 MR. ZANER: Well, who
10 typed the report?

11 DEPUTY SANEHOLTZ: I
12 did.

13 MR. ZANER: And was the
14 Sheriff by you as you were typing it?

15 DEPUTY SANEHOLTZ: No
16 he was not.

17 MR. ZANER: Were you
18 having a discussion with him while you were typing it?

19 DEPUTY SANEHOLTZ: No I
20 was not.

21 MR. ZANER: Did you
22 ever review the report with him to make sure what was in there
23 was complete and accurate to the best of your recollection and
24 his recollection?

25 DEPUTY SANEHOLTZ: I

1 never reviewed it with him, no.

2 MR. ZANER: Okay. And
3 it's important that your report be as complete as possible
4 correct?

5 DEPUTY SANEHOLTZ:
6 Correct.

7 MR. ZANER: And you
8 believe you put in everything that was relevant and important
9 that night, correct?

10 DEPUTY SANEHOLTZ: I
11 believe so, right.

12 MR. ZANER: Now,
13 officer, the information that Kyle Kern advised you was that a
14 Honda Civic, somebody in it was allegedly shooting at him,
15 correct?

16 DEPUTY SANEHOLTZ:
17 Correct.

18 MR. ZANER: He didn't
19 give you any identification as to who the person was?

20 DEPUTY SANEHOLTZ: As
21 to that was shooting at him?

22 MR. ZANER: Correct.

23 DEPUTY SANEHOLTZ:
24 Correct.

25 MR. ZANER: He didn't

1 say if it was a male.

2 DEPUTY SANEHOLTZ:

3 Correct.

4 MR. ZANER: He didn't

5 say if it was a female.

6 DEPUTY SANEHOLTZ:

7 Correct.

8 MR. ZANER: Didn't give
9 you any physical description of the person.

10 DEPUTY SANEHOLTZ:

11 Correct.

12 MR. ZANER: Alright.

13 So at the time you were at the scene all you had from Mr. Kern
14 was that it was a vehicle that he believed was the Parsons,
15 correct?

16 DEPUTY SANEHOLTZ:

17 Correct.

18 MR. ZANER: Alright.

19 And Officer, you had an opportunity to review your report
20 correct? In fact I take it you probably have your report with
21 you.

22 DEPUTY SANEHOLTZ: Yes,
23 it's right up there.

24 MR. ZANER: Would you
25 take a quick look at it and see if you can point out in that

1 report where there is anything that you have put in that
2 report, that I could have missed, that says Mr. Kern identified
3 Cullen Parsons as the person driving a Honda Civic earlier
4 before this incidence?

5 DEPUTY SANEHOLTZ:
6 Right, I neglected to put that in the report.

7 MR. ZANER: That's
8 pretty significant don't you think?

9 DEPUTY SANEHOLTZ: It's
10 a significant piece.

11 MR. ZANER: And that
12 was never put in the report.

13 DEPUTY SANEHOLTZ:
14 Correct.

15 MR. ZANER: So as to
16 whether or not it's being made up by you or the Sheriff or
17 anybody else, we don't know because it's not in the report,
18 correct?

19 DEPUTY SANEHOLTZ:
20 Correct.

21 MR. ZANER: Alright.
22 And sir, you would agree that there are numerous if not
23 hundreds of Honda Civics in this county, correct?

24 DEPUTY SANEHOLTZ: I
25 don't know the exact number of Honda Civics' in this county.

1 MR. ZANER: But there's
2 numerous correct?

3 DEPUTY SANEHOLTZ: Yeah
4 numerous.

5 MR. ZANER: And so now,
6 you showed up first, the Sheriff showed up second, anybody show
7 up at the scene?

8 DEPUTY SANEHOLTZ: At
9 the scene of?

10 MR. ZANER: Of where
11 Mr. Kern was.

12 DEPUTY SANEHOLTZ: At
13 that time it was just me and the Sheriff, no other deputies
14 were there.

15 MR. ZANER: And then
16 this other individual drove up and said he saw a Honda Civic at
17 the Parsons home?

18 DEPUTY SANEHOLTZ:
19 Correct.

20 MR. ZANER: Did you ask
21 him any questions as to how or why anybody would be looking for
22 a Honda Civic as opposed to a Cadillac Eldorado?

23 DEPUTY SANEHOLTZ: He
24 overheard the dispatch on the scanner.

25 MR. ZANER: And the

1 dispatch, as far as you know, was from what Mr. Kern had called
2 in, correct?

3 DEPUTY SANEHOLTZ:

4 Right.

5 MR. ZANER: And he

6 called in that there was what, a Honda Civic?

7 DEPUTY SANEHOLTZ: A

8 silver Honda Civic.

9 MR. ZANER: But he

10 didn't identify who it was.

11 DEPUTY SANEHOLTZ: We

12 were informed while we were in route that the caller was Kyle
13 Kern and he believes his neighbors, the Parsons, just shot at
14 him while he was jogging.

15 MR. ZANER: Once again,

16 he believes.

17 DEPUTY SANEHOLTZ:

18 Correct.

19 MR. ZANER: He didn't

20 know.

21 DEPUTY SANEHOLTZ:

22 Correct.

23 MR. ZANER: Alright,

24 now you then, I take it you followed the Sheriff over to the
25 Parsons home, correct?

1 DEPUTY SANEHOLTZ:

2 Correct.

3 MR. ZANER:

4 Approximately how long did it take to get there?

5 DEPUTY SANEHOLTZ: It
6 would have been not even a minute probably, we were probably a
7 mile away at the most.

8 MR. ZANER: And so you
9 arrived at the Parsons home and the Sheriff, were you directly
10 behind the Sheriff?

11 DEPUTY SANEHOLTZ:
12 Correct.

13 MR. ZANER: So it
14 wasn't as if he was on the scene for any length of time, you
15 both essentially got there the same time?

16 DEPUTY SANEHOLTZ: Just
17 about, yes.

18 MR. ZANER: And so you
19 would have observed everything he observed.

20 DEPUTY SANEHOLTZ: To
21 an extent. Once he pulled in obviously he would have the first
22 view of everything and his vehicle was blocking what I could
23 see for a short period of time.

24 MR. ZANER: Where was
25 Cullen Parsons when you first observed him?

1 DEPUTY SANEHOLTZ: When
2 I first observed him it looked like he was walking right in
3 front of the patrol car, the Sheriff's patrol call.

4 MR. ZANER: In front of
5 the vehicle.

6 DEPUTY SANEHOLTZ:
7 Right.

8 MR. ZANER: And what
9 was the next thing you observed him do? Mr. Parsons.

10 DEPUTY SANEHOLTZ: I
11 observed him, he was looking at the Sheriff's vehicle and he
12 spun around and was going down to the ground when I was going
13 up there.

14 MR. ZANER: Okay, so
15 when you first observed Mr. Parsons he was in the front of the
16 Sheriff's vehicle?

17 DEPUTY SANEHOLTZ:
18 Right.

19 MR. ZANER: And he was
20 walking.

21 DEPUTY SANEHOLTZ:
22 Right.

23 MR. ZANER: Did he have
24 anything on his body that you could observe?

25 DEPUTY SANEHOLTZ: When

1 I walking up there I observed he had a beer bottle and his
2 phone, that or an iPod I couldn't tell what it was.

3 MR. ZANER: You didn't
4 see a weapon on him?

5 DEPUTY SANEHOLTZ: Not
6 until he was on the ground and we did see that he did have a
7 pocket knife in his back pocket.

8 MR. ZANER: It
9 certainly wasn't a gun.

10 DEPUTY SANEHOLTZ:
11 Correct.

12 MR. ZANER: And so you
13 observed Cullen walking in front of the Sheriff's car. Was the
14 Sheriff in his vehicle at that point?

15 DEPUTY SANEHOLTZ: Yes
16 the Sheriff was still in the vehicle.

17 MR. ZANER: And you
18 were still in your vehicle.

19 DEPUTY SANEHOLTZ:
20 Right.

21 MR. ZANER: Alright.
22 What is the next thing that happened?

23 DEPUTY SANEHOLTZ: Next
24 thing that happened was I get out of my vehicle...

25 MR. ZANER: Hey, no,

1 there obviously had to be something first. At the time that
2 you first observed Cullen, I take it the Sheriff's vehicle was
3 still moving or had it been stopped?

4 DEPUTY SANEHOLTZ: It
5 was coming to a stop because he was right in front on him.

6 MR. ZANER: And then
7 you were behind him and coming to a stop also?

8 DEPUTY SANEHOLTZ:
9 Right.

10 MR. ZANER: So then
11 Cullen was still then just standing in front of the vehicle?

12 DEPUTY SANEHOLTZ: In
13 front of or off to the side right there.

14 MR. ZANER: And the
15 next thing, the sheriff's vehicle stopped and your vehicle
16 stopped.

17 DEPUTY SANEHOLTZ: Yes.

18 MR. ZANER: And then
19 you saw the Sheriff get out of the vehicle?

20 DEPUTY SANEHOLTZ: The
21 Sheriff I don't believe got out of his vehicle until I got up
22 there and Cullen was going down because the Sheriff I don't
23 think could get his door open and he wasn't out of the vehicle
24 yet.

25 MR. ZANER: Well why

1 would Cullen have been going down?

2 DEPUTY SANEHOLTZ:

3 Because he was ordering him to.

4 MR. ZANER: So the
5 Sheriff was ordering Cullen to get on the ground?

6 DEPUTY SANEHOLTZ:

7 Right.

8 MR. ZANER: And he was
9 doing that when he was still in his vehicle?

10 DEPUTY SANEHOLTZ:

11 Correct.

12 MR. ZANER: And I take
13 it at that point Cullen had no right to ignore that order?

14 DEPUTY SANEHOLTZ: We
15 give a lawful order, yeah.

16 MR. ZANER: So Cullen
17 was ordered to be on the ground and not leave, right?

18 DEPUTY SANEHOLTZ:

19 Correct.

20 MR. ZANER: Is that
21 right?

22 DEPUTY SANEHOLTZ:

23 Correct.

24 MR. ZANER: So you then
25 come up, Cullen is on the ground at that point?

1 DEPUTY SANEHOLTZ: Um

2 hmm.

3 MR. ZANER: Is that a

4 yes?

5 DEPUTY SANEHOLTZ: Yes.

6 MR. ZANER: Sorry, we

7 can't get uh huh's, we need yes and no's alright?

8 DEPUTY SANEHOLTZ: Yes.

9 MR. ZANER: Alright, so

10 Cullen's on the ground, you're coming up, are you by the

11 Sheriff's vehicle at that point?

12 DEPUTY SANEHOLTZ: Yes.

13 MR. ZANER: And was the

14 Sheriff still in the vehicle?

15 DEPUTY SANEHOLTZ: He

16 was exiting his vehicle.

17 MR. ZANER: So you were

18 off towards where the Sheriff was, his vehicle and the Sheriff

19 was exiting the driver side I take it?

20 DEPUTY SANEHOLTZ: Yes.

21 MR. ZANER: And Cullen

22 was in front, on the right side or left side?

23 DEPUTY SANEHOLTZ: It

24 would have been off to the driver's side of the vehicle so it

25 would have been the left side when you were approaching it.

1 MR. ZANER: But still
2 in front of the vehicle?

3 DEPUTY SANEHOLTZ: Well
4 he was off to the side at that point.

5 MR. ZANER: Is that
6 because the vehicle kept moving to catch up with where Cullen
7 was?

8 DEPUTY SANEHOLTZ: The
9 vehicle was stopped at that point.

10 MR. ZANER: Alright.
11 So Cullen is on the ground and you and the sheriff get up,
12 what's the next thing that happened?

13 DEPUTY SANEHOLTZ: We
14 had him put his hands behind his back and we were kind of
15 patting him down and that's when we saw the knife in the back
16 pocket that was secured by the Sheriff.

17 MR. ZANER: Okay.

18 DEPUTY SANEHOLTZ: And
19 then at that point Deputy Birtcher arrived on scene and he
20 moved up and assisted with the Sheriff and the Sheriff has me
21 go check on the car hoods.

22 MR. ZANER: Alright,
23 so, at some point in time did you ever observe Cullen throw
24 anything?

25 DEPUTY SANEHOLTZ: Did

1 I? No.

2 MR. ZANER: And someone
3 eventually found some keys, correct?

4 DEPUTY SANEHOLTZ:
5 Correct, the Sheriff was the one that observed that.

6 MR. ZANER: Is it the
7 Sheriff who went to secure the keys?

8 DEPUTY SANEHOLTZ: I
9 did not secure the keys, I know that for a fact.

10 MR. ZANER: Alright.
11 Did you ever check to see if the keys fit that Honda Civic?

12 DEPUTY SANEHOLTZ: At
13 that time we did not.

14 MR. ZANER: Alright.
15 And, was Cullen placed in handcuffs prior to the car keys being
16 seized?

17 DEPUTY SANEHOLTZ: I do
18 believe so, yes.

19 MR. ZANER: And who put
20 him in handcuffs?

21 DEPUTY SANEHOLTZ:
22 Deputy Alex Birtcher did that.

23 MR. ZANER: And the
24 Sheriff was right there with him?

25 DEPUTY SANEHOLTZ:

1 Right.

2 MR. ZANER: And the
3 Sheriff ordered you to go and take a look at the Honda.

4 DEPUTY SANEHOLTZ:
5 Correct.

6 MR. ZANER: And in
7 fact, your report says you were checking the surrounding area
8 looking for evidence, correct?

9 DEPUTY SANEHOLTZ:
10 Surrounding area of the vehicle, correct.

11 MR. ZANER: And so you
12 had no additional information at the time when you came to the
13 house. I take it then the plan was to arrest Cullen Parsons,
14 right?

15 DEPUTY SANEHOLTZ: The
16 plan was to investigate it.

17 MR. ZANER: Well, did
18 you talk to anybody before you placed, before Cullen was placed
19 under arrest?

20 DEPUTY SANEHOLTZ:
21 Before he was placed under arrest we spoke with the victim.

22 MR. ZANER: Did you
23 speak, the victim couldn't identify who he was.

24 DEPUTY SANEHOLTZ:
25 Correct.

1 MR. ZANER: And so we
2 don't know who, if it was a man, woman, child, we don't know,
3 right?

4 DEPUTY SANEHOLTZ:
5 Right.

6 MR. ZANER: And so, but
7 Cullen was placed under arrest.

8 DEPUTY SANEHOLTZ: He
9 was placed under arrest after the hood of the car was examined...

10 MR. ZANER: No, he was
11 handcuffed before the car was...

12 DEPUTY SANEHOLTZ: He
13 wasn't actually told he was under arrest though...

14 MR. ZANER: It doesn't
15 matter, he was handcuffed before the Sheriff ordered or asked
16 you, ordered you to go up to the vehicle and conduct a search,
17 correct?

18 DEPUTY SANEHOLTZ: Was
19 he in handcuffed at that time?

20 MR. ZANER: I think you
21 said he was.

22 DEPUTY SANEHOLTZ: I do
23 believe he was.

24 MR. ZANER: Yes,
25 alright. And isn't it true that Mr. and Mrs. Parsons had come

1 out?

2 DEPUTY SANEHOLTZ:

3 Correct.

4 MR. ZANER: And had
5 they come out prior to you getting up this Honda?

6 DEPUTY SANEHOLTZ: No,
7 not prior to.

8 MR. ZANER: And isn't
9 it true that they told you that you were not allowed to be on
10 their property and not allowed to do a search, isn't that
11 correct?

12 DEPUTY SANEHOLTZ:
13 Right.

14 MR. ZANER: And you had
15 no search warrant?

16 DEPUTY SANEHOLTZ:
17 Correct.

18 MR. ZANER: You had no
19 arrest warrant when you went to the Parsons house, right?

20 DEPUTY SANEHOLTZ:
21 Correct.

22 MR. ZANER: But Parsons
23 was immediately kept of his freedom based strictly on what the
24 discussion was with Kyle Cullen right?

25 DEPUTY SANEHOLTZ: You

1 mean Kyle Kern?

2 MR. ZANER: Kyle Kern,
3 sorry.

4 DEPUTY SANEHOLTZ: Yes.

5 MR. ZANER: So the plan
6 was to go over to the house and arrest Cullen Parsons?

7 MR. FLANAGAN: Asked
8 and answered Your Honor.

9 MR. ZANER: I'll move
10 on.

11 THE COURT: Sustained,
12 next question.

13 MR. ZANER: And it's
14 true in your report you put in a number of times that Kyle
15 believed it was the Parsons vehicle but he couldn't identify
16 it, true?

17 DEPUTY SANEHOLTZ:
18 Correct.

19 MR. ZANER: Alright.
20 And did you hear the Sheriff tell Cullen that he was under
21 arrest for Felonious Assault?

22 DEPUTY SANEHOLTZ: I
23 did hear that, yes.

24 MR. ZANER: And there
25 was a search warrant that were obtained at some point in time

1 that evening, correct?

2 DEPUTY SANEHOLTZ:

3 Later that evening, correct.

4 MR. ZANER: And was
5 there an attempt to get a search warrant to seize the vehicle?

6 DEPUTY SANEHOLTZ: No.

7 MR. ZANER: So the
8 vehicle was just taken from the property without a search
9 warrant, correct?

10 DEPUTY SANEHOLTZ:

11 Correct.

12 MR. ZANER: Now, you're
13 investigating over by this vehicle, could you tell the
14 temperature the hood was at?

15 DEPUTY SANEHOLTZ: The
16 exact temperature? No I could just tell it was warm, very
17 warm.

18 MR. ZANER: Well did
19 you put in your report very warm or did you just put warm?

20 DEPUTY SANEHOLTZ: My
21 guess would be probably warm, I can review it to confirm
22 though.

23 MR. ZANER: Okay, and
24 you don't know if that vehicle was actually driven, it could
25 have just been the engine could have just been turned on and it

1 | could have just been left there running, right?

2 DEPUTY SANEHOLTZ: At
3 that time, yeah, it could have happened.

4 MR. ZANER: Okay. So
5 you had no knowledge to know that that vehicle was actually
6 driving at the time of this alleged incident, correct?

7 DEPUTY SANEHOLTZ:
8 Correct.

9 MR. ZANER: Yet the
10 vehicle was seized without a warrant, correct?

11 DEPUTY SANEHOLTZ:
12 Correct.

13 MR. ZANER: Alright.

14 Now, you indicate this, you had a flashlight, correct?

15 DEPUTY SANEHOLTZ:
16 Correct.

17 MR. ZANER: It was dark
18 out I take it?

19 DEPUTY SANEHOLTZ:
20 Correct.

21 MR. ZANER: So you
22 couldn't see. Were there lights around the vehicle or did you
23 need the flashlight in order to see?

24 DEPUTY SANEHOLTZ: To

25 see?

1 MR. ZANER: To see
2 anything around the vehicle?

3 DEPUTY SANEHOLTZ: To
4 my knowledge there wasn't hardly any light out there. I don't
5 recall if they have a little outside light illuminating their
6 driveway or not but it was dark. I do recall it being dark
7 around everywhere.

8 MR. ZANER: And your
9 flashlight, how much of an area does it light up?

10 DEPUTY SANEHOLTZ:
11 Depending how far out it can be anywhere from you know it spans
12 out, it's a pretty focused beam.

13 MR. ZANER: And it's
14 your testimony you are by the vehicle conducting an
15 investigation and then you get up and you allegedly see this
16 weapon 10-15, 20 yards away at the bottom of a pine tree.

17 DEPUTY SANEHOLTZ: Yes,
18 it was in the surrounding area of the pine tree.

19 MR. ZANER: And you
20 could not have seen it without your flashlight, correct?

21 DEPUTY SANEHOLTZ:
22 Correct.

23 MR. ZANER: Which was
24 part and parcel of what you were doing was searching the
25 surrounding area as you indicated in your report. Is that

1 right?

2 DEPUTY SANEHOLTZ:

3 Right.

4 MR. ZANER: Isn't it
5 true Deputy that when you went up to the Honda that Cullen was
6 already in the police vehicle?

7 DEPUTY SANEHOLTZ: I
8 went up to the Honda several times. At which time?

9 MR. ZANER: Wasn't he
10 in the vehicle, in the police vehicle before you went up to the
11 Honda?

12 DEPUTY SANEHOLTZ:
13 Which time?

14 MR. ZANER: The very
15 first time you went up there.

16 DEPUTY SANEHOLTZ: The
17 very first time he was still on the ground when I went up
18 there.

19 MR. ZANER: Okay, and
20 then you left the vehicle and came back?

21 DEPUTY SANEHOLTZ: Well
22 I walked back over to where the Sheriff was.

23 MR. ZANER: Why?

24 DEPUTY SANEHOLTZ: To
25 inform him the hood was still warm.

1 MR. ZANER: Okay. And
2 then what's the next thing, you went back?

3 DEPUTY SANEHOLTZ: Yes.

4 MR. ZANER: Why?

5 DEPUTY SANEHOLTZ: To
6 look inside the vehicle to see if I could see anything.

7 MR. ZANER: And at that
8 point you never called to get a search warrant?

9 DEPUTY SANEHOLTZ: No.

10 MR. ZANER: And when
11 you came back was Cullen put in the police vehicle at that
12 point?

13 DEPUTY SANEHOLTZ: What
14 I, somewhere in that point is when he was, yes.

15 MR. ZANER: Before you
16 went back to the Honda the second time to continue you search?

17 DEPUTY SANEHOLTZ:
18 Correct.

19 MR. ZANER: Okay. I
20 have nothing further Your Honor.

21 THE COURT: Very good,
22 any redirect?

23 MR. FLANAGAN: Just
24 briefly. Could you just clarify the, were you walking about
25 the property when your flashlight came upon the handgun? Were

1 you canvassing the property with the beam? Can you describe
2 again how it was that you located the handgun?

3 DEPUTY SANEHOLTZ:

4 Right, I was looking around the general area of the vehicle,
5 like the immediate area of the vehicle and I was next to the
6 driver's door, literally straight down there was a piece of
7 paper that caught my eye and that's when I just shined my
8 flashlight up and you know, wandering eye, I looked up and
9 that's what I saw.

10 MR. FLANAGAN: Nothing
11 further thank you.

12 THE COURT: Any limited
13 additional cross?

14 MR. ZANER: When you
15 found this piece of paper were you bent over, were you
16 kneeling, were you on your knees?

17 DEPUTY SANEHOLTZ: I
18 was standing upright, kind of looking down.

19 MR. ZANER: So you did
20 get down to go and get it?

21 DEPUTY SANEHOLTZ: No.

22 MR. ZANER: Okay,
23 nothing further.

24 THE COURT: Very good.
25 You may step down.

1 MR. FLANAGAN: Your
2 Honor the State has no additional witnesses at this time.

3 MR. ZANER: No
4 witnesses Judge.

5 THE COURT: Thank you.
6 Well counsel, what I would like on this, I would give each of
7 you an opportunity to really, and the issue I want to address
8 primarily is plain view at night. Also, the issue of
9 inadvertence. If you remember in the original plain view case
10 inadvertence was an aspect of that case.

11 MR. ZANER: Providing
12 they had a legal right to be where they were.

13 THE COURT: I
14 understand that and that's where, this really comes down to the
15 extent that there was a search incident to a lawful arrest and
16 to the extent that they were investigating at what point in
17 investigating what they believed to be an offense and what they
18 believed to be a crime scene. To what extent does the plain
19 view doctrine come in to play? And what are the limits of
20 plain view? Both with regard to nighttime, the use of
21 artificial illumination, I know there is case law on that. But
22 really that is what I think this, for lack of better word,
23 focused on at this point in time. And if you want to submit
24 proposed findings of fact please go ahead and do so. I'd give
25 the State the opportunity to, it's their burden...

1 MR. ZANER: Judge, if I
2 might, since we had filed the Motion and we had obviously lots
3 of case law, I would ask the prosecutor to respond and then we
4 have ten days to respond to whatever they file.

5 THE COURT: Yeah, that
6 would be fine.

7 MR. FLANAGAN: That's
8 fine.

9 THE COURT: What I'm
10 saying is that I was going to ask the State how long they
11 wanted and then I would give you a chance to reply.

12 MR. ZANER: Perfect,
13 sorry Judge.

14 THE COURT: Is ten days
15 sufficient?

16 MR. FLANAGAN: Uh, yes,
17 could we just do two weeks from today?

18 THE COURT: Two weeks
19 is fine. And if you want two weeks counsel I'll grant you two
20 weeks.

21 MR. ZANER: Perfect,
22 because I'll be gone for a week anyway.

23 THE COURT: Okay, very
24 good. Anything else that we need to address today?

25 MR. FLANAGAN: I don't

1 believe so Your Honor.

2 MR. ZANER: Judge there
3 is a lot of outstanding discovery that the prosecutor has until
4 the 21st.

5 THE COURT: Right.

6 MR. ZANER: And there
7 is some additional information I understand that some
8 additional searches and other kinds of things. Because when we
9 get that, you know, I'm going to decide do we need to do it, do
10 we need an expert?

11 THE COURT: Right.

12 MR. FLANAGAN: And Your
13 Honor, I can at least, Deputy Saneholtz is the representative
14 from the Sheriff's Office who's coordinating a lot of the
15 information but in speaking with him yesterday, BCI has been
16 advised that there is a rush and that we do have a deadline set
17 of the 21st. They have placed all of these items into the
18 priority lane and they are planning to get things done by the
19 21st.

20 THE COURT: Okay.

21 MR. FLANAGAN: There
22 was a cell phone seized pursuant to a search warrant relatively
23 recently. I do believe that in speaking with Deputy Saneholtz
24 we will be able to get the analysis on that still by the 21st
25 but that may be a different story.

1 THE COURT: What I
2 would suggest, which week are you gone?

3 MR. ZANER: Next week.

4 THE COURT: Next week,
5 and we could do this by the way of a telephone status, pre-
6 trial, but sometime after the 21st if you want to be here that's
7 fine, if, we'll check with...

8 MR. ZANER: By phone is
9 good if the Court is okay with that.

10 THE COURT: No, and I
11 understand that. If there are additional things or if there
12 are additional issues, you know, 10-15 minutes on the phone
13 perhaps we can resolve those, it avoids people filing a bunch
14 of stuff that we end up just holding a hearing on it anyway.

15 MR. ZANER: I have no
16 problem with that.

17 THE COURT: Before you
18 leave why don't you go in and speak with the Assignment
19 Commissioner and we'll pick a time that works.

20 MR. ZANER: Perfect.
21 Judge, thank you very much.

22

23

24

25

My Commission Expires: February 5, 2019