

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 TRIAL TO COURT

7 Defendant.

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9 * * * * *

10 HEARD:

11 March 7th & 8th, 2016

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 (MONDAY, MARCH 7, 2016 AT 9:12 A.M.)

2 THE COURT: We are now
3 on the record in the matter of State of Ohio verses Cullen A.
4 Parsons, case number 15CR0082. Present in the courtroom at
5 this time would Mr. Hawken Flanagan, Henry County Prosecuting
6 Attorney; Mr. Lorin Zaner, Attorney at Law; as well as Molly S.
7 Blythe, Attorney at Law; and Cullen Parsons, the defendant.
8 This matter comes on today in case number 15CR0082 for a bench
9 trial. I will now hear opening, anything preliminary to
10 opening statements?

11 MR. ZANER: We would
12 just move for a separation of witnesses Judge.

13 THE COURT: Should
14 there be anyone here that is to testify today or tomorrow for
15 that matter you would need to leave the courtroom at this time.
16 If you're here simply as a spectator or an interested in just
17 simply watching the trial you're more than welcome to stay.
18 The idea, and the motion would granted that anyone who would be
19 a witness, it would not be appropriate for them to hear the
20 testimony of some other witness so that we know that the
21 statements given are truly independent. That being the case,
22 I'll hear now from the State.

23 MR. FLANAGAN: Thank
24 you Your Honor. As this is a trial to the Court we understand
25 that you're familiar, in general, with the charges and the

1 allegations that are set forth in the indictment so we will be
2 very brief with our opening remarks and simply attempt to
3 provide a general overview of the case that the State will be
4 presenting. This case involves an incident that occurred on
5 the evening of September 2, 2015 along on County Road S-3 in
6 Washington Township in Henry County, Ohio. Kyle Kern was
7 jogging along the roadways about his residence and during the
8 course of that run he encountered Cullen Parsons, not once but
9 twice and on the second occasion Cullen Parsons fired eight
10 shots at Kyle. It would be easy for Kyle to say that he saw
11 Cullen in the driver seat of the vehicle on both encounters
12 that evening but to his credit he has consistently indicated
13 that he could not see the individual driving the vehicle and
14 firing the shots on the second encounter so the obvious
15 question is why is it that Cullen Parsons was charged? The
16 evidence will show that Cullen Parsons drives a silver Honda
17 Civic and that 10-15 minutes prior to the shooting Kyle
18 encountered Cullen driving that very vehicle. Evidence will
19 indicate that no other person who had access to the vehicle was
20 operating the vehicle on the evening of September 2, 2015 and
21 Kyle Kern will positively identify the vehicle that he
22 encountered on both occasions as the same vehicle.
23 Additionally, evidence will show that Cullen Parsons was the
24 owner of a model Regent R-100 firearm and that firearm was
25 discovered on the Parsons property on the night of the

1 instance, of the incident, beneath a tree. Additionally eight
2 casings were recovered along the roadway near where the shots
3 were fired and a bullet was also recovered in a cornfield in
4 the vicinity of the shooting. Expert testimony from agents at
5 BCI will show that Cullen Parsons DNA was on the handle and the
6 trigger area of the subject handgun and that the casings and
7 the bullet recovered during the course of the investigation
8 were all fired from that handgun. The next question,
9 obviously, is why would Cullen Parsons shoot at Kyle Kern?
10 Testimony will indicate that a long running and ongoing dispute
11 between Kyle Kern and the Parsons family and prior interaction,
12 specifically between Kyle and Cullen, demonstrating a level of
13 animosity that was built up over time and on the evening in
14 question, clearly, Cullen Parsons made an error in judgment and
15 took it upon himself to fire shots from his handgun at Kyle
16 Kern in an attempt to kill him. Kyle will testify very clearly
17 that the gun was pointed at him when it was fired and there is
18 certainly no logical or reasonable explanation for the purpose
19 of shooting a handgun at someone other than an attempt to kill
20 them. At the conclusion of the evidence Your Honor, the State
21 would submit that we will have proved beyond a reasonable doubt
22 all elements of the three charges listed in the three count
23 indictment and we would ask for a verdict of guilty Your Honor.

24 THE COURT: Mr. Zaner?

25 MR. ZANER: Yes. May

1 it please the Court, Your Honor this is a case with all kinds
2 of things missing that makes a huge difference for the State to
3 meet their burden of proof. The initial report that Mr. Kern
4 made to police, even after the 9-1-1 call we understand nothing
5 was really mentioned about vehicles necessarily in the 9-1-1
6 call but the taped statement with interview with Kyle, there
7 was absolutely nothing ever mentioned about him identifying
8 Cullen as being the driver of the vehicle 10 or 15 minutes
9 earlier. Its only afterwards that he's now come up with that.
10 There are lots of things that could have been done that would
11 have helped really figure out what happened that evening. The
12 Court, I'm sure, is aware of the area and how close everything
13 is from where allegedly Kyle was jogging, where allegedly he
14 was shot at, to where the Parsons home is, all of that is like
15 minutes away and there is nothing to show, there is no evidence
16 that at the time that Mr. Kern was allegedly shot at it was
17 Cullen behind the vehicle. Could have been somebody else.
18 Could have been a different vehicle, we don't know because
19 there were things that weren't done that would help demonstrate
20 what happened that night, including the fact, there is no GSR
21 evidence to show whether or not Cullen was the one who fired
22 the weapon. The parents were both home when the police came to
23 the house, they should have been tested, they were never tested
24 for GSR. It is very possible it was one of them. There is a
25 huge history between Mr. Kern and the Parsons but it's mainly

1 about Cullen's parents with lawsuits, with numerous police
2 reports, etc. If someone wants to, and the State has the
3 burden to prove what the intent was here. If someone wants to
4 shoot someone, if someone's jogging down the road and it's
5 nighttime, which the evidence will show, they're going to come
6 up to them and they're going to stop their car and fire
7 directly at the person and shoot them. If they really, if that
8 is there intent they're going to be able to accomplish that.
9 They're not going to be driving and trying to shoot. They're
10 going to stop the car and they're going to be able to shoot if
11 that's the intent. If the intent was to harm, the same kind of
12 thing. For all we know, the intent was merely to scare and the
13 State has the burden of proving that what the intent was in
14 this case. But most importantly, they have to prove it was
15 actually Cullen who was the one who was driving the vehicle at
16 the time this occurred. The State cannot do that because they
17 failed to do sufficient evidence, to obtain sufficient evidence
18 to determine whether or not any one of the Parsons family had
19 fired the weapon. Whether or not that vehicle was ever used,
20 they could have done things, not only which could have been
21 inculpatory but exculpatory, they didn't do it. The burden is
22 on the State. The evidence will show that Cullen did not do
23 this offense and the Court should find him not guilty of all of
24 these charges. Thank you.

25 THE COURT: Thank you.

1 Is the State prepared to call their first witness?

2 MR. FLANAGAN: Yes,
3 thank you Your Honor. At this time the State would call Kyle
4 Kern.

5 THE COURT: Please
6 raise your right hand. Do you swear or affirm the testimony
7 you are about to give is the truth?

8 MR. KERN: Yes I do.

9 THE COURT: Please be
10 seated.

11 MR. FLANAGAN: Good
12 morning. Could you please state both your first and last name?

13 MR. KERN: Kyle Kern.

14 MR. FLANAGAN: And
15 could you spell your last name please?

16 MR. KERN: K-E-R-N.

17 MR. FLANAGAN: And what
18 is your present address Mr. Kern?

19 MR. KERN: S873 County
20 Road 4, Liberty Center, Ohio.

21 MR. FLANAGAN: Your
22 Honor, during the course of testimony I would ask that Kyle be
23 able to indicate on an aerial map of the vicinity to some of
24 the locations that we're discussing?

25 THE COURT: That's

1 Fine. As long as with the screen he'll be able to view
2 everybody should be able to view?

3 MR. FLANAGAN: Yep.

4 THE COURT: Okay.

5 MR. FLANAGAN: With the
6 Court's permission, would it be alright to invite Kyle to step
7 to the map on occasion during testimony?

8 THE COURT: No, that
9 will be fine.

10 MR. FLANAGAN: Thank
11 you Your Honor. Mr. Kern could you, and please be careful of
12 your step, could you just indicate on this map where your
13 residence is?

14 MR. KERN: Right here.

15 MR. FLANAGAN: And do
16 you go running in that area from time to time?

17 MR. KERN: Yes I do.

18 MR. FLANAGAN: Okay.
19 And do you typically run the same or a similar route?

20 MR. KERN: Yes I do.

21 MR. FLANAGAN: Okay,
22 could you, if you're able to, can you indicate the route that
23 you typically run?

24 MR. KERN: I go down
25 Road 4, County Road T2, County Road 3 to S3, back to 4 and back

1 home.

2 MR. FLANAGAN: And on
3 the date of September 2, 2015 did you go running?

4 MR. KERN: Yes I did.

5 MR. FLANAGAN: And was
6 that in the morning or in the evening?

7 MR. KERN: It was in
8 the evening.

9 MR. FLANAGAN: And did
10 you take the route that you just describe there?

11 MR. KERN: Yes I did.

12 MR. FLANAGAN: Can you
13 describe what, if anything, happened during the course of your
14 run on the evening of September 2, 2015?

15 MR. KERN: Well, I left
16 and ran and came down to T2, come down T2 and got about half
17 way down T2 and Mr. Parsons come by in a silver Honda Civic and
18 just about hit me. I was on the opposite side of the road, it
19 is a one lane road, I was running on the berm and he just about
20 hit me with the mirror on the car.

21 MR. FLANAGAN: Which
22 direction was he traveling?

23 MR. KERN: He was
24 traveling, this would be east, we were both traveling east, I
25 run against traffic so we were both traveling the same way.

1 And he come down there and got very, real close to me.

2 MR. FLANAGAN: Okay.

3 At the time of that encounter on T2 what was the lighting like?

4 MR. KERN: It was still
5 light out.

6 MR. FLANAGAN: It was
7 still daylight?

8 MR. KERN: Yeah it was.

9 MR. FLANAGAN: And you
10 indicated Cullen almost hit you.

11 MR. KERN: Yes.

12 MR. FLANAGAN: Were you
13 able to identify the driver of that vehicle?

14 MR. KERN: Yes I was.

15 MR. FLANAGAN: And who
16 was the driver of that vehicle on T2?

17 MR. KERN: Cullen
18 Parsons.

19 MR. FLANAGAN: Do you
20 see the person you identify as Cullen Parsons here in the
21 courtroom today?

22 MR. KERN: Right there.

23 MR. FLANAGAN: Okay.

24 THE COURT: The record
25 would indicate that the witness has identified the defendant,

1 Cullen Parsons.

2 MR. FLANAGAN: Thank
3 you Your Honor. You indicated, what was the vehicle that he
4 was driving?

5 MR. KERN: It was a
6 silver Honda Civic.

7 MR. FLANAGAN: Is that
8 a car you're familiar with?

9 MR. KERN: Yes I am.

10 MR. FLANAGAN: Okay.

11 How so?

12 MR. KERN: I see it all
13 the time in their driveway.

14 MR. FLANAGAN: Okay,
15 and do you see Cullen operate that vehicle?

16 MR. KERN: Yes I do.

17 MR. FLANAGAN: Okay.

18 And you immediately recognize that as the silver Honda Civic
19 that Cullen Parsons drives?

20 MR. KERN: Yes I did.

21 MR. FLANAGAN: Is there
22 any doubt in your mind here today that it was Cullen Parsons
23 driving that vehicle when he encountered you at T2 on September
24 2?

25 MR. KERN: Is there any

1 doubt that it was or wasn't?

2 MR. FLANAGAN: Yeah, is
3 there any doubt in your mind that it was Cullen Parsons?

4 MR. KERN: It was
5 Cullen Parsons.

6 MR. FLANAGAN: And is
7 there any doubt in your mind that it was a silver Honda Civic
8 he was driving?

9 MR. KERN: It was a
10 silver Honda Civic.

11 MR. FLANAGAN: Did you
12 encounter Cullen Parsons a second time during your run that
13 evening?

14 MR. KERN: Yes I did,
15 at that time I continued on, Cullen went to the stop sign,
16 stopped at Road 3 and went north. I continued on to 3, went
17 down Road 3, in the meantime it was a bit dusk, it was starting
18 to get dark. To S3, I went over to S3 and at this time it was
19 completely dark. I got to this location right here and I
20 didn't hear anything, something came up and it sounded like
21 firecrackers. I thought someone had thrown firecrackers out
22 the window because it sounded like two firecrackers went off
23 and I jumped because I didn't know what was there. And when I
24 looked to the right, there were no lights on, when I looked to
25 the right at that time the silver Honda Civic was pulled up

1 next to me and I stopped and as soon as I stopped he shot out
2 the window a fire came out of the barrel of the gun, at that
3 time I just turned back to my left, watched over my right
4 shoulder and I started running back the opposite way and as the
5 car, it was probably going 10 mile and hour, 15 mile an hour,
6 the lights came on, the arm had the gun pointed back at me and
7 shot five more rounds. The fire came out of the gun probably
8 six inches as he fired. You could see the silhouette of him
9 and the gun and the lights of the car once he got by me.

10 MR. FLANAGAN: How much
11 time had passed between your encounter with Cullen Parsons on
12 Road T2 and the shooting incident on Road S3?

13 MR. KERN: Probably
14 around 12-15 minutes at the most.

15 MR. FLANAGAN: Now,
16 were you able to see the vehicle from which the shots were
17 fired?

18 MR. KERN: Yeah, it was
19 right next to me and then the vehicle continued on, after he
20 shot at me there was a neighbor's house that lives right here
21 and the lights were on and I was going to try and get there
22 because there was nowhere to hide, this was a field that had
23 been taken off. There is corn on this side, he went down to
24 the end of the road, he stopped, turn right then he backed up
25 and turned his lights back towards me, I thought he was going

1 to come back at me again. At that time I jumped on the other
2 side of the run as I was trying to run to this house, jumped on
3 that side of the road so if he came back I could get in the
4 cornfield on the right hand side. And then, he say there about
5 3 seconds, I was on the phone with the sheriff department at
6 that time. He turned, he made kind of like a, his lights, the
7 lights turned to the south and he went down here to the new 24
8 where the road dead ends. He was probably down there 30
9 seconds, 45 seconds. As I got to the house and I seen a car, I
10 don't know, I couldn't tell because it was probably a good
11 three-quarters of a mile away but probably go at a high, it was
12 flying, I just seen a glimpse of it going straight north at a
13 high rate of speed.

14 MR. FLANAGAN: You
15 didn't see any other vehicle head down that direction?

16 MR. KERN: No, no other
17 vehicle went passed me.

18 MR. FLANAGAN: Alright.
19 Are you certain that the vehicle from which the shots were
20 fired was the same vehicle you encountered on Road T2?

21 MR. KERN: Yeah, that
22 vehicle has got a distinctive sound to it, it's got an exhaust
23 leak or the muffler, old muffler or whatever and when it goes
24 away from you, you can hear it.

25 MR. FLANAGAN: Was it

1 only the sound that makes you certain it was the same vehicle
2 or where, I mean, were you able to see the vehicle at all the
3 second time?

4 MR. KERN: I just seen
5 it right next to me.

6 MR. FLANAGAN: Is there
7 any doubt in your mind it was the same vehicle that you
8 encountered on Road T2?

9 MR. KERN: It was the
10 same vehicle. It sounded identical to it.

11 MR. FLANAGAN: Okay.
12 You indicated you were running to a residence once the car
13 passed you?

14 MR. KERN: Yes.

15 MR. FLANAGAN: Okay,
16 can you indicate which residence you were running to?

17 MR. KERN: It was Nick
18 Badenhop, that residence right there on the right hand side.
19 The first residence, there is a residence here on the left hand
20 side, they didn't have any lights on and I know Nick so I ran
21 to his house.

22 MR. FLANAGAN: Okay.

23 MR. KERN: The first
24 house that had lights on.

25 MR. FLANAGAN: And what

1 happened once you got to that residence?

2 MR. KERN: I knocked on
3 the door, I tried to get in his garage right away but his
4 garage was locked so I, he was in the house, I could see him in
5 there so I called him on my phone and said, hey, I just got
6 shot at, let me in and he did until the sheriff department
7 showed up.

8 MR. FLANAGAN: Do you
9 have an idea about how much time passed before law enforcement
10 showed up to the Badenhop residence?

11 MR. KERN: Um,
12 possibly, I mean, it was very quick, I would say within, I
13 would say roughly ten minutes probably.

14 MR. FLANAGAN: And what
15 happened after law enforcement showed up?

16 MR. KERN: At that time
17 one of my workers heard it on the scanner and he came from his
18 house and was also there when law enforcement showed up, he
19 gave me a ride home and sheriff told me to get inside my house
20 and stay there and they would get back with me once they
21 figured out what was going on.

22 MR. FLANAGAN: Is it
23 your understanding that Cullen Parsons was taken into custody
24 later that evening?

25 MR. KERN: That's what

1 they told me.

2 MR. FLANAGAN: Circling
3 back to the shooting incident, okay, were you able to tell
4 whether the shots were fired at you as opposed to being shot up
5 in the air?

6 MR. KERN: The first
7 two shots I didn't even know it was a gun at that time, like I
8 said it sounded like firecrackers because it was behind me and
9 I didn't even know they were there. When he pulled up next to
10 me I seen the flash come out, I still did not know it was a gun
11 for sure, it was pointed, I mean, it was pointed right at me,
12 because he was right, six feet from me and then as the car went
13 by his arm went back and he flipped the lights on, you could
14 see the gun at that time, the silhouette of the gun and he
15 fired five more rounds out the window right directly at me, you
16 could see the direction of the fire coming right out of the
17 gun.

18 MR. FLANAGAN: Is there
19 any doubt in your mind the gun was pointed at you when it was
20 fired?

21 MR. KERN: No, it was
22 pointed at me.

23 MR. FLANAGAN: You can
24 have a seat for the next few questions Kyle, thank you. Now
25 prior to September 2, 2015 have you ever had any other

1 encounters with Cullen Parsons while you were out running in
2 the area around your residence?

3 MR. KERN: The only
4 other encounter I had with him was the Sunday before this
5 happened, it was probably 6:00 o'clock at night, me and my two
6 sons and my dog, we went for a run that way. My one son was
7 riding his bike and I had the dog on a leash and my other boy
8 was running behind me and we got to the corner, we headed north
9 on 4 and we got to the corner of T and 4 where Parsons live and
10 a neighbor guy stopped me on the road and talked to me at the
11 intersection on the road and said hi and so forth for about
12 probably ten seconds and at that time we continued on and my
13 one son said hey, did you see Cullen...

14 MR. ZANER: Objection,
15 move to strike.

16 THE COURT: Sustained.
17 The Court will disregard.

18 MR. FLANAGAN: Your
19 Honor I, to the extent the statements are not being offered
20 certainly for the truth of the matter as they are rather to
21 just show the reaction and response and course of events.

22 THE COURT: Well it is
23 hearsay so let's eliminate that.

24 MR. FLANAGAN: Okay.

25 MR. KERN: Can I

1 continue on?

2 MR. FLANAGAN: Yes

3 please just try to...

4 MR. KERN: I continued
5 on passed them, I went around...

6 MR. ZANER: Your Honor,
7 I would object, I don't know that there is really a question
8 before the witness. Sounds like just testimony.

9 THE COURT: Rephrase
10 the question.

11 MR. FLANAGAN: Kyle can
12 you continue describing previous encounters you had with Cullen
13 Parsons on the Sunday prior to this September 2 shooting
14 incident?

15 MR. KERN: As I was
16 running I ran down T2 to County Road 3, me and my boys did and
17 the dog, we got almost to, can I go back up to the map?

18 THE COURT: Yes.

19 MR. KERN: We got to
20 County Road 3 and just about to S3, probably at the house right
21 here, we got probably right here and Cullen pulled up next to
22 us in that same Honda Civic with his shirt off and his dog in
23 the car with the window down and he drove right next to us. I
24 told my kids to stop and my one boy goes we don't stop, and I
25 said, just stop, we are going to take a break. He coasted up

1 to the stop sign at S3 and County Road 3 and he just sat there
2 as we stopped behind him and we wouldn't go up next to the car.
3 He just sat there, he wouldn't go so finally I told my kids, I
4 said, let's go, we went behind the car, behind the stop sign to
5 S3 here and avoided confrontation and went down County Road S3
6 and at that time Cullen went straight and went down, I didn't
7 see him until we got back home, I didn't see him anymore that
8 time.

9 MR. FLANAGAN: Thank
10 you.

11 MR. KERN: That's the
12 only confrontation I've ever had with the gentleman.

13 MR. FLANAGAN: Prior to
14 September 2, 2015 how would you describe your relationship with
15 Cullen Parsons family?

16 MR. KERN: His dad has
17 had an issue with me for a long time, he's come down saying
18 I've done different things to his property and so forth. We've
19 had to have him arrested three times. He's been, numerous
20 times we've had the sheriff come down and talk to him. He's
21 been, he was suing us over a pond we dug, it said we was
22 flooding his house out, that finally just got settled here
23 recently, it got thrown out of Court and every time I drive by
24 that house the gentleman flips me the middle finger, stares at
25 you, drives by real slow, he'll spin his tires out in front of

1 your house, he'll stop and take pictures of you as your outside
2 mowing your yard, working when you're out around your pond.
3 So, I don't honestly have an issue with him but they, he's got
4 a chip on his shoulder evidently.

5 MR. FLANAGAN: These
6 types of interactions, is that something from the past or is
7 that something that's been ongoing?

8 MR. KERN: It's from
9 the past, it's been going on for the last good ten years or so,
10 at least.

11 MR. FLANAGAN: Was it
12 something that was continuing, I mean, you guys, had you
13 reconciled or just gotten over the dispute before this incident
14 or was there still animosity?

15 MR. KERN: There was
16 still animosity.

17 MR. FLANAGAN: When the
18 shots were fired at you that evening were you able to determine
19 how many shots were fired?

20 MR. KERN: Yeah, there
21 were eight rounds fired.

22 MR. FLANAGAN: Did you
23 know how many shell casings were recovered, if any, by the
24 Sheriff's Department on that evening?

25 MR. KERN: Yeah, they

1 said there was seven shell casings found down at the end of 24
2 and County Road 4.

3 MR. FLANAGAN: So was
4 it, was it your belief that there was potentially another shell
5 casing that had not been found?

6 MR. KERN: Yeah, there
7 was eight shots fired.

8 MR. FLANAGAN: Did you,
9 at some point, locate another shell casing?

10 MR. KERN: Yes, I was
11 running again with my daughter, she was riding her bike, the
12 following Monday, which I believe was Labor Day and at that
13 time we ran, we didn't go towards Parsons house anymore so we
14 came down here and we would run just straight instead of
15 turning, we would just continue straight on this road and we
16 would come straight back. I always run against traffic so
17 going there I was on the north side of the road and I come back
18 and turn around, I got back here and I always run looking at
19 the ground and she rides ahead of me on the bike and I got to
20 right here where the shooting was and laying in the berm right
21 in the grass there was a shell casing laying there. At that...

22 MR. FLANAGAN: What did
23 you do when you saw the shell casing?

24 MR. KERN: At that time
25 I called the sheriff. I stopped. I called the sheriff, I

1 didn't pick it up, I just left it lay and they sent an officer
2 out. At that time I marked the spot out in the field, I went
3 back to the corner of the property, there was a big concrete
4 post there, I stepped it off and there was a pop bottle laying
5 there, I laid it out in the yard, in the field where it would
6 mark it and left it lay and I ran on home and then the deputy
7 came and we went down there, I showed it to him and then he
8 took pictures and took care of it.

9 MR. FLANAGAN: Thank
10 you Your Honor, we have no further questions at this time.

11 MR. ZANER: If I may
12 have a second.

13 THE COURT: Sure.

14 MR. ZANER: Mr. Kern,
15 the night in question, you had called 9-1-1 from County Road S-
16 3 right?

17 MR. KERN: I did not.

18 MR. ZANER: Alright.
19 When did you call 9-1-1?

20 MR. KERN: I didn't

21 call 9-1-1.

22 MR. ZANER: On, you

23 never called 9-1-1?

24 MR. KERN: Nope.

25 MR. ZANER: Who did you

1 call?

2 MR. KERN: I called the
3 Henry County Sheriff Department.

4 MR. ZANER: So you
5 called the Henry County Sheriff's Department.

6 MR. KERN: Yes.

7 MR. ZANER: And you
8 were on County Road S-3 at the time, correct?

9 MR. KERN: Correct.

10 MR. ZANER: So that was
11 one time that you talked to the police. They also, that night,
12 after you went home, did they come and pick you up?

13 MR. KERN: The sheriff?

14 MR. ZANER: Yeah.

15 MR. KERN: Sheriff did
16 not pick you up.

17 MR. ZANER: Did someone
18 come and pick you up that night?

19 MR. KERN: At my house?

20 MR. ZANER: Correct.

21 MR. KERN: Yeah, my
22 brother-in-law did.

23 MR. ZANER: Isn't it
24 true you were taken back to the scene of where the alleged
25 shooting took place?

1 MR. KERN: I wanted to
2 go back to the scene.

3 MR. ZANER: Did the
4 police want you to go back to the scene?

5 MR. KERN: I believe
6 they asked me if I could go back and show them where it
7 happened.

8 MR. ZANER: And you
9 observed a number of police officers in the area, is that
10 correct?

11 MR. KERN: Yeah, there
12 was two of them out there.

13 MR. ZANER: And did you
14 notice a police dog also come to the area?

15 MR. KERN: Yes I did.

16 MR. ZANER: Alright.
17 And the police dog and the other police officers were going up
18 and down S-3 looking for bullets or casings correct?

19 MR. KERN: Yes, I
20 believe that's what they were doing.

21 MR. ZANER: And they
22 would have traveled this road, correct?

23 MR. KERN: Yes.

24 MR. ZANER: And isn't
25 it true at the time that they were looking for casings they did

1 not find any in that area on County Road S-3, correct?

2 MR. KERN: They didn't
3 travel far enough down the road.

4 MR. ZANER: That's not
5 my question, my question is did they find any casings on County
6 Road S-3?

7 MR. KERN: I don't
8 believe so.

9 MR. ZANER: And you
10 demonstrated to them where the alleged shooting took place,
11 correct?

12 MR. KERN: Where I
13 thought it took place.

14 MR. ZANER: And you
15 demonstrated to them where the vehicle had been coming from and
16 where the vehicle went to?

17 MR. KERN: Yes.

18 MR. ZANER: And that
19 same night the police officer took a statement from you, is
20 that correct?

21 MR. KERN: Correct.

22 MR. ZANER: And where
23 were you when he took that statement?

24 MR. KERN: I'm not sure
25 where they took that statement. It might have been at my

1 house, I can't tell you that for sure. It was a blurry night.

2 MR. ZANER: But it was
3 the same night, correct?

4 MR. KERN: I can't tell
5 you that for sure. I know they took a statement but I don't
6 know if it was the next morning or if it was that night, I
7 can't remember that for sure.

8 MR. ZANER: And that
9 statement was taped, correct?

10 MR. KERN: Yes it was.

11 MR. ZANER: And that
12 statement you were with Deputy Ross Saneholtz, correct?

13 MR. KERN: Yes sir.

14 MR. ZANER: And you
15 were aware that that was taped, correct?

16 MR. KERN: Yes sir.

17 MR. ZANER: And so if
18 in fact the report indicates that a statement took place on
19 September 2, you can't disagree with that correct?

20 MR. KERN: I can't
21 disagree with that.

22 MR. ZANER: And that's
23 certainly closer in time than today's date which is March 7th
24 correct?

25 MR. KERN: Yes.

1 MR. ZANER: And did you
2 write out any other additional statements after that taped
3 statement was taken from you on September 2nd?

4 MR. KERN: I don't
5 know, I can't remember.

6 MR. ZANER: Did you
7 ever have any additional discussions with police officers about
8 what occurred that evening of September 2nd?

9 MR. FLANAGAN: Your
10 Honor, I would object and ask for a clarification on the time
11 frame, if we are just talking about subsequent to that
12 statement or prior to that statement. I think we need
13 clarification.

14 MR. ZANER: I'll phrase
15 it.

16 THE COURT: Just
17 rephrase the question.

18 MR. ZANER: That's
19 fine. You called the Henry County Sheriff from County Road S-3
20 and then at some point in time you did a taped statement with
21 Officer Saneholtz, correct?

22 MR. KERN: Correct.

23 MR. ZANER: Alright,
24 which was also on September 2nd? After September 2nd did you
25 have any other discussions with police officers concerning the

1 events and circumstances of September 2nd?

2 MR. KERN: About the
3 shooting?

4 MR. ZANER: Correct.

5 MR. KERN: We discussed
6 a couple different times, we, just in general.

7 MR. ZANER: Well, first
8 of all, who is we?

9 MR. KERN: Me and Mr.
10 Saneholtz.

11 MR. ZANER: And do you
12 remember what dates those occurred?

13 MR. KERN: No I don't.

14 MR. ZANER: And was you
15 statement taped at that point in time?

16 MR. KERN: I don't
17 believe so.

18 MR. ZANER: Did you
19 write anything out?

20 MR. KERN: I don't
21 believe so.

22 MR. ZANER: Do you
23 believe you said anything different on those subsequent times
24 than what you said on September 2nd?

25 MR. KERN: I don't

1 believe so.

2 MR. ZANER: Alright, so
3 your statements on September 2nd, close in time, were similar to
4 any statements you would have given to Deputy Saneholtz after
5 that, correct?

6 MR. KERN: Yes.

7 MR. ZANER: And there
8 is nothing else that you reviewed prior to coming here today
9 concerning your testimony correct?

10 MR. KERN: Correct.

11 MR. ZANER: And
12 everything that occurred on September 2nd you would have said in
13 that taped statement, correct?

14 MR. KERN: I don't know
15 that for sure, because I was shook up bad.

16 MR. ZANER: Well, was
17 there anything that you left out on that September 2nd tape?

18 MR. KERN: If you play
19 the tape I'll tell you. •

20 MR. ZANER: Well, so
21 it's easy for you to add things today and then you would agree
22 there very well could be things that you've added that you've
23 never said on September 2nd, correct?

24 MR. KERN: There could
25 be.

1 MR. ZANER: And the
2 distance from Township Road 4 to Township Road 3, how far is
3 that?

4 MR. KERN: A little
5 less than a mile.

6 MR. ZANER: And the
7 distance from Township Road T-2 to County Road S-3, what is
8 that distance?

9 MR. KERN: I don't know
10 but it's a little less than a mile I'm sure.

11 MR. ZANER: And
12 approximately when you are jogging, how fast do you run?

13 MR. KERN: About, I can
14 run, some nights I run a eight and a half minute mile and
15 sometimes it takes me fifteen minutes to run a mile, it depends
16 on how I feel.

17 MR. ZANER: And that
18 night do you recall how fast you were running?

19 MR. KERN: No, it just
20 was a normal night, so, I can't tell you how fast I ran it, but
21 normal would probably be a ten minute mile.

22 MR. ZANER: So, a car
23 traveling from County Road 3 at Township Road T-2 to County
24 Road S-3 could take, certainly, a lot less than a minute,
25 correct?

1 MR. KERN: Yes.

2 MR. ZANER: Alright.

3 And from County Road 3 to County Road 4 going down County Road
4 S-3 could also be less than a minute, correct?

5 MR. KERN: Could be,
6 yes.

7 MR. ZANER: And from
8 going to, from County Road 4 at the intersection of County Road
9 S-3 to the Parsons home is certainly less than a minute,
10 correct?

11 MR. KERN: Could be,
12 yes.

13 MR. ZANER: Alright, so
14 the entire time to travel from the time this alleged shooting
15 took place on County Road S-3, you said the car pulled up to
16 the intersection at County Road 4, stopped, faced north, turned
17 around, went down to the cul-de-sac, was down there for maybe
18 30 or 45 seconds, correct?

19 MR. KERN: Correct.

20 MR. ZANER: And then
21 you saw a car go north on Township Road 4 and wherever that car
22 went to you don't know.

23 MR. KERN: I don't
24 know.

25 MR. ZANER: Alright.

1 So the time from where the vehicle passed you until the vehicle
2 was going north it was what, maybe two minutes at the most?

3 MR. KERN: Tell me that
4 one more time.

5 MR. ZANER: The place
6 where the vehicle passed you until it was going back north on
7 Township Road 4, less than two minutes, right?

8 MR. KERN: No, it was
9 longer than that.

10 MR. ZANER: Well you
11 said it takes less than a minute to get...

12 MR. KERN: No, I said
13 it could. You said how upon, you could drive that in ten
14 minutes you could drive that in a minute.

15 MR. ZANER: Ok, well,
16 you said the car went past you and stopped, stayed down here
17 30-45 seconds and then started north.

18 MR. KERN: What I said
19 is that the car stopped, turned to the north, stopped, then it
20 turned back and shined it's lights back at me for a while, then
21 it turned around and went to 24, to the south for about 30-45
22 seconds, then turned around at a high rate of speed, if that
23 was the same car, and went north.

24 MR. ZANER: And it's
25 true, speaking of the same car, when you originally talked to

1 police you said it looked like the Parsons vehicle but you
2 weren't sure, correct? DO you remember telling them that?

3 MR. KERN: I said I
4 couldn't identify the driver, yeah.

5 MR. ZANER: Isn't also
6 true that you said it looked like the Parsons car but you
7 didn't know if it was it.

8 MR. KERN: Yeah, I did.

9 MR. ZANER: So, from,
10 when the vehicle was down here you could still, in this area,
11 correct?

12 MR. KERN: When the
13 vehicle was where?

14 MR. ZANER: In the cul-
15 de-sac.

16 MR. KERN: When I was
17 there I was at the driveway of the house, I sprinted to the
18 next house.

19 MR. ZANER: The
20 Badenhop house.

21 MR. KERN: Yes.

22 MR. ZANER: And you saw
23 the vehicle go north?

24 MR. KERN: Before I
25 got, right before I got to their house I saw a vehicle go

1 North.

2 MR. ZANER: And you
3 don't know where it went from there?

4 MR. KERN: I don't.

5 MR. ZANER: And from
6 the time that you got to the Badenhop house until the police
7 came to that house, you said it was roughly ten minutes.

8 MR. KERN: I'm
9 guessing, I don't know, it was a blur.

10 MR. ZANER: And they
11 stayed and talked to you for a little bit? Correct?

12 MR. KERN: Very little,
13 they stayed until another deputy got there and then they left
14 right away.

15 MR. ZANER: Two
16 minutes, five minutes?

17 MR. KERN: A couple
18 minutes.

19 MR. ZANER: Alright.
20 So from the time you saw the vehicle going north could have
21 been anywhere from 10-15 minutes for them to get to where you
22 were and then leave to go to the Parsons home, right?

23 MR. KERN: Could have
24 been.

25 MR. ZANER: And you

1 indicated you saw allegedly, Cullen Parsons on Township Road T-
2 2 as you were jogging this way, correct?

3 MR. KERN: Yes I did.

4 MR. ZANER: You never
5 said that to the police in your statement to them, that you saw
6 him driving a car by.

7 MR. KERN: They didn't
8 ask. They asked me about the shooting.

9 MR. ZANER: You never
10 said to them that you saw Cullen driving the vehicle earlier,
11 did you?

12 MR. FLANAGAN: Your
13 Honor, I'll object, again, this is not, he's got to specify
14 what statement we're talking about.

15 THE COURT: Just simply
16 clarify which statement.

17 MR. ZANER: The
18 statement that you gave to the police, which is the only one
19 that we've ever been provided other than the 9-1-1 call, when
20 you talked to them, the taped statement on September 2, you
21 never said to the police that you saw Cullen driving earlier
22 that night, did you?

23 MR. KERN: They didn't
24 ask.

25 MR. ZANER: That's not

1 my question.

2 MR. KERN: I never
3 called 9-1-1 either.

4 MR. ZANER: Alright,
5 when you called Henry County Sheriff, you never said to them
6 when you called Henry County Sheriff, you never said to Deputy
7 Saneholtz when he took a taped statement from you, real simple
8 yes or no.

9 MR. KERN: I told them
10 it was the Parsons car in my statement.

11 MR. ZANER: Sir listen
12 to my question, isn't it true you never said that you saw
13 Cullen driving the vehicle earlier?

14 MR. FLANAGAN: Again,
15 I'll object to that question, it does not specify a time frame.

16 THE COURT: Counsel
17 approach. (Discussion at bench)

18 MR. ZANER: From the
19 time that you now adding today, that you allegedly saw Cullen
20 driving earlier...

21 MR. FLANAGAN: Your
22 Honor, I'll object to the phrasing of that statement. He's
23 suggesting that he's adding it today. That's inaccurate.

24 MR. ZANER: It's not in
25 any reports that we've ever seen. Unless he's talked to the

1 police and had them make additional reports they haven't turned
2 over.

3 THE COURT: Just
4 rephrase the question. Once again, I understand.

5 MR. ZANER: From the
6 time you allegedly saw Cullen on T-2, how long was it until you
7 were on County Road S-3 and you heard what you thought was
8 firecrackers?

9 MR. KERN: I would say
10 probably 13-15 minutes probably.

11 MR. ZANER: And you
12 would agree sir, even if that vehicle went north, you didn't
13 see where it went after that?

14 MR. KERN: I did not.

15 MR. ZANER: You don't
16 know if it turned around. You have no clue.

17 MR. KERN: I don't.

18 MR. ZANER: And you
19 would agree sir, that a vehicle could have gone from this area
20 at Township Road T-2 and County Road 3, gone back to Township
21 Road 4, gone onto the Parsons property, the vehicle then could
22 have left and gone up to T-2, come to County Road 3, gone down
23 to S-3 and come over allegedly by you within that 10-15
24 minutes, correct?

25 MR. KERN: It could

1 have.

2 MR. ZANER: And the
3 person that was driving this vehicle, you've already said you
4 can't identify who it was?

5 MR. KERN: Correct.

6 MR. ZANER: Sir you've
7 talked about different issues with you and the Parsons correct?

8 MR. KERN: Correct.

9 MR. ZANER: And Mr.
10 Kern, on February 12, 2009 at roughly 10 o'clock there is an
11 incident number 1-09000424 do you recall calling and making a
12 claim that there was a phone harassment to you by Craig
13 Parsons?

14 MR. KERN: When was it?

15 MR. ZANER: January,
16 February 12, 2009.

17 MR. KERN: I don't
18 know.

19 MR. ZANER: Mr. Kern I
20 am showing you Defendant's Exhibit A. That is a report dated
21 from February 12, 2009 at 10:01, is that correct?

22 MR. KERN: Yes it is.

23 MR. ZANER: And that
24 incident report is 1-09000424, is that correct?

25 MR. KERN: Yes.

1 MR. ZANER: And if you
2 look on the fourth page sir.

3 MR. KERN: I've only
4 got two pages.

5 MR. ZANER: Sorry.
6 Look on the second page. And the last paragraph said that Kyle
7 said that yesterday he had gotten a harassing phone call from
8 his neighbor, Craig Parsons, correct?

9 MR. KERN: Yes it does.

10 MR. ZANER: Sir do you
11 remember on February 12, 2009 at 2030 that you had made another
12 police report alleging that Craig had thrown a beer can at you
13 and yelled obscenities to you?

14 MR. KERN: Yes I do.

15 MR. ZANER: And on
16 April 24, 2009 at 2031 do you recall that there was a report,
17 you were complaining about Cullen supposedly trespassing on
18 your property and Craig was complaining that you were
19 trespassing on his property. Do you recall that?

20 MR. KERN: Yes I do.

21 MR. ZANER: Sir do you
22 recall on May 3, 2009 at roughly 10:45 that you had made a
23 police report that you claimed that Craig Parsons was drinking,
24 he was belligerent, yelling and cussing and refusing to leave
25 your property. Do you recall that?

1 MR. KERN: Yes I do.

2 MR. ZANER: And sir, on
3 May 4 at approximately 0851 you had made another police report
4 claiming that Craig was trespassing?

5 THE COURT: What year
6 was that?

7 MR. ZANER: 2012 Judge.
8 Do you recall that?

9 MR. KERN: Yep.

10 MR. ZANER: And in fact
11 that claim was false because Craig Parsons had the attorneys
12 permission to be on your property, remember that?

13 MR. KERN: That's not
14 true.

15 MR. ZANER: No charges
16 were filed against him as a result.

17 MR. KERN: He didn't
18 have permission though.

19 MR. ZANER: And Sir, on
20 January 9, 2013 do you recall calling the police to make sure
21 the peace was kept concerning Craig Parsons, do you recall
22 that?

23 MR. KERN: To make sure
24 that what was kept?

25 MR. ZANER: The peace,

1 to keep the peace with Craig Parsons, do you recall that?

2 MR. KERN: Yes I do.

3 MR. ZANER: Sir on

4 March 18, 2014 do you recall a call to the police about Cullen
5 allegedly shooting firearms, do you recall that?

6 MR. KERN: Of Cullen
7 shooting firearms?

8 MR. ZANER: Right.

9 MR. KERN: I didn't
10 know that for sure.

11 MR. ZANER: And sir, on
12 July 6, 2014 at approximately 2103 hours do you recall Michelle
13 had called the police claiming that you had either been
14 shooting fireworks or shots, remember that?

15 MR. KERN: I don't
16 remember that.

17 MR. ZANER: And the
18 police came and talked to you about that. Do you recall that?

19 MR. KERN: They could
20 have, they call the police on me a lot.

21 MR. ZANER: So you call
22 the police on them and they call the police on you, right?

23 MR. KERN: I call the
24 police when I have a problem.

25 MR. ZANER: You've

1 called the police on them a number of times, true?

2 MR. KERN: Yes I have.

3 MR. ZANER: And sir,

4 even after the, after the September 2 incident, you filed a
5 petition for a civil protection order against Craig and
6 Michelle Parsons, do you recall that?

7 MR. KERN: Yes I did.

8 MR. ZANER: And in fact
9 part of your complaints is that they were trespassing on your
10 property, they were making threats to your family and you,
11 throwing beer cans, yelling, placing the middle finger at you,
12 correct?

13 MR. KERN: Yes, I went
14 through the history, yes.

15 MR. ZANER: And let's
16 talk about this civil suit. This civil suit the Parsons filed
17 against you was for damages that they were claiming were caused
18 as a result of this pond that you were building, correct?

19 MR. KERN: Correct.

20 MR. ZANER: And they
21 claimed that they were out tens of thousands of dollars,
22 correct?

23 MR. KERN: Correct.

24 MR. ZANER: And that
25 lawsuit certainly caused a substantial amount to prosecute and

1 defend with attorney fees, etc.

2 MR. KERN: I don't know
3 what it cost them.

4 MR. ZANER: I take it
5 you spent anywhere from \$25,000-\$50,000?

6 MR. KERN: I don't know
7 what it cost them.

8 MR. ZANER: I'm talking
9 about you.

10 MR. KERN: My insurance
11 company took care of that, and I hired an attorney on the side.

12 MR. ZANER: And the
13 attorney you hired on the side cost you money, right?

14 MR. KERN: Yes it did.

15 MR. ZANER: And how
16 much did that cost you?

17 MR. KERN: Probably
18 around \$27,000.

19 MR. ZANER: Plus you
20 had your insurance attorney, is that a yes?

21 MR. KERN: Yes.

22 MR. ZANER: And isn't
23 it true that you filed a counterclaim against the Parsons,
24 correct?

25 MR. KERN: Yes we did.

1 MR. ZANER: And in fact
2 as part of that complaint you stated you've had a long history
3 of problems with the Plaintiff which would Craig and Michelle
4 Parsons, plaintiff's continued belligerent conduct towards
5 himself and members of his family have caused them to become
6 fearful when entering outside of the home, forcing them to be
7 on constant look out for Plaintiff, either driving by in a car
8 or emerging from his house and to all of the behavior
9 consistent with those concerns, correct?

10 MR. KERN: Correct.

11 MR. ZANER: And that
12 was filed October 2012, correct?

13 MR. KERN: 2012?

14 MR. ZANER: Your
15 amended counterclaim was filed.

16 MR. KERN: I don't know
17 when that was filed, I thought it was just filed in 2015, I
18 don't know when it was filed for sure.

19 MR. ZANER: Your Honor
20 I would ask the Court to take judicial notice to the Amended
21 Answer and Counterclaim as filed October 29, 2012.

22 THE COURT: That will
23 be fine, it's the Court's record.

24 MR. ZANER: Right. And
25 sir, that case was dismissed where the Parsons claim against

1 you was dismissed by the Court, correct?

2 MR. KERN: Correct.

3 MR. ZANER: Do you know
4 the Carpenters?

5 MR. KERN: Yes I do.

6 MR. ZANER: They're
7 friends of yours?

8 MR. KERN: Yes.

9 MR. ZANER: And this
10 shell casing that you claim that was found on County Road S-3,
11 that you found some time after September 2, can you point out
12 where it was found?

13 THE COURT: You may
14 approach the screen.

15 MR. KERN: It was found
16 right in there.

17 MR. ZANER: Okay, so
18 you're talking like right in this..

19 MR. KERN: Just past
20 that property line fifty feet.

21 MR. ZANER: Going?

22 MR. KERN: West, yes.

23 MR. ZANER: And just so
24 we're clear, that civil protection order you filed was against
25 Craig and Michelle Parsons correct?

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MR. KERN: Correct.

MR. ZANER: That did not include, you did not file that on Cullen Parsons?

MR. KERN: I already

had one on Cullen.

MR. ZANER: You did not

file that...

MR. KERN: I did not

file against Cullen.

MR. ZANER: On the date

that you filed the civil protection order.

MR. KERN: No I did

not.

MR. ZANER: Okay. The

protection that you had against Cullen Parsons was a result of these allegations being filed against him, correct?

MR. KERN: Correct.

MR. ZANER: So nothing

before was filed against Cullen?

MR. KERN: Nope.

MR. ZANER: I have

nothing further.

THE COURT: Redirect?

MR. FLANAGAN: Thank

you Your Honor. There was some time spent on the statement

1 that you gave to law enforcement personnel, the recorded
2 statement.

3 MR. KERN: Yes.

4 MR. FLANAGAN: Is it
5 fair to say that you had several other conversations with law
6 enforcement on September 2, 2015 that were not recorded?

7 MR. KERN: Yes.

8 MR. FLANAGAN: And when
9 you first came into contact with law enforcement that evening
10 at the Badenhop residence, you spoke with law enforcement,
11 correct?

12 MR. KERN: Correct.

13 MR. FLANAGAN: But that
14 was not where you gave a recorded statement, correct?

15 MR. KERN: Correct.

16 MR. FLANAGAN: At that
17 time, again not a recorded statement, did you advise law
18 enforcement personnel that you had encountered Cullen Parsons
19 driving the same vehicle on T-2 earlier that evening?

20 MR. KERN: Yes.

21 MR. FLANAGAN: When you
22 gave the recorded statement that topic was not brought to your
23 attention and you never provided information regarding that
24 earlier interaction, is that true?

25 MR. KERN: That is

1 true.

2

MR. FLANAGAN: Okay.

3

So, again, it's your testimony that your first contact with law
4 enforcement after the shooting incident, they were advised at
5 that time that you had come into contact with Cullen Parsons
6 driving a silver Honda Civic on Township Road T-2 10-15 minutes
7 prior to the shooting incident.

8

MR. KERN: Correct.

9

MR. FLANAGAN: The
10 bullet casing that you recovered on S-3, or that you located, I
11 apologize.

12

MR. KERN: Yes.

13

14 place that casing there?

MR. FLANAGAN: Did you

15

MR. KERN: No.

16

MR. FLANAGAN: No

17

further questions Your Honor. Thank you.

18

THE COURT: Cross on

19

the re-direct?

20

MR. ZANER: Your Honor

21

at this time I move to dismiss. The State has the duty and the
22 obligation to turn over any information that they obtain when
23 it comes to investigation of a case. And we have gotten a
24 number of police reports from the prosecutor's office and we
25 have nothing, nothing anywhere, that says anything about Mr.

1 Kern claiming that he saw Cullen driving the vehicle on
2 Township Road T-2 earlier that night. If he talked to police
3 officers there would be a report. We've received nothing.
4 Your Honor, the prosecutor can't just sit back, he obviously
5 knew about this before today, he just can't sit back and say,
6 well I didn't get anything, the police have an obligation and
7 the prosecutor's office has an obligation to turn over any
8 information and they'll be more later which we'll demonstrate
9 to the Court that we never got, but any information concerning
10 this case, especially interviews, of an alleged victim by
11 police officers. We have nothing, not one shred of evidence
12 that this witness said anything to any police officers, not
13 only on September 2 but any time since then about allegedly
14 seeing Cullen on Township Road T-2 and the prosecutor's office
15 has an obligation and a duty to investigate and obtain that
16 information and he obviously knew it before today's date and
17 they never turned it over and I would move to dismiss.

18 THE COURT: Respond.

19 MR. FLANAGAN: Your
20 Honor, defense counsel has been well aware of this very topic
21 was examined at great length at a suppression hearing, both law
22 enforcement officers who testified at that suppression hearing
23 stated that Kyle Kern told them that there was earlier
24 interaction with Cullen Parsons that evening. There is,
25 defense counsel has known about this and they learned about it

1 here in open court so it's rather disingenuous to suggest that
2 we've been sitting on some secret evidence. Thank you.

3 THE COURT: Anything
4 further?

5 MR. ZANER: Nothing
6 further Judge.

7 THE COURT: Overruled.
8 Any additional cross then?

9 MR. ZANER: No Judge.

10 THE COURT: Okay, you
11 may step down. At this time let's take about a ten minute
12 break. We'll get back with your next witness. We'll be
13 briefly adjourned.

14 (BRIEF RECESS - BACK ON RECORD AT 10:36 A.M.)

15 THE COURT: We
16 reconvene now in the matter of State of Ohio verses Cullen A.
17 Parsons. We are still with the state. Mr. Flanagan please
18 call your next witness.

19 MR. FLANAGAN: Thank
20 you Your Honor. At this time the State would call Deputy Ross
21 Saneholtz.

22 THE COURT: Deputy
23 please raise your right hand. Do you swear or affirm the
24 testimony you are about to give is the truth?

25 DEPUTY SANEHOLTZ: I

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do.

seated. Your witness Mr. Flanagan.

THE COURT: Please be

MR. FLANAGAN: Thank
you. Could you please state both your first and last name?

DEPUTY SANEHOLTZ: Ross

Saneholtz.

MR. FLANAGAN: Could

you spell your last name please?

DEPUTY SANEHOLTZ: S-A-

N-E-H-O-L-T-Z.

MR. FLANAGAN: And by

whom are you employed?

DEPUTY SANEHOLTZ: The

Henry County Sheriff's Office.

MR. FLANAGAN: And were

you so employed in September 2015?

DEPUTY SANEHOLTZ: Yes

I was.

MR. FLANAGAN: Were you

on duty September 2, 2015?

DEPUTY SANEHOLTZ: Yes

I was.

MR. FLANAGAN: And on

that date were you dispatched to a location on or near County

1 Road S-3 in Washington Township, Henry County, Ohio?

2 DEPUTY SANEHOLTZ: Yes

3 I was.

4 MR. FLANAGAN: And what
5 was the reason you were dispatched to that location?

6 DEPUTY SANEHOLTZ: It
7 was reported drive by shooting on a jogger.

8 MR. FLANAGAN: And did
9 you respond to that location?

10 DEPUTY SANEHOLTZ: Yes

11 I did.

12 MR. FLANAGAN: Do you
13 recall where you went specifically?

14 DEPUTY SANEHOLTZ: The
15 dispatch location was County Road S-3 between 3 and 4, that's
16 the first place I went was on S-3. I had learned through our
17 dispatch that the caller was Kyle Kern and so I, I am familiar
18 with Kyle Kern, I was attempting to locate him and I eventually
19 located him at Nick Badenhop's residence.

20 MR. FLANAGAN: Okay.

21 What happened when you arrived at the Badenhop residence?

22 DEPUTY SANEHOLTZ: At
23 the Badenhop residence Mr. Kern told me what happened that
24 night and that evening a couple minutes prior or before that.
25 He described that he was jogging on County Road S-3, he was

1 westbound...

2 MR. FLANAGAN: Well...
3 That's okay. So you took a, you interviewed Mr. Kern briefly?

4 DEPUTY SANEHOLTZ:
5 Correct.

6 MR. FLANAGAN: And he
7 described the incident as he recalled it?

8 DEPUTY SANEHOLTZ:
9 Correct.

10 MR. FLANAGAN: After
11 speaking with Mr. Kern what happened next?

12 DEPUTY SANEHOLTZ:
13 Right after I got done speaking with Mr. Kern the Sheriff was
14 in route along with Deputy Birtcher. I was the first one
15 there, I was there for a few minutes by myself so before I
16 proceeded to go anywhere else I was going to wait for another
17 unit to arrive. I briefly checked the road, just real quick,
18 to see if there were any obvious shell casings on the roadway
19 that way if there were we would get those collected right away
20 and I didn't locate anything.

21 MR. FLANAGAN: When you
22 briefly checked, I'll go ahead and throw that map back up, Your
23 Honor, again if the witness may be permitted to approach the
24 screen?

25 THE COURT: He may

1 leave the witness stand to utilize the map.

2 MR. FLANAGAN: You
3 indicated you briefly inspected the area for shell casings.
4 Could you indicate where you were looking at, at that time?

5 DEPUTY SANEHOLTZ:
6 Right there was, again, Nick Badenhop's residence, this is Road
7 3B, it's actually a dead end road, we started there and we went
8 back maybe, I briefly went back 800 yards at the most, just
9 real quick, just to shine the light on the roadway real quick
10 to see if there was anything that jumped out at me.

11 MR. FLANAGAN: Okay.
12 And that was while you were waiting for other law enforcement
13 personnel to arrive?

14 DEPUTY SANEHOLTZ:
15 Correct.

16 MR. FLANAGAN: Okay.
17 What happened after other law enforcement personnel did arrive?

18 DEPUTY SANEHOLTZ: The
19 next on scene was the Sheriff and Mr. Kern just kind of roughly
20 went over what happened and once the Sheriff heard everything
21 again from Mr. Kern, the decision was made that we were going
22 to go to the Parsons residence.

23 THE COURT: Does he
24 need to remain up there?

25 MR. FLANAGAN: We'll be

1 referring to it off and on I think for a little while. So a
2 decision was made to go to the Parsons residence?

3 DEPUTY SANEHOLTZ:

4 Correct.

5 MR. FLANAGAN: Okay.

6 And do you recall who all went to the Parsons residence?

7 DEPUTY SANEHOLTZ: It
8 would have been the Sheriff, then me and then shortly after
9 Deputy Birtcher.

10 MR. FLANAGAN: Okay.

11 I'm going to ask you to go ahead and step up to the map for a
12 second please. Can you indicate the, it may not be completely
13 visible but the area where the Parsons residence is on that
14 map?

15 DEPUTY SANEHOLTZ: It
16 is right on the intersection right here, Road T and Road 4.

17 MR. FLANAGAN: Do you
18 recognize that as an aerial view of the Parsons property?

19 DEPUTY SANEHOLTZ: That
20 is.

21 MR. FLANAGAN: Okay.

22 Is the location of the house and the driveway and other items
23 to the best of your recollection, is that the same location of
24 everything on September 2, 2015?

25 DEPUTY SANEHOLTZ: It

1 appears to be.

2 MR. FLANAGAN: So when
3 law enforcement personnel travelled to the Parsons residence
4 where were you coming and how did you approach?

5 DEPUTY SANEHOLTZ: We
6 would have been coming from Road S-3 which would have been from
7 the south so we would have turned north on 4, which is right
8 here, and then that is when we turned into the drive.

9 MR. FLANAGAN: And what
10 happened when you arrived at the Parsons residence?

11 DEPUTY SANEHOLTZ: The
12 Sheriff was the first vehicle in the driveway followed by
13 myself. The Sheriff's vehicle made it in just far enough for
14 me to pull in behind and that is when a subject appeared coming
15 from, what would have been the north over here, crossing the
16 driveway to the south.

17 MR. FLANAGAN: And that
18 subject was later identified as?

19 DEPUTY SANEHOLTZ:
20 Later identified as Cullen Parsons.

21 MR. FLANAGAN: Alright.
22 Was there any other individual located outside the Parsons
23 residence that evening?

24 DEPUTY SANEHOLTZ:
25 Nobody was located outside the residence other than Cullen.

1 MR. FLANAGAN: Was
2 Cullen Parsons placed in handcuffs shortly after he was
3 encountered?

4 DEPUTY SANEHOLTZ: Yes.

5 MR. FLANAGAN: What
6 items, if any, were located on Mr. Parsons person?

7 DEPUTY SANEHOLTZ: On
8 his person at that time was, there was a pocket knife in his
9 back packet, he had a Budweiser beer bottle in his hand, along
10 with a phone or an iPod with like headphones on it.

11 MR. FLANAGAN: Did you
12 locate a silver Honda Civic at the property?

13 DEPUTY SANEHOLTZ: Yes
14 we did.

15 MR. FLANAGAN: And
16 where was that located?

17 DEPUTY SANEHOLTZ: So
18 the driveway comes in, there is a couple trees right there, it
19 was actually pulled into the grass by those trees.

20 MR. FLANAGAN: And did
21 that vehicle that was pulled into the grass, did it match the
22 description of the vehicle provided by Kyle Kern?

23 DEPUTY SANEHOLTZ: Yes
24 it did.

25 MR. FLANAGAN: I'm

1 going to hand you what's been marked as State's Exhibit #8, can
2 you identify that?

3 DEPUTY SANEHOLTZ: That
4 is the car that we located, the silver Honda Civic.

5 MR. FLANAGAN: Is that
6 a photograph that was taken on September 2, 2015?

7 DEPUTY SANEHOLTZ:
8 Correct.

9 MR. FLANAGAN: And does
10 it accurately depict that silver Honda Civic and the position
11 it was located on that evening?

12 DEPUTY SANEHOLTZ:
13 Correct, that was the position it was located that evening.

14 MR. FLANAGAN: Okay.
15 When you located the vehicle what did you do with respect to
16 the vehicle at that time?

17 DEPUTY SANEHOLTZ: Once
18 the vehicle was located there, I briefly just felt the hood to
19 make sure, to see if it was warm, cold, and I found the
20 vehicle's hood to be very warm compared to the other two
21 vehicles in the driveway.

22 MR. FLANAGAN: What
23 meaning did that have to you if any?

24 DEPUTY SANEHOLTZ: I
25 was able to determine that the vehicle had recently been

1 driven.

2 MR. ZANER: Objection.

3 THE COURT: Sustained,

4 lack of foundation. The Court will disregard.

5 MR. FLANAGAN: At that

6 time did law enforcement personnel open up the vehicle?

7 DEPUTY SANEHOLTZ: We

8 never opened anything on that vehicle at that time.

9 MR. FLANAGAN: Did you

10 look inside the vehicle?

11 DEPUTY SANEHOLTZ: We

12 looked inside, correct, but we did not open anything.

13 MR. FLANAGAN: Was

14 there anything of note that was visible?

15 MR. ZANER: Your Honor

16 I would object to the use of the term of we, he testifies to

17 what he did, maybe what other people saw, but I'm trying..

18 THE COURT: Put it this

19 way, I understand the perhaps the misuse of pronoun, so either

20 re-word the questions or have him identify who we are.

21 MR. FLANAGAN: Ok,

22 that's fine, that's fair. Did law enforcement personnel, did

23 you, yourself have an opportunity to view the interior of the

24 vehicle while it was at the Parsons residence?

25 DEPUTY SANEHOLTZ: Yes

1 I did.

2 MR. FLANAGAN:

3 Did you observe anything that you found noteworthy at the time?

4 DEPUTY SANEHOLTZ: At
5 the time the only thing noteworthy was it appeared there was a
6 box of Budweiser on the outside, bottles of Budweiser beer.

7 MR. FLANAGAN: So you
8 observed a box or a case of Budweiser?

9 DEPUTY SANEHOLTZ:

10 Correct.

11 MR. FLANAGAN: Did it
12 appear to be open?

13 DEPUTY SANEHOLTZ: Yes
14 it did.

15 MR. FLANAGAN: And was
16 it bottles or cans?

17 DEPUTY SANEHOLTZ: It
18 would have been bottles, glass bottles.

19 MR. FLANAGAN: And you
20 indicated earlier that Cullen was found with a bottle of
21 Budweiser on his person?

22 DEPUTY SANEHOLTZ:

23 Correct.

24 MR. FLANAGAN: While
25 you were at the Parsons property did you or other law

1 enforcement personnel come into contact with Cullen Parsons
2 parents?

3 DEPUTY SANEHOLTZ:

4 Correct.

5 MR. FLANAGAN: Can you
6 describe that interaction, if it was you or if you observed
7 another officer interacting with them.

8 DEPUTY SANEHOLTZ: It
9 would have been the Sheriff was interacting with them.

10 MR. FLANAGAN: Did the
11 Sheriff go to the residence or did the Parsons come out?

12 DEPUTY SANEHOLTZ: I
13 believe they came out on the lawn.

14 MR. FLANAGAN: Other
15 than the items that you discussed which were located on the
16 person of Cullen Parsons, were there other items located at the
17 Parsons residence as part of the investigation?

18 DEPUTY SANEHOLTZ: Yes
19 there were other items.

20 MR. FLANAGAN: What
21 were those items?

22 DEPUTY SANEHOLTZ: A
23 key to the Honda vehicle was located on the property near
24 Cullen when he was taken into custody.

25 MR. FLANAGAN: Where on

1 that map if you could depict where the keys were located.

2 DEPUTY SANEHOLTZ: It
3 would have been roughly right about in here, just into the
4 driveway.

5 MR. FLANAGAN: Were
6 those on the ground?

7 DEPUTY SANEHOLTZ:
8 Correct.

9 MR. FLANAGAN: Okay.
10 Were there other items located on the property as part of the
11 investigation?

12 DEPUTY SANEHOLTZ:
13 Correct, a handgun was located on the property.

14 MR. FLANAGAN: And
15 where was that located at?

16 DEPUTY SANEHOLTZ: That
17 was located underneath a pine tree which would have been this
18 pine tree right here.

19 MR. FLANAGAN: And was
20 that located on the ground?

21 DEPUTY SANEHOLTZ:
22 Correct.

23 MR. FLANAGAN: Alright.
24 Okay, I'll have you go ahead and take a seat for the next part
25 here. Thanks. I'll hand you what's been marked as State's

1 Exhibit #7, can you identify that please?

2 DEPUTY SANEHOLTZ:

3 Right, this is the key to the Honda vehicle.

4 MR. FLANAGAN: Okay,
5 and you say it's the key to the Honda vehicle. What it is, how
6 do you know it's the key to the Honda vehicle?

7 DEPUTY SANEHOLTZ: On
8 the key there is a white Honda logo.

9 MR. ZANER: Your Honor
10 I would move to strike, it is a key to a Honda, unless he did
11 more we don't know it's the key to that Honda.

12 THE COURT: Understood,
13 the Court would only note that the testimony is confined to a
14 key to a Honda vehicle.

15 MR. FLANAGAN: Were
16 there any further information or investigation conducted to
17 determine whether that key with the Honda logo went to the
18 silver Honda Civic located on the Parsons property?

19 DEPUTY SANEHOLTZ:
20 Right, it's my understanding it was used.

21 MR. ZANER: Objection.

22 THE COURT: Sustained.

23 MR. FLANAGAN: Alright,
24 I'm going to publish a set of photos that we'll be marking as
25 Exhibits, collectively as Exhibit #5. What's this a picture

1 of?

2 DEPUTY SANEHOLTZ: This
3 is a photo of leading up to the handgun that was located on the
4 property. Once I saw, obviously we didn't go up and touch it
5 right away, went back and grabbed my camera and took
6 photographs before it was collected.

7 MR. FLANAGAN: Can you
8 see the handgun in this photo?

9 DEPUTY SANEHOLTZ: It
10 will be just above the beam of light from the Sheriff's
11 flashlight.

12 MR. FLANAGAN: Is that
13 it there?

14 DEPUTY SANEHOLTZ: That
15 is it right there.

16 MR. FLANAGAN: Again,
17 is that a closer up picture of the same handgun?

18 DEPUTY SANEHOLTZ:
19 Correct.

20 MR. FLANAGAN: And was
21 this taken prior to anyone handling the firearm?

22 DEPUTY SANEHOLTZ: This
23 was taken before anyone handled that firearm, correct.

24 MR. FLANAGAN: Again,
25 taken before anybody handled the firearm?

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DEPUTY SANEHOLTZ:

Correct.

MR. FLANAGAN: And you personally located that handgun, correct?

DEPUTY SANEHOLTZ:

Correct.

MR. FLANAGAN: Okay.

And when you located it, did it appear that it had been under that tree for some time or that it had just recently been placed there?

MR. ZANER: Objection.

THE COURT: Sustained.

Lack of foundation.

MR. FLANAGAN: Did you make any observations when you located the handgun?

DEPUTY SANEHOLTZ: The

handgun appeared that it was not covered in dust and not weathered on.

MR. FLANAGAN: Was the

area about the handgun, it was located under a pine tree correct?

DEPUTY SANEHOLTZ:

Correct.

MR. FLANAGAN: And was

the area around the handgun covered in pine needles that had

1 fallen?

2 DEPUTY SANEHOLTZ:

3 Correct.

4 MR. FLANAGAN: And were
5 there any pine needles or any other debris located on the
6 handgun?

7 DEPUTY SANEHOLTZ: No.

8 MR. FLANAGAN: I'd like
9 to hand you what's marked as State's Exhibit #6, can you
10 identify that and then after identifying at least the container
11 could you open it please?

12 DEPUTY SANEHOLTZ: This
13 would be the evidence box containing the handgun that is seen
14 in those photos there.

15 MR. FLANAGAN: Okay,
16 could you go ahead and open it?

17 DEPUTY SANEHOLTZ: Yes.

18 MR. FLANAGAN: Okay,
19 what are the contents there?

20 DEPUTY SANEHOLTZ: It's
21 going to be one handgun, it's going to be Regent Model, I stand
22 corrected on this, it's going to be a Tessa Model T0620 and
23 then there is one magazine in the box as well for the handgun.

24 MR. FLANAGAN: Are you
25 able to see a serial number?

1

DEPUTY SANEHOLTZ:

2

Correct.

3

MR. FLANAGAN: Can you

4

read that?

5

DEPUTY SANEHOLTZ:

6

Serial number would be 13Y00652.

7

MR. FLANAGAN: And is

8

the handgun you have there the same handgun that you located on

9

the Parsons property?

10

DEPUTY SANEHOLTZ:

11

Correct.

12

MR. FLANAGAN: It's the

13

same handgun as depicted in that photograph?

14

DEPUTY SANEHOLTZ:

15

Correct.

16

MR. FLANAGAN: Now you

17

read that serial number, are you aware of a discrepancy between

18

that serial number and a serial number provided on law

19

enforcement incident report?

20

DEPUTY SANEHOLTZ:

21

Correct, I do believe I transposed the last two numbers in

22

there.

23

MR. FLANAGAN: Okay.

24

But that discrepancy is a result of a clerical error?

25

DEPUTY SANEHOLTZ:

1 Correct.

2 MR. FLANAGAN: Okay.

3 There is no question that the handgun that you have at the
4 witness stand is the same handgun you located at the Parsons
5 property?

6 DEPUTY SANEHOLTZ:

7 Correct, there should be additional photos too that show the
8 markings on the handgun.

9 MR. FLANAGAN: So what
10 was done with the handgun after it was located at the Parsons
11 property?

12 DEPUTY SANEHOLTZ:

13 Photographs were taken first and then I secured the handgun and
14 I, and in its given state right now, with the hammer locked
15 back like that, I consider that to be very dangerous, because
16 you don't know if it's safe or not, so I cleared the handgun,
17 there was no rounds found in the magazine or in the chamber,
18 there were no casings found anywhere near the handgun.

19 MR. FLANAGAN: Was the
20 handgun collected into evidence?

21 DEPUTY SANEHOLTZ:

22 Correct, I then collected it and secured it for evidence.

23 MR. FLANAGAN: Was it
24 later sent to BCI for analysis?

25 DEPUTY SANEHOLTZ: Yes

1 it was.

2 MR. FLANAGAN: Alright.
3 Just real quickly before we move one. The photographs that we
4 identified collectively as Exhibits #5, including this
5 photograph here, those photographs accurately represent the
6 images as they appeared on that evening?

7 DEPUTY SANEHOLTZ:
8 Correct.

9 THE COURT: What were
10 the exhibit numbers?

11 MR. FLANAGAN: It's 5A,
12 B, C and D.

13 THE COURT: Okay, so
14 it's a composite?

15 MR. FLANAGAN: Yes.
16 During the course of your investigation did you continue
17 working on this case after September 2, 2015?

18 DEPUTY SANEHOLTZ:
19 Correct.

20 MR. FLANAGAN: What
21 other things did you learn during the course of your
22 investigation?

23 DEPUTY SANEHOLTZ: We
24 learned..

25 MR. ZANER: Objection.

1 DEPUTY SANEHOLTZ: I
2 was...

3 MR. FLANAGAN: Thank
4 you. Describe your involvement with the investigation after
5 September 2, 2015.

6 DEPUTY SANEHOLTZ: I
7 was tasked with attempting to locate the bullets out in the
8 field and went about that task over a couple week period.

9 MR. FLANAGAN: Can you
10 describe what you did in trying to, you say you were tasked
11 with trying to locate bullets?

12 DEPUTY SANEHOLTZ:
13 Correct.

14 MR. FLANAGAN: Okay.
15 And can you describe what you did to try and locate bullets?

16 DEPUTY SANEHOLTZ: I
17 contacted Mr. Kevin Carpenter, he is a hobbyist in metal
18 detecting and asked if he'd be willing to help us out as my
19 metal detecting skills are non-existent.

20 MR. FLANAGAN: And so
21 you contacted Mr. Carpenter.

22 DEPUTY SANEHOLTZ:
23 Correct.

24 MR. FLANAGAN: Did he
25 agree to help?

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he did.

DEPUTY SANEHOLTZ: Yes

happened next?

MR. FLANAGAN: And what

DEPUTY SANEHOLTZ: Due to scheduling we eventually set up a date, I'd have to refer to my report for the exact date that I had him come out there. He started in the morning and I went out and checked on his progress around 11:00 o'clock, he had a bunch of areas flagged out in the location of the shooting and at that time no bullets were recovered. I advised him I'd check back with him, a little bit later I went to the office and I no more than pulled into the office driveway when I received a phone call from him saying they recovered a bullet out in the field, it was laying on top of the soil, they could clearly tell it was a bullet and all he did was place a flag by it.

MR. FLANAGAN: We'll pull up a map again. Looking at this map, can you indicate where Mr. Carpenter was looking for the bullets?

DEPUTY SANEHOLTZ: May I approach?

MR. FLANAGAN: Yes.

THE COURT: If you would, I think I know but would you point out the Badenhop house?

1 DEPUTY SANEHOLTZ: Yes.
2 This would be the Badenhop residence right there. Then here is
3 Road 3B, and then, with the updated information about where the
4 shooting took place, there is a concrete field marker right
5 there, a property marker, that's where, in this general area,
6 we guided them to search that general area of the field to
7 start with and then they were given instructions to kind of fan
8 out from there.

9 MR. FLANAGAN: And, so
10 again, you received a report that they located a bullet?

11 DEPUTY SANEHOLTZ:
12 Correct.

13 MR. FLANAGAN: Can you
14 indicate in general on that map where it was located?

15 DEPUTY SANEHOLTZ: In
16 general, it would be going off this concrete field marker,
17 about right out, just not too far off the road there. It was,
18 it would have been in this field, just about right in there.

19 MR. FLANAGAN: And did
20 you take some photographs?

21 DEPUTY SANEHOLTZ:
22 Correct.

23 MR. FLANAGAN: Okay,
24 you can go ahead and sit down, thanks. I'll hand you what
25 we'll be marking as State's Exhibit, collectively as State's

1 Exhibit #13. Do you recognize that exhibit?

2 DEPUTY SANEHOLTZ: Yes

3 I do.

4 MR. FLANAGAN: And what
5 is it?

6 DEPUTY SANEHOLTZ:
7 Those are the photographs I took of the recovery of the bullet
8 in the field.

9 MR. FLANAGAN: Okay.
10 So this would be Exhibit #13A, again, you took this photograph?

11 DEPUTY SANEHOLTZ:
12 Correct.

13 MR. FLANAGAN: And just
14 describe what we're looking at here.

15 DEPUTY SANEHOLTZ: The
16 road, you see there is Road S-3, that's the concrete post
17 marker that we've been referring to and then the field would be
18 on the right side of this photo, to the west, so this is facing
19 south and that was a standing bean field at the time of the
20 shooting, it's been recently harvested in this photo.

21 MR. FLANAGAN: There is
22 a gentleman out in the field?

23 DEPUTY SANEHOLTZ:
24 Correct.

25 MR. FLANAGAN: Would

1 that be Mr. Carpenter?

2 DEPUTY SANEHOLTZ: That
3 would either be Kevin Carpenter or his brother Randy, I don't
4 recall at the time which one it was out there.

5 MR. FLANAGAN: They
6 were both out there?

7 DEPUTY SANEHOLTZ: They
8 were both out there, there was two of them, yes, the two
9 brothers.

10 MR. FLANAGAN: Okay,
11 and looking at Exhibit #13B, what is this depicting?

12 DEPUTY SANEHOLTZ: That
13 is the bullet that was located out in the field exactly how it
14 was found by Kevin Carpenter. As I stated, all he did was
15 stick a flag by it and the white and red thing off to the side
16 is the flag marking the location.

17 MR. FLANAGAN: So this
18 is the bullet untouched and again, you took the photograph?

19 DEPUTY SANEHOLTZ:
20 Correct.

21 MR. FLANAGAN: And then
22 #13C, again, this is another photograph you took?

23 DEPUTY SANEHOLTZ:
24 Correct.

25 MR. FLANAGAN: Okay.

1 And then, just tell us what you're depicting in that
2 photograph.

3 DEPUTY SANEHOLTZ: This
4 is referencing back to the start location of that concrete post
5 where you can see the flag still there. Unfortunately I don't
6 think you can see the bullet in this photo but it just kind of
7 gives a general view of how far off the road we are and where
8 we are in the field at the time.

9 MR. FLANAGAN: I'll
10 just hand you what's been marked as, or what will be marked at
11 States' Exhibit #17. Do you recognize that?

12 DEPUTY SANEHOLTZ: Yes
13 I do, this is a sketch I made of the location that the bullet
14 was recovered.

15 MR. FLANAGAN: And
16 again, that is your own sketch?

17 DEPUTY SANEHOLTZ:
18 Correct. This is my sketch.

19 MR. FLANAGAN: And if
20 you could just describe the information that you're trying to
21 convey on this sketch.

22 DEPUTY SANEHOLTZ: The
23 sketch is just, it's pretty simple. A is going to be where the
24 bullet was located out in the field, this is a rough sketch,
25 not to scale, all the measurements are going to be approximate.

1 DEPUTY SANEHOLTZ: I
2 had, with Mr. Kevin Carpenters assistance, he had like a trough
3 that he used to dig up underneath it, we actually took dirt and
4 all, that way we didn't disturb and mark the bullet in any way.
5 It was placed in an evidence bag.

6 MR. FLANAGAN: And you
7 said that was subsequently sent down to BCI for analysis?

8 DEPUTY SANEHOLTZ:
9 Correct.

10 MR. FLANAGAN: Ok,
11 circling back to September 2, 2015, there was some additional
12 investigative work that we didn't cover. You indicated that
13 while you were at the Badenhop residence and prior to
14 additional law enforcement personnel showing up, you looked for
15 some shell casings on the roadway.

16 DEPUTY SANEHOLTZ:
17 Correct.

18 MR. FLANAGAN: Were
19 there any other attempts that evening to locate shell casings?

20 DEPUTY SANEHOLTZ:
21 Later that evening we made an additional attempt, correct.

22 MR. FLANAGAN: Can you
23 describe that process?

24 DEPUTY SANEHOLTZ: Once
25 the vehicle was towed and Mr. Parsons was already in custody

1 and being transported to CCNO I went back to the scene with
2 assistance from Deputy Mark Glanz and K-9 Andy in an attempt to
3 locate the shell casings.

4 MR. FLANAGAN: What was
5 the process at that point?

6 DEPUTY SANEHOLTZ: We
7 also got ahold of Mr. Kern to walk us back to the location he
8 believed the incident happened on S-3 and we began, well K-9
9 Andy began to search Road S-3 with us, as in Deputy Glanz and
10 myself using our flashlights to look up and down the road.

11 MR. FLANAGAN: Were any
12 shell casings located that evening?

13 DEPUTY SANEHOLTZ: On
14 Road S-3 no, not that evening.

15 MR. FLANAGAN: Were any
16 shell casings located other than on S-3?

17 DEPUTY SANEHOLTZ: Yes
18 there were, on County Road 4 at the end where it cul-de-sacs
19 before Route 24.

20 MR. FLANAGAN: Here?

21 DEPUTY SANEHOLTZ:
22 Correct.

23 MR. FLANAGAN: And why
24 were you searching in that vicinity?

25 DEPUTY SANEHOLTZ:

1 Based on the information obtained from Mr. Kern with the
2 vehicle traveling down that way and spending approximately 30-
3 45 seconds down there, we figured it was a good idea to follow
4 up and see if anything was located down there.

5 MR. FLANAGAN: And was
6 it the K-9 unit that actually located the shell casings?

7 DEPUTY SANEHOLTZ: Yes.
8 K-9 Andy was deployed and showed interest in an area of that
9 cul-de-sac and when we approached that's when we discovered the
10 casings.

11 MR. FLANAGAN: And when
12 you came, when you visualized the shell casings what did you
13 do?

14 DEPUTY SANEHOLTZ: Once
15 we determined that they were shell casings we basically made
16 little cardboard evidence markers and started 1 through 7 on
17 them, that way they could be photographed and seen better in the
18 photographs.

19 MR. FLANAGAN: I'll
20 hand you what will be marked as State's Exhibit #10, do you
21 recognize that?

22 DEPUTY SANEHOLTZ: Yes.

23 MR. FLANAGAN: What
24 does that depict?

25 DEPUTY SANEHOLTZ: That

1 would be the location of the shell casings as they were found
2 with my additional markers that I placed by them.

3 MR. FLANAGAN: And how
4 many shell casings did you locate?

5 DEPUTY SANEHOLTZ:
6 Seven.

7 MR. FLANAGAN: And
8 these are marked before they were moved by any law enforcement
9 personnel?

10 DEPUTY SANEHOLTZ:
11 Correct, we marked them, photographed them and once we
12 completed that, that's when I collected the casings.

13 MR. FLANAGAN: Alright,
14 I'll just hand you evidence that was submitted to BCI, would
15 you just simply open that and identify the contents please?

16 MR. ZANER: Your Honor
17 we are willing to stipulate that that's the shell casings that
18 were found.

19 THE COURT: Very good.

20 MR. FLANAGAN: Okay.
21 So Your Honor we'll have State's Exhibit #10 would be the
22 photograph depicting the location of the casings and State's
23 Exhibit #11 would be the seven casings. I apologize if I asked
24 but, after those were collected they were submitted to BCI for
25 analysis?

1 DEPUTY SANEHOLTZ: Yes
2 they would have been.

3 MR. FLANAGAN: So in
4 looking at this picture again, you indicate that this is that
5 dead end area.

6 DEPUTY SANEHOLTZ:
7 Right, that's the cul-de-sac.

8 MR. FLANAGAN: Okay, is
9 this looking south where it dead ends?

10 DEPUTY SANEHOLTZ: This
11 would have been looking more towards the west, maybe a little
12 bit southwest.

13 MR. FLANAGAN: Let me
14 pull up that aerial just so you can indicate to us. Can you
15 just real quickly come up here and show us where it was?

16 DEPUTY SANEHOLTZ: It
17 would have been located approximately right in this area of the
18 cul-de-sac.

19 MR. FLANAGAN: Thank
20 you. No further questions at this time, thank you Your Honor.

21 THE COURT: Cross?

22 MR. ZANER: Officer
23 you're familiar with doing police reports correct?

24 DEPUTY SANEHOLTZ:
25 Correct.

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MR. ZANER: And why do
you do police reports?

DEPUTY SANEHOLTZ: To
document our efforts in the field.

MR. ZANER: And you do
police reports because you can't remember everything from one
day to the next, correct?

DEPUTY SANEHOLTZ:
Correct.

MR. ZANER: Because
you're involved in a number of cases, correct?

DEPUTY SANEHOLTZ:
Correct.

MR. ZANER: So whenever
you've done, in your involvement in this case, you would have
documented by a police report, correct?

DEPUTY SANEHOLTZ:
Correct.

MR. ZANER: And I'm
aware that you had this interview with Kyle Kern, correct?

DEPUTY SANEHOLTZ:
Correct.

MR. ZANER: And you
documented that in the police report.

DEPUTY SANEHOLTZ:

1 Correct.

2 MR. ZANER: And you
3 documented in the police report your investigation as to what
4 occurred at the Parsons home, correct?

5 DEPUTY SANEHOLTZ:
6 Correct.

7 MR. ZANER: And you
8 documented in the police report the search for the bullets and
9 the shell casings, correct?

10 DEPUTY SANEHOLTZ:
11 Correct.

12 MR. ZANER: Was there
13 any other police reports that you completed in this case
14 documenting what you did?

15 DEPUTY SANEHOLTZ: As
16 far as separate reports or supplemental narratives?

17 MR. ZANER: Any and all
18 of the above.

19 DEPUTY SANEHOLTZ:
20 There is an abundance of supplemental narratives on this.

21 MR. ZANER: Have we
22 received all the supplemental narratives?

23 DEPUTY SANEHOLTZ: You
24 have to ask the prosecutor, I hand over to him.

25 MR. ZANER: And let's

1 talk about, first of all, when you came back to County Road S-3
2 to look for, after you left the Parsons, to look for shell
3 casings.

4 DEPUTY SANEHOLTZ: The
5 same night on the 2nd?

6 MR. ZANER: The same
7 night.

8 DEPUTY SANEHOLTZ:
9 Okay.

10 MR. ZANER: And you
11 said there was other deputies there with you?

12 DEPUTY SANEHOLTZ:
13 There would have been Deputy Mark Glanz and then Sergeant Sean
14 Walker there with me.

15 MR. ZANER: And the K-9
16 dog was there?

17 DEPUTY SANEHOLTZ:
18 Correct, that's Deputy Mark Glanz's partner.

19 MR. ZANER: And the
20 area that was searched for shell casings, and this is
21 Badenhop's house, correct?

22 DEPUTY SANEHOLTZ:
23 Correct.

24 MR. ZANER: Would have
25 been going back this way on County Road S-3?

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DEPUTY SANEHOLTZ:

Would have been back to the east from there, correct.

MR. ZANER: And how far

back did you go?

DEPUTY SANEHOLTZ: We

started at, I would say we started right around Road 3-B there, you can see that on the map.

MR. ZANER: So here.

DEPUTY SANEHOLTZ:

Yeah. We went there, went 100-150 yards back to the east, that's where at the time we believed the shooting to happen.

MR. ZANER: So you went

from Township Road 3-B on County Road S-3 going east.

DEPUTY SANEHOLTZ:

Yeah, we went back east.

MR. ZANER: Do you

know, did anyone look west?

DEPUTY SANEHOLTZ: We

didn't go west, no.

MR. ZANER: Did the dog

go west?

DEPUTY SANEHOLTZ: No.

MR. ZANER: Were you

there the entire time?

DEPUTY SANEHOLTZ: As

1 far as the entire time?

2 MR. ZANER: The dogs
3 were there.

4 DEPUTY SANEHOLTZ: I
5 was there the entire time that K-9 Andy was there, yes.

6 MR. ZANER: And you're
7 aware from Mr. Kern where he claimed the shooting took place
8 from right?

9 DEPUTY SANEHOLTZ: As
10 far as that night?

11 MR. ZANER: That night.

12 DEPUTY SANEHOLTZ:
13 Correct.

14 MR. ZANER: So you're
15 aware, allegedly Mr. Kern is jogging westbound on County Road
16 S-3.

17 DEPUTY SANEHOLTZ:
18 Correct.

19 MR. ZANER: And
20 allegedly there is a vehicle that is behind him, he hears
21 firecrackers, he's not sure what it is, correct?

22 DEPUTY SANEHOLTZ:
23 Correct.

24 MR. ZANER: And the
25 vehicle passed him, I believe Mr. Kern testified he was in this

1 area here, do you recall that?

2 DEPUTY SANEHOLTZ: I
3 can't recall exactly where he testified to, but I can recall to
4 what he informed us that evening.

5 MR. ZANER: Did he
6 indicate he was eastbound or westbound on Township Road 3-B?

7 DEPUTY SANEHOLTZ: I
8 don't even recall if he, as far as testifying? Or what he told
9 us?

10 MR. ZANER: What he
11 told you or showed you.

12 DEPUTY SANEHOLTZ: What
13 he showed us, he was around Road 3-B there, it would have been
14 just to the east of there a little ways.

15 MR. ZANER: And he also
16 indicated to you that this vehicle allegedly went passed him
17 and shots were fired after the vehicle went passed him,
18 correct?

19 DEPUTY SANEHOLTZ:
20 Correct.

21 MR. ZANER: And you're
22 telling me that you never checked from Township Road 3-B to
23 Badenhop's home? You never checked on that road looking for
24 shell casings?

25 DEPUTY SANEHOLTZ:

1 Given the time frame that Mr. Kern was telling us, all the
2 shots would have been completed by Road 3-B, that's why we
3 started there.

4 MR. ZANER: Alright, so
5 that's what he told you that evening?

6 DEPUTY SANEHOLTZ: That
7 evening, right.

8 MR. ZANER: And this
9 bullet that you found in the field would have been.

10 DEPUTY SANEHOLTZ: Do
11 you see that stone driveway there, like that bare spot?

12 MR. ZANER: Here?

13 DEPUTY SANEHOLTZ:
14 Yeah, it would have been to the, move right, down, down, down,
15 down, right in there.

16 MR. ZANER: And at the
17 time on September, so down in this area?

18 DEPUTY SANEHOLTZ: A
19 little bit farther to the north. But yes, right in there.

20 MR. ZANER: Okay. And
21 on September 2nd that field had beans in it?

22 DEPUTY SANEHOLTZ:
23 Correct, soybeans.

24 MR. ZANER: Alright.
25 And when this bullet was surfaced, that area had already been

1 plowed?

2 DEPUTY SANEHOLTZ: That
3 would have been, it would have been harvested, the combine
4 would have been through there.

5 MR. ZANER: Alright,
6 this bullet that you found that day in question, or that the
7 Carpenter's found, there is no way to know when that bullet was
8 shot? Right?

9 DEPUTY SANEHOLTZ: I
10 can't tell you exactly when.

11 MR. ZANER: There is no
12 way to know how long that bullet had been there? Correct?

13 DEPUTY SANEHOLTZ: I
14 would say...

15 MR. FLANAGAN: I'll
16 object, he's asking his expert opinion. He's not laid a
17 foundation for that.

18 MR. ZANER: I'll
19 rephrase it. Do you know how long that bullet had been there?

20 DEPUTY SANEHOLTZ: I do
21 not know exactly how long.

22 MR. ZANER: Do you know
23 where that bullet was on September 2?

24 DEPUTY SANEHOLTZ: Did
25 I know where it was on the 2nd? I had no idea where that bullet

1 was on the 2nd.

2 MR. ZANER: In fact,
3 that field was harvested, that very well could have moved that
4 bullet from any place, right?

5 MR. FLANAGAN: I'll
6 object, calls for speculation. Lack of foundation.

7 THE COURT: I'll
8 sustain that.

9 MR. ZANER: I'll
10 rephrase it. Do you know whether or not the harvesting field
11 could cause that bullet to move from one location to another?

12 DEPUTY SANEHOLTZ: With
13 my knowledge of how a combine operates I would say that bullet
14 was not sucked into the combine.

15 MR. ZANER: Could it
16 have been moved by a wheel?

17 DEPUTY SANEHOLTZ: If
18 it would have been ran over, it would have been the only way it
19 would have been moved.

20 MR. ZANER: So it could
21 have been? Is that right?

22 DEPUTY SANEHOLTZ:
23 Correct.

24 MR. ZANER: We just
25 don't know.

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DEPUTY SANEHOLTZ:

Correct.

MR. ZANER: Right.

Now, this interview that you had with Kyle Kern, that was on September 2nd, correct?

DEPUTY SANEHOLTZ:

Correct.

MR. ZANER: And you

taped that interview correct?

DEPUTY SANEHOLTZ:

Correct.

MR. ZANER: Was that at

Badenhop's home or somewhere else?

DEPUTY SANEHOLTZ: That

would have been on the road while K-9 Andy was running around searching for the shell casings.

MR. ZANER: And did you

have any other after that day on September 2nd, did you have any other interviews with Kyle Kern?

DEPUTY SANEHOLTZ: I

had spoken to him about events. As far as sit down interviews and recordings, no.

MR. ZANER: And did you

do reports from those sit down interviews?

DEPUTY SANEHOLTZ: As I

1 stated, I didn't have any sit down interviews.

2 MR. ZANER: I'm sorry.

3 From those additional discussions that you had with Mr. Kern,
4 did you write up any supplemental reports?

5 DEPUTY SANEHOLTZ: No I
6 did not.

7 MR. ZANER: Was there
8 anything additional that he told you in those conversations you
9 had with him, in addition to what the taped conversation was on
10 September 2nd?

11 DEPUTY SANEHOLTZ: As
12 far as?

13 MR. ZANER: Was there
14 any additional information that he conveyed to you after
15 September 2nd that wasn't in that taped interview?

16 DEPUTY SANEHOLTZ:
17 Correct.

18 MR. ZANER: Was there?

19 DEPUTY SANEHOLTZ: Yes.

20 MR. ZANER: And did you
21 do any kind of reports?

22 DEPUTY SANEHOLTZ:
23 There are supplemental narratives where Kyle would obtain
24 information from a neighbor and he referred that neighbor to me
25 so I would follow up with speaking with those neighbors.

1 MR. ZANER: So then
2 other than Kyle contacting you about other people having
3 additional information, did he provide any additional
4 information to you? Of himself as to what he recalled on the
5 evening of September 2nd?

6 DEPUTY SANEHOLTZ:
7 Everything he recalled to me after that interview was
8 relatively the exact same of that evening.

9 MR. ZANER: And the
10 evening of September 2nd you got him stating, you gave him the
11 opportunity to tell you everything that happened that evening,
12 correct?

13 DEPUTY SANEHOLTZ: I do
14 believe I worded it that way.

15 MR. ZANER: Your Honor
16 I'd like to play that tape.

17 THE COURT: Just to
18 make it clear, this is the taped interview of September 2,
19 2015. The evening.

20 MR. ZANER: That is
21 correct.

22 THE COURT: And this
23 is, hold on, well go ahead.

24 MR. ZANER: No, go
25 ahead Your Honor.

1 THE COURT: So this is
2 not the initial discussion that you or anybody else had at the
3 Badenhop's, this is later?

4 DEPUTY SANEHOLTZ:
5 Correct.

6 THE COURT: Okay, very
7 good. That's what I thought.

8 MR. ZANER: Before we
9 get there, did you take any notes from your discussion with
10 Kyle Kern at the Badenhop's home?

11 DEPUTY SANEHOLTZ: No I
12 did not.

13 MR. ZANER: Did you
14 write any reports concerning that?

15 DEPUTY SANEHOLTZ: My
16 initial report would have that in there.

17 MR. ZANER: Alright,
18 and that report would be complete as to what you were told,
19 correct?

20 DEPUTY SANEHOLTZ: To
21 the best of my knowledge.

22 MR. ZANER: And then
23 you also did the taped interview that same evening over on...

24 DEPUTY SANEHOLTZ: S-3.

25 THE COURT: Very good.

1 Now I understand.

2 (PLAYING OF RECORDED INTERVIEW)

3 DEPUTY SANEHOLTZ:

4 September 2, 2015, this is Deputy Ross Saneholtz speaking. We
5 are currently on Road S-3 in Washington Township, Henry County,
6 Ohio. I am here present with...

7 MR. KERN: Kyle Kern.

8 DEPUTY SANEHOLTZ: What
9 is your date of birth?

10 MR. KERN: 7-2-69.

11 DEPUTY SANEHOLTZ: Kyle
12 can you please explain why you called the office and the events
13 that happened at 10 til 9 this evening?

14 MR. KERN: I was
15 running south, or excuse me, running west, against traffic on
16 S-3, um...

17 DEPUTY SANEHOLTZ: What
18 are the crossroads?

19 MR. KERN: Crossroads
20 between County Road 3 and County Road 4.

21 DEPUTY SANEHOLTZ:

22 Okay.

23 MR. KERN: And I was
24 running against traffic and didn't hear any car come up, didn't
25 see any lights. It sounded like someone pulled up behind me

1 and threw firecrackers, two firecrackers out the window. I
2 turned to my right and looked there was a silver Honda, 4 door
3 Honda Civic, had a gun barrel sticking out his window and it
4 went off right in front of me, pointed at me. The car went by
5 me and as it went by me I turned to my left and headed back to
6 the west, the opposite way as the car, looking over, I believe
7 it was my right shoulder, as I seen four or five more shots go
8 off, a total of seven or eight shots. The gun barrel was
9 pointed at me as it went by, the gun barrel was probably 6
10 inches long roughly, it was just barely sticking out of the
11 car. Fire would come out of the gun every time it would shot,
12 about two to three inches. It was pointed directly at me as it
13 went by. It wasn't directly at me, but it was in the, he was
14 trying, whoever it was, was trying to get it back at me.

15 DEPUTY SANEHOLTZ: Did
16 you recognize this vehicle at all?

17 MR. KERN: Yeah, I
18 recognize the vehicle, it's the, Craig Parsons has a silver
19 Honda Civic, it looks just like this vehicle.

20 DEPUTY SANEHOLTZ:
21 Could you recognize the operator at all?

22 MR. KERN: I could not
23 tell who was driving, no.

24 DEPUTY SANEHOLTZ:
25 Okay. To the best of your knowledge, let's just recap, you

1 heard approximately seven or eight shots.

2 MR. KERN: Correct.

3 DEPUTY SANEHOLTZ: And
4 you were running, it would be west, on the south side of the
5 road.

6 MR. KERN: Correct.

7 DEPUTY SANEHOLTZ: A
8 vehicle passed you to the north and you saw the gun point out
9 and...

10 MR. KERN: The vehicle
11 was headed west on the north side of the road and I heard two
12 shots behind me, I thought it was firecrackers at first. I
13 never seen lights, I don't believe he had his lights at first
14 because I never seen lights come up behind me to light up the
15 road or anything until I heard that and it scared the hell out
16 of me and sounded like firecrackers and I looked at the gun
17 barrel as it went by me. I mean, it was ten foot from me.

18 DEPUTY SANEHOLTZ: And
19 the lighting at this time of the evening, could you describe
20 it, was it twilightish?

21 MR. KERN: No, it was
22 dark.

23 DEPUTY SANEHOLTZ: It
24 was dark?

25 MR. KERN: It was dark

1 and the only reason I could see the gun barrel is because when
2 he did go by me the headlights were on at that time and I could
3 see, looking through the car, I could see the silhouette of the
4 gun barrel and then the fire would come out of it every time
5 they shot it.

6 DEPUTY SANEHOLTZ:

7 Okay, is there anything else you'd like to add or can recall?

8 MR. KERN: No, the car,
9 I watched the car, called the sheriff at 8:52 according to my
10 phone and I told, I kept on the phone with them as the car went
11 down to County Road 4, it turned right to go north and then it
12 backed up and actually shined the lights back down at me, at
13 that time I crossed, I was crossing the road to jump in a
14 cornfield because I thought the car was going to come back at
15 me and then it turned and went south towards the new 24 that is
16 a dead-end for roughly 30-45 seconds, I couldn't see any
17 lights, and then all of a sudden it turned around and went
18 straight north, all I did was caught a glimpse of headlights,
19 it was flying.

20 DEPUTY SANEHOLTZ: With
21 that being said I'll conclude this recording. It is roughly
22 2322 pm.

23 (END OF RECORDED INTERVIEW)

24 MR. ZANER: Officer,
25 part of that, you specifically asked him towards Mr. Kern at

1 the end, is there anything you would like to add or can recall,
2 do you recall that?

3 DEPUTY SANEHOLTZ:

4 Yeah, correct.

5 MR. ZANER: And that,
6 you would agree, nowhere in that statement did Mr. Kern say
7 anything about seeing a vehicle driven by Cullen earlier that
8 evening on T-2, correct?

9 DEPUTY SANEHOLTZ: In
10 that recorded statement correct.

11 MR. ZANER: And to
12 refresh your recollection, the incident report that you did on
13 concerning what happened on September 2nd and your conversation
14 with Kyle Kern, do you recall not putting anywhere in your
15 report that Kyle Kern had said he had seen Cullen driving the
16 vehicle on T-2?

17 DEPUTY SANEHOLTZ:
18 Correct, it was not in the report.

19 MR. ZANER: Is it in
20 any reports that you've ever completed in this case?

21 DEPUTY SANEHOLTZ: It
22 is not, correct, it's not in any of those narratives.

23 MR. ZANER: Is it in
24 any reports that you've done in this entire case that Kyle Kern
25 allegedly told you that he saw Cullen driving the vehicle on T-

1 2?

2 DEPUTY SANEHOLTZ: It's
3 not in any report.

4 MR. ZANER: Now,
5 Officer, from the time that, you were the first one on the
6 scene, is that correct?

7 DEPUTY SANEHOLTZ:
8 Correct.

9 MR. ZANER: And from
10 the time the phone call came until you got on scene do you know
11 how long that took?

12 DEPUTY SANEHOLTZ: I'd
13 have to refer to the report for the exact dispatch times.

14 MR. ZANER: If I show
15 you the report would that help refresh your recollection?

16 DEPUTY SANEHOLTZ: Yes
17 it would.

18 MR. ZANER: Okay.

19 DEPUTY SANEHOLTZ:
20 Dispatch times are, I was dispatched at 2055, in route at that
21 time and on scene at 2101, which would have been me saying, out
22 in the area I'm on S-3 attempting to locate Mr. Kern. That's
23 my on scene time.

24 MR. ZANER: So you got
25 the call at 2055 is that right?

1 DEPUTY SANEHOLTZ:
2 That's what the dispatch would have, the exact time could
3 fluctuate a minute or two.

4 MR. ZANER: And I
5 believe Mr. Kern said he called at 2052.

6 DEPUTY SANEHOLTZ:
7 Correct.

8 MR. ZANER: So you
9 arrived at 2101 which is roughly nine minutes after the phone
10 call by Mr. Kern.

11 DEPUTY SANEHOLTZ:
12 according to Mr. Kern correct.

13 MR. ZANER: At some
14 point in time you left and then went to the Parsons home.

15 DEPUTY SANEHOLTZ:
16 Correct.

17 MR. ZANER: At what
18 time did you get to the Parsons home?

19 DEPUTY SANEHOLTZ: If I
20 can refer back I might be able to, if our dispatcher logged the
21 time.

22 MR. ZANER: Sure.

23 DEPUTY SANEHOLTZ: We
24 would have been on scene at 2112 at the Parsons residence.

25 MR. ZANER: So the

1 total time from the time Mr. Kern called until you were at the
2 Parsons home would have been 20 minutes. 8 plus 12 is 20.

3 DEPUTY SANEHOLTZ:

4 Okay.

5 MR. ZANER: Is that

6 right?

7 DEPUTY SANEHOLTZ:

8 Right.

9 MR. ZANER: Officer I

10 wanted to show you Defendant's Exhibit B, which I believe these
11 are all the reports that we have received in this case that you
12 were involved in. Can you take a look to see if there is
13 anything that is missing?

14 DEPUTY SANEHOLTZ: it

15 appears to be my police report.

16 MR. ZANER: Are there

17 any other reports that you did concerning your investigation in
18 this case other than Exhibit B?

19 DEPUTY SANEHOLTZ: As

20 far as additional reports or additional supplements?

21 MR. ZANER: Either one.

22 DEPUTY SANEHOLTZ:

23 There would have been a couple additional supplements after
24 this one.

25 MR. ZANER: And what

1 were the supplements concerning?

2 DEPUTY SANEHOLTZ: I'd
3 have to refer to my report for those supplements.

4 MR. ZANER: Please go
5 ahead and do that.

6 THE COURT: What is he
7 being handed?

8 MR. FLANAGAN: I'm
9 sorry Your Honor, I just pulled it off his file.

10 THE COURT: Identify it
11 if you would.

12 DEPUTY SANEHOLTZ: This
13 is my police report from the incident number 2316 of the year
14 2015.

15 THE COURT: And you're
16 saying that would be everything?

17 DEPUTY SANEHOLTZ: This
18 is everything as of 3/3 of this year.

19 THE COURT: Very good.
20 Thank you.

21 MR. ZANER: So, can you
22 tell me what if anything is missing from my Defendant's Exhibit
23 B to the document that you have in your hand?

24 DEPUTY SANEHOLTZ:
25 There is a supplemental narrative on the 1st of December that

1 states we obtained a search warrant for a cell phone of the
2 defendant's girlfriend. And then there is one more additional
3 narrative that I just documented that I received the cell phone
4 and report back from BCI on the 31st of January, briefly
5 documented that I received the report and the phone back.

6 MR. ZANER: And those
7 are the only additional reports that you have generated in this
8 case, other than what's in Defendant's Exhibit B?

9 DEPUTY SANEHOLTZ:
10 Correct. Defendant's Exhibit B has the last supplemental
11 narrative on 10/24/15. 10/24/15 would be the narrative
12 referring to Mr. Kevin Carpenter which is that narrative right
13 there. And then there is that additional for the cell phone
14 which continues to the next page and then the additional for
15 receiving the cell phone and report back.

16 MR. ZANER: The report
17 of December 1 for Aisya Kynard which is Cullen's, where the
18 cell phone was taken from her house, correct?

19 DEPUTY SANEHOLTZ:
20 Correct.

21 MR. ZANER: And your
22 report indicates that you went with the Lucas County Sheriff's
23 to 4860 Cantaleda Drive, is that correct?

24 DEPUTY SANEHOLTZ: That
25 sounds like the correct address.

1 MR. ZANER: And you
2 were there at that time when the cell phone was taken, correct?

3 DEPUTY SANEHOLTZ:
4 Correct.

5 MR. ZANER: And there
6 was a search warrant that was obtained for the cell phone?

7 DEPUTY SANEHOLTZ:
8 Correct.

9 MR. ZANER: Do you
10 have, was that search warrant ever turned over to us?

11 DEPUTY SANEHOLTZ: That
12 would be a question for...

13 MR. ZANER: Did you
14 turn it over to the prosecutor?

15 DEPUTY SANEHOLTZ: I do
16 believe so.

17 MR. ZANER: And isn't
18 it true that the only thing that this report indicates about
19 Aisya Kynard is that you obtained the cell phone, correct?

20 DEPUTY SANEHOLTZ: As
21 far as?

22 MR. ZANER: At that
23 incident at her home on December 1, 2015?

24 DEPUTY SANEHOLTZ:
25 Right, we had a search warrant and we seized the cell phone.

1 MR. ZANER: Isn't it
2 true she was talked to on that day?
3 DEPUTY SANEHOLTZ: I
4 spoke to her briefly.
5 MR. ZANER: Did you do
6 a report?
7 DEPUTY SANEHOLTZ: I
8 typed up that we seized the phone.
9 MR. ZANER: You didn't
10 say anything in your report that you talked to her did you?
11 DEPUTY SANEHOLTZ: No
12 it's not in there.
13 MR. ZANER: And isn't
14 it true that you asked her questions about whether or not she
15 had a conversation with Cullen?
16 DEPUTY SANEHOLTZ: I
17 asked her a few questions, correct.
18 MR. ZANER: But you
19 never did a report.
20 DEPUTY SANEHOLTZ:
21 Correct.
22 MR. ZANER: And isn't
23 it true on that night she in fact told you that she was, on the
24 night of September 2, the time we are talking about, she told
25 you she was on the phone...

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MR. FLANAGAN: I'll

object, Your Honor, this is hearsay.

THE COURT: Sustained.

MR. ZANER: Your Honor

it's not for the truth, its whether or not there was a
conversation, we can get that...

THE COURT: I'll permit

the question with regard to whether or not there was a
conversation.

MR. ZANER: Isn't it

true you had a conversation with Aisya Kynard at that location
when you seized the phone?

DEPUTY SANEHOLTZ:

Correct.

MR. ZANER: And isn't

it true that you became aware from that conversation that she
was on the phone with Cullen Parsons during the time of this
alleged shooting, correct?

DEPUTY SANEHOLTZ: That

I became aware of that?

MR. ZANER: Yes.

DEPUTY SANEHOLTZ: I

aware of that prior to that.

MR. ZANER: Okay, and

she confirmed that isn't that true?

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DEPUTY SANEHOLTZ:

Correct.

MR. ZANER: That's

exculpatory don't you think? Didn't she in fact tell you she never heard gun shots during that phone conversation with Cullen Parsons?

MR. FLANAGAN: Again,

Your Honor, he can ask Aisya what she said.

THE COURT: That is

sustained.

MR. ZANER: You never

did a report about anything about the conversation you had with Aisya Kynard on December 1 did you?

DEPUTY SANEHOLTZ:

Correct.

MR. ZANER: And you

know you have an obligation and a duty to turn over exculpatory information, correct?

DEPUTY SANEHOLTZ:

Correct.

MR. ZANER: And isn't

it true that if in fact she told you that she was on the phone the entire time of this incident on September 2, 2015 with Cullen Parsons and she never heard any gun shots, that would be exculpatory, wouldn't it?

1 MR. FLANAGAN: Your
2 Honor I'll object. I believe he's asking him for legal
3 conclusions here.

4 THE COURT: Sustained.

5 MR. ZANER: You never
6 provided us with any reports of any conversation you had with
7 her did you?

8 DEPUTY SANEHOLTZ: Any
9 conversation with?

10 MR. ZANER: Aisya
11 Kynard.

12 DEPUTY SANEHOLTZ:
13 Correct.

14 MR. ZANER: This is the
15 Parsons home, correct?

16 DEPUTY SANEHOLTZ:
17 Correct.

18 MR. ZANER: Alright.
19 And you were behind the sheriff and you were parked back in
20 this area is that correct?

21 DEPUTY SANEHOLTZ:
22 Roughly that area, correct.

23 MR. ZANER: And this is
24 the area that Cullen came out of?

25 DEPUTY SANEHOLTZ:

1 That's where he appeared to from what I could see, correct.

2 MR. ZANER: You said he
3 had a beer bottle. Do you know where that beer bottle came
4 from?

5 DEPUTY SANEHOLTZ: He
6 had a beer bottle from his hand, I don't know where it came
7 from.

8 MR. ZANER: It could
9 have come from the house, it could have come from the store,
10 you don't know where it came from correct?

11 DEPUTY SANEHOLTZ:
12 Correct.

13 MR. ZANER: So there's
14 no way that you can say that it came from that box of beer
15 bottles in the vehicle, right?

16 DEPUTY SANEHOLTZ:
17 Correct.

18 MR. ZANER: Now, the
19 vehicle, you said, was off in this area, is that correct?

20 DEPUTY SANEHOLTZ: It'd
21 be back farther, if you keep moving your hand back and just
22 down a little, it would have been right in that area.

23 MR. ZANER: And on the
24 other side of the driveway were Cullen was found, correct? OR
25 was coming from.

1 DEPUTY SANEHOLTZ:

2 Correct.

3 MR. ZANER: And the
4 weapon that he found was over by this tree here I believe?

5 DEPUTY SANEHOLTZ:

6 Correct.

7 MR. ZANER: Which is
8 certainly closer to the vehicle, correct?

9 DEPUTY SANEHOLTZ:

10 Correct.

11 MR. ZANER: Than where
12 Cullen was back here.

13 DEPUTY SANEHOLTZ: I
14 don't know exactly where he was back over there.

15 MR. ZANER: Well but
16 you saw him coming back this way across...

17 DEPUTY SANEHOLTZ: I
18 saw him cross the driveway, correct.

19 MR. ZANER: Okay, but
20 certainly you didn't see him coming from this tree.

21 DEPUTY SANEHOLTZ:

22 Correct.

23 MR. ZANER: You didn't
24 see him coming from the car.

25 DEPUTY SANEHOLTZ:

1 Correct.

2 MR. ZANER: Officer, as
3 part of your investigation, this Honda, you made a
4 determination as to whose vehicle it was, correct?

5 DEPUTY SANEHOLTZ:
6 Correct.

7 MR. ZANER: And isn't
8 it true that vehicle belongs to Craig Parsons?

9 DEPUTY SANEHOLTZ: The
10 registration, I do believe, comes back to Craig Parsons.

11 MR. ZANER: And
12 officer, you are aware there were numerous phone conversations
13 by Cullen when he was at CCNO, correct?

14 DEPUTY SANEHOLTZ:
15 Correct.

16 MR. ZANER: And I take
17 it you've reviewed those conversations.

18 DEPUTY SANEHOLTZ:
19 Correct.

20 MR. ZANER: Alright.
21 And isn't it true on phone call #22 that Cullen was talking to
22 his father and Craig Parsons indicated that his charger...

23 MR. FLANAGAN: I'll
24 object Your Honor, this is hearsay.

25 MR. ZANER: I'll

1 rephrase it. Isn't it true that during those phone
2 conversations you became aware that personal items belonging to
3 Craig Parsons were in that Honda?

4 DEPUTY SANEHOLTZ: I
5 can't recall off the top of my head.

6 MR. ZANER: Okay.
7 You're aware that Cullen denied any wrong doing that night,
8 correct?

9 DEPUTY SANEHOLTZ:
10 Correct.

11 MR. ZANER: Now,
12 Officer, you've been trained on how to gather information, is
13 that correct?

14 DEPUTY SANEHOLTZ:
15 Correct.

16 MR. ZANER: And you've
17 been trained on how to gather gunshot residue, correct?

18 DEPUTY SANEHOLTZ: Not
19 for sure, I'm not 100% sure, we might have briefly touched on
20 that at the academy but since I've been employed here we have
21 not been trained on it.

22 MR. ZANER: Well I take
23 it there are employees of the Henry County Sheriff's Department
24 who know the specific procedures about gathering and obtaining
25 gunshot residue, correct?

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DEPUTY SANEHOLTZ: I

would say that is correct.

MR. ZANER: And gunshot

residue would assist in determining whether or not someone had recently fired a firearm, correct.

DEPUTY SANEHOLTZ:

Correct.

MR. ZANER: And gunshot

residue potentially would also show whether or not a gun was fired from the vehicle, correct?

DEPUTY SANEHOLTZ:

Correct.

MR. ZANER: And in this

case there is three potential people who could have been involved, well strike that. You agree that from, you know where T-2 is, correct?

DEPUTY SANEHOLTZ:

Correct.

MR. ZANER: And you

know where that is in relationship to where the Parsons home is, correct?

DEPUTY SANEHOLTZ:

Correct.

MR. ZANER: And you

would agree that if in fact Cullen had been driving earlier

1 that evening and was seen 15, 20, 30 minutes earlier that
2 vehicle could have gotten back to the Parsons home, parked, and
3 somebody else could have left with that vehicle, correct?

4 DEPUTY SANEHOLTZ: That
5 is possible.

6 MR. ZANER: And there
7 would have been sufficient time for whoever was driving that
8 vehicle to go down T, come down 3 and potentially do this
9 shooting, correct?

10 DEPUTY SANEHOLTZ: That
11 is possible.

12 MR. ZANER: Alright.
13 So, the people that were at the home that you were aware of was
14 not only Cullen, but Craig and Michelle Parsons, correct?

15 DEPUTY SANEHOLTZ:
16 Correct.

17 MR. ZANER: Did you
18 ever ask anyone if anyone else was at the house?

19 DEPUTY SANEHOLTZ: I
20 don't really recall speaking to them.

21 MR. ZANER: Did you
22 ever search the house and see if anyone else was there?

23 DEPUTY SANEHOLTZ: No
24 we did not.

25 MR. ZANER: So sir, you

1 don't know if someone else could have in fact been in that
2 home, that may have been involved with this alleged shooting,
3 correct?

4 DEPUTY SANEHOLTZ:

5 Correct.

6 MR. ZANER: And sir,
7 from the time this alleged shooting took place until you got to
8 the Parsons home you indicated that was 20 minutes I believe.

9 DEPUTY SANEHOLTZ: I
10 believe we came up with that math.

11 MR. ZANER: Okay. And
12 the vehicle that Mr. Kern's testified allegedly went by and
13 shot at him, it could have been home within 5 minutes, right,
14 easily?

15 DEPUTY SANEHOLTZ:

16 Right.

17 MR. ZANER: From his
18 testimony. So, anybody that was at that house could have been
19 a potential suspect, correct?

20 DEPUTY SANEHOLTZ:

21 Correct.

22 MR. ZANER: Did you
23 ever do anything to determine, well strike that, did you ever
24 obtain GSR from Cullen Parsons?

25 DEPUTY SANEHOLTZ: We

1 did not.

2 MR. ZANER: Did you
3 ever do any, you could have gotten a search warrant quickly,
4 correct?

5 DEPUTY SANEHOLTZ: As
6 far as for?

7 MR. ZANER: GSR.

8 DEPUTY SANEHOLTZ:
9 Depending on how fast our prosecutor could write it up. I have
10 no time.

11 MR. ZANER: You got a
12 search warrant for the car pretty quick, right?

13 DEPUTY SANEHOLTZ: I
14 believe the search warrant for the car was the next day.

15 MR. ZANER: You got a
16 search warrant for Cullen Parsons blood alcohol level.

17 DEPUTY SANEHOLTZ: One
18 was obtained, correct.

19 MR. ZANER: That same
20 night, right?

21 DEPUTY SANEHOLTZ:
22 Right.

23 MR. ZANER: And you
24 never took steps to determine whether or not Cullen Parsons had
25 any GSR from shooting a firearm on September 2, correct?

1 MR. FLANAGAN: Your
2 Honor I'll object to the extent, there, is he referring simply
3 to Deputy Saneholtz or to the entire law enforcement personnel
4 at the Sheriff's Office.

5 MR. ZANER: First of
6 all, did you do anything to make sure that Cullen Parsons was
7 checked as to whether or not he fired a firearm by checking for
8 GSR?

9 DEPUTY SANEHOLTZ: I
10 spoke with the supervisor.

11 MR. ZANER: Did you
12 ever take any steps to collect anything from Cullen Parsons to
13 see if he shot a weapon that night?

14 DEPUTY SANEHOLTZ:
15 Anything as far as?

16 MR. ZANER: GSR.

17 DEPUTY SANEHOLTZ: I
18 personally was never in contact with him once he left the
19 house.

20 MR. ZANER: I'm talking
21 at the scene, at the house, you were there when he was
22 arrested, correct?

23 DEPUTY SANEHOLTZ:
24 Correct.

25 MR. ZANER: Did you or

1 anyone else, when Cullen Parsons was in your view, take any
2 steps to determine whether or not Cullen fired a weapon that
3 night?

4 DEPUTY SANEHOLTZ: As
5 far as?

6 MR. ZANER: Getting GSR
7 evidence?

8 DEPUTY SANEHOLTZ: At
9 the scene when he was placed in custody and put in Deputy
10 Birtcher's patrol car, no we did not.

11 MR. ZANER: Alright,
12 did you do anything, or anyone else, when Michelle Parsons or
13 Craig Parsons were at the scene, you saw them there, correct?

14 DEPUTY SANEHOLTZ:
15 Correct.

16 MR. ZANER: Did any,
17 did either you or any deputy take any steps to determine
18 whether or not there was GSR evidence on either one of them?

19 DEPUTY SANEHOLTZ: If
20 my recollection is correct they refused to cooperate in any
21 manner in this investigation so.

22 MR. ZANER: Do you know
23 how long it takes, that you have to gather GSR evidence?

24 DEPUTY SANEHOLTZ:
25 There is a preferred window of 1-3 hours to my knowledge.

1 MR. ZANER: So you
2 would agree that's potentially, under these circumstances, that
3 would have given you probable cause to do something about it...

4 MR. FLANAGAN: Your
5 Honor I'll object.

6 THE COURT: I'll
7 sustain the objection, that calls for legal conclusion.

8 MR. ZANER: Did you
9 ever call the prosecutor to try to obtain, did you or anyone
10 else on behalf of Henry County Sheriff's Department call the
11 prosecutor to obtain a search warrant to gather GSR evidence
12 from Craig Parsons or Michelle Parsons?

13 DEPUTY SANEHOLTZ: For
14 those two, no.

15 MR. ZANER: Did you
16 ever call the prosecutor to do a search of the Parsons home to
17 see if anyone else was there?

18 DEPUTY SANEHOLTZ: I
19 did not make a phone call to the prosecutor that night.

20 MR. ZANER: And are you
21 aware if any other people from your department would have
22 contacted the prosecutor to obtain a search warrant of the
23 Parsons home to see if anybody else was present?

24 DEPUTY SANEHOLTZ: Not
25 to my knowledge.

1 MR. ZANER: At the time
2 Craig and Michelle Parsons, they came out of the house correct?

3 DEPUTY SANEHOLTZ:
4 Correct.

5 MR. ZANER: At the time
6 they came out of the house, had you found the weapon?

7 DEPUTY SANEHOLTZ: No.

8 MR. ZANER: Yet you
9 continued to search after they told you to get off the
10 property, they didn't want you there, correct?

11 DEPUTY SANEHOLTZ: I
12 continued to check around the immediate area of the car.

13 MR. ZANER: And you
14 didn't get a search warrant at that point for anything, right?

15 DEPUTY SANEHOLTZ: At
16 that point, correct.

17 MR. ZANER: You did
18 part of your investigation to try to see if you could get
19 anything from the log cabin neighbors as to surveillance video,
20 you contacted them, correct?

21 DEPUTY SANEHOLTZ: Are
22 you referring to the log cabin bar? When you say neighbors I'm
23 confused. There is a log cabin tavern that is kind of like a
24 bar, I think that's what you're referring to. I just want to
25 make sure.

1 MR. ZANER: Did you
2 ever get a video from them?

3 DEPUTY SANEHOLTZ: I
4 did not obtain a video from them.

5 MR. ZANER: Do you know
6 if you or anyone else from your department collected
7 fingerprint information from Craig or Michelle Parsons either
8 on September 2 or anytime to today's date?

9 DEPUTY SANEHOLTZ: I
10 know that night we didn't fingerprint anybody and as far as
11 from that point on, I don't know, I have no idea, I can't
12 answer that question.

13 MR. ZANER: Well aren't
14 you the one who was in charge of this investigation?

15 DEPUTY SANEHOLTZ:
16 Right.

17 MR. ZANER: And so if
18 anyone did anything they would have done it on your behalf,
19 correct?

20 DEPUTY SANEHOLTZ:
21 Correct.

22 MR. ZANER: And they
23 would have turned it over to you, correct?

24 DEPUTY SANEHOLTZ:
25 Correct.

1 MR. ZANER: And you
2 have no information that anyone on behalf of the Henry County
3 Sheriff's Department obtained fingerprint information from
4 Craig or Michelle Parsons, correct?

5 DEPUTY SANEHOLTZ:
6 Correct.

7 MR. ZANER: Further,
8 you have no information that anyone collected GSR evidence from
9 Craig or Michelle Parsons, correct?

10 DEPUTY SANEHOLTZ:
11 Correct.

12 MR. ZANER: Further,
13 you have no evidence that anyone ever collected the DNA
14 evidence from Craig or Michelle Parsons, correct?

15 DEPUTY SANEHOLTZ:
16 Correct.

17 MR. ZANER: Officer,
18 you obtained cell phone reports from BCI concerning, strike
19 that, you received reports concerning Cullen's cell phone,
20 correct?

21 DEPUTY SANEHOLTZ:
22 Correct.

23 MR. ZANER: And you
24 also received reports concerning Aisya's cell phone, correct?

25 DEPUTY SANEHOLTZ:

1 Correct.

2 MR. ZANER: And you're
3 aware that from roughly 7:30 p.m. on September 2nd until roughly
4 9:30 or so, that Cullen Parsons and Aisya Kynard were on the
5 phone with each other, correct?

6 DEPUTY SANEHOLTZ: As
7 far as the rough times I'd have to refer to that report for the
8 timing on it, but there was a two hour phone call, it was...

9 MR. ZANER: Including,
10 that time would have included the period between 7:30 and 8:30
11 correct?

12 DEPUTY SANEHOLTZ:
13 Correct.

14 MR. ZANER: I'm sorry,
15 the shooting was roughly 8:50, so between 8:30 and 9:00,
16 correct?

17 DEPUTY SANEHOLTZ:
18 Correct, there was a phone call placed during that time.

19 MR. ZANER: And you
20 turned over all your police reports about the phone to the
21 prosecutor, right?

22 DEPUTY SANEHOLTZ: As
23 far as the BCI reports for the phones?

24 MR. ZANER: No, your
25 reports.

1 DEPUTY SANEHOLTZ: For
2 which phone?

3 MR. ZANER: Cullen's
4 and Aisya's.

5 DEPUTY SANEHOLTZ: I
6 gave the prosecutor what I had, right.

7 MR. ZANER: And you
8 went to CCNO in this case as part of your investigation,
9 correct?

10 DEPUTY SANEHOLTZ:
11 Correct.

12 MR. ZANER: And you
13 went to talk to Rolando Valle, is that correct?

14 DEPUTY SANEHOLTZ:
15 However you want to pronounce his last name, it's close enough.

16 MR. ZANER: Well why
17 don't you tell me how it should be then.

18 DEPUTY SANEHOLTZ: I
19 don't know, I don't know if it's like a Valdez or Valle, I
20 talked to a Rolando, yes.

21 MR. ZANER: Prior to
22 you talking to him who did you obtain information from that
23 this individual wanted to talk to you?

24 DEPUTY SANEHOLTZ: From
25 our agent in the MAN unit.

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MR. ZANER: I'm sorry?

DEPUTY SANEHOLTZ: From our agent in the MAN unit, it would have been Deputy Nick Pieracini.

MR. ZANER: And that person that contacted you that this Rolando wanted to see you.

DEPUTY SANEHOLTZ: I believe that's, yeah.

MR. ZANER: And do you know whether or not that agent talked to Rolando?

DEPUTY SANEHOLTZ: To my knowledge Deputy Pieracini did not speak with Rolando.

MR. ZANER: And you know what, if any, information the deputy would have given to Rolando?

DEPUTY SANEHOLTZ: To my knowledge I don't believe our deputy spoke to him period.

MR. ZANER: And you would, who is Arlen Cohrs?

DEPUTY SANEHOLTZ: He is our Chief Deputy.

MR. ZANER: In your report, in fact, it indicates that he's the one that told you about Rolando wanting to see you.

DEPUTY SANEHOLTZ: I

1 misspoke, that would have been Chief Deputy Cohrs. Deputy
2 Pieracini informed me about a different matter involving the
3 gun, sorry, that's my mistake, it was Chief Deputy Cohrs.

4 MR. ZANER: And do you
5 know whether or not Deputy Cohrs talked to Rolando?

6 DEPUTY SANEHOLTZ: To
7 my knowledge he's never spoken to him.

8 MR. ZANER: Do you know
9 how information would have been gotten to her that Rolando
10 wanted to talk to her?

11 DEPUTY SANEHOLTZ: Him.
12 Sorry.

13 MR. ZANER: Him, sorry.

14 DEPUTY SANEHOLTZ: I
15 guess it was passed through the MAN unit to him to my
16 knowledge.

17 MR. ZANER: If I may
18 have a moment Your Honor?

19 THE COURT: Certainly.

20 MR. ZANER: Officer did
21 you ever go through a determination to determine what, if any,
22 issues that the Parsons had with the Kern's?

23 DEPUTY SANEHOLTZ: As
24 far as?

25 MR. ZANER: The number

1 of complaints that were being filed.

2 DEPUTY SANEHOLTZ: I've
3 reviewed our case history briefly, when I say case history I
4 mean our report history briefly.

5 MR. ZANER: So you're
6 aware there has been a number of complaints that Kyle has filed
7 against the Parsons, correct?

8 DEPUTY SANEHOLTZ:
9 Correct.

10 MR. ZANER: And
11 including specifically Craig Parsons, correct?

12 DEPUTY SANEHOLTZ:
13 Correct.

14 MR. ZANER: And sir,
15 you would have reviewed reports concerning Cullen Parsons also
16 correct?

17 DEPUTY SANEHOLTZ:
18 Correct.

19 MR. ZANER: And sir do
20 you recall a report on March 18, 2014 about a claim that Cullen
21 had been shooting a firearm in the neighborhood?

22 DEPUTY SANEHOLTZ: I,
23 not specifically, but I think I know which one you're talking
24 about.

25 MR. ZANER: If I show

1 you an incident report...

2 MR. FLANAGAN: Is it an
3 incident report he was involved in?

4 MR. ZANER: Well, see
5 if it refreshes his recollection since he looked at it.

6 MR. FLANAGAN: Did he
7 write that, that's what I'm asking. Is that his?

8 MR. ZANER: No. But
9 you did indicate that you reviewed records, correct?

10 DEPUTY SANEHOLTZ:
11 Correct.

12 MR. ZANER: And there
13 was an incident where Cullen was allegedly shooting in the
14 neighborhood somewhere, correct?

15 DEPUTY SANEHOLTZ: I'd
16 have to refer to the report.

17 MR. ZANER: Let me show
18 you incident report dated March 18, 2014, report number 1-14-
19 000878 to refresh your recollection.

20 DEPUTY SANEHOLTZ: I
21 briefly read over this, yeah.

22 MR. ZANER: So you were
23 aware there was an allegation that Cullen was shooting a weapon
24 somewhere in the neighborhood, correct?

25 DEPUTY SANEHOLTZ:

1 Correct.

2 MR. ZANER: If I may
3 have one moment Your Honor, almost done.

4 THE COURT: Certainly.

5 MR. ZANER: I have
6 nothing further Your Honor.

7 THE COURT: Re-direct?

8 MR. FLANAGAN: Thank
9 you Your Honor. Deputy Saneholtz are you aware of whether
10 there was an attempt made to obtain gunshot residue from Cullen
11 Parsons on September 2, 2015?

12 DEPUTY SANEHOLTZ: Yes,
13 there was an attempt in a way. We kind of learned it was going
14 to be outside our time window.

15 MR. FLANAGAN: And was
16 there also, as part of the investigation, attempts to obtain
17 gunshot residue from the silver Honda Civic that was located at
18 the property?

19 DEPUTY SANEHOLTZ:

20 Correct.

21 MR. FLANAGAN: And what
22 was the disposition with that attempt to your recollection?

23 DEPUTY SANEHOLTZ: BCI
24 informed us due to the time frame constituent that they
25 wouldn't process it because we were outside the window on that

1 1-3 hours more or less.

2 MR. FLANAGAN: With
3 respect to the cell phones that defense counsel referenced.
4 The cell phones seized from Cullen Parsons and a cell phone
5 seized from a Aisya Kynard, do you recall that inquiry from
6 defense counsel?

7 DEPUTY SANEHOLTZ: Yes.

8 MR. FLANAGAN: Did the
9 Henry County Sheriff's Office perform any of the extraction,
10 the information gathering from those cell phones?

11 DEPUTY SANEHOLTZ: No
12 we did not.

13 MR. FLANAGAN: Was that
14 all completed at the Bureau of Criminal Investigation?

15 DEPUTY SANEHOLTZ:
16 Correct, BCI was the one's that did all the extract of
17 information.

18 MR. FLANAGAN: And BCI
19 provided you and the Sheriff's Office with a CD containing the
20 entire report of that extraction?

21 DEPUTY SANEHOLTZ:
22 Correct.

23 MR. FLANAGAN: For both
24 phones?

25 DEPUTY SANEHOLTZ:

1 Correct.

2 MR. FLANAGAN: And that
3 was provided to the State and made available to defense
4 counsel?

5 DEPUTY SANEHOLTZ:
6 Correct.

7 MR. FLANAGAN: Defense
8 counsel referenced an incident in 2014 where Cullen was
9 reported to be shooting in the neighborhood.

10 DEPUTY SANEHOLTZ:
11 Correct.

12 MR. FLANAGAN: The
13 handgun that was recovered at the Parsons residence on
14 September 2, 2015 during the course of your investigation did
15 you attempt to find out who owned that handgun?

16 MR. ZANER: Objection,
17 beyond scope.

18 THE COURT: Correct,
19 sustained.

20 MR. FLANAGAN: Your
21 Honor may we approach very quickly? (Discussion at bench) I
22 don't believe I had this marked previously, it would be #14.
23 I'm just handing you State's Exhibit #14, can you identify what
24 is enclosed in there?

25 DEPUTY SANEHOLTZ: This

1 should be the bullet and the dirt from the field. Yeah, I
2 won't open it.

3 MR. ZANER: We'll
4 stipulate to that.

5 MR. FLANAGAN: Okay, I
6 have nothing further, thank you Your Honor.

7 THE COURT: Any
8 additional cross on that limited re-direct?

9 MR. ZANER: Nothing
10 further.

11 THE COURT: Thank you,
12 you may step down Deputy. At this time we're going to adjourn.
13 Let's be back by about 1:00 o'clock so we can get started at
14 1:00.

15 MR. ZANER: I don't
16 know, where can I find something in that time to have some
17 lunch?

18 THE COURT: Make it
19 1:15 p.m. Very good. That will be all.

20 (BRIEF BREAK - RESUME HEARING AT 1:16 P.M.)

21 THE COURT: We are now
22 back on the record in the matter of State of Ohio verses Cullen
23 Parsons, case number 15CR0082. We are still with the State of
24 Ohio. Call your next witness Mr. Flanagan.

25 MR. FLANAGAN: Thank

1 you Your Honor. At this time we would call Mr. Daniel Potts
2 please.

3 THE COURT: Come
4 forward sir. Do you swear or affirm the testimony you are
5 about to give is the truth?

6 MR. POTTS: I do.

7 THE COURT: Please be
8 seated. Your witness Mr. Flanagan.

9 MR. FLANAGAN: Thank
10 you Your Honor. If you would please state both your first and
11 last name?

12 MR. POTTS: Daniel
13 Potts, P-O-T-T-S.

14 MR. FLANAGAN: What is
15 your current address Mr. Potts?

16 MR. POTTS: 6351
17 Jeffers, Swanton, Ohio 43558.

18 MR. FLANAGAN: Okay.
19 And what is your place of employment?

20 MR. POTTS: I own the
21 Lead Shed, it is a sporting goods, a gun store.

22 MR. FLANAGAN: And
23 where is that located?

24 MR. POTTS: Wauseon,
25 Ohio.

1 MR. FLANAGAN: Alright,
2 and in your course of your work at the Lead Shed have you had
3 an occasion to come into contact with a Cullen Parsons?

4 MR. POTTS: I have,
5 he's right there.

6 MR. FLANAGAN: Do you...

7 MR. ZANER: Your Honor
8 we'll stipulate.

9 THE COURT: Very good.

10 MR. FLANAGAN: So you
11 interacted with Cullen Parsons at the Lead Shed before?

12 MR. POTTS: I have.

13 MR. FLANAGAN: Ok and
14 was that in connection with the purchase of a firearm?

15 MR. POTTS: Yes, he has
16 purchased a couple of firearms in his times there.

17 MR. FLANAGAN: Do you
18 have a recollection of a purchase on February 22, 2015?

19 MR. POTTS: I do, he
20 purchased a 1911 handgun, it' also known as a Regent R100, it's
21 a standard 1911 .45 automatic pistol.

22 MR. FLANAGAN: Okay.

23 And when you do a firearm transaction is there a report or
24 paperwork that is generated in connection with that
25 transaction?

1 MR. POTTS: There is,
2 we actually call the FBI NIC section, there is a Form 4473,
3 it's an ATF form, we did fill out that form that day.

4 MR. FLANAGAN: I'm
5 going to hand you what's been marked as State's Exhibit #18.
6 Is that a copy of the information section of the form you just
7 referenced?

8 MR. POTTS: It is.

9 MR. FLANAGAN: Does
10 that paperwork refer to a transaction involving Cullen Parsons?

11 MR. POTTS: It does.

12 MR. FLANAGAN: And is
13 that, what was the date of the transaction?

14 MR. POTTS: It was 22
15 of February, 2015.

16 MR. FLANAGAN: And does
17 that paperwork identify the specific firearm?

18 MR. POTTS: It does,
19 it's a Regent R100 1911 .45 automatic pistol. It also has the
20 serial number on it.

21 MR. FLANAGAN: And does
22 it identify the individual who made the purchase?

23 MR. POTTS: It does.

24 MR. FLANAGAN: And who
25 is identified as that person?

1 MR. POTTS: Cullen
2 Parsons.

3 MR. FLANAGAN: I'm
4 going to hand you what's been previously marked as State's
5 Exhibit #6 and ask if you're able to confirm whether that
6 handgun is the handgun referenced in your purchase paperwork?

7 MR. POTTS: It appears
8 to be. Yes it is, serial numbers match.

9 MR. FLANAGAN: Thank
10 you. Did Mr. Parsons purchase anything else on February 22,
11 2015?

12 MR. POTTS: He
13 purchased a box of .45 ACP ammunition. I believe it was CCI
14 Blazer Brass.

15 MR. FLANAGAN: Okay.
16 Subsequent to this purchase on February 22, 2015 have you had
17 any other interactions with Cullen Parsons at the Lead Shed?

18 MR. POTTS: I have,
19 he's come in a few times. As a matter of fact, the way I
20 caught wind of this after the news broke, he had actually
21 stopped in the store Sunday before the alleged incident. He
22 had the...

23 MR. FLANAGAN: It is
24 your understanding, when you say the alleged incident, are you
25 referring to an incident with Kyle Kern on September 2, 2015?

1 MR. POTTS: I am.

2 MR. FLANAGAN: And

3 you're indicating that Cullen was at the Lead Shed the Sunday
4 before that?

5 MR. POTTS: Yes he was.

6 MR. FLANAGAN: And what
7 was he doing at the Lead Shed that day?

8 MR. POTTS: He came in,
9 he was looking at firearms, he had the Regent with him, it was
10 disassembled in a bag, he said a friend or a cousin or
11 something had taken it apart and he couldn't get it back
12 together. I said no problem, you're a valued customer here and
13 you bought the gun here, I'll reassemble it for you and I
14 reassembled the gun for him.

15 MR. FLANAGAN: And that
16 was the same gun that you just looked at and identified there
17 in the box?

18 MR. POTTS: It was.

19 MR. FLANAGAN: No

20 further questions at this time Your Honor. Thank you.

21 THE COURT: Cross?

22 MR. ZANER: No

23 questions Judge.

24 THE COURT: Very good,

25 you may step down.

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leave this here?

that.

witness?

Carpenter.

approach Mr. Carpenter. Please raise your right hand. Do you swear or affirm the testimony you are about to give is the truth?

sir.

seated. Your witness.

you. Could you please state both your first and last name?

Carpenter.

could you spell your last name please?

P-E-N-T-E-R.

MR. POTTS: Should I

MR. FLANAGAN: I'll get

THE COURT: Next

MR. FLANAGAN: Kevin

THE COURT: Please

MR. CARPENTER: Yes

THE COURT: Please be

MR. FLANAGAN: Thank

MR. CARPENTER: Kevin

MR. FLANAGAN: And

MR. CARPENTER: C-A-R-

MR. FLANAGAN: Thank

1 you. And what is your current address?

2 MR. CARPENTER: 7150

3 County Road C, Delta.

4 MR. FLANAGAN: Delta,

5 Ohio?

6 MR. CARPENTER: Yes

7 sir.

8 MR. FLANAGAN: Thank

9 you. Do you on occasion engage in the activity of metal
10 detecting?

11 MR. CARPENTER: Yes, as

12 a hobby.

13 MR. FLANAGAN: Were you

14 at some point contacted by the Henry County Sheriff's Office to
15 assist with an investigation?

16 MR. CARPENTER: Yes.

17 MR. FLANAGAN: What was

18 the nature of assistance that was requested?

19 MR. CARPENTER: Just to

20 scan an area of a field to look for some bullets.

21 MR. FLANAGAN: Do you

22 recall whether they told you what type of bullets you should be
23 looking for or anything like that?

24 MR. CARPENTER: I

25 believe it was a .45 caliber.

1 MR. FLANAGAN: And did
2 you agree to provide assistance?
3 MR. CARPENTER: Yes.
4 MR. FLANAGAN: And how
5 did you go about doing that?
6 MR. CARPENTER: My
7 brother and I flagged off some areas and just started screening
8 off certain areas and until we came across, it only took about
9 four hours and we found one.
10 MR. FLANAGAN: What did
11 you do, when you say you found one, what are you referring to?
12 MR. CARPENTER: A
13 bullet laying on top of the ground.
14 MR. FLANAGAN: And what
15 did you do when you found the bullet?
16 MR. CARPENTER: Just
17 put a flag on it and I called Deputy Saneholtz.
18 MR. FLANAGAN: Did you
19 move the bullet?
20 MR. CARPENTER: No I
21 didn't touch it.
22 MR. FLANAGAN: And you
23 didn't place the bullet there?
24 MR. CARPENTER: No.
25 MR. FLANAGAN: And to

1 the best of your knowledge, after you located the bullet no one
2 else moved it or touched it or did anything before Deputy
3 Saneholtz arrived?

4 MR. CARPENTER: No, we
5 stayed right there until he got there.

6 MR. FLANAGAN: Okay, no
7 further questions, thank you Your Honor.

8 THE COURT: Cross?

9 MR. ZANER: Do you know
10 how long the bullet had been sitting there?

11 MR. CARPENTER: I have
12 no idea.

13 MR. ZANER: Do you have
14 any idea what direction that bullet would have been shot from
15 and ending where it was?

16 MR. CARPENTER: I have
17 no idea.

18 MR. ZANER: Very good,
19 thank you.

20 THE COURT: Any limited
21 re-direct?

22 MR. FLANAGAN: No re-
23 direct, thank you Your Honor.

24 THE COURT: You may
25 step down, thank you Mr. Carpenter. Next witness?

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MR. FLANAGAN: Deputy
Mark Glanz please.

THE COURT: Please
raise your right hand. Do you swear or affirm the testimony
you are about to give is the truth?

DEPUTY GLANZ: I do.

THE COURT: Please be
seated. Your witness.

MR. FLANAGAN: Thank
you Your Honor. Could you please state both your first and
last name?

DEPUTY GLANZ: Mark
Glanz.

MR. FLANAGAN: And
could you spell your last name please?

DEPUTY GLANZ: G-L-A-N-
Z.

MR. FLANAGAN: And by
whom are you employed?

DEPUTY GLANZ: Henry
County Sheriff's Office.

MR. FLANAGAN: And were
you so employed in September 2015?

DEPUTY GLANZ: Yes.

MR. FLANAGAN: On

1 September 2, 2015 were you called to assist with an
2 investigation?

3 DEPUTY GLANZ: Yes.

4 MR. FLANAGAN: And was
5 that an instance up in Washington Township area in Henry
6 County, Ohio?

7 DEPUTY GLANZ: Yes.

8 MR. FLANAGAN: What was
9 the nature of your involvement in that investigation?

10 DEPUTY GLANZ: I was
11 off duty that evening and I got a call from Sergeant Walker, I
12 have the K-9 unit for the Sheriff's Office and he requested
13 that I come out to help use the K-9 to help search for some
14 shell casings.

15 MR. FLANAGAN: And so
16 you traveled to that location with the K-9 unit?

17 DEPUTY GLANZ: Yes.

18 MR. FLANAGAN: I'm just
19 going to put a map up here real quick. Now when you went out
20 there, you went out there in the evening of September 2?

21 DEPUTY GLANZ: Yes.

22 MR. FLANAGAN: And what
23 information were you provided when you decided where you were
24 going to be searching for these casings?

25 DEPUTY GLANZ: When

1 Sergeant Walker called me, he just briefly stated that we got a
2 call from Kyle Kern that he was running down the road, had an
3 individual come by and fire out the window at him. Told me it
4 happened on S-3, said it was between 3 and 4 and asked that I
5 go up to that area and I believe at that point it was to meet
6 with Deputy Saneholtz to go up there and use the dog to search
7 for the shell casings.

8 MR. FLANAGAN: Could I
9 invite him to step over to the screen Your Honor.

10 THE COURT: Certainly.

11 MR. FLANAGAN: If you
12 could just come over to the screen and indicate on the map all
13 the areas that you canvased with the K-9 unit.

14 DEPUTY GLANZ: When I
15 got out to the scene I met with Deputy Saneholtz and Kyle Kern
16 and basically trying to figure out where this actually
17 happened. Kyle described it as it happened just east, I
18 believe of 3B here so we were along, this was a bean field at
19 the time. We were along this road and we searched on the south
20 side along the edge of the roadway there. When I ran the dog,
21 I took him into the grass, there is actually road, stone and
22 then it's like a shallow king of ditch area there and then it
23 went into bean field. The beans were probably about, not quite
24 waist high but just about waist high on me. So I took him
25 along the edge of the road through the grass area and just had

1 him on a 15 foot leash and let him do his work.

2 MR. FLANAGAN: And did
3 the K-9 unit alert to anything along County Road S-3 at that
4 time?

5 DEPUTY GLANZ: No he
6 did not.

7 MR. FLANAGAN: And did
8 you search in any other locations that evening?

9 DEPUTY GLANZ: I did,
10 after leaving here I went down and met with Sergeant Walker
11 over here at the dead end of Road 4, this cul-de-sac down here.
12 While we were running the dog up here, he went down and just
13 waited down there to secure the area and wait for us. I got
14 down there and once I got down there, when I got down here I
15 parked my car off to the side here, ended up taking the dog out
16 and I had him start up in the top corner here, the top right
17 corner, which would be the northeast corner and just let him do
18 his work. I took him off the leash because this is all fenced
19 off from 24 and it was a completely secured area and there
20 obviously no houses in that area so I took him off leash at
21 that point and just let him roam around and search the area and
22 followed behind him and let him go.

23 MR. FLANAGAN: And what
24 happened at that point?

25 DEPUTY GLANZ: He

1 worked his way around the cul-de-sac area and he was the
2 pavement, he was in the grass, he just kind of worked his way
3 around clockwise. Once he came up to the north, it'd be the
4 northwest corner, kind of the northwest or west corner there,
5 once he got up there he, he does what I call a head snap, he
6 picks up an odor and he'll snip, he'll twist his head pretty
7 quick, he did his head snap and came back and he started
8 sniffing some areas on the ground. I was probably from here to
9 that door away, a little distance away, and I noticed that he's
10 sniffing here and he's sniffing here and I ended up walking up
11 there and as we got closer you could tell it was some metal
12 objects. As I got a little closer I realized it was shell
13 casings and at that point I called him back, had him come back
14 and I put him back in the car and that's when Sergeant Walker
15 was right there with me when we found them. I put the dog in
16 the car and we walked back up and we counted out, there were 7
17 shell casings that were on the ground.

18 MR. FLANAGAN: At any
19 point after the k-9 unit came into contact with the shell
20 casings did you move them or handle them in any way?

21 DEPUTY GLANZ: I did
22 not. Not until I helped Deputy Saneholtz, I held the bags
23 while he put them in.

24 MR. FLANAGAN: Okay.

25 DEPUTY GLANZ: After we

1 located the shell casings and after the dog was put back, I
2 actually had to get down on my hands and knees and was able to
3 look and was able to see that it was .45 caliber, the casings
4 were .45 caliber shells and that's what I was advised by
5 Sergeant Walker when I got the call, that we were looking for
6 .45 caliber shell casings.

7 MR. FLANAGAN: That
8 evening or any time after that was the K-9 unit asked to search
9 any other areas for additional casings or evidence?

10 DEPUTY GLANZ: They had
11 asked about searching the bean field here and my dog is an 80
12 pound German Shepard and he would only stand so high in those
13 beans, they were up to just below my waist, just below my
14 waist. I tried to take him out in the bean field but he
15 couldn't work his way through the bean field, it was too thick
16 and maybe too high. He was actually doing more of a hop to
17 jump over top of them, it wasn't a possibility.

18 MR. FLANAGAN: So does
19 that cover your involvement and the K-9 units involvement in
20 the investigation?

21 DEPUTY GLANZ: Yes.

22 MR. FLANAGAN: Okay,
23 thank you. No further questions.

24 THE COURT: You can
25 have a seat. Cross?

1 MR. ZANER: Officer,
2 can you show me from, you're familiar that this is Mr.
3 Badenhop's home?

4 DEPUTY GLANZ: I do not
5 know.

6 MR. ZANER: Well can
7 you show me, show us exactly where you had the dog search on
8 County Road S-3, from where to where?

9 DEPUTY GLANZ: I don't
10 know exactly where it was at, I know we were east, I'm going on
11 what I was told that night when I met up with Deputy Saneholtz
12 and I also met with Kyle Kern, because I wanted to know where
13 the area was, if the shooting happened up here I didn't want to
14 be searching clear down here. So what I did was I had him come
15 out and show me, he said, I know that I was east of 3B, I said,
16 whereabouts, and he literally walked down there with me and
17 said, about right here. I said ok, so what I did is I ended up
18 going; I searched an area that was 50-75 yards long with the
19 dog. Everything that I searched was along the south side of
20 the roadway because of the way that it was described to me, the
21 way of the driving, the shooting where Kyle was when he was
22 running at the time. So what I did is I searched along the
23 south side of the S-3 here and it was a distance just to the
24 east of 3B.

25 MR. ZANER: Going, do

1 you see this area here?

2 DEPUTY GLANZ: Yes.

3 MR. ZANER: Did you get
4 out to that area with the dog or past that or not?

5 DEPUTY GLANZ: I don't
6 know where that area is, I don't know. I can tell you, like I
7 said, I was approximately anywhere like probably 50 yards to
8 the east of 3B here and then I searched an area that from where
9 Kyle had pointed out and said it was like right here and I took
10 a large distance this way, probably 25-50 yards and then went
11 the opposite way as well. And I just took the dog through the
12 grass on the edge of the roadway.

13 MR. ZANER: Alright.
14 You can have a seat. Officer, the dog is trained, obviously
15 and what is it picking up when you're taking it out to look for
16 shell casings?

17 DEPUTY GLANZ: What is
18 it picking up?

19 MR. ZANER: Yeah.

20 DEPUTY GLANZ: He, what
21 he is doing in this situation is an article search. It's all
22 in the different commands that I give him. He's looking for
23 just any sort of an article, anything, it could be a pop can if
24 it was laying out there. I've had him where he has alerted to
25 a pop can. But he's just picking up an odor, it may be of a

1 person, it may be of a gunshot because we're trained with
2 various different things, we'll take anything that you can
3 imagine, a wallet, a cell phone, a disabled firearm, we'll
4 through it out in tall grass, short grass anywhere and have the
5 dog go out and find it. And he's going off of any type of an
6 odor that would be on it.

7 MR. ZANER: So the dog
8 is trained in regards to gunshots? Finding residue from
9 gunshots?

10 DEPUTY GLANZ: He's
11 trained, no; he's trained to pick up basically any sort of a
12 different odor other than the grass, debris such as that. So
13 in this case it would be the gunshot, or the spent shell
14 casing, the odor of the powder.

15 MR. ZANER: So the dog
16 is trained to pick up the odor of gunshot powder?

17 DEPUTY GLANZ: He's
18 trained, like I said, under this command..

19 MR. ZANER:
20 Specifically this.

21 DEPUTY GLANZ: Under
22 this, under the command, his command in German is to go out and
23 find this. He'll basically, he'll go out and he'll find
24 something that has a strong odor to it. It's not a specific to
25 just the gun, the casing, it's not a specific command to go out

1 and find this. It's similar to when I have him sniff a car for
2 drugs. I'm not saying find the marijuana, I'm saying, find the
3 odor and he's trained for a number of different odors.

4 MR. ZANER: Is the dog
5 trained to find the odor of a gun being shot in a location?
6 Would the dog be able to pick up on that kind of scent? Well,
7 let's assume if a gun is shot in a car, would the dog be able
8 to pick up on the odor that in fact the gun was shot in the
9 car?

10 DEPUTY GLANZ: No, he's
11 not certified with explosives or accelerants or anything along
12 those lines.

13 MR. ZANER: Alright,
14 very good. Thank you. Nothing further.

15 THE COURT: Re-direct?

16 MR. FLANAGAN: You
17 discussed, you know, a certain distance that you and the dog
18 traveled along County Road S-3. Are you, is it your
19 understanding that a shell casing was discovered after
20 September 2, 2015 along County Road S-3?

21 DEPUTY GLANZ: Yes.

22 MR. FLANAGAN: Is it
23 possible that even if Andy was searching in the right area, the
24 K-9 unit was searching in the right area the shell casing could
25 have been missed?

1 DEPUTY GLANZ: Yes, I
2 mean, like I said, it was a large area and he was, I had him on
3 a 15 foot leash, he could cast any which way that he wants, I
4 mean you are talking about a shell casing that is yay big and
5 to be able to, you know, he may not have hit that exact area.
6 Yes, it's possible, he could have missed it.

7 MR. FLANAGAN: So, so
8 the fact that the K-9 unit didn't locate a shell along County
9 Road S-3 that evening is no indication that there wasn't a
10 shell there that evening.

11 DEPUTY GLANZ: Correct.

12 MR. FLANAGAN: Thank
13 you, nothing further.

14 MR. ZANER: Nothing
15 further.

16 THE COURT: You may
17 step down. Thank you. Next witness?

18 MR. FLANAGAN: Sergeant
19 Shawn Wymer please?

20 THE COURT: Please
21 raise your right hand. Do you swear or affirm the testimony
22 you are about to give is the truth?

23 SERGEANT WYMER: I do.

24 THE COURT: Please be
25 seated. Your witness Mr. Flanagan.

1 MR. FLANAGAN: Thank
2 you, could you please state both your first and last name?

3 SERGEANT WYMER: Shawn
4 Wymer.

5 MR. FLANAGAN: Could
6 you spell your last name please?

7 SERGEANT WYMER: W-Y-M-
8 E-R.

9 MR. FLANAGAN: And by
10 whom are you employed?

11 SERGEANT WYMER: Henry
12 County Sheriff's Office.

13 MR. FLANAGAN: Were you
14 so employed in September 2015?

15 SERGEANT WYMER: Yes.

16 MR. FLANAGAN: Were you
17 on duty on September 7, 2015?

18 SERGEANT WYMER: Yes.

19 MR. FLANAGAN: On that
20 date were you asked to respond to a call from Kyle Kern?

21 SERGEANT WYMER: Yes I
22 was.

23 MR. FLANAGAN: And what
24 was your understanding as to the nature of the call and why you
25 were being dispatched?

1 SERGEANT WYMER:

2 Potential evidence from a case that was found or supposedly
3 found.

4 MR. FLANAGAN: Did you
5 make contact with Mr. Kern?

6 SERGEANT WYMER: Yes I
7 did.

8 MR. FLANAGAN: And
9 where was that initially?

10 SERGEANT WYMER: I met
11 him at his hide, went to his house.

12 MR. FLANAGAN: And what
13 did you do from there?

14 SERGEANT WYMER: Once I
15 got there he had told me that he thought he found the potential
16 shell casing. So I, he had been running so I asked him if he
17 would want a ride to show me where it was.

18 MR. FLANAGAN: So he
19 rode over in your patrol car?

20 SERGEANT WYMER: Yes.

21 MR. FLANAGAN: And did,
22 were you able to locate the shell casing?

23 SERGEANT WYMER: Yeah,
24 he had marked it, I believe with a pop bottle.

25 MR. FLANAGAN: Just

1 going to throw up a map real quickly. Was it along County Road
2 S-3?

3 SERGEANT WYMER: Yes.

4 MR. FLANAGAN: Would
5 you be able to estimate looking at that as to where it was
6 located?

7 THE COURT: If you want
8 to approach the map you may.

9 MR. FLANAGAN: If you
10 feel you can.

11 SERGEANT WYMER: To be
12 honest looking at that, to estimate it, I would not be able to
13 pinpoint.

14 MR. FLANAGAN: Could
15 you tell us whether it was on the, if you recall, north or
16 south side of the road?

17 SERGEANT WYMER: It was
18 on the south side of the road.

19 MR. FLANAGAN: What
20 area, I guess, was it on the roadway or...

21 SERGEANT WYMER: It
22 would have been in the berm area, in the stone area, which
23 would have been berm.

24 MR. FLANAGAN: And what
25 did you do after locating the shell?

1 SERGEANT WYMER: I took
2 a photograph of it then I collected it and bagged it for
3 evidence.

4 MR. FLANAGAN: I'll
5 hand you what we're going to mark as State's Exhibit #12 and
6 ask if you can identify that?

7 SERGEANT WYMER: Yeah,
8 that would be the evidence I collected from out there that day.

9 MR. FLANAGAN: No
10 further questions, thank you Your Honor.

11 THE COURT: Cross?

12 MR. ZANER: No
13 questions Judge.

14 THE COURT: You may
15 step down.

16 MR. FLANAGAN: May we
17 approach Your Honor? (Discussion at bench)

18 THE COURT: We'll be in
19 adjournment for 10-15 minutes.

20 (BRIEF RECESS - RESUME HEARING AT 2:44 P.M.)

21 THE COURT: We are back
22 on the record this afternoon now in the State of Ohio verses
23 Cullen Parsons, we are still with the State and who will be the
24 next witness?

25 MR. FLANAGAN: Your

1 Honor, at this time the State would call Kevin Belcik.

2 THE COURT: Please come
3 forward. Please raise your right hand. Do you swear or affirm
4 the testimony you are about to give is the truth?

5 MR. BELCIK: Yes I do.

6 THE COURT: Very good,
7 please be seated. Your witness.

8 MR. FLANAGAN: Good
9 afternoon. Could you please state both your first and last
10 name?

11 MR. BELCIK: Kevin
12 Belcik.

13 MR. FLANAGAN: And
14 could you spell your last name please?

15 MR. BELCIK: B-E-L-C-I-
16 K.

17 MR. FLANAGAN: And
18 where are you currently employed Mr. Belcik?

19 MR. BELCIK: I am
20 employed for the Ohio Bureau of Criminal Investigation out of
21 the Bowling Green laboratory.

22 MR. FLANAGAN: And what
23 is your position there?

24 MR. BELCIK: I'm a
25 forensic scientist in the firearm and tool marks unit.

1 MR. FLANAGAN: Okay.

2 What is the nature of your work in that position?

3 MR. BELCIK: In that
4 position my work primarily involves the examination of firearms
5 and firearm related evidence. Fired cartridge cases, fired
6 bullets, with the intention of trying to identify or exclude
7 those fired components to an individual specific firearm.

8 MR. FLANAGAN: Okay.

9 Can you tell me where you attended school?

10 MR. BELCIK: I attended
11 school at the University of Toledo where I majored in Applied
12 Physics.

13 MR. FLANAGAN: And
14 what, is that the name of the degree you received at that...

15 MR. ZANER: Judge I'll
16 stipulate to the witnesses qualifications as an expert.

17 THE COURT: So noted.

18 MR. FLANAGAN: Alright.

19 Through your position at BCI in the firearms identification,
20 were you asked to assist with an investigation involving a
21 Cullen Parsons?

22 MR. BELCIK: Yes I was.

23 MR. FLANAGAN: And what
24 was the type of assistance that was requested in that case?

25 MR. BELCIK: The

1 assistance that was requested was the processing of evidence in
2 our laboratory case #15-24164, it basically involved a firearm,
3 several fired cartridge cases and a fired bullet that were
4 submitted to the laboratory and the examination requested that
5 I examine all three units of evidence to determine whether or
6 not the fired components were produced by that firearm.

7 MR. FLANAGAN: Okay.

8 I'm going to hand you what's been previously marked as State's
9 Exhibit #6. Are you able to state whether that is the firearm
10 that was part of your investigation?

11 MR. BELCIK: I am and

12 it was.

13 MR. FLANAGAN: Your

14 Honor, with defense counsel's indulgence I believe we are going
15 to stipulate that the casings and the bullet that were marked
16 as State's Exhibit #11, #14 and #12 would be the other
17 information that was provided to Mr. Belcik.

18 MR. ZANER: That is

19 correct.

20 THE COURT: Very good,

21 so noted.

22 MR. FLANAGAN: So you

23 indicated that a firearm was submitted to spent casings and a
24 bullet?

25 MR. BELCIK: Correct.

1 MR. FLANAGAN: And what
2 was the analysis you performed on those items?

3 MR. BELCIK: Well, to
4 begin with I performed an assessment on the firearm which
5 involves taking note of its characteristics, make, model,
6 serial number and then test fired that firearm by firing it
7 into a tank of water which allowed me to recover both the fired
8 cartridge cases and the fired bullets. I then set about
9 performing the comparison as requested.

10 MR. FLANAGAN: And so
11 you compared the casing and the bullet that your fired with the
12 casings and the bullet that were submitted?

13 MR. BELCIK: Correct.
14 First and initially what we do in a comparison where we have a
15 firearm is we will examine the, typically three tests are
16 generated to begin with and we examine those test bullets and
17 test cartridge cases and compare them to one another in order
18 to determine how the firearm will reproduce the individual
19 characteristics that we look at for an identification. We try
20 to get an idea of how that firearm reproduces first and then we
21 begin by comparing the fired evidence from the case to those
22 tests. So it's a test to test and then we test the evidence
23 comparison.

24 MR. FLANAGAN: Were you
25 able to make a determination with respect to the casings and

1 the bullet that were submitted with respect as to whether they
2 came from the firearm that was also submitted?

3 MR. BELCIK: I was and
4 I was able to determine that the, all the fire cartridges and
5 the submitted fired bullet were fired by the submitted firearm.

6 MR. FLANAGAN: And did
7 you prepare a report to that effect?

8 MR. BELCIK: I did.

9 MR. FLANAGAN: I'm just
10 handing you what we've marked as State's Exhibit #16, is that a
11 copy of the report that you prepared?

12 MR. BELCIK: It is.

13 MR. FLANAGAN: And what
14 does it, can you describe what it states under the findings?

15 MR. BELCIK: Would you
16 like me to read it or just kind of paraphrase through it.

17 MR. FLANAGAN:

18 Paraphrase is fine. In laymen terms please.

19 MR. BELCIK: Sure. The
20 first paragraph, the operability assessment I talked about
21 where I made sure that the firearm was capable of firing and
22 that no cartridge cases were entered into a ATF database that
23 exists to compare cartridge cases to potential previous crimes.
24 We are a county delineation, certain counties are submitted,
25 certain ones are not, so there is a statement in there saying

1 that this was not entered into that database. The second
2 paragraph refers to the entire grouping of .45 auto fire
3 cartridge cases and says that based on matching individual
4 breach characteristics, which would be individual marks that
5 would be left on the primer area of the fire cartridge case,
6 that based on those matching tests evidence as able to
7 determine that all of those were fired by the submitted
8 firearm. And in the final paragraph I refer to the matching
9 individual barrel engraved _____, which anytime a
10 firearm is manufactured the rifling is cut into the barrel and
11 that rifling is what the bullet essentially rides out of the
12 barrel and departs spinning out so it will fly stably and when
13 that rifling cuts into that bullet the incidental, individual
14 tool marks that were present during manufacturing get imprinted
15 onto it, kind of like metal fingerprints and it's those
16 individual characteristics that I refer to matching that
17 allowed me to determine that the fired bullet was fired by the
18 submitted firearm. I also included statements saying that
19 there was some dirt that was submitted with this. That's not
20 within my forensic discipline to do.

21 MR. FLANAGAN: Alright.

22 So just to, again, summarize, it was your opinion to a
23 reasonable degree of scientific certainty that the 8 shell
24 casings submitted and the single bullet submitted all came from
25 the firearm identified as States' Exhibit #6?

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correct.

you I have no further questions.

Judge. Mr. Belcik under your report, #2 were it talks about the7 .45 auto fired cartridge cases.

tell me when those were fired?

say when those were fired.

where it talks about one .45 auto fired cartridge case, can you tell me when that was fired?

#5 where it says one fired bullet with collection of dirt, can you tell when that was fired?

thank you. Nothing further.

direct?

MR. BELCIK: That's

MR. FLANAGAN: Thank

THE COURT: Cross?

MR. ZANER: Thank you

MR. BELCIK: Yes.

MR. ZANER: Can you

MR. BELCIK: I cannot

MR. ZANER: And under 3

MR. BELCIK: I cannot.

MR. ZANER: And under

MR. BELCIK: I cannot.

MR. ZANER: Very good,

THE COURT: And re-

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Honor.

step down.

sir.

Next witness?

you Your Honor, at this time the State would call Logan
Schepeler.

approach. Please raise your right hand. Do you swear or affirm
that the testimony you are about to give is the truth?

seated. Your witness.

afternoon, could you please state both your first and your last
name?

Schepeler.

could you spell your last name please?

MR. FLANAGAN: No Your

THE COURT: You may

MR. BELCIK: Thank you

THE COURT: Thank you.

MR. FLANAGAN: Thank

THE COURT: You may

MR. SCHEPELER: Yes.

THE COURT: Please be

MR. FLANAGAN: Good

MR. SCHEPELER: Logan

MR. FLANAGAN: And

MR. SCHEPELER: S-C-H-

1 E-P-E-L-E-R.

2 MR. FLANAGAN: And by
3 whom are you employed?

4 MR. SCHEPELER: The
5 Ohio bureau of Criminal Investigation commonly known as BCI.

6 MR. FLANAGAN: And what
7 is your position there?

8 MR. SCHEPELER: I'm a
9 forensic scientist in the DNA section.

10 MR. ZANER: We'll
11 stipulate.

12 MR. FLANAGAN: Okay.
13 Your Honor, upon agreement of defense counsel there is a
14 stipulation that Mr. Schepeler is qualified to provide expert
15 testimony.

16 THE COURT: Thank you,
17 so noted.

18 MR. ZANER: That is
19 correct Judge.

20 MR. FLANAGAN: Through
21 your position as a forensic scientist in the DNA department at
22 BCI were you asked to assist in an investigation involving a
23 Cullen Parsons?

24 MR. SCHEPELER: Yes I
25 was.

1 MR. FLANAGAN: And were
2 you asked to perform a DNA analysis?

3 MR. SCHEPELER: Yes.

4 MR. FLANAGAN: Were
5 certain items submitted to you to perform that analysis on?

6 MR. SCHEPELER: Yes.

7 MR. FLANAGAN: Do you
8 recall what items were submitted?

9 MR. SCHEPELER: There
10 were four items in total. There was one firearm, there were
11 two items that consisted of shell casings and one DNA standard
12 from Cullen Parsons.

13 MR. FLANAGAN: And what
14 was the process by which you analyzed these items?

15 MR. SCHEPELER: The DNA
16 analysis process consists of four steps. The first step being
17 extraction in which we isolate the DNA from the material in
18 which, in this case there were swabs, cotton swabs taken from
19 the handgun. We isolate just the DNA from those swabs. The
20 second step is called quantitation in which we essentially
21 count how much DNA is present in the samples. Then we amplify
22 the DNA which is making millions of copies of the DNA and the
23 fourth step is the data interpretation so we're creating what
24 is called a DNA profile and it looks like a chart and we're
25 looking at fifteen different locations on the DNA profile to

1 make comparisons between the evidence sample, in this case from
2 the handgun, to the known standard.

3 MR. FLANAGAN: And the
4 known standard in this instance was the standard provided from
5 Cullen Parsons?

6 MR. SCHEPELER: Yes.

7 MR. FLANAGAN: And were
8 you able to reach any opinions based on your analysis?

9 MR. SCHEPELER: Yes I
10 was.

11 MR. FLANAGAN: And did
12 you prepare a report setting forth those opinions?

13 MR. SCHEPELER: Yes I
14 did.

15 MR. FLANAGAN: I'm
16 going to hand you what we've marked as State's Exhibit #15, is
17 that a copy of the report that you prepared?

18 MR. SCHEPELER: Yes it
19 is.

20 MR. FLANAGAN: Okay.
21 And there is a section in the report identified as DNA
22 conclusions, in layman's terms can you described what the
23 information contained in there means?

24 MR. SCHEPELER: Yes,
25 DNA analysis was performed on three separate evidence samples,

1 in this case a swabbing from the handled areas of the firearm,
2 swabbing from the trigger of the firearm and samples from BCI
3 item #2 which was the cartridge cases, I believe there were
4 seven total that were swabbed together and the casings resulted
5 in no DNA profile and both samples from the firearm resulted in
6 a mixture of DNA profiles, in which I was able to identify a
7 major contributor, which means one individual had contributed
8 more DNA than any other contributors that were present on the
9 sample. And in both the handled areas and the trigger Cullen
10 Parsons was included in the major DNA profile, so that means
11 from the evidence sample, the major DNA profile was consistent
12 with the known standard from Cullen Parsons.

13 MR. FLANAGAN: Okay,
14 now there are some numbers, could you explain what those
15 numbers are and the meaning of those numbers on your report?

16 MR. SCHEPELER: So, for
17 each inclusion I calculated a statistic which estimate how rare
18 the DNA profile is, in this case the major DNA profile is from
19 those samples and the handled areas, the statistic, Cullen
20 Parsons is included 1 in 6,215,000,000,000,000 unrelated
21 individuals and what that number means is I would expect to
22 test that many individuals unrelated to find one person that
23 would have DNA consistent with the major DNA profile. And the
24 number from the trigger is 1 in 300,700,000 unrelated
25 individuals and again, that is the major DNA profile.

1 MR. FLANAGAN: So based
2 on those findings is it your opinion to a reasonable degree of
3 scientific certainty that DNA found on the handle and trigger
4 areas of the firearm belong to Cullen Parsons?

5 MR. SCHEPELER:
6 Excluding the possibility of an identical twin, yes.

7 MR. FLANAGAN: You
8 indicated that you weren't able to make similar findings on the
9 casings, was that because there was not enough material to
10 analyze? Can you explain that?

11 MR. SCHEPELER: The
12 casings resulted in no DNA profile and that could be for a
13 variety of reasons, it could be that no DNA was ever deposited
14 on these items, it could be due to the fact that the casings
15 are traveling through the firearm being ejected that through
16 that process with the heat in the firearm that may remove any
17 DNA that may have been present. Generally we don't get very
18 good DNA results on shell casings.

19 MR. FLANAGAN: Okay,
20 thank you Your Honor, no further questions at this time.

21 THE COURT: Cross?

22 MR. ZANER: Thank you
23 Your Honor. Mr. Schepeler in looking at your reports under the
24 handled areas it talks about a mixture, correct?

25 MR. SCHEPELER: That's

1 correct.

2 MR. ZANER: And a
3 mixture means there is more than one person's DNA, correct?

4 MR. SCHEPELER: That's
5 correct.

6 MR. ZANER: And so you
7 were able to find that Cullen's was on there because you had a
8 sample comparison from Cullen, correct?

9 MR. SCHEPELER:
10 Correct.

11 MR. ZANER: And you
12 were not provided any other sample comparisons to do a DNA
13 check with those other people, correct?

14 MR. SCHEPELER:
15 Correct.

16 MR. ZANER: And likewise
17 on the trigger it also showed a mixture, correct?

18 MR. SCHEPELER: Yes.

19 MR. ZANER: And so
20 Cullen would have been one of those people but you could not
21 determine who the other people were because you weren't
22 provided any other known samples, correct?

23 MR. SCHEPELER:
24 Correct. In the case of the trigger the additional data
25 besides the major profile was very minimal and I wouldn't be

1 able to make any additional comparisons, which is what the
2 additional data, not sufficient for comparison indicates. But
3 on the handled areas there was sufficient DNA to make
4 additional comparisons if a standard had been provided.

5 MR. ZANER: So bottom
6 line is first of all, you can't tell when that gun would have
7 been fired, correct?

8 MR. SCHEPELER: That's
9 correct.

10 MR. ZANER: You can't
11 tell, obviously Cullen Parsons had been involved and had
12 touched the gun but you can't tell when he last shot the
13 weapon, correct?

14 MR. SCHEPELER: And you
15 can't tell when any of these mixture people may have shot the
16 weapon, correct?

17 MR. ZANER: Thank you,
18 nothing further.

19 THE COURT: Redirect?

20 MR. FLANAGAN: I just
21 wanted to ask if you could explain once again with respect to
22 the trigger area, you indicated Cullen Parsons DNA was the
23 major contributor, is that accurate?

24 MR. SCHEPELER: Yes.

25 MR. FLANAGAN: And

1 although there was additional material there it was
2 insufficient to perform any DNA analysis on?

3 MR. SCHEPELER: I would
4 not be able to make any additional DNA comparisons based on the
5 low volume of additional data from that sample.

6 MR. FLANAGAN: So based
7 on the material available on the trigger area of that
8 particular handgun the only individual you could identify
9 through DNA analysis would be Cullen Parsons?

10 MR. SCHEPELER: That's
11 correct.

12 MR. FLANAGAN: Okay.
13 Thank you Your Honor, nothing further.

14 THE COURT: Any limited
15 cross?

16 MR. ZANER: Somebody
17 wearing gloves, very well you may not get a DNA sample, right?

18 MR. SCHEPELER:
19 Correct.

20 MR. ZANER: Very good,
21 thank you.

22 THE COURT: You may
23 step down, thank you.

24 MR. SCHEPELER: Thank
25 you Your Honor.

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THE COURT: Counsel

approach. (Discussion at bench)

MR. FLANAGAN: Your

Honor I would indicate to the Court that just due to the difficulties of scheduling our, the State's remaining witnesses would be testifying tomorrow but at this time we would ask that the photographs identified collectively as Exhibit #5, those being photographs of the handgun on the Parsons property be admitted. We would ask that the handgun identified as State's Exhibit #6 be admitted, that the set of keys identified as State's Exhibit #7 be admitted, that the photograph of the Honda Civic taken on the property of the Parsons property, identified as State's Exhibit #8 be admitted, that the photograph depicting the location of seven shell casings along the road identified as State's Exhibit #10 be admitted, that the eight shell casings, casings 1-7, identified as State's Exhibit #11 and the eighth casing identified as State's Exhibit #12 be admitted. The collective photographs of the metal detecting and bullet recovery process identified as State's Exhibit #13 be admitted. The bullet identified as State's Exhibit #14 be admitted. The lab report prepared by Logan Schepeler identified as State's Exhibit #15 be admitted. The lab report prepared by agent Belcik be admitted and the bullet recovery sketch identified as State's Exhibit #17 that was prepared by Deputy Saneholtz be admitted and State's Exhibit

1 #18, the reporting documents from the Lead Shed, we would ask
2 that all those be admitted at this time Your Honor.

3 THE COURT: Okay, so we
4 have #5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17 and 18.

5 MR. FLANAGAN: That's
6 correct Your Honor.

7 THE COURT: Those are
8 being proffered. Any objections from the defense?

9 MR. ZANER: I'm just
10 trying to decide if it's worth objecting to Exhibit #17 because
11 it's not to scale etc. but I don't know that it means anything.

12 THE COURT: It comes in
13 for what's it is worth I suppose.

14 MR. ZANER: No
15 objection.

16 THE COURT: Okay. Very
17 good. Let's try to get started tomorrow morning by 8:45 a.m.,
18 is there a problem with that counsel?

19 MR. ZANER: No Judge.

20 THE COURT: We'll try
21 to get going that way we can have a little more to plow through
22 tomorrow than what was previously indicated. Very good, we'll
23 be adjourned. Thank you counsel.

24 (ADJOURNED FOR THE DAY)

25 (RESUME TRIAL TO COURT MARCH 8, 2016 AT 8:50 A.M.)

1 THE COURT: We are back
2 on the record in the matter of State of Ohio verses Cullen A.
3 Parsons, we are still with the State. Call your next witness
4 Mr. Flanagan.

5 MR. FLANAGAN: Thank
6 you Your Honor, at this time the State would call Arlen Cohrs.

7 THE COURT: Please
8 raise your right hand. Do you swear or affirm the testimony
9 you are about to give is the truth?

10 DEPUTY COHRS: Yes.

11 THE COURT: Please be
12 seated.

13 MR. FLANAGAN: Good
14 morning, could you please state both your first and last name?

15 DEPUTY COHRS: Arlen
16 Cohrs.

17 MR. FLANAGAN: And could
18 you spell your last name please?

19 DEPUTY COHRS: C-O-H-R-
20 S.

21 MR. FLANAGAN: And by
22 whom are you employed?

23 DEPUTY COHRS: Henry
24 County Sheriff's Office.

25 MR. FLANAGAN: And what

1 is your position there?

2 DEPUTY COHRS: Chief
3 Deputy.

4 MR. FLANAGAN: In the
5 course of your employment with the Henry County Sheriff's
6 Office did you have an occasion or occasions to be involved in
7 an investigation of Cullen Parsons?

8 DEPUTY COHRS: Yes.

9 MR. FLANAGAN: And was
10 part of that involvement the processing of a silver Honda Civic
11 that was seized in connection with that case?

12 DEPUTY COHRS: Yes.

13 MR. FLANAGAN: And
14 during the course of that processing, did you access the trunk
15 of that vehicle?

16 DEPUTY COHRS: I did.

17 MR. FLANAGAN: And did
18 you use a key or keys to access that trunk?

19 DEPUTY COHRS: I used a
20 key, yes.

21 MR. FLANAGAN: Your
22 Honor, may I approach the witness?

23 THE COURT: Yes you
24 may.

25 MR. FLANAGAN: I'm

1 going to hand you what's been marked as State's Exhibit #7, can
2 you affirm whether or not that is the key that you used to
3 access the trunk of the silver Honda Civic?

4 THE COURT: Yes it is.

5 MR. FLANAGAN: Thank
6 you Your Honor, no further questions.

7 THE COURT: Cross?

8 MR. ZANER: One second
9 Judge. I have no questions Judge.

10 THE COURT: Okay, thank
11 you. Next witness.

12 MR. FLANAGAN: Thank
13 you Your Honor, at this time the State would call Michael
14 Bodenbender.

15 THE COURT: Please
16 raise your right hand. Do you swear or affirm the testimony
17 you're about to give is the truth?

18 SHERIFF BODENBENDER:
19 Yes I do.

20 MR. FLANAGAN: Good
21 morning, could you please state both your first and last name?

22 SHERIFF BODENBENDER:
23 Michael Bodenbender.

24 MR. FLANAGAN: And
25 could you spell your last name please?

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SHERIFF BODENBENDER:

B-O-D-E-N-B-E-N-D-E-R.

MR. FLANAGAN: And by

whom are you employed?

SHERIFF BODENBENDER:

I'm the Henry County Sheriff.

MR. FLANAGAN: And were

you in that position on September 2, 2015?

SHERIFF BODENBENDER:

Yes.

MR. FLANAGAN: And on

that evening did you respond to a report of an incident that took place on County Road S-3 in Washington Township, Henry County?

SHERIFF BODENBENDER:

Yes.

MR. FLANAGAN: And was

that a report that someone had shot at Kyle Kern?

SHERIFF BODENBENDER:

Yes.

MR. FLANAGAN: And did

you respond to the residence of a Nick Badenhop?

SHERIFF BODENBENDER:

It was out in front of the house I believe.

MR. FLANAGAN: And at

1 that time did you meet with Kyle Kern and other law enforcement
2 from the Henry County Sheriff's Office?

3 SHERIFF BODENBENDER:

4 Yes.

5 MR. FLANAGAN: And from
6 there did you travel to the residence of Cullen Parsons?

7 SHERIFF BODENBENDER:

8 Yes.

9 MR. FLANAGAN: Okay.
10 I'm just going to put an image up here. Sheriff do you
11 recognize that as an overhead image of the Parsons property?

12 SHERIFF BODENBENDER: I
13 believe so, yes.

14 MR. FLANAGAN: If you
15 could, and feel free to step down, if you could just indicate
16 your approach to the residence when you went there on the
17 evening of September 2, 2015?

18 SHERIFF BODENBENDER:

19 It happened down in here, I believe we came from this
20 direction, I pulled in the driveway right here.

21 MR. FLANAGAN: What
22 happened when you pulled in the driveway?

23 SHERIFF BODENBENDER:

24 As I pulled up here I see Cullen come from behind this tree
25 right here, he went right in front of my patrol car. I stopped

1 right here and he was standing right beside my door.

2 MR. FLANAGAN: You're
3 fine I just want to make sure the Judge can see you there.

4 SHERIFF BODENBENDER: I
5 can go on the other side if that will help.

6 MR. FLANAGAN: If you
7 would. So he came...

8 SHERIFF BODENBENDER:
9 He came from behind I believe it was this tree here, somewhere
10 in this area and I'm stopped right here, beside this tree on
11 the north side of the driveway.

12 MR. FLANAGAN: Did you
13 make any observations as he came out from behind that tree?
14 With respect to Cullen, what did you see him doing?

15 SHERIFF BODENBENDER:
16 Well he came right out, as I pulled in the driveway he comes
17 right beside the driver's side door, my side.

18 MR. FLANAGAN: Okay.

19 SHERIFF BODENBENDER:
20 And he had a beer bottle in his hand. I told him to get back.

21 MR. FLANAGAN: And what
22 happened next?

23 SHERIFF BODENBENDER:
24 He got back, I told him to get to the ground, which he did. He
25 complied. Just prior to that he turned his back to me and he

1 little over three years as Sheriff.

2 MR. ZANER: And before
3 then you were Deputy Sheriff?

4 SHERIFF BODENBENDER:
5 Yes sir.

6 MR. ZANER: And how
7 many years were you a Deputy Sheriff?

8 SHERIFF BODENBENDER:
9 23, 22 or 23 years.

10 MR. ZANER: And I take
11 it you have law enforcement training?

12 SHERIFF BODENBENDER: I
13 do.

14 MR. ZANER: And you
15 have training in regards to gathering evidence?

16 SHERIFF BODENBENDER:
17 Yes I do.

18 MR. ZANER: And you
19 have training in regards to putting together affidavits for
20 search warrants correct?

21 SHERIFF BODENBENDER:
22 Correct.

23 MR. ZANER: And I take
24 it you have trained your deputies so that they would know how
25 to do those same kind of things, correct?

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SHERIFF BODENBENDER: I

personally don't train them.

MR. ZANER: But they go

through training.

SHERIFF BODENBENDER:

They go through training, yes.

MR. ZANER: And so

there are deputies, whether you are, are you trained
ingathering GSR information?

SHERIFF BODENBENDER: I

don't know what GSR is sir.

MR. ZANER: Gunshot

residue.

SHERIFF BODENBENDER:

No I am not personally.

MR. ZANER: But there

are deputies within your department who are trained in what to
do and how to do that correct?

SHERIFF BODENBENDER:

To my knowledge yes they are.

MR. ZANER: And on the

night in question, September 2, 2015, did you have any of your
deputies attempt to gather any GSR evidence?

SHERIFF BODENBENDER:

The only thing I can remember is that we talked about doing his

1 hands but other than that I don't know anything else.

2 MR. ZANER: And it's
3 true at the time that you went to the Parsons home you did not
4 know who the driver was who allegedly did the shooting with
5 Kyle Kern, correct?

6 SHERIFF BODENBENDER:
7 Kyle told me he believed...

8 MR. ZANER: No, you did
9 not know, you've already testified to that sir, so you did not
10 know when you went to the home who the actual shooter was,
11 correct?

12 SHERIFF BODENBENDER:
13 No I did not.

14 MR. ZANER: And Mr. and
15 Mrs. Parsons were also, they had come out of the house correct?

16 SHERIFF BODENBENDER:
17 That's correct.

18 MR. ZANER: Did you or
19 anyone on your behalf do anything to gather potential GSR
20 evidence from Mr. and Mrs. Parsons?

21 SHERIFF BODENBENDER:
22 We did not.

23 MR. ZANER: Did anyone
24 of you at go into the home to try to see if there was anyone
25 else in the house?

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SHERIFF BODENBENDER:

We did not.

MR. ZANER: Alright.

And I understand that the Parsons asked you to get off the property and were not going to cooperate with you, correct?

SHERIFF BODENBENDER:

That's correct.

MR. ZANER: But, you

could have obtained a search warrant because there clearly would have been probable cause to obtain information based on the allegations that Kyle Kern made.

MR. FLANAGAN: I'll

object Your Honor, he's asking the witness for a legal conclusion.

MR. ZANER: Did you or

anyone on your behalf that evening while you were at the Parsons property put together an affidavit to do a search warrant of the Parsons home?

SHERIFF BODENBENDER:

We did not.

MR. ZANER: And did

anyone ever go into the Parsons home at any time after that day?

SHERIFF BODENBENDER:

We were told we weren't allowed in that house.

1 MR. ZANER: But you
2 could have obtained a search warrant, right?

3 SHERIFF BODENBENDER:
4 We could have.

5 MR. ZANER: But you
6 never did.

7 SHERIFF BODENBENDER:
8 We did not.

9 MR. ZANER: From that
10 date to today.

11 SHERIFF BODENBENDER:
12 We did not.

13 MR. ZANER: Alright, so
14 even though you have a set of keys, you have no idea how many
15 other sets of keys to this Honda are in existence, right?

16 SHERIFF BODENBENDER:
17 That's correct.

18 MR. ZANER: Because you
19 never went to try and figure that out. Right?

20 SHERIFF BODENBENDER:
21 That's correct.

22 MR. ZANER: And when
23 you allegedly saw Cullen throw something, you don't know what
24 was in his hand at the time, right?

25 SHERIFF BODENBENDER: I

1 did not know what he threw at the time.

2 MR. ZANER: And in fact
3 you thought it could have been a weapon.

4 SHERIFF BODENBENDER: I
5 thought it was a weapon at first.

6 MR. ZANER: Okay, so
7 whatever they collected you don't know if that's what Cullen
8 actually threw or if he threw something else, you don't know
9 because you couldn't see what was in his hands, true?

10 SHERIFF BODENBENDER:
11 That was the only thing that was under that tree.

12 MR. ZANER: Sir you
13 don't know what else was in his hand.

14 SHERIFF BODENBENDER: I
15 do not.

16 MR. ZANER: And you
17 don't know what he threw, correct?

18 SHERIFF BODENBENDER:
19 That's correct.

20 MR. ZANER: Nothing
21 further.

22 THE COURT: Any re-
23 direct?

24 MR. FLANAGAN: Very
25 briefly Your Honor. Sheriff it is your testimony that you

1 observed Cullen Parsons throw an object under a tree and in
2 front of him, correct?

3 SHERIFF BODENBENDER:

4 That's correct.

5 MR. FLANAGAN: And a

6 search of the location where the object was thrown was
7 conducted, correct?

8 SHERIFF BODENBENDER:

9 That's correct.

10 MR. FLANAGAN: And the

11 only object located was that key that you have in front of you?

12 MR. ZANER: Objection

13 Your Honor. At this point this witness hasn't testified, did
14 he go over, did someone else go over and if he didn't go over
15 he doesn't know what else was there.

16 THE COURT: Sustained.

17 MR. FLANAGAN: Did law

18 enforcement collect any other objects in the vicinity where the
19 object you observed to be thrown?

20 MR. ZANER: Objection,

21 irrelevant. What they collected or not, the issue is whether
22 or not anything else was there.

23 MR. FLANAGAN: That's

24 not for him to decide?

25 THE COURT: I'll permit

1 that question.

2 SHERIFF BODENBENDER:

3 Can you repeat that please?

4 MR. FLANAGAN: Yes, was
5 the key in front of you the only item collected from the
6 vicinity where you observed Cullen Parsons throw an object?

7 SHERIFF BODENBENDER:

8 Yes.

9 MR. FLANAGAN: Thank
10 you, no further questions.

11 THE COURT: Any re-
12 cross on that matter?

13 MR. ZANER: One second.
14 Isn't it true that, you were not the one who went over to look
15 in the area where something was thrown, right, it was another
16 deputy?

17 SHERIFF BODENBENDER: I
18 just shined the light, I did not collect the evidence, no I did
19 not.

20 MR. ZANER: So you
21 didn't go over there?

22 SHERIFF BODENBENDER: I
23 did not.

24 MR. ZANER: Very good,
25 nothing further.

1 MR. FLANAGAN: Nothing
2 further.

3 THE COURT: You may
4 step down. Next witness.

5 MR. FLANAGAN: Thank
6 you. Thank you Your Honor at this time the State would call
7 Rolando Valle.

8 THE COURT: Please
9 approach Mr. Valle. I'll ask you to raise your right hand. Do
10 you swear or affirm that the testimony you are about to give is
11 the truth?

12 MR. VALLE: Yes.

13 THE COURT: Now, before
14 you take the witness stand I do want to explain a couple of
15 things to you. It is my understanding that you previously had
16 been represented in certain matters, is that correct?

17 MR. VALLE: Yep.

18 THE COURT: And who is
19 your attorney?

20 MR. VALLE: Mr.
21 Sondergard.

22 THE COURT: Mr. Steve
23 Sondergard from Defiance? Have you discussed with him your
24 testimony at all today?

25 MR. VALLE: No, I tried

1 to get ahold of him before I came out here but I couldn't.

2 THE COURT: You
3 understand that, I'm going to go over with you your right
4 against self-incrimination. Anyone that testifies,
5 particularly if it gets into matters that could constitute any
6 criminal behavior, you have the right to remain silent and
7 first and foremost, you need not implicate yourself in any kind
8 of criminal activity or anything included that could be
9 construed as a crime. That includes the right against, and you
10 have the right to confer with an attorney prior to answering
11 any questions.

12 MR. VALLE: I wasn't
13 told that. I want to talk to my attorney but I never got ahold
14 of him.

15 THE COURT: Okay,
16 counsel please approach. (Discussion at bench) Mr. Valle, it's
17 your position that you're not prepared to testify until you
18 confer with your attorney?

19 MR. VALLE: I just want
20 to talk to him just because I got other case going on, just a
21 quick conversation is all I wanted.

22 THE COURT: I
23 understand. Would a telephonic conversation with him satisfy
24 you?

25 MR. VALLE: Yeah it

1 would.

2 THE COURT: Okay, we're
3 going to adjourn briefly to see if we can get Mr. Sondergard on
4 the phone. We'll give you a private line so you can speak with
5 Mr. Sondergard. We'll at least attempt that. We'll be in
6 adjournment then.

7 (BRIEF RECESS - RESUME HEARING AT 9:20 A.M.)

8 THE COURT: We are back
9 on the record in the matter of State of Ohio verses Cullen
10 Parsons. Mr. Valle, you've had an opportunity to speak with
11 your attorney Mr. Sondergard?

12 MR. VALLE: Yep.

13 THE COURT: Are you
14 then prepared to testify today?

15 MR. VALLE: Yes.

16 THE COURT: Please take
17 a seat, you've been sworn in. Your witness Mr. Flanagan.

18 MR. FLANAGAN: Thank
19 you Your Honor. Could you please state both your first and
20 your last name?

21 MR. VALLE: Rolando
22 Valle.

23 MR. FLANAGAN: Could
24 you spell your last name please?

25 MR. VALLE: V-A-L-L-E.

1 MR. FLANAGAN: And Mr.
2 Valle were you recently incarcerated at the Corrections Center
3 of Northwest Ohio? I apologize but I do have to ask for a yes
4 or no answer just because of the recording.

5 MR. VALLE: Yes.

6 MR. FLANAGAN: And was
7 that in relation to charges out of Defiance County?

8 MR. VALLE: Yes.

9 MR. FLANAGAN: Okay.
10 And that was three counts of trafficking in drugs and a single
11 count of engaging in a pattern of corrupt activity?

12 MR. VALLE: Do I have
13 to answer that?

14 MR. FLANAGAN: I'm just
15 asking what the charges were. Do you know what the charges
16 were?

17 MR. VALLE: Do I have
18 to answer that?

19 THE COURT: He's not
20 asking you if you did anything, he's simply asking you if you
21 were charged with something.

22 MR. VALLE: Yes.

23 MR. FLANAGAN: And
24 those charges are still pending, is that correct?

25 MR. VALLE: Yes.

1 MR. FLANAGAN: While
2 you were at CCNO did you at any time share a cell with another
3 person by the name of Cullen Parsons?

4 MR. VALLE: No.

5 MR. FLANAGAN: Did you
6 ever speak with law enforcement personnel and advise them that
7 you had been in a cell with Cullen Parsons?

8 MR. VALLE: I told them
9 I was in the block with him, not a cell.

10 MR. FLANAGAN: Okay, I
11 apologize, okay. Do you see Cullen Parsons here in the
12 courtroom today?

13 MR. VALLE: Yeah, he's
14 right there.

15 MR. FLANAGAN: Your
16 Honor, would the record reflect that's he's identified?

17 THE COURT: Record
18 would reflect he's indicated that the person is Cullen Parsons
19 who is the defendant in this matter.

20 MR. FLANAGAN: Thank
21 you. While you were on the same block with Mr. Parsons, did
22 you have an occasion to have a conversation with him?

23 MR. VALLE: We talked
24 here and there.

25 MR. FLANAGAN: Did you

1 at any time discuss with Cullen the reason why he was at CCNO?

2 MR. VALLE: No.

3 MR. FLANAGAN: Did

4 Cullen advise you...

5 MR. ZANER: Objection

6 leading.

7 THE COURT: Sustained.

8 Rephrase the question.

9 MR. FLANAGAN: What did

10 you talk about with Cullen Parsons?

11 MR. VALLE: General

12 things.

13 MR. FLANAGAN: Like

14 what?

15 MR. VALLE: Where we

16 were from, what we were in there for and stuff like that.

17 MR. FLANAGAN: So you

18 did talk about what you were in there for.

19 MR. VALLE: Yeah, we

20 all knew because it was in the paper.

21 MR. FLANAGAN: Tell me

22 about that conversation.

23 MR. VALLE: Well, he

24 just basically said what he was in there for.

25 MR. FLANAGAN: Can you

1 tell me what he said?

2 MR. VALLE: He said he
3 was in there for, they were saying that he was shooting at
4 somebody running or something like that.

5 MR. FLANAGAN: And did
6 he say...

7 MR. ZANER: Objection
8 that's a leading question.

9 THE COURT: Sustained.

10 MR. FLANAGAN: What
11 else did he say during that conversation?

12 MR. VALLE: Not too
13 much.

14 MR. FLANAGAN: Did you
15 previously provide a statement to law enforcement personnel?

16 MR. VALLE: Yes.

17 MR. FLANAGAN: And that
18 was regarding a conversation with Cullen Parsons?

19 MR. VALLE: It was
20 regarding a conversation that he was, like we were all in a
21 group, not one on one.

22 MR. FLANAGAN: Okay,
23 and did you tell law enforcement...

24 MR. ZANER: Objection.

25 THE COURT: Sustained.

1 MR. FLANAGAN: Do you
2 recall what you advised law enforcement about what Cullen had
3 told you as to why he was CCNO?

4 MR. VALLE: That he
5 shot at somebody running.

6 MR. FLANAGAN: So what
7 did Cullen say?

8 MR. VALLE: That he
9 shot at somebody running. That's what I heard when we were all
10 in the group.

11 MR. FLANAGAN: So did
12 Cullen say that he had shot at somebody...

13 MR. ZANER: Objection,
14 leading.

15 THE COURT: Sustained.

16 MR. FLANAGAN: Did
17 Cullen make any statements about the circumstances of this
18 alleged shooting?

19 MR. VALLE: No.

20 MR. FLANAGAN: Did he
21 say anything about...

22 MR. ZANER: Objection,
23 leading.

24 THE COURT: Sustained.

25 MR. FLANAGAN: Do you

1 recall any additional details about the conversation that you
2 told law enforcement?

3 MR. VALLE: Well I told
4 law enforcement that I overheard that I thought he said that he
5 shot somebody that was running. That's why I'm in here.

6 MR. FLANAGAN: Did you
7 tell law enforcement that you overheard that?

8 MR. ZANER: Objection.

9 THE COURT: Sustained.

10 MR. FLANAGAN: I told
11 law enforcement that he told me but you know, there were like
12 7-8 guys there, it's not like we pulled aside and had a one on
13 one conversation.

14 MR. FLANAGAN: Did you
15 hear the words from him mouth though?

16 MR. VALLE: That what?

17 MR. FLANAGAN: You
18 indicated that he stated that he had shot at a jogger, did you
19 hear him say that?

20 MR. VALLE: Yes.

21 MR. FLANAGAN: Did you
22 hear him say anything else?

23 MR. ZANER: Objection.

24 THE COURT: Sustained.

25 MR. FLANAGAN: When you

1 heard him make that statement was Cullen stating that was what
2 he had done?

3 MR. ZANER: Objection,
4 leading.

5 THE COURT: Sustained.

6 MR. FLANAGAN: You
7 don't recall any other details regarding the statement that you
8 provided to law enforcement?

9 MR. VALLE: I started
10 off by saying I overheard that and I said that, umm, he was
11 talking about getting wasted but I can't remember, it's been
12 since like...

13 MR. FLANAGAN: Would it
14 help refresh your recollection if you heard the recorded
15 statement?

16 MR. ZANER: Objection.

17 THE COURT: Sustained.

18 MR. FLANAGAN: Do you
19 recall, do you or do you not recall the statement that you
20 provided to law enforcement?

21 MR. VALLE: I recall
22 parts of it, yes.

23 MR. FLANAGAN: Okay.

24 MR. VALLE: I just
25 don't recall all of it because it's been a while and I've had a

1 fastlane life since so...

2 MR. FLANAGAN: As you
3 sit here today you don't recall any additional details about
4 what Cullen said?

5 MR. VALLE: That at he
6 shot at somebody running and that he was getting all drunk.
7 What else did I say? I can't remember.

8 MR. FLANAGAN: So, I
9 just want to be clear. During a discussion at CCNO you heard
10 Cullen Parsons say that...

11 MR. ZANER: Objection.

12 THE COURT: Sustained.

13 MR. FLANAGAN: No

14 further questions at this time.

15 THE COURT: Okay,

16 cross?

17 MR. ZANER: So there
18 was, Mr. Valle, there was a group of people around just kind of
19 talking, right?

20 MR. VALLE: There is
21 always a group of people talking.

22 MR. ZANER: Alright,
23 and you guys were talking about what your charges were, right?

24 MR. VALLE: Everybody
25 is talking about charges. Everybody's talking.

1 MR. ZANER: And this
2 alleged conversation, you weren't directly with Cullen where he
3 is talking one on one with you.

4 MR. VALLE: Well I'm
5 right there.

6 MR. ZANER: He wasn't
7 talking one on one with you right?

8 MR. VALLE: He was
9 talking normal.

10 MR. ZANER: So there is
11 a bunch of you talking about what the charges were and what the
12 allegations were, right?

13 MR. VALLE: Correct.

14 MR. ZANER: And you had
15 already read in the newspaper that he allegedly shot at a
16 jogger, right?

17 MR. VALLE: Correct.

18 MR. ZANER: And you
19 have an aggravated trafficking in drugs, a felony of the first
20 degree, you have that pending right?

21 MR. VALLE: Correct.

22 MR. ZANER: And that's
23 mandatory time, right?

24 MR. VALLE: Correct.

25 MR. ZANER: And you

1 also have a second degree felony which is also mandatory time
2 for aggravated trafficking in drugs, right?

3 MR. VALLE: Correct.

4 MR. ZANER: You also
5 have a felony of the fifth degree is that correct?

6 MR. VALLE: Correct.

7 MR. ZANER: And you
8 also have engaging in corrupt activity, which is also a felony
9 of the first degree, right?

10 MR. VALLE: Okay.

11 MR. ZANER: And that's
12 also mandatory time, right? And I think before, is that right?

13 MR. VALLE: Yep.

14 MR. ZANER: And before
15 you started I got the impression that you had some more charges
16 pending against you besides those, is that true?

17 MR. VALLE: I'm not
18 sure.

19 MR. ZANER: You're not
20 sure if you have any other charges against you?

21 MR. VALLE: No.

22 MR. ZANER: Well, what
23 kind of deals were made to you in order to have you come and
24 make a statement to the police?

25 MR. VALLE: No deals.

1 MR. ZANER: Sir isn't
2 it true that your original bond in your case, you were arrested
3 on those charges right?

4 MR. VALLE: Yes.

5 MR. ZANER: And your
6 original bond was set on August 20, 2015 at \$250,000 with 10%
7 allowed to be deposited, do you remember that?

8 MR. VALLE: Yes.

9 MR. ZANER: And this
10 alleged conversation happened when, do you remember? Sometime
11 in September, is that fair?

12 MR. VALLE: Sometime.

13 MR. ZANER: And you're
14 saying you got no deals as a result of the, you're going to
15 police and talking to them about this alleged conversation,
16 right?

17 MR. VALLE: No deals.

18 MR. ZANER: Sir, isn't
19 it true that on October 1, 2015 your bond was modified, which
20 was after this alleged statement from \$250,000 and 10% to
21 \$250,000 unsecured bond, in other words you did not have to
22 post any money to get out of jail, correct?

23 MR. VALLE: That's
24 correct.

25 MR. ZANER: And so you

1 used this statement as your get out of jail free card, isn't
2 that true?

3 MR. VALLE: No.

4 MR. FLANAGAN: I'll
5 object, he's answered that he made no deals.

6 THE COURT: Well he
7 just answered the question and said no. I'll permit it.

8 MR. ZANER: Isn't it
9 true, that was your get out of jail free card, that's why the
10 bond was reduced, isn't that true?

11 MR. VALLE: That's not
12 true.

13 MR. ZANER: I have
14 nothing further.

15 THE COURT: And re-
16 direct?

17 MR. FLANAGAN: No Your
18 Honor, thank you.

19 THE COURT: Mr. Valle
20 you're free to go. Any other witnesses?

21 MR. FLANAGAN: The
22 State has no further witnesses at this time Your Honor.

23 THE COURT: Do you have
24 any other exhibits to deal with?

25 MR. FLANAGAN: Your

1 Honor other than the aerial view, which I don't believe we need
2 to have admitted.

3 THE COURT: Okay, so
4 the State rests?

5 MR. FLANAGAN: Yes Your
6 Honor.

7 THE COURT: Very good.
8 We would be with the defense counsel.

9 MR. ZANER: Yes Your
10 Honor, I would move for a Rule 29 Judgment of Acquittal, there
11 is no evidence to tie Cullen Parsons into this alleged offense
12 and I would ask that all the charges be dismissed. The Court
13 has heard the evidence that has been presented. It could have
14 been lots of other people and police didn't do a lot of things
15 they could have, should have, would have.

16 THE COURT: Go ahead,
17 I'll hear from the State.

18 MR. FLANAGAN: Thank
19 you Your Honor. The uncontradicted testimony that we've heard
20 is that someone shot at Kyle Kern on County Road S-3 on
21 September 2, 2015, eight shots were fired, the barrel of the
22 gun was pointed at Kyle Kern when the shots were fired. There
23 is no dispute, all of the evidence, there has been no evidence
24 other than that is what happened. The questions before the
25 Court is who fired the shots. We've submitted more than ample

1 evidence to carry the burden of establishing beyond a
2 reasonable doubt that was in fact Cullen Parsons. We've
3 provided evidence, again, undisputed, that Cullen Parsons was
4 driving the silver Honda Civic 10-15 prior to the shooting and
5 it was a, not just any silver Honda Civic, but one that Kyle
6 Kern recognized as belonging to the Parsons and one that
7 emitted a unique engine sound. Kyle also made reference to
8 seeing the vehicle numerous times. Kyle also testified that
9 there was no doubt in his mind that Cullen was the operator of
10 the vehicle 10-15 minutes before the shooting incident and he
11 was paying close attention because he almost got hit by the car
12 when he came in contact with it. Again, undisputed testimony
13 that same Honda Civic is where the shots were fired from. Kyle
14 again testified that he observed the vehicle and he also heard
15 the unique engine sound. Twenty minutes later the same silver
16 Honda Civic was located on the property where Cullen Parsons
17 resides not parked in the driveway or the garage but in the
18 grass and the only person located outside the residence at that
19 time was Cullen Parsons, notably he was found with a bottle
20 Budweiser in his hand and inside the vehicle there was an open
21 case of Budweiser. Also found was a set of keys, keys that
22 Cullen Parsons had in his hand when law enforcement first came
23 into contact with him, keys that he tossed in an effort to
24 conceal and those keys were to the silver Honda Civic. Also
25 located on the Parsons property was a handgun and not just any

1 handgun but a handgun that we've established irrefutably was
2 responsible for eight shell casings that were found as part of
3 this investigation. Eight shell casings that were all found in
4 locations consistent with the testimony provided by Kyle Kern.
5 Also evidence provided undisputed testimony that a bullet was
6 found in a field in a location that was consistent again with
7 the description of events provided by Kyle Kern and that that
8 bullet came from that handgun. This was a handgun that Cullen
9 Parsons purchased, a handgun that Cullen Parsons had taken into
10 be placed in working order three days prior to this shooting
11 incident. And again, now we have testimony from an inmate at
12 CCNO that while both he and Cullen were incarcerated Cullen
13 made the statement that he was drunk and that he shot at a
14 jogger. Your Honor I would submit to the Court, further I
15 would submit to the Court that we've established that all the
16 alleged shooting incident took place in Henry County. I would
17 submit to the Court that we've established all the essential
18 elements of the charge of Attempted Murder and that Cullen
19 Parsons did attempt to purposely cause the death of Kyle Kern.
20 With respect to the felony of felonious assault, we've
21 established that Cullen Parsons did attempt to cause physical
22 harm to Kyle Kern by means of a deadly weapon or dangerous
23 ordinance and with respect to improperly handling a firearm in
24 a motor vehicle we've established that Cullen Parsons did
25 knowingly discharge a firearm while in a motor vehicle. Again,

1 we have linked through scientific evidence the particular
2 handgun that's been admitted into evidence with the shooting
3 incident and with the casings and the bullet that was found as
4 part of the investigation and would submit that with respect to
5 the forfeiture specification we have also carried our burden in
6 that regard Your Honor. Thank you.

7 MR. ZANER: Nothing
8 further.

9 THE COURT: Well,
10 construing the evidence that's been put forth by the State
11 consistent with the parameters of Criminal Rule 29 the Court
12 would overrule the motion at this time. Defense counsel do you
13 need a few minutes to go forward?

14 MR. ZANER: Ready to go.

15 THE COURT: Very good,
16 call your first witness.

17 MR. ZANER: Your Honor
18 I believe there is a stipulation with the prosecutor,
19 Defendant's Exhibit C, which is the results of the blood
20 alcohol content of Cullen Parsons of .074 and also Defendant's
21 Exhibit D which is the significant phone records of Cullen
22 Parsons on September 2, 2015.

23 THE COURT: Very good,
24 they'd be admitted. Please approach and if you would raise
25 your right hand please. Do you swear or affirm the testimony

1 you are about to give is the truth?

2 MS. KYNARD: I do.

3 THE COURT: Please be
4 seated. Your witness Mr. Zaner.

5 MR. ZANER: Thank you
6 Your Honor. If you could keep your voice up so everybody can
7 hear. State your name please?

8 MS. KYNARD: Aisya
9 Kynard.

10 MR. ZANER: And Aisya
11 where do you live?

12 MS. KYNARD: Toledo,
13 Ohio.

14 MR. ZANER: And do you
15 know Cullen Parsons?

16 MS. KYNARD: Yes.

17 MR. ZANER: And do you
18 see him in the courtroom?

19 MS. KYNARD: Yes.

20 MR. ZANER: Can you
21 point him out and describe what he is wearing?

22 MS. KYNARD: He's
23 wearing a dark blue suit.

24 MR. ZANER: Your Honor
25 I would ask the record would reflect the witness has

1 identified...

2 THE COURT: It would so
3 indicate that the witness has identified Mr. Parsons.

4 MR. ZANER: What is
5 your relationship with Cullen Parsons?

6 MS. KYNARD: We are
7 dating.

8 MR. ZANER: Would you
9 come to Court and lie for him?

10 MS. KYNARD: No.

11 MR. ZANER: Are you
12 presently employed?

13 MS. KYNARD: Yes.

14 MR. ZANER: And what do
15 you do?

16 MS. KYNARD: I'm an

17 STNA.

18 MR. ZANER: You're a

19 what?

20 MS. KYNARD: Nursing

21 assistant.

22 MR. ZANER: And do you

23 have a second job?

24 MS. KYNARD: Yes, I

25 work at Sunshine.

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home?

you do there?

the same thing.

also in school?

planning on going back to school?

your plans as to what you want to become?

like to be a neonatal nurse.

to become a nurse you're aware that you have to take certain tests.

and one of the things they look at is your background and history, right?

MR. ZANER: Children's

MS. KYNARD: Yes.

MR. ZANER: And what do

MS. KYNARD: Basically

MR. ZANER: And are you

MS. KYNARD: No.

MR. ZANER: Are you

MS. KYNARD: Yes.

MR. ZANER: And what's

MS. KYNARD: I would

MR. ZANER: Okay, and

MS. KYNARD: Yes.

MR. ZANER: Alright,

MS. KYNARD: Yes.

1 MR. ZANER: And so you
2 certainly wouldn't want to have some kind of a felony perjury
3 charge on you, right?

4 MS. KYNARD: No.

5 MR. ZANER: So you're
6 here to tell the truth.

7 MS. KYNARD: Yes.

8 MR. ZANER: Okay, and
9 we have talked about your testimony, right?

10 MS. KYNARD: Yes.

11 MR. ZANER: And I've
12 told you what we want is the truth, right?

13 MS. KYNARD: Yes.

14 MR. ZANER: Now, how
15 long have you been dating Cullen?

16 MS. KYNARD: Around
17 nine and a half months.

18 MR. ZANER: And during
19 that time did the two of you talk a lot?

20 MS. KYNARD: Yes.

21 MR. ZANER: Do you text
22 a lot?

23 MS. KYNARD: Yes.

24 MR. ZANER: Does Cullen
25 also text with your mother?

1

MS. KYNARD: Yes.

2

MR. ZANER: And you've

3

met his family?

4

MS. KYNARD: Yes.

5

MR. ZANER: And he's

6

met your family?

7

MS. KYNARD: Yes.

8

MR. ZANER: Are there

9

times the two of you argue?

10

MS. KYNARD: Yes.

11

MR. ZANER: But you

12

still have been seeing each other.

13

MS. KYNARD: Yes.

14

MR. ZANER: Let's call

15

your attention to September 2, 2015. Do you recall on that

16

date that you're aware Cullen was arrested later that night?

17

MS. KYNARD: Yes.

18

MR. ZANER: Let's talk

19

about earlier in the day, were the two of you talking at all?

20

MS. KYNARD: Yes.

21

MR. ZANER: And earlier

22

in the day during any of those conversations that you had with

23

Cullen you could hear what was going on and what he is doing?

24

MS. KYNARD: Yes.

25

MR. ZANER: And earlier

1 in the day did you hear any shots being fired?

2 MS. KYNARD: Yes.

3 MR. ZANER: So you're
4 talking to Cullen earlier in the day did you ask what that was
5 about?

6 MS. KYNARD: Yes, he
7 said he was hitting bottles.

8 MR. ZANER: And you
9 were able to hear that over the phone?

10 MS. KYNARD: Yes.

11 MR. ZANER: Alright.

12 Now, let's talk about the evening of September 2nd, do you go by
13 Lady Cheech as far as your phone or that's how Cullen keeps
14 track of you, is that right?

15 MS. KYNARD: Yes.

16 MR. ZANER: And back on
17 September 2nd was your phone number 419-902-0367?

18 MS. KYNARD: Yes.

19 MR. ZANER: And the
20 records would indicate that you and Cullen had a conversation
21 that started roughly at 7:30 and went for a little over 2
22 hours, right?

23 MS. KYNARD: Yes.

24 MR. ZANER: Now, during
25 that conversation, were you aware that there was a point in

1 time that Cullen was in fact texting your mother?

2 MS. KYNARD: Yes.

3 MR. ZANER: How could
4 he be talking to you and also texting your mother?

5 MS. KYNARD:

6 Headphones.

7 MR. ZANER: Okay, so he
8 would be using headphones to talk to you.

9 MS. KYNARD: Yes.

10 MR. ZANER: And then
11 using the phone itself to text.

12 MS. KYNARD: Yes.

13 MR. ZANER: And you
14 have seen him do that before?

15 MS. KYNARD: Yes.

16 MR. ZANER: Now, was
17 there ever a time that you weren't able to hear Cullen during
18 that two hour conversation?

19 MS. KYNARD: No.

20 MR. ZANER: Did he ever
21 mute the phone?

22 MS. KYNARD: No.

23 MR. ZANER: How would
24 you know that?

25 MS. KYNARD: I could

1 hear him breathing if he was on mute I wouldn't have been able
2 to hear him breathing.

3 MR. ZANER: Okay, so
4 during the entire time you two were either talking or you could
5 hear him breathing.

6 MS. KYNARD: Yes.

7 MR. ZANER: So you're
8 sure he never muted the phone.

9 MS. KYNARD: Yes.

10 MR. ZANER: At any time
11 during that two hour conversation did you ever hear any gun
12 shots?

13 MS. KYNARD: No.

14 MR. ZANER: Now, at one
15 point during that conversation were you able to hear Cullen
16 talking to anyone else?

17 MS. KYNARD: His
18 mother.

19 MR. ZANER: And you
20 recognized his mother's voice?

21 MS. KYNARD: Yes.

22 MR. ZANER: And so you
23 heard him talking to his mother and what's the next thing you
24 heard?

25 MS. KYNARD: I heard an

1 opening car door.

2 MR. ZANER: Was it a
3 house door?

4 MS. KYNARD: Yes, well
5 both.

6 MR. ZANER: Alright.
7 And was it shortly after that you heard, did you hear the
8 police come to the house?

9 MS. KYNARD: Yes.

10 MR. ZANER: And, what
11 five minutes or so from the time he's talking to his mother
12 until the police came to the house?

13 MS. KYNARD: Yes.

14 MR. ZANER: And after
15 that I take it the conversation with Cullen stopped?

16 MS. KYNARD: Yes.

17 MR. ZANER: Now, you
18 never heard the engine start though right?

19 MS. KYNARD: No.

20 MR. ZANER: Alright,
21 and you never heard the car drive away.

22 MS. KYNARD: No.

23 MR. ZANER: And you
24 don't know who may or may not have opened that car door right?

25 MS. KYNARD: Right.

1 MR. ZANER: Now, did
2 you have a conversation with, in December of this year, did the
3 police come to your house?

4 MS. KYNARD: Yes.

5 MR. ZANER: Did they
6 have a search warrant?

7 MS. KYNARD: Yes.

8 MR. ZANER: And in fact
9 do you recognize the officer who came to your house?

10 MS. KYNARD: Yes.

11 MR. ZANER: And is it
12 the officer that is sitting next to the prosecutor?

13 MS. KYNARD: Yes.

14 MR. ZANER: And were
15 there also some Toledo Police Officers with him?

16 MS. KYNARD: Yes.

17 MR. ZANER: And did
18 they have a conversation with you?

19 MS. KYNARD: Yes.

20 MR. ZANER: Did they
21 ask you some questions?

22 MS. KYNARD: Yes.

23 MR. ZANER: Did they
24 talk about what was your phone number?

25 MS. KYNARD: Yes.

1 MR. ZANER: And did
2 they ask you questions, from the conversation with you, did
3 they seem to know what the case was all about?

4 MS. KYNARD: Yes.

5 MR. ZANER: Alright.
6 Did they ask you if they had been on the phone with Cullen
7 during that entire time?

8 MS. KYNARD: Yes.

9 MR. ZANER: Did they
10 ask you as to whether or not the phone was ever on mute?

11 MS. KYNARD: Yes.

12 MR. ZANER: And was
13 your response then the same as it was today? It was never on
14 mute?

15 MS. KYNARD: Yes.

16 MR. ZANER: And did you
17 tell them it was because you could hear him breathing?

18 MS. KYNARD: Yes, well
19 the breathing part I did not say.

20 MR. ZANER: And did
21 they ask you as to whether or not you ever heard shots?

22 MS. KYNARD: Yes.

23 MR. ZANER: And did you
24 indicate to them that you never heard any shots being fired?

25 MS. KYNARD: Yes.

1 MR. ZANER: If I may
2 have a second Judge. I'd have nothing further Judge.

3 THE COURT: Cross?

4 MR. FLANAGAN: Thank
5 you Your Honor. You just, you indicated that you had advised
6 law enforcement personnel that you never heard any shots?

7 MS. KYNARD: Yes.

8 MR. FLANAGAN: But you
9 testified earlier that you heard shots.

10 MS. KYNARD: Earlier in
11 the day, yes.

12 MR. FLANAGAN: But you
13 didn't advise law enforcement of that?

14 MS. KYNARD: No.

15 MR. FLANAGAN: How many
16 shots did you hear earlier in the day?

17 MS. KYNARD: About 4 or
18 5.

19 MR. FLANAGAN: Now,
20 defense counsel indicated that you were on the phone for about
21 2 hours from about 7:30 to 9:30, does that sound about right?

22 MS. KYNARD: Yes.

23 MR. FLANAGAN: Would it
24 also be accurate that you were on the phone with Cullen as well
25 from 6:27 to 7:02 and from 7:02 to 7:30 and then from 7:30 to

1 9:38?

2 MS. KYNARD: Yes.

3 MR. FLANAGAN: So

4 essentially with breaks for under a minute you were on the
5 phone with for him for up to three hours?

6 MS. KYNARD: Yes.

7 MR. FLANAGAN: Now that
8 last half hour of phone call, was Cullen on the phone?

9 MS. KYNARD: From when?

10 I'm sorry.

11 MR. FLANAGAN: From

12 9:00 to 9:38?

13 MS. KYNARD: No.

14 MR. FLANAGAN: Okay.

15 What was going on then?

16 MS. KYNARD: The police
17 had come.

18 MR. FLANAGAN: Why were
19 you still on the phone?

20 MS. KYNARD: I didn't
21 know what had happened.

22 MR. FLANAGAN: You just
23 left it on for a half hour?

24 MS. KYNARD: Yep.

25 MR. FLANAGAN: You

1 didn't know what had happened so you just left the phone on for
2 a half hour with nothing on the other line.

3 MS. KYNARD: Well
4 someone was on the other line, I heard him being arrested.

5 MR. FLANAGAN: What
6 were you doing on September from 6:27 to 9:38?

7 MS. KYNARD: I was
8 hanging out with my little brother and sister.

9 MR. FLANAGAN: Where
10 was that?

11 MS. KYNARD: My house.

12 MR. FLANAGAN: In
13 Toledo?

14 MS. KYNARD: Yes.

15 MR. FLANAGAN: What did
16 you and Cullen talk about for two and a half hours?

17 MS. KYNARD: We talked
18 about our relationship; we talked about past experiences and
19 both of our birthdays since they were beginning to come up.

20 MR. FLANAGAN: Anything
21 else?

22 MS. KYNARD: Marriage.

23 MR. FLANAGAN: Anything
24 else?

25 MS. KYNARD: We did

1 have a little argument because he said he was giving his ex
2 money, but that was about it.

3 MR. FLANAGAN: Again,
4 anything else?

5 MS. KYNARD: No.

6 MR. FLANAGAN: No?
7 Except, the gunshots that were fired earlier, did you talk
8 about that?

9 MS. KYNARD: No we
10 didn't talk about that.

11 MR. FLANAGAN: Okay.
12 What was Cullen doing while you guys were on the phone?

13 MS. KYNARD: Which
14 time?

15 MR. FLANAGAN: 6:27 to
16 9:00.

17 MS. KYNARD: First he
18 was talking to his mother, then he was talking to my mother,
19 then he sat in his car for a little while.

20 MR. FLANAGAN: Have you
21 been in his car before?

22 MS. KYNARD: Yes.

23 MR. FLANAGAN: Is that
24 a silver Honda Civic?

25 MS. KYNARD: I've been

1 in multiple cars.

2 MR. FLANAGAN: When you
3 refer to his car, which car are you referring to?

4 MS. KYNARD: I'm not
5 sure which car is his.

6 MR. FLANAGAN: You said
7 you were aware that he was texting your mother during the phone
8 call.

9 MS. KYNARD: Yes.

10 MR. FLANAGAN: Do you
11 know what he was texting her about?

12 MS. KYNARD: He was
13 apologizing because I had come home later before and she was
14 getting tired of it.

15 MR. FLANAGAN: Now, you
16 said that you guys can text other people while you're on the
17 phone with each other?

18 MS. KYNARD: Yes.

19 MR. FLANAGAN: I guess
20 my question is, why would you text each other while you're on
21 the phone with each other?

22 MS. KYNARD: I don't
23 recall texting while I'm on the phone with him.

24 MR. FLANAGAN: Well
25 would it surprise you that between 6:27 p.m. and 9:00 p.m. on

1 September 2, while you were on the phone with Cullen, that you
2 sent twelve text messages to him. Does that surprise you?

3 MS. KYNARD: No.

4 MR. FLANAGAN: But you
5 don't recall doing that?

6 MS. KYNARD: No.

7 MR. FLANAGAN: Would it
8 surprise you that Cullen sent you thirteen text messages during
9 that same time frame?

10 MS. KYNARD: No.

11 MR. FLANAGAN: While
12 you guys were on the phone with each other.

13 MS. KYNARD: Yes, we do
14 that all the time.

15 MR. FLANAGAN: Do you
16 recall at 8:22 on September 2, 2015, 8:22 p.m. sending Cullen a
17 text saying, you stop and go do what I told you, bye.

18 MS. KYNARD: Yes.

19 MR. FLANAGAN: Okay.
20 You said bye.

21 MS. KYNARD: Yes, but
22 we were still on the phone.

23 MR. FLANAGAN: Oh,
24 okay. Does that make sense to you?

25 MS. KYNARD: Yes.

1 MR. ZANER: I'm sorry,
2 you had the time wrong. I have it from your notes as 7:22 not
3 8:22.

4 MR. FLANAGAN: I
5 apologize, do you recall at 7:22 that evening sending a text
6 message to Cullen stating you stop and go do what I told you,
7 bye.

8 MS. KYNARD: Yes.

9 MR. FLANAGAN: And you
10 did that while you were on the phone with him?

11 MS. KYNARD: Yes.

12 MR. FLANAGAN: And you
13 did that because you couldn't say that to him?

14 MS. KYNARD: Well, I
15 did say it to him also.

16 MR. FLANAGAN: And do
17 you recall at, I think I may have misspoke about my times here
18 but at any rate you do acknowledge sending texts to Cullen
19 during that period of time you were on the phone on the evening
20 of September 2, 2015?

21 MS. KYNARD: Yes.

22 MR. FLANAGAN: And you
23 received texts from him as well right?

24 MS. KYNARD: Yes.

25 MR. FLANAGAN: And at

1 7:22 you sent a text that said bye.

2 MS. KYNARD: Yes.

3 MR. FLANAGAN: And at

4 7:22 you sent a text saying delete my pics.

5 MS. KYNARD: Yes.

6 MR. FLANAGAN: And

7 again, is that something you couldn't say to him if you were on
8 the phone with him?

9 MS. KYNARD: I could
10 have.

11 MR. FLANAGAN: Is this
12 when he was just breathing on the other end?

13 MS. KYNARD: No, he was
14 talking back.

15 MR. FLANAGAN: Do you
16 recall speaking with Cullen on numerous occasions while he was
17 incarcerated at CCNO?

18 MS. KYNARD: Yes.

19 MR. FLANAGAN: Do you
20 recall making a statement to the effect of, you didn't witness
21 anything?

22 MS. KYNARD: Yes.

23 MR. FLANAGAN: And do
24 you recall making the statement that you weren't important to
25 the case?

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MS. KYNARD: Yes.

MR. FLANAGAN: Do you recall Cullen stating that he had driven by a jogger?

MS. KYNARD: No.

MR. FLANAGAN: Is it your testimony that he never said that to you during a jail phone call?

MS. KYNARD: I do not remember.

MR. FLANAGAN: So he could have said it and you just don't remember?

MS. KYNARD: Yes.

MR. FLANAGAN: Do you recall during a jail phone call Cullen telling you that the person who accused him was a person that he told earlier he hated?

MS. KYNARD: Yes.

MR. FLANAGAN: Again, when you were questioned by law enforcement whether you heard any shots you said you didn't hear any?

MS. KYNARD: Yes.

MR. FLANAGAN: No further questions, thank you Your Honor.

THE COURT: Any re-direct?

1 MR. ZANER: One second
2 Judge. Nothing further Judge.

3 THE COURT: You may
4 step down. Next witness.

5 MR. ZANER: Defendant
6 rests Judge.

7 THE COURT: Very good.
8 Well let's at this time, counsel approach. (Discussion at
9 bench) Okay, and for purposes of the record it is stipulated
10 that Exhibit B would be admitted, correct?

11 MR. FLANAGAN: That is
12 correct Your Honor.

13 MR. ZANER: Which is
14 all the police reports we received.

15 THE COURT: Very good.

16 MR. ZANER: I have two
17 motions Judge, first is, I'm not blaming the prosecutor, Hawken
18 has been straightforward and honest with me throughout
19 including calling me last night. But, the police have a duty
20 to do reports and turn them over especially if it is
21 exculpatory information and I don't know how anyone could ever
22 say what Aisya Kynard testified to was not exculpatory if in
23 fact this relationship with Cullen and Aisya had ended we would
24 not have any information about that testimony. That testimony
25 is crucial and critical in this case and based on the failure

1 of that information to be turned over, plus the two final
2 reports that Officer Saneholtz did in this case which is clear
3 are not in our Exhibit B which he testified to, we believe
4 there is misconduct and the case should be dismissed.

5 THE COURT: Well let's
6 go to those two final, the two final reports you're referring
7 to.

8 MR. ZANER: One of them
9 was about going and talking to Aisya and the second one was
10 submitting the phone, I believe submitting Aisya's phone to
11 BCI, but we never received those reports, but the important
12 thing is this conversation that Aisya had with the officer,
13 that is absolutely exculpatory that she never heard gunshots
14 and we never got it, thank goodness that they still have a
15 relationship, if they hadn't we would have never known that.
16 So that's the first and the second one is to renew our Rule 29.

17 THE COURT: Understood.
18 Mr. Flanagan?

19 MR. FLANAGAN: Thank
20 you Your Honor. The supplemental reports, as the record would
21 show, had they had those supplemental reports the information
22 that he's suggesting they did not have they still wouldn't
23 have, the supplemental narratives does not explain it, those
24 statements. That being said Ms. Kynard's contention that she
25 was on the phone with Cullen and didn't hear anything while she

1 was on the phone has been well known to defense counsel for
2 months, there are numerous phone calls that they had heard,
3 that we have heard where that very fact is acknowledged and the
4 fact that that is part of their defense is acknowledged so to
5 suggest they somehow have been prejudiced or somehow going to
6 be handcuffed in preparing a defense is disingenuous Your
7 Honor. They had that information and everybody involved in the
8 defense was working that angle four months and we all heard the
9 conversations where that's being discussed so this information
10 was not secreted away, it was known to all parties and had they
11 had two supplements, we are talking about a paragraph
12 describing the execution of a search warrant and probably one
13 or two sentences describing the turning over of a phone or the
14 collection of a phone from BCI. Those two supplements did not
15 reference any of that information so the fact that they didn't
16 have it, again, caused absolutely 100% no prejudice and the
17 information that is contended that they would have been without
18 or that was somehow concealed from them was known to them and
19 it is patently obvious that it was known to everyone involved
20 in their defense for months and is reflected in numerous,
21 numerous conversations about that very fact. So, Your Honor I
22 would submit that certainly in hindsight, obviously there can
23 be better communication, better reporting but the fact of the
24 matter is these complaints resulted in zero, zero, zero
25 prejudice to the defense and their ability to prepare a defense

1 in this case. Thank you.

2 THE COURT: Any

3 response?

4 MR. ZANER: No judge.

5 THE COURT: Overruled.

6 We'll take about a fifteen minute break; we'll then come back
7 and do closing.

8 (BRIEF RECESS - RESUME HEARING AT 10:45 A.M.)

9 THE COURT: The Court

10 at this time is prepared to hear closing argument. Mr.
11 Flanagan are you prepared?

12 MR. FLANAGAN: Yes Your

13 Honor, thank you.

14 THE COURT: Go ahead.

15 MR. FLANAGAN: Your

16 Honor, through the evidence and testimony presented over the
17 past two days we believe we have establish beyond a reasonable
18 doubt that Cullen Parsons is guilty of the charges of Attempted
19 Murder, Felonious Assault and Improperly Handling a Firearm.
20 With respect to the charge of Attempted Murder we have
21 established that on September 2, 2015 in Henry County Cullen
22 Parsons engaged in conduct that if it were successful would
23 have constituted the offense of murder and he engaged in
24 conduct designed to purposefully cause the death of Kyle Kern.
25 With respect to the charge of Felonious Assault we've presented

1 evidence that on September 2, 2015 here in Henry County Cullen
2 Parsons did attempt to cause physical harm to Kyle Kern by
3 means of a deadly weapon. And with respect to the charge of
4 Improperly Handling a Firearm we've presented evidence beyond a
5 reasonable doubt establishing that on September 2, 2015 in
6 Henry County Cullen Parsons discharged a firearm while in a
7 motor vehicle. The evidence presented in this matter, both eye
8 witness testimony and the scientific evidence all ties only one
9 person to both the silver Honda Civic and to the .45 caliber
10 Regent R100 handgun, that person is Cullen Parsons. Based on
11 the evidence presented there is no reasonable doubt that Cullen
12 Parsons fired shots while he was driving a silver Honda Civic
13 on September 2, 2015, there is no reasonable doubt that those
14 shots were fired at Kyle Kern and in light of these facts and
15 the evidence and testimony presented Your Honor we would
16 request a finding of guilty as to each count of the Three
17 County Indictment and we would also request a finding that
18 Cullen Parsons .45 caliber Regent R100 handgun be forfeited as
19 an instrumentality of the offense. Thank you.

20 THE COURT: Thank you.

21 Mr. Zaner?

22 MR. ZANER: May it
23 please the Court, what better way to get back at somebody you
24 hate, somebody you've had years of having issues with and
25 problems with, someone that you filed things against that have

1 been found to be false that involved in civil litigation
2 costing potentially hundreds of thousands of dollars. What
3 better way to get back at someone than to go after their child?
4 What parent doesn't want their children protected? Their
5 children not being locked up, being falsely accused? Every
6 parent wants that. And so what better way for Kyle Kern to get
7 back at the Parsons family but to blame Cullen Parsons for what
8 allegedly occurred on September 2nd and let's assume, yes, it
9 did happen. The issue is whether or not the State has proved
10 beyond a reasonable doubt that it's Cullen and the fact that
11 Cullen, after he was locked up and at CCNO tells his
12 girlfriend, I hate Kyle Kern, who wouldn't hate someone who has
13 falsely accused you and forced you to be locked up in an
14 environment like CCNO. Clearly irrelevant. Before September
15 2nd maybe important, but after September 2nd it means nothing.
16 Judge this is, the police had an opportunity to really do a
17 good, thorough complete investigation, not only to find
18 potentially inculpatory information but exculpatory information
19 and they dropped the ball. Either because they intentionally
20 did it, potentially because of the Sheriff's relationship with
21 Kyle Kern or because they didn't know what to do or how to do
22 it. But, the point is, they could have done things that night
23 that could have totally exculpated Cullen, could have
24 inculpated Cullen but they failed to do that. GSR of the
25 people that were there, clearly they could have gotten a search

1 warrant, and even being a defense attorney, it's our position
2 they didn't need to do a search warrant to check Craig and
3 Michelle Parsons who were at the scene. They clearly could
4 have done that. They could have gotten a search warrant to
5 check. But they never did. They never correctly went about
6 checking out that car, if in fact that car was used for a drive
7 by shooting and a gun is partially pointed out the window there
8 is going to be GSR all over that car and they didn't do that
9 right so there are all kinds of things that they could have
10 done, but they didn't. So the question is, have they proved
11 beyond a reasonable doubt that Cullen did this? Interesting to
12 know, there is nowhere in any reports, there is nowhere in Kyle
13 Kern's statement does he ever talk about seeing Cullen earlier
14 that night and all of a sudden now at trial he makes it up, but
15 let's assume he did. The testimony is there was clearly
16 sufficient time from the time that he allegedly saw Cullen on
17 T-2 for Cullen to get home. So let's buy it. Alright, what
18 scenario could have happened that has easily as likely to have
19 occurred then Cullen being the one who did the shooting? Let's
20 assume it was Cullen driving. He goes home, sees his dad, hey
21 dad, I just saw Kyle Kern jogging by himself over on T-2 and
22 looks like he's coming down County Road 4, alright, and Craig
23 says, I'm going to go take the car, it's his car anyway, give
24 me the keys and Craig takes off. Remember, there is evidence
25 before this Court that there was, Cullen was shooting that

1 weapon earlier that day from Aisya, cocked gun still in the
2 car, we don't know, but let's assume it was, why couldn't it
3 have been? And Craig gets in the car and Craig goes and drives
4 and Craig goes by Kyle Kern and Craig fires the shots. Craig
5 goes home throws the keys to Cullen, gets rid of the gun and
6 goes into the house. Why isn't that as logical? The DNA
7 evidence that has been obtained shows an unknown male, once
8 again, the State had the power to find out, they could have
9 gotten DNA from Craig Parsons that night. They never did.
10 They could have gotten fingerprints that night. They never
11 did. And we know on the weapon there is an unknown male. That
12 could have cleared it all up. But who has the motive, the
13 incentive to do this? Not Cullen, Craig Parsons who lots of
14 police reports back and forth with Kyle Kern, throwing beer
15 bottles, which there is testimony that happened that night.
16 Swearing, vulgarity, drinking, all of those kinds of things.
17 The only evidence that the State has presented that ties in
18 Cullen to being the person is the snitch, Mr. Valle, who
19 clearly is not to be believed and when he says he had no
20 incentive and nothing was given to him, that's an absolute lie,
21 somebody with mandatory Fl's and mandatory prison time,
22 alright, who doesn't even have a one on one with Cullen, there
23 is a group of people talking and talking about their charges
24 and those kinds of things, he knew part of it from newspaper
25 articles which he testified to, ok, I submit what he is saying

1 is not accurate and maybe he overheard Cullen talking about the
2 charges but never Cullen admitting to anything because if
3 Cullen was admitting something to someone who is a total
4 stranger the thirty hours of phone conversations that took
5 place from CCNO to various people by Cullen, there would have
6 been evidence that would have been submitted to this Court
7 about Cullen admitting he did something as opposed to just this
8 conversation. I submit to you that conversation never
9 happened, misinterpreted by this man and on top of that, he did
10 get an incentive. How does his bond go from \$250,000 with 10%
11 and then he makes the statement and then the bond gets reduced
12 and he doesn't have to post any money, that was his get out of
13 jail free card. So I submit Mr. Valle is not to be trusted and
14 is not to be believed. Judge the State has this burden beyond
15 a reasonable doubt and this is an all or nothing thing, we
16 don't want, we're hoping the Court doesn't make a compromise on
17 this, believe it all or believe none of it but the State has
18 the burden and clearly they haven't shown that Cullen Parsons
19 was the one who drove by at the time that these shots were
20 allegedly fired. Aisya Kynard who wants to be a nurse knows
21 that she cannot lie. Obviously young kids today with texting
22 and on the phone and all kinds of things, certainly people of
23 our generation never did wouldn't even know how to do both of
24 those things at the same time but clearly that's what was
25 happening. She heard gunshots earlier in the day; she heard no

1 know that the texts have been admitted into evidence, I don't
2 think, but the phone records shows the conversation was going
3 on that entire time. Ms. Kynard testified that there was never
4 a time that was put on mute because she could always hear
5 breathing, which you would with the speaker, with the
6 headphone.

7 THE COURT: She never
8 testified that she had headphones though.

9 MR. ZANER: No, no, she
10 heard Cullen with the headphones.

11 THE COURT: Here's the
12 other thing that didn't come out was whether or not, and I was
13 hoping to hear this, was whether or not she had her phone on
14 speaker which many people do or whether or not she was just
15 listening, you know, and I don't know if she had it to her ear
16 for two hours, which probably not.

17 MR. ZANER: I think she
18 had indicated which, I can, I know what the answer is, but I am
19 not going to add testimony but I can indicate, if the Court
20 recalls, she said she was doing things with her brother and
21 sister.

22 THE COURT: Right, like
23 when you're hanging out, but it was never in the record because
24 I was waiting to hear that. Okay.

25 MR. ZANER: I know the

1 answer to that but I can't tell the Court. But once again,
2 still, the burden is on the State beyond a reasonable doubt.

3 THE COURT: I
4 understand that.

5 MR. ZANER: And they
6 haven't got it.

7 THE COURT: Okay, thank
8 you.

9 MR. ZANER: Thank you
10 Judge.

11 THE COURT: Go ahead
12 with your final argument counsel.

13 MR. FLANAGAN: Thank
14 you Your Honor. On September 2, 2015 someone did shoot at Kyle
15 Kern on County Road S-3 in Henry County, Ohio. Eight shots
16 were fired; the barrel of the gun was pointed at Kyle Kern when
17 shots were fired. This is the testimony of Kyle Kern and this
18 is uncontroverted testimony. I think defense counsels struck
19 the question for this Court to decide is who fired those shots.
20 On behalf of the State of Ohio and behalf of the victim in this
21 case, Kyle Kern, I would submit to the Court that in light of
22 the evidence submitted there is no reasonable doubt that those
23 shots were fired by Cullen Parsons. We have provided evidence,
24 again, through uncontroverted testimony that Cullen Parsons was
25 driving a silver Honda Civic 10-15 minutes prior to the

1 shooting incident. Kyle Kern testified as we've discussed that
2 he recognized that specific vehicle as belonging to the Parsons
3 because he had seen it numerous times and because of the unique
4 noise made by the engine. Kyle also testified there was no
5 doubt whatsoever that the driver of the silver Honda Civic when
6 he encountered that vehicle 10-15 minutes prior to the shooting
7 was Cullen Parsons and he testified that he paid extra note to
8 the vehicle because at that time the vehicle almost hit him
9 while he was jogging. We've provided further evidence, again,
10 through uncontroverted testimony that when the shots were fired
11 at Kyle Kern the shots were fired from a silver Honda Civic.
12 Again, not just any silver Honda Civic but the same silver
13 Honda Civic that Cullen Parsons was driving when he almost hit
14 Kyle Kern just 10-15 minutes earlier. Kyle Kern testified that
15 he recognized the vehicle and that he also heard, again, the
16 same unique sound that the engine, of the engine that was
17 associated with that vehicle. Twenty minutes later, the same
18 silver Honda Civic was located at the Parsons residence, not
19 parked in the driveway or garage but on the grass and the only
20 person outside the residence was Cullen Parsons who was coming
21 out from the trees. Notably he was found with a bottle of
22 Budweiser. Notably inside the silver Honda Civic was an open
23 case of Budweiser bottles. Notably Cullen Parsons had on his
24 persons a key, Sheriff Bodenbender saw him toss the object
25 under a tree and the only object recovered from where that

1 object was tossed was a key. A key bearing a Honda logo and
2 that Arlen Cohrs testified worked on the silver Honda Civic
3 that was seized from the Parsons property. So, 10-15 minutes
4 before the shooting Cullen Parsons was driving the silver Honda
5 Civic and 20 minutes after the shooting the evidence has shown
6 that Cullen Parsons was in the front yard of his residence, the
7 same location as the car and he had the keys to the car in his
8 hand along with that bottle of Budweiser. Let's look at
9 another piece of evidence that was located in the front yard of
10 the Parsons residence, the handgun. The pictures that are in
11 evidence and presented to the Court clearly indicate that this
12 gun had not been sitting beneath the pine tree where it was
13 found. The ground about it was strewn with pine needles and
14 other debris but the gun itself was spotless. This was Cullen
15 Parsons gun; he purchased it on February 22, 2015. On Sunday,
16 August 30, 2015, three days prior to the shooting incident
17 Cullen took that gun into the Lead Shed in Wauseon and got it
18 repaired to working order. The only DNA on the trigger of that
19 gun that was sufficient for analysis belonged to Cullen
20 Parsons. The only DNA on the trigger of that gun that was
21 sufficient for analysis belonged to Cullen Parsons. We have
22 shell casings and a bullet that were recovered as part of the
23 investigation. Kyle Kern testified that he heard eight shots
24 fired at him on September 2, 2015. Eight shell casings were
25 found. The casing found by Kyle Kern was located in the

1 immediate area where he felt the shots were fired. The casings
2 found by K-9 Andy and Deputy Glanz were located at the back of
3 a dead end drive, County Road 4, the same dead end drive where
4 Kyle saw the silver Honda Civic go immediately after the shots
5 were fired. And the bullet, the bullet was found in the bean
6 field to the south of where Kyle Kern said he was shot at in a
7 location consistent with his description of events. So not
8 only was the location of each casing and the bullet consistent
9 with the descriptions provided by Kyle Kern but each casing and
10 the bullet were scientifically shown to have been fired from
11 Cullen Parsons gun. The gun with his DNA on the trigger, his
12 DNA on the handle. The gun that he purchased and that he had
13 repaired three days prior to the shooting and the gun that was
14 found discarded under a tree in the Parsons front yard on the
15 night of the shooting at a time when only Cullen Parsons was
16 located outside the residence. And finally Your Honor we
17 presented the testimony, the reluctant testimony of Rolando
18 Valle. He was clearly unhappy to be here but the testimony,
19 whether defense counsel wants to acknowledge it or not, is that
20 no deals were offered, no deals were made for the statements he
21 provided. And while at CCNO he heard Cullen Parsons state that
22 he had gotten drunk and shot at a jogger. Defense presented
23 testimony of Aisya Kynard in an effort to show that Cullen
24 Parsons could not have fired those shots. It goes without
25 saying that this is a biased witness, she is Cullen's long term

1 girlfriend, they talk about marriage, they talk about a life
2 together, all of that goes out the window if he is convicted.
3 Aisya stated that she was on the phone with Cullen on the
4 evening of September 2, 2015 for three hours. She states that
5 she could hear him breathing the whole time and yet, she
6 indicated during that time she was playing with family members,
7 she texting, she's engaging in activities that are not
8 consistent with someone paying attention to a phone call for
9 three hours. I believe it is significant that in one of the
10 text message that was sent during this time period she tells
11 him to do what she told him and then she says bye. She makes a
12 statement in a text message, bye. She can't explain why she
13 would say that in a text message as opposed to saying it over
14 the phone if she's in contact with him. She can't explain why
15 she chose to send any text messages to him if he was simply on
16 the phone in constant contact with her. Aisya also testified
17 that she heard gunshots earlier that night or that day on
18 September 2, 2015 but when law enforcement personnel asked her
19 whether she heard any shots she said no. When asked how many
20 shots she heard she said four or five, that certainly doesn't
21 line up with the evidence that was collected as part of this
22 investigation. I think it is also noteworthy with respect to
23 how Aisya was using this phone and whether she was in fact,
24 listening or paying attention to what was happening on the
25 other end of the line. But that phone call stayed active until

1 9:38 p.m. Over a half an hour, I believe, after Cullen Parsons
2 was taken into custody. So she's got an active phone call with
3 a dead line essentially. It doesn't seem like someone who is
4 paying attention to what is going on the other end of the line
5 would keep the phone line active for up to 30 minutes after we
6 know there is no one on the other end of it. Cullen Parsons
7 told Aisya that he hated Kyle Kern and the testimony, if the
8 Court will look into it, the testimony was that Cullen told her
9 that he was the person he had told her earlier, that he hated.
10 He was not saying that he hated him, I'm sure he does, but he
11 was not referencing hating him at the moment, he was describing
12 him to her as the person that he had already told her he hated.
13 The Court is well aware through the evidence submitted that the
14 relationship between the Parsons family and Kyle Kern is beyond
15 strained. The relationship is characterized by constant calls
16 to law enforcement from both parties. A recently active
17 lawsuit in which large sums of money were at issue, clearly it
18 is a strained and hostile relationship. I think Kyle Kern
19 testified that on a previous time when he was jogging on the
20 same route that he typically takes he had an uncomfortable
21 encounter with Cullen Parsons who was driving the silver Honda
22 Civic in such a manner that Kyle felt I necessary to stop
23 running in hopes that Cullen would leave the area and Cullen
24 stayed in an intersection and made no indication that he was
25 going to leave until Kyle ran past him. Kyle elected to run

1 through a field to get around him and avoid a confrontation.
2 Clearly the hostilities between the families had spilled over
3 and was being exhibited between Cullen and Kyle. Defense
4 counsel has suggested that it's just as likely that this crime
5 was committed by Craig Parsons. I would submit that it is not
6 likely and not probable and barely even possible to suggest
7 that. Again, there is no evidence linking Craig Parsons to
8 this conduct. The DNA on the trigger, the only DNA sufficient
9 for analysis belongs to Cullen Parsons. The gun belongs to
10 Cullen Parsons. The only person seen driving the silver Honda
11 Civic was Cullen Parsons. The keys to the silver Honda Civic
12 were in the possession of Cullen Parsons and Craig never told
13 anyone that he had shot at a jogger on September 2, 2015. The
14 only person who did say that was Cullen Parsons. Your Honor I
15 wish that Kyle Kern had seen clearly the person who was in the
16 driver seat of the silver Honda Civic when those shots were
17 fired but to his credit, from start to finish, he has been
18 honest and said that he was not able to see anything but a
19 silhouette. The evidence surrounding that moment in time
20 points to only one person being there. It points only to
21 Cullen Parsons. Your Honor, again, the uncontroverted
22 testimony from September 2, 2015, someone fired eight shots at
23 Kyle Kern and the barrel of that gun was pointed at him when
24 shots were fired. These shots were fired with intent to cause
25 harm, in an attempt to cause death, there is no other reason to

1 point a weapon at someone and fire those shots. In light of
2 the evidence and testimony as we've discussed Your Honor, I
3 would respectfully submit to the Court that the State has
4 established its burden of proof beyond a reasonable doubt as to
5 all elements as to each of the three counts in the Three Count
6 Indictment as well as specification of forfeiture. We would
7 ask for a finding of guilt and an order forfeiting the handgun
8 Your Honor.

9 THE COURT: I do have
10 one question. Relative to the phone and at the time he was
11 taken into custody, I don't remember being reflected anywhere
12 in the record, is there any testimony relative to locating a
13 phone?

14 MR. FLANAGAN: Yes, it
15 was one of the items on his persons.

16 THE COURT: Okay, very
17 good.

18 MR. ZANER: The phone
19 and the headphones.

20 THE COURT: Okay, I
21 remember the headphones.

22 MR. ZANER: And the
23 phone.

24 THE COURT: Okay. Very
25 good. Thank you. Counsel I want some time, and not a lot of

1 time, I'm not talking weeks, but I do want to take several
2 hours to go over it and I'll tell you where my focus is, my
3 focus is on reviewing the timeline. It's in any type of
4 incident, the one thing, because we do have some specific times
5 here that we can work from. I want to review that time line, I
6 also want to take some time to review Exhibit B completely and
7 I also want to take some time to review the phone records. I
8 know all of your time is important but this is an extremely
9 important case, not only to the State but specifically to Mr.
10 Parsons. I would like to announce my verdict and I would
11 anticipate sometime tomorrow. What are your respective
12 schedules tomorrow? I know we thought we'd get this done today
13 but I don't want to rush through reviewing this evidence. And
14 I will work with whatever your respective schedules are. If it
15 has to be the next day it's the next day.

16 MR. ZANER: First thing
17 in the morning works for me Judge.

18 THE COURT: Is 9:30
19 okay?

20 MR. ZANER: That's
21 fine.

22 MR. FLANAGAN: Yes Your
23 Honor, that's fine.

24 THE COURT: I'll
25 announce my verdict at 9:30 a.m. tomorrow morning. Counsel I

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want to thank you. You've both done a thorough job and I do respect your respective arguments. Thank you.

IN THE COURT OF COMMON PLEAS OF HENRY COUNTY, OHIO

STATE OF OHIO, * Case No. 15CR0082

Plaintiff, *

-vs- * CERTIFICATION OF TRANSCRIPT

CULLEN A. PARSONS, *

Defendant. *

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I, Andrea M. Burgel, Official Court Reporter for the Common Pleas Court of Henry County, Ohio, duly appointed therein, do hereby certify that the foregoing, consisting of 255 pages, is a true and complete transcript from the original digital recording, as transcribed by me of the proceedings conducted in that court on the 7th and 8th days of March, 2016, before the Honorable John S. Collier, Judge of said Court, and I do further certify that I was personally present in the courtroom during all of the said proceedings.

Subscribed this 8th day of July, 2016.

Andrea M. Burgel
Notary Public in and for the
State of Ohio

My Commission Expires: February 5, 2019