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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

**UNITED STATES OF AMERICA,) VOLUME 4
) ROUGH DRAFT
) CRIMINAL ACTION
v.) NO. 23cr61 (MN)
)
ROBERT HUNTER BIDEN,)
)
Defendant.)**

**Thursday, June 6, 2024
9:00 a.m.
Jury Trial**

**Courtroom 4A
844 King Street
Wilmington, Delaware**

**BEFORE: THE HONORABLE MARYELLEN NOREIKA
United States District Court Judge**

APPEARANCES:

**SPECIAL COUNSEL'S OFFICE
BY: DEREK E. HINES, ESQ.
BY: LEO WISE, ESQ.**

**Counsel for the
United States of America**

1 APPEARANCES CONTINUED:
2

3 DALTON & ASSOCIATES, P.A.
4 BY: BARTHOLOMEW J. DALTON, ESQ.
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6 -and-

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8 BY: ABBE DAVID LOWELL, ESQ.
9 BY: DAVID KOLANSKY, ESQ.
10 BY: ISABELLA OISHI, ESQ.

11 Counsel for the Defendant
12
13 -----
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08:51:47 14

08:51:47 15

COURT CLERK: All rise.

08:55:05 16

THE COURT: All right. Good morning, everyone.

08:55:08 17

Please be seated. You had some issues?

08:55:13 18

MR. LOWELL: Good morning, Your Honor.

08:55:14 19

THE COURT: Mr. Lowell, good morning.

08:55:16 20

MR. LOWELL: First at the end of the day

08:55:18 21

yesterday, first I should say that I did as I said I would

08:55:22 22

do and I've thinned this and turned it into a shorter event

08:55:26 23

so hopefully I used the time wisely. Secondly, when we left

08:55:29 24

the day I was raising the issue that we started, on page 697

08:55:35 25

of the transcript.

08:55:54 1 THE COURT: Yes.

08:55:54 2 MR. LOWELL: Lines 7 through 14. He was asked
08:56:00 3 "what happened next after you see Mr. Biden sign the form
08:56:03 4 and date it? What happened next is Jason said, also we
08:56:06 5 would need for the passport, another form of like
08:56:11 6 identification stating his address, it could be a bill or it
08:56:16 7 could be vehicle registration. What's the next thing you
08:56:18 8 observed, I observed Mr. Biden leave out and then come back
08:56:22 9 in.

08:56:22 10 So on that, the questioning would be what was
08:56:24 11 the issue. He was never asked yet what was the issue that
08:56:27 12 you went to talk to Mr. Turner about that caused you to be
08:56:31 13 asking that question. And then he doesn't state what
08:56:34 14 happens next. So it leaves open whether he says that there
08:56:37 15 was another form of identification because he says he went
08:56:40 16 out and he came back in, so I would ask him whether that
08:56:44 17 happened.

08:56:44 18 THE COURT: If he says no, what's next?

08:56:47 19 MR. LOWELL: If he says no, nothing.

08:56:53 20 THE COURT: So you say.

08:56:54 21 MR. LOWELL: If he says no other form of
08:56:56 22 identification was presented when Mr. Biden came back in,
08:56:58 23 no, if he says yes, then I have to ask him what it was and
08:57:01 24 then we'll see where that goes because he attaches to the
08:57:06 25 4473 form only the passport, he doesn't attach any other

08:57:09 1 form.

08:57:09 2 THE COURT: All right. So what is your
08:57:11 3 position?

08:57:11 4 MR. HINES: Yeah, so on the second question, did
08:57:13 5 he see what the secondary form of identification was, if
08:57:18 6 anything, he can ask that. I anticipate Mr. Cleveland will
08:57:22 7 say I didn't see. But as far as like his first question,
08:57:26 8 what is the issue, what is the issue, the Court has already
08:57:29 9 ruled on that. The gun store is not on trial for whether or
08:57:32 10 not they collected a supplemental form so that would be an
08:57:35 11 inappropriate question and not relevant in this case.

08:57:38 12 MR. LOWELL: Not what the issue was, I could ask
08:57:40 13 that better, what did you say to Mr. Palimere and/or
08:57:43 14 Mr. Turner.

08:57:44 15 MR. HINES: So the portion that he just cited
08:57:48 16 there, Mr. Cleveland on the stand is not saying anything,
08:57:51 17 it's Mr. Turner who says he's got to go get another form of
08:57:55 18 identification. Mr. Cleveland has nothing to do with that
08:57:57 19 process according to what he's testified to and what
08:58:01 20 Mr. Lowell has cited to in the transcript.

08:58:03 21 MR. LOWELL: But he's saying what happened next
08:58:08 22 is Jason said, so I want to ask him what did he say to
08:58:14 23 Jason.

08:58:15 24 MR. HINES: That Jason said.

08:58:17 25 MR. LOWELL: Yeah, what happened next, is Jason.

08:58:20 1 MR. HINES: Jason Turner says.

08:58:21 2 MR. LOWELL: But you're cutting out --

08:58:23 3 THE COURT: Hold on. I'm trying to get this in
08:58:25 4 context. Did he see him sign it? Yes. And then we made
08:58:31 5 sure that it was the same person. And we said there is a
08:58:36 6 date. Who wrote the date? Mr. Biden did. Then Section A
08:58:42 7 is completed. Was -- did you see Section A completely
08:58:47 8 completed by Mr. Biden. Yes. Has anyone else filled out
08:58:51 9 anything in that section. No. What happens next? After
08:58:54 10 you saw Mr. Biden sign the form and date it? What happened
08:58:59 11 next is Jason said. So you want to say how did Jason get
08:59:06 12 involved?

08:59:07 13 MR. LOWELL: Yes.

08:59:11 14 MR. HINES: Okay.

08:59:11 15 THE COURT: You can say you said that after you
08:59:14 16 saw Mr. Biden sign the form and date it, you said that the
08:59:18 17 thing that happened next was Jason said we would need with
08:59:23 18 the passport another form of identification. How did Jason
08:59:27 19 get involved? And then did you see another form of
08:59:32 20 identification?

08:59:34 21 MR. LOWELL: And not be able to say to him what
08:59:37 22 did you say to Jason, if anything? I mean, that's the
08:59:41 23 natural in between question.

08:59:42 24 THE COURT: I mean, how did Jason get involved,
08:59:45 25 I guess if he says Jason was standing there, did you say

08:59:49 1 anything, no, and if he says I went into the back and talked
08:59:52 2 to Jason, I guess you can say what did you say to Jason.

08:59:56 3 MR. LOWELL: Okay. That was one issue.

08:59:57 4 THE COURT: Okay.

08:59:58 5 MR. LOWELL: The second issue is the government
09:00:00 6 said that they had six witnesses, they think they'll finish
09:00:04 7 at the end of the day or before, last night we told him who
09:00:08 8 our witnesses will be, we summoned them, they have to come,
09:00:13 9 and their lawyers have to come. They're all coming this
09:00:15 10 afternoon, if they end up at 3 o'clock or 3:30, I don't have
09:00:20 11 them yet, they'll be here first thing in the morning, if
09:00:25 12 that happens, I ask that we break them here, we summoned
09:00:30 13 them yesterday, they're getting here as soon as they can.

09:00:33 14 THE COURT: Let's see where we are, do you have
09:00:35 15 any problem with that, you may have a problem with
09:00:37 16 witnesses, and maybe that will give us time to deal with it
09:00:40 17 if you did.

09:00:41 18 MR. HINES: I understand one of the witnesses
09:00:42 19 were represented, I don't know, you referenced multiple
09:00:46 20 lawyers, there will be witnesses available based on my
09:00:49 21 understanding as early as early afternoon.

09:00:52 22 MR. LOWELL: No, I don't know that anybody is
09:00:54 23 available, they're coming this afternoon or this evening,
09:00:57 24 they're coming from different places so they're getting here
09:01:00 25 when they get here, and we did that last night based on the

09:01:05 1 government's schedule.

09:01:05 2 THE COURT: Keep me informed.

09:01:07 3 MR. LOWELL: On scheduling, when the government
09:01:09 4 rests, Your Honor, we have a written Rule 29 motion on three
09:01:12 5 topics. One would be the topic that you reserved on the
09:01:15 6 issue of unconstitutional based on vagueness. The second
09:01:20 7 will be an issue we found in 922(g), which has been amended,
09:01:26 8 so we have to address the issue that it doesn't exist at the
09:01:29 9 time of the -- of our trial. I don't want to say more about
09:01:34 10 it because I'll say it wrong, but that's the second. And
09:01:37 11 the third would be the issue sort of dovetails with the
09:01:40 12 first on the sufficiency of the evidence on the key issue.
09:01:44 13 But all of them are in the works and all of them have been
09:01:47 14 filed at the end of the day as soon as the government rests.
09:01:49 15 And obviously you'll want to see it and the government will
09:01:53 16 want a chance to respond, that's another good reason if we
09:01:56 17 break we would be able to do that and see what happens from
09:01:59 18 there.

09:01:59 19 THE COURT: If you think I can read your motion,
09:02:02 20 the government will have a chance to read your motion,
09:02:05 21 respond to your motion, and I will have a chance to
09:02:08 22 carefully review that and rule by tomorrow morning, you have
09:02:12 23 an elevated view of my abilities.

09:02:15 24 So I appreciate that, but it's not going to
09:02:20 25 happen. But I will take a look at it when it's filed.

09:02:22 1 MR. LOWELL: What I really wanted to do is let
09:02:26 2 everybody know that, so I don't know how that effects the
09:02:30 3 scheduling, usually you argue that before you present the
09:02:33 4 case so I wanted to let you know that was in the works.

09:02:35 5 MR. HINES: Your Honor --

09:02:36 6 THE COURT: And I understand what you're saying,
09:02:38 7 but it's also so -- I'm not going to waste the jurors time
09:02:43 8 with making them sit around and wait for a day or two while
09:02:46 9 I figure that out. So it may be that I just need to
09:02:50 10 reserve.

09:02:51 11 MR. LOWELL: Right. And that's fine. I just
09:02:53 12 needed to give everybody notice that that was the case and I
09:02:56 13 expected that that could be one possibility.

09:02:59 14 THE COURT: Okay. All right. Anything else?

09:03:02 15 MR. WISE: Your Honor, we have an objection to
09:03:03 16 an exhibit that we got late last night that the defense
09:03:07 17 intends to use with our second witness today, Ms. Hallie
09:03:11 18 Biden. It's Defense Exhibit 16A, I don't know if the Court
09:03:16 19 has been provided with that.

09:03:17 20 THE COURT: Let me check.

09:03:24 21 Yes, I do have that.

09:03:26 22 MR. WISE: The first issue is globally, we got
09:03:30 23 this at 11:07 last night that actually provided the sources
09:03:33 24 for these messages. We have been asking for it since Monday
09:03:37 25 when they sent it to us. We of course provided our summary

09:03:42 1 chart months ago. The whole point of the rule, 1006 to
09:03:45 2 allow each side to check the accuracy of the statements that
09:03:48 3 are in the summary chart. So we think the whole thing
09:03:52 4 should be kept out because we haven't had the time and they
09:03:55 5 haven't followed the rules to give us the time. And it's
09:03:58 6 eight-pages long. And what we did on our summary chart is
09:04:03 7 we told them page numbers in an extraction report which
09:04:08 8 makes it something you can actually find. Here they have
09:04:10 9 given us what appears to be the same, you know, it looks
09:04:15 10 like every source is the same file path. Which doesn't
09:04:21 11 actually tell us really thinking. And candidly I was in a
09:04:26 12 hotel room at 11:07 last night, so wherever this was, I
09:04:29 13 wasn't in a position to go hunting for it, even assuming I
09:04:33 14 could.

09:04:34 15 The other issue it's full of inadmissible
09:04:37 16 hearsay. Our first objection is it's late, they didn't
09:04:40 17 follow 1006, it shouldn't come in, the second is nearly
09:04:44 18 everything they wanted to do other than a couple of message
09:04:47 19 strings that are on our chart, which come in because under
09:04:51 20 801(d)(2) their opposing party statements offered against
09:04:54 21 that party --

09:04:56 22 THE COURT: It's different if the defendant
09:04:58 23 wants to put the statements in, it's one thing if you do,
09:05:00 24 because they're admissions, but he can't put them in.

09:05:04 25 MR. HINES: Exactly, and some of them are quite

09:05:06 1 frankly quite salacious, we can talk about them in open
09:05:10 2 court or come to side-bar so I can point those out. I think
09:05:15 3 row number 21, for instance.

09:05:32 4 MR. WISE: As I said, most of them, I counted
09:05:34 5 four on page 1, lines 2, 3, 4 and 5, there are strings that
09:05:40 6 contain admissions that are -- we were offering so we
09:05:44 7 obviously don't have an objection to that, and then 11, 12,
09:05:48 8 13, and 14 are also part of strings that have admissions.
09:05:52 9 And then 20 --

09:05:53 10 THE COURT: I'm sorry, tell me again, there are
09:05:55 11 so many numbers on here. Okay. So first you have the
09:06:00 12 hearsay and your hearsay is the rows where it's something
09:06:06 13 that was said by the defendant, not the issue where it was
09:06:09 14 said by Ms. Biden because those aren't hearsay if she's on
09:06:15 15 the stand and they're asking her questions, right?

09:06:18 16 MR. HINES: So it's still hearsay even if she's
09:06:22 17 on the stand because it's an out of court statement that she
09:06:25 18 made for the truth of the matter asserted, they got hearsay
09:06:29 19 problems with her and they got hearsay problems with him.
09:06:32 20 So number one, for instance, is a hearsay statement of
09:06:35 21 Ms. Biden, first row, that there is no exception for.

09:06:41 22 Same thing with it picks up, as I said, Row 2,
09:06:46 23 3, and 4 on their chart --

09:06:48 24 THE COURT: So you're saying, they could use
09:06:51 25 this for impeachment if they asked her, for example, if they

09:06:55 1 were having problems in their relationship at that point and
09:06:57 2 she said no.

09:06:58 3 MR. HINES: Potentially, depending on how they
09:07:02 4 set it up.

09:07:03 5 THE COURT: Do you have a response?

09:07:04 6 MR. LOWELL: Yes, of course. So as to the first
09:07:07 7 one, Mr. Wise would indicate that the first time he saw
09:07:10 8 these texts was whenever he just said. Actually, over the
09:07:14 9 last few days we have back and forth, they keep asking us
09:07:17 10 for source material and we keep trying to provide it.

09:07:20 11 THE COURT: What are these sources that they all
09:07:22 12 have exactly the same number?

09:07:24 13 MR. LOWELL: I would like my colleague to
09:07:26 14 address the source if I could have that happen.

09:07:29 15 MR. WISE: I didn't say we saw the text for the
09:07:32 16 first time last night, I said we saw the source.

09:07:34 17 THE COURT: I understand, you were trying to
09:07:36 18 check the accuracy and authenticity.

09:07:38 19 MR. LOWELL: Again, one of the things I asked
09:07:41 20 Agent Jensen was whether or not that material, the Cloud
09:07:44 21 material, and the laptop was in the condition that they got
09:07:47 22 it and whether they provided it to us in discovery and
09:07:49 23 whether it was the same material and she said it was. That
09:07:52 24 is the source, they have it and they sent it to us, we sent
09:07:55 25 it back to them, but I'll have Mr. Kolansky address the

09:07:58 1 source for it.

09:08:00 2 MR. WISE: I don't think they sent it back to
09:08:02 3 us. But again, if you look at our chart, we literally have
09:08:05 4 page 1001, I'm looking at a message 86, page 1412, so that
09:08:11 5 they could go back exactly to where this message comes from
09:08:15 6 and it was provided months ago.

09:08:17 7 MR. KOLANSKY: Your Honor, these messages that
09:08:19 8 start on October the 11th, they're extracted from the hard
09:08:23 9 drive that we received in discovery from the government. It
09:08:26 10 was a single hard drive with essentially, if you think about
09:08:29 11 it --

09:08:30 12 THE COURT: So was there a way for you to say
09:08:33 13 it's on page whatever of the hard drive?

09:08:37 14 MR. KOLANSKY: There is not, Your Honor.

09:08:38 15 THE COURT: How did they do it?

09:08:40 16 MR. KOLANSKY: I don't know how they do it, I
09:08:42 17 don't know what software they used.

09:08:44 18 THE COURT: How did you give them a specific
09:08:46 19 place to go and he's saying you can't.

09:08:48 20 MR. WISE: We gave it to them both ways, they
09:08:51 21 asked for the raw data and then we also gave them these
09:08:55 22 extraction reports that reflect all of the messages that we
09:08:59 23 are using with page numbers and all of the messages they're
09:09:01 24 using, they're just somewhere in these 18,000 pages and they
09:09:06 25 won't tell us where.

09:09:07 1 THE COURT: You're assuming they're somewhere in
09:09:09 2 these 18,000 pages, you don't know?

09:09:11 3 MR. HINES: They keep saying they're from the
09:09:14 4 same data, so that means they should be on the extraction
09:09:17 5 reports and the extraction reports are pages that are--

09:09:21 6 THE COURT: Can you get them that information?

09:09:24 7 MR. KOLANSKY: We can get them the information
09:09:26 8 based on an extraction report that we created using an
09:09:29 9 extraction software we have. It's not going to match --

09:09:32 10 THE COURT: Did they give you an extraction --

09:09:36 11 MR. WISE: We gave them an extraction report,
09:09:39 12 they did not give us whatever he's referring to that has
09:09:42 13 page numbers that we can look at.

09:09:43 14 THE COURT: So you gave them an extraction
09:09:45 15 report, the same extraction report you used to come up with
09:09:48 16 page numbers?

09:09:49 17 MR. WISE: Exactly.

09:09:50 18 THE COURT: Can you use that extraction report
09:09:53 19 and give them page numbers?

09:09:54 20 MR. KOLANSKY: When I searched these messages
09:09:56 21 last night, Your Honor, for each of the 42 rows, I did not
09:10:00 22 find these messages in the extraction report that they're
09:10:04 23 referring to.

09:10:05 24 MR. WISE: So they have discovery, an extraction
09:10:06 25 report that they're relying on that they haven't give us

09:10:09 1 which is the underlying material that supports under 1006
09:10:13 2 the summary report and they should have given it to us.

09:10:15 3 MR. KOLANSKY: Your Honor, we're happy to
09:10:17 4 provide the extraction report that we generated.

09:10:20 5 THE COURT: Why are you doing that today when
09:10:22 6 you expect to use the exhibit today?

09:10:25 7 MR. KOLANSKY: It's an extraction report that we
09:10:27 8 used in order to thread the messages so that they're
09:10:29 9 readable.

09:10:31 10 THE COURT: Yes, but -- what I'm confused about
09:10:34 11 is you're not giving them the information in the same way
09:10:36 12 that they gave it to you. You're saying -- he's saying
09:10:40 13 look, tell us where it is, we gave you an extraction report
09:10:43 14 and you're telling me but it's not in, it's something new
09:10:47 15 that wasn't in the government's extraction report and you
09:10:49 16 can't tell us where it is?

09:10:53 17 MR. KOLANSKY: Let me try to rephrase it, maybe
09:10:55 18 I'm mischaracterizing it. When we --

09:10:58 19 THE COURT: Was it in the -- so the government
09:11:00 20 gave you an extraction report, you're telling me these
09:11:04 21 messages you want to use were not in there.

09:11:06 22 MR. KOLANSKY: Correct. They were in something
09:11:08 23 else.

09:11:08 24 MR. LOWELL: They were in a separate sub-data,
09:11:08 25 the extraction reports were from the iCloud, these messages

09:11:14 1 were derived not from the source file, but from Macintosh
09:11:16 2 HD, Macintosh hard drive, so there is two worlds of
09:11:20 3 discovery, iCloud, and those were the extraction reports,
09:11:23 4 and then material from the hard drive, which we extracted
09:11:28 5 ourselves based on the forensic images they provided.

09:11:32 6 THE COURT: Did you give them an extraction from
09:11:33 7 the hard drive?

09:11:34 8 MR. WISE: Yes, from the laptop. There is an
09:11:37 9 extraction-- that's why if you remember when Agent Jensen
09:11:40 10 was testifying, the format changed --

09:11:42 11 THE COURT: So these are messages that you're
09:11:44 12 using from the laptop, not from the -- not from the iCloud.

09:11:50 13 MR. KOLANSKY: They're from the hard drive that
09:11:53 14 we received from the government.

09:11:54 15 THE COURT: The hard drive image is from the
09:11:57 16 laptop. You guys are talking, I got laptops and hard
09:12:00 17 drives, and I don't even know what else I got, iClouds, oh
09:12:04 18 my.

09:12:05 19 MR. KOLANSKY: Yes, that's right.

09:12:06 20 THE COURT: So the hard drive, though, is the
09:12:09 21 hard drive that correlates with the laptop.

09:12:13 22 MR. KOLANSKY: Yes, Your Honor.

09:12:13 23 THE COURT: So these are messages you want to
09:12:16 24 rely on from the laptop that are not in the iCloud?

09:12:20 25 MR. KOLANSKY: That's correct, Your Honor.

09:12:21 1 THE COURT: Okay. And you're saying, Mr. Wise,
09:12:23 2 that you gave them extraction files from the hard
09:12:29 3 drive/laptop.

09:12:30 4 MR. WISE: Exactly.

09:12:31 5 THE COURT: And why didn't you give them from
09:12:33 6 that extraction file, the page numbers?

09:12:37 7 MR. KOLANSKY: I have not seen that extraction
09:12:39 8 report, Your Honor.

09:12:40 9 MR. WISE: We provided it in discovery. It was
09:12:42 10 -- that's how we made the chart, I mean, which they've had
09:12:45 11 for months. So if they looked at that chart and said wait a
09:12:49 12 minute this says laptop, we don't have an extraction report
09:12:52 13 from the laptop, where are you getting this from, we would
09:12:55 14 have expected to hear that months ago. There is clearly an
09:12:58 15 extraction report, that's what the 1006 reflects and we
09:13:02 16 reattached it when we provided our expert discovery.

09:13:05 17 MR. LOWELL: One point on that, by the way, if
09:13:08 18 we're talking about authenticity, which I think is half the
09:13:13 19 issue, we talked to the government and have the stipulation
09:13:16 20 about it being authentic. These messages that we tried to
09:13:20 21 put together in this fashion, we could take more time and
09:13:24 22 then what we could do is printout every one individually and
09:13:27 23 ask the witness did you send it. That will issue into the
09:13:32 24 question they raised about asking a witness on the stand did
09:13:34 25 she do something and send something. That is not hearsay as

09:13:38 1 to the witness, she is in court to be examined. I can ask
09:13:41 2 her, usually, did you on that moment send Mr. Biden a text.
09:13:46 3 What did the text say. If she says she knows, fine, if she
09:13:51 4 says she doesn't, I can refresh her recollection.

09:13:53 5 THE COURT: With the text?

09:13:54 6 MR. LOWELL: With the text itself. If she then
09:13:56 7 states that it is not something that refreshes her
09:13:59 8 recollection, then it is a prior recorded, you know, it fits
09:14:03 9 into the issue of something that was already in existence.
09:14:06 10 But the idea that you can't ask a witness on the stand
09:14:09 11 whether that witness said something or wrote something and
09:14:12 12 that's the hearsay, it is not hearsay at that moment. It is
09:14:16 13 something that was existing before, but you can ask, when
09:14:20 14 and if Mr. Biden took the stand and he was testifying, he
09:14:24 15 would be able to be asked about did you receive a text from
09:14:28 16 Mrs. Biden and how did you respond and why. So you can't
09:14:31 17 have half the story the way they have not had half the story
09:14:35 18 when they are going back and forth.

09:14:38 19 THE COURT: Well, no, but you can't put in
09:14:40 20 evidence that is hearsay. You can't put in statements from
09:14:43 21 the defendant when she's on the stand.

09:14:47 22 MR. LOWELL: Not for the truth necessarily. In
09:14:49 23 other words -- well, first of all --

09:14:52 24 THE COURT: Well, I mean --

09:14:53 25 MR. LOWELL: I don't need to seek its admission

09:14:56 1 because if she says this is what I want you to do, it's what
09:14:59 2 I want you to do necessarily, but it certainly reflects the
09:15:02 3 state of mind that they were both in at the period of time
09:15:05 4 that they were conversing, so it's that exception as well.
09:15:08 5 But if you're saying that if a witness is on the stand and
09:15:11 6 you can't ask the witness did you call Mr. Biden, what did
09:15:15 7 you say to Mr. Biden.

09:15:16 8 THE COURT: That's very different than what did
09:15:18 9 he say to you.

09:15:19 10 MR. LOWELL: I get that, I understand that.

09:15:20 11 THE COURT: But you have that in this --

09:15:23 12 MR. LOWELL: You often -- I'm sorry, often in
09:15:26 13 context, both sides will come in to put it in context, I
09:15:30 14 understand and I don't need to ask her what Mr. Biden wrote
09:15:33 15 back, I can ask her, though, I think, what did you say to
09:15:36 16 him, what did you write. In terms of the salacious material
09:15:40 17 we provided it to them in that form but certainly there are
09:15:44 18 redactions we wanted to make, I wanted them to see the full
09:15:47 19 thing in terms of, for example, the one they said. I
09:15:50 20 understand that Ms. Biden, from me can't be asked what did
09:15:55 21 Hunter say. I can, though, I think, say what did you say to
09:15:59 22 him. And especially because some of these are contextually
09:16:02 23 in state of mind. I mean, if she wrote him and said today
09:16:06 24 it's raining, when it's not raining, I'm not putting it in
09:16:10 25 for the truth that it was raining but it does have bearing

09:16:13 1 on what she was saying to him and what his reaction would
09:16:15 2 be.

09:16:16 3 So there is -- I have never been in a situation
09:16:19 4 where you can't ask a witness did you call, you said I could
09:16:22 5 do that. Did you say something. You can say that. There
09:16:25 6 is no difference in a text, did you write him, what did you
09:16:28 7 say? And then that's where that ends in terms of not what
09:16:33 8 Mr. Biden said back.

09:16:34 9 MR. WISE: So there is a couple of issues with
09:16:36 10 Mr. Lowell has argued. First of all, the issue with the
09:16:39 11 summary chart is --

09:16:40 12 THE COURT: Wait, I was actually going to ask
09:16:42 13 you that. Let's say I say no to the summary chart because
09:16:46 14 they didn't provide you with the information that they
09:16:48 15 should have provided you in a timely way. Mr. Lowell says,
09:16:51 16 well, okay, then I can just pull out -- you know that they
09:16:56 17 have the messages, can they just pull out a message and ask
09:17:00 18 her about it? Not from your other objections about doing
09:17:06 19 that, but is that appropriate?

09:17:08 20 MR. WISE: So no, it's still a text message she
09:17:11 21 wrote, is an out of court statement.

09:17:13 22 THE COURT: No. No. I'm sorry, I'll let you
09:17:15 23 make that argument about the hearsay. My point is does that
09:17:18 24 get us through the objection that they didn't give you the
09:17:23 25 information that you should have had in a timely way.

09:17:26 1 MR. WISE: There is sort of two things with
09:17:29 2 that. We didn't get everything that's on that laptop. It
09:17:34 3 went through a filter review. So we may or may not have.
09:17:38 4 They have the whole set. So first thing --

09:17:40 5 THE COURT: Filter review from whom?

09:17:43 6 MR. WISE: A separate team that we have no
09:17:45 7 access, we're walled off for, it's in the search warrant,
09:17:50 8 that is the protocol that would be followed. The first
09:17:53 9 thing is whatever they would want to show her, they should
09:17:57 10 give us, we should see it so we know, and we're not going to
09:18:00 11 be able to sitting here sort of find it on the fly.

09:18:03 12 If the question is authenticity, sure a witness
09:18:08 13 can testify that, you know, this is a text I sent or an
09:18:11 14 e-mail I sent and that gets them through the authenticity
09:18:15 15 gate, but it doesn't necessarily get them through the
09:18:18 16 admissibility gate and the admissibility gate is often
09:18:22 17 things like is it a business record, that's how it comes in,
09:18:24 18 is it some other exception --

09:18:26 19 THE COURT: Well he's saying it goes to state of
09:18:28 20 mind.

09:18:29 21 MR. WISE: A lot of them don't. A lot of them
09:18:31 22 are, you know, I mean, I'll just start at the back. "Are
09:18:37 23 you here. I'll see you inside, I'm in the parking lot but I
09:18:41 24 feel comfortable about going in right now, I will wait here
09:18:45 25 for you. Come in, F you, I came because it was important

09:18:49 1 for me to show dad that I could show up."

09:18:51 2 MR. LOWELL: I'm sorry to interrupt, that's a
09:18:53 3 Hunter one.

09:18:54 4 MR. WISE: It's the same issue with all of
09:18:56 5 these, these are out of court statements being offered for
09:18:59 6 the truth of the matter asserted that they're saying these
09:19:01 7 things, that these things reflect where they are or what
09:19:04 8 they're doing. It's not to say, oh we want to impeach that
09:19:07 9 she said it's raining and we know it's not raining, they
09:19:09 10 want to push through, the defendant can take the stand and
09:19:13 11 say I was here or I did this or I said this, but they can't
09:19:16 12 use as proxies out of court statements he made.

09:19:19 13 MR. LOWELL: We agree about that.

09:19:22 14 THE COURT: We are in agreement, they cannot use
09:19:24 15 on his statements. Okay. Those are hearsay.

09:19:27 16 MR. LOWELL: Right.

09:19:27 17 THE COURT: If they want to get those in, they
09:19:29 18 have to do it a different way.

09:19:33 19 With respect to this witness, are you saying
09:19:40 20 that they would have to say -- I mean, these statements as I
09:19:46 21 read them suggest that there were issues in the relationship
09:19:52 22 at that time.

09:19:53 23 MR. WISE: Yes, I agree.

09:19:55 24 THE COURT: And if you're saying that they
09:20:03 25 should really be using those for impeachment, if she says,

09:20:07 1 gosh, we were happier than we have ever been, everything was
09:20:11 2 great, then you could impeach and say they weren't really.

09:20:15 3 MR. WISE: Exactly.

09:20:16 4 THE COURT: But if she says no, things were
09:20:18 5 really bad, then that's fine.

09:20:20 6 MR. WISE: Exactly.

09:20:21 7 THE COURT: If Mr. Lowell said was one of the
09:20:25 8 issues you were worried about infidelity in the relationship
09:20:29 9 and she says no, he can use those to say you did have
09:20:36 10 concerns.

09:20:36 11 MR. WISE: Right, because then there is a prior
09:20:39 12 inconsistent statement, that gets them through the
09:20:41 13 admissibility gate. But if she says yeah, we were fighting,
09:20:45 14 which is what they seem to be getting at that, they were
09:20:48 15 fighting, they were accusing each other of things, I don't
09:20:52 16 know how deeply we need to get into that, there is a 403
09:20:55 17 issue at some point, but if she said as Your Honor said
09:20:58 18 everything was great, then potentially, that allows for one
09:21:01 19 of these statements to come in as a prior inconsistent
09:21:03 20 statement because the rules provide for that.

09:21:05 21 THE COURT: What if she says as Mr. Lowell says,
09:21:08 22 back around the time in October of 2018, were you guys in a
09:21:13 23 good place, and she says I don't remember. And he says well
09:21:18 24 let me show you some things to refresh your recollection.
09:21:21 25 That's okay?

09:21:22 1 MR. WISE: Right. Provided one, it doesn't go
09:21:24 2 up on the screen, she looks at it herself, and the key
09:21:28 3 question is does this refresh your recollection, and if she
09:21:30 4 says yes, then he can go back to asking her okay, what was
09:21:34 5 the state of your relationship or whatever, if she says no,
09:21:36 6 the statement itself doesn't come in because it's not like a
09:21:40 7 grand jury transcript where it's under oath, it's
09:21:44 8 inadmissible, the statement itself is inadmissible other
09:21:47 9 than if its a prior inconsistent statement or if it
09:21:50 10 refreshes recollection.

09:21:51 11 THE COURT: What about if you're putting it in
09:21:54 12 not for the truth but for her state of mind that she was
09:22:00 13 upset.

09:22:02 14 MR. WISE: So her state of mind isn't relevant
09:22:05 15 right, it's the defendant's state of mind. The elements are
09:22:09 16 what was he knowing, not what was in her state of mind. So
09:22:12 17 the hearsay exception for state of mind evidence still has
09:22:15 18 to get through the relevancy test which is, is it a fact or
09:22:19 19 consequence that -- will this be a fact or consequence more
09:22:24 20 or less probable. What she's thinking isn't, it's simply
09:22:28 21 not relevant whether she believes what he's saying or not.
09:22:31 22 You know, what their -- is she paranoid, is she saying
09:22:37 23 things because she doesn't mean them because she wants to
09:22:39 24 get back at him, whatever, none of that matters. They can
09:22:43 25 explore a little bit in terms of bias and motive, about the

09:22:46 1 rule for state of mind for, the hearsay exception for
09:22:51 2 statements doesn't relate to a witness where the witness's
09:22:55 3 state of mind is not an element of defense.

09:22:58 4 MR. LOWELL: I can respond in a moment.

09:23:01 5 THE COURT: Please.

09:23:01 6 MR. LOWELL: Okay. I heard Mr. Wise, in my mind
09:23:05 7 he's jumbled two things. State of mind is relevant to any
09:23:09 8 witness if that person is testifying. It is relevant for
09:23:13 9 any number of reasons that Your Honor has asked one about,
09:23:18 10 Mr. Wise is trying to cabin this either into a refresh
09:23:23 11 recollection, or saying it's hearsay for it's the truth of
09:23:26 12 the matter.

09:23:26 13 But if Ms. Biden is writing Mr. Biden, Ms. Biden
09:23:32 14 is writing Mr. Biden and saying where are you, where are
09:23:35 15 you, where are you, that does reflect what's happening at
09:23:38 16 that moment, especially because I understand her testimony
09:23:41 17 is going to be that he was with her on a particular time
09:23:46 18 when her writing to him and saying where are you, where are
09:23:49 19 you, will reflect that that's not possible. Or she's either
09:23:54 20 not being accurate on the stand or she's not being accurate
09:23:57 21 where she's saying --

09:23:58 22 THE COURT: Then you can use that to impeach or
09:24:01 23 to refresh her recollection.

09:24:03 24 MR. LOWELL: That's what I'm saying, there are
09:24:04 25 various parts of what --

09:24:06 1 THE COURT: So I think it's a difference between
09:24:09 2 -- I'm sorry, I cut you off, I asked you not to cut me off,
09:24:13 3 so I apologize. But I think it's a difference between
09:24:15 4 whether you use it affirmatively or whether she testifies to
09:24:18 5 something inconsistently and you then use it to impeach or
09:24:22 6 she doesn't remember what she's doing and you use it to
09:24:25 7 refresh her recollection.

09:24:26 8 MR. LOWELL: I think that's right. I think each
09:24:28 9 one can be for a reason and the reason could be either a
09:24:32 10 state of mind that would be relevant as to the nature of
09:24:35 11 their relationship at a moment, it would be for the
09:24:38 12 possibility of again refreshing and if she says she did say
09:24:42 13 this and she did write him six times and say where are you,
09:24:46 14 where are you, then I think that's established. If she says
09:24:49 15 something that's inconsistent with what a text says, then
09:24:53 16 its impeachment and I think that's right. And the reason
09:24:56 17 that we've struggled to try to get them in a very set of
09:24:59 18 data where you can find things from the reason that Mr. Wise
09:25:02 19 said, for example, that it went through a filter team, now
09:25:05 20 I'm understanding that, but I don't know why that would
09:25:09 21 eliminate these kind of texts just to save time. We can
09:25:13 22 print each one of these separately and use them separately,
09:25:16 23 and that will be a back and forth up to the witness stand or
09:25:22 24 not, and so we thought we would try it this way.

09:25:25 25 THE COURT: So I'm going to sustain the

09:25:27 1 objection as to the summary chart, I think that the summary
09:25:30 2 chart does include hearsay certainly as to the statements
09:25:33 3 that Mr. Biden made to Ms. Biden. So the summary chart is
09:25:39 4 out.

09:25:40 5 As to the texts from Ms. Biden to Mr. Biden, I
09:25:48 6 think we'll have to play that one at a time. I do think
09:25:51 7 that they are hearsay, and the question is whether they can
09:25:55 8 be used in some way to refresh her recollection, to impeach
09:26:01 9 her if she says something inconsistently. And as to her
09:26:07 10 state of mind, I don't think her state of mind is
09:26:10 11 necessarily relevant to the issue in this case whereas her
09:26:14 12 state of mind I guess to the extent it goes to bias or
09:26:17 13 something like that, may come into play, so we're going to
09:26:21 14 have to take those issues one at a time.

09:26:24 15 MR. LOWELL: Understand. I will still have the
09:26:27 16 summary chart up there, for the purposes of when it gets to
09:26:31 17 refreshing, that would just be clear, or impeachment, that
09:26:35 18 would be easier for them, but we will print out the
09:26:37 19 individuals ones as well.

09:26:38 20 MR. WISE: I seen stuff in the summary chart
09:26:41 21 where there are messages and I can recognize them where
09:26:43 22 they're not accurate. That's the problem, if you put
09:26:46 23 something in front of her, she's not going to remember
09:26:51 24 precise wording.

09:26:51 25 THE COURT: All right. So you have to show her

09:26:53 1 the message and provide those messages to you.

09:26:56 2 MR. WISE: And then we need something, whatever
09:26:59 3 they're going to show her, we need to see it too.

09:27:02 4 THE COURT: You need to see it from their
09:27:03 5 extraction file.

09:27:07 6 MR. LOWELL: So in the meantime when we're
09:27:08 7 starting this morning --

09:27:09 8 THE COURT: My guess is that you're not the one
09:27:13 9 who is creating an extraction file?

09:27:14 10 MR. LOWELL: You probably got that right.

09:27:16 11 THE COURT: You do that in your spare time.

09:27:18 12 MR. LOWELL: Yes. So we will try to get that
09:27:20 13 done quickly and figure that out. Again, not that I feel
09:27:23 14 like I need to apologize, but we have been going back and
09:27:28 15 forth. The data is incredibly dense and we have gotten it
09:27:31 16 from the government in various ways. And now I'm hearing
09:27:36 17 that they're saying in their extraction report or what they
09:27:39 18 did, there may be things missing, well we have them from
09:27:42 19 them, so I don't know how things we put here could be
09:27:45 20 missing because we didn't invent this, we got it from them.

09:27:50 21 THE COURT: So anything -- maybe I should
09:27:51 22 address this to your colleague. So anything that you have
09:27:55 23 gotten or put on this chart is something you got from the
09:27:58 24 government, not from any other source?

09:28:00 25 MR. KOLANSKY: That's correct, Your Honor, and I

09:28:02 1 proffer that and it comes directly from the government and
09:28:05 2 that is why I endeavored to be as precise as possible to the
09:28:09 3 original source file path they can stick it on the hard
09:28:13 4 drive and get exactly to the folder where that message is
09:28:16 5 derived from on the hard drive we received.

09:28:19 6 MR. LOWELL: Like last night I think, or
09:28:22 7 yesterday afternoon, whenever we were able to go back, we
09:28:25 8 provided them with the media that they can go and do exactly
09:28:28 9 what Mr. Kolansky just said and check it. Now if they chose
09:28:32 10 not to, I'm sorry but we gave it to them because that's the
09:28:35 11 best you can do with the data they gave us.

09:28:37 12 THE COURT: All right.

09:28:38 13 MR. WISE: No, no, we didn't get any media, I
09:28:41 14 got, 11:07, I saw something on my phone that has this path
09:28:46 15 name that I don't know what it is.

09:28:48 16 MR. LOWELL: I'm sorry, we gave them the file
09:28:51 17 path one by one of something they gave us.

09:28:54 18 MR. WISE: Yeah.

09:28:55 19 THE COURT: The file path one by one, but the
09:28:58 20 file path is identical.

09:29:00 21 MR. HINES: It's filtered, we can't see that but
09:29:05 22 we can't -- and they know that from the search warrant, it's
09:29:08 23 in the search warrant.

09:29:09 24 THE COURT: So you're limited in what you can do
09:29:14 25 because you're trying to protect rights using only the

09:29:17 1 information allowed from the search warrant.

09:29:19 2 MR. WISE: Exactly.

09:29:20 3 MR. LOWELL: What I'm learning for the first
09:29:22 4 time, understand this, they have provided us in discovery
09:29:27 5 things that they're saying that the investigative team does
09:29:30 6 not have. So I didn't realize that, I thought it was a one
09:29:33 7 to one match, you would have assumed that otherwise I don't
09:29:37 8 know why they would have sent it to me, it's not
09:29:40 9 attorney/client materials we're talking about, it's
09:29:42 10 conversations between Mr. and Ms. Biden, so I don't
09:29:45 11 understand that.

09:29:46 12 MR. WISE: It's Rule 16, it's his statement, we
09:29:49 13 have to turn it over, if it's privileged, we don't get to
09:29:52 14 see it if it goes through a filter, this is not anything
09:29:57 15 new, the search warrant says it went through a filter.

09:29:59 16 THE COURT: He's saying this is conversation
09:30:01 17 between Mr. Biden and Ms. Biden, there is no arguable
09:30:04 18 privilege here.

09:30:05 19 MR. WISE: Again, we don't know what we don't
09:30:08 20 know, when they say we got it, we don't have it.

09:30:11 21 THE COURT: So there is a question as to the
09:30:14 22 authenticity accuracy of these statements, if you can
09:30:17 23 provide the extraction file whatever, so they can find that
09:30:21 24 and confirm that, then we can deal with that objection and
09:30:25 25 get through, you can use -- deal with them on a one by one

09:30:30 1 basis. All right. Anything else?

09:30:31 2 MR. LOWELL: And one last piece on that so I'm
09:30:34 3 understanding, please.

09:30:35 4 So if there is a filter team, there is no basis
09:30:39 5 for them to filter out to the government a conversation
09:30:42 6 between Hallie Biden and Hunter Biden. So how that would
09:30:46 7 not get back into their possession when it got into ours is
09:30:50 8 still something I don't understand.

09:30:52 9 THE COURT: So it may be, and I think Mr. Wise
09:30:55 10 would say, he very well may have it, but he has no idea if
09:30:59 11 he has it based on what you gave him. So I'm saying give
09:31:03 12 him something so that he can look at it and say oh, yeah, I
09:31:07 13 have it. He's just saying look, I think he's trying to make
09:31:10 14 the record, I don't have everything. Some of the stuff
09:31:13 15 that's in here, I don't remember seeing. So I don't know if
09:31:16 16 it's right or wrong. And so we're saying, okay, give him
09:31:21 17 the stuff to show so that he can decide if he has an
09:31:25 18 objection.

09:31:25 19 MR. LOWELL: One other thing so that we can do
09:31:27 20 that. On those texts which you phrased as salacious, I
09:31:32 21 wanted to make sure you saw everything, but those phrases we
09:31:35 22 can redact out and I'll show them how we do that.

09:31:40 23 MR. WISE: We don't have a redacted set.

09:31:43 24 THE COURT: I don't know what the point of
09:31:44 25 having that text is if you take that out because there is

09:31:47 1 nothing there other than --

09:31:49 2 MR. LOWELL: Well, no, I'm sorry, I didn't mean
09:31:51 3 to interrupt you.

09:31:52 4 THE COURT: 21, so what do you take one word out
09:31:56 5 and then it doesn't really mean anything.

09:32:00 6 MR. LOWELL: For that one, for example, will you
09:32:02 7 come home, then you redact so we can, blah, blah, blah
09:32:07 8 before I go. That matters, it matters because of the date.
09:32:11 9 It matters because it indicates that he is not there. It
09:32:17 10 matters because of that. The relevance is her testimony of
09:32:21 11 what happened that morning and where she was and where he
09:32:23 12 was. She's asking him to come home. The natural inference,
09:32:29 13 not even inference, is he's not there.

09:32:32 14 MR. WISE: But it's not that he was never there.

09:32:35 15 THE COURT: No, no, I get it. But that's fair
09:32:38 16 for the jury to decide. Right? If she says he was, he says
09:32:43 17 he wasn't, that's for the jury to decide.

09:32:46 18 MR. WISE: Sure, and if she says he wasn't, he
09:32:49 19 left, this isn't inconsistent with that.

09:32:51 20 THE COURT: I understand. That's why I say
09:32:53 21 we'll take it one step at a time because I don't know what
09:32:56 22 the witness is going to say.

09:32:58 23 Okay. Any other exhibits, anything else we need
09:33:01 24 to talk about before we let the jury come in?

09:33:05 25 MR. WISE: Not from the United States.

Cleveland - cross

09:33:06 1 MR. LOWELL: No, we'll get working on that.

09:33:10 2 THE COURT: All right. Thank you. Let's bring
09:33:11 3 in the jury.

09:34:14 4 (Jury entering the courtroom at 9:35 a.m.)

09:36:06 5 THE COURT: All right. Everyone, be seated.

09:36:35 6 Members of the jury, welcome back. It's time for me to ask
09:36:39 7 my question. Have you heard anything about this trial?

09:36:42 8 THE JURY: No.

09:36:43 9 THE COURT: Anyone try to talk to you about
09:36:44 10 anything in this trial?

09:36:46 11 THE JURY: No.

09:36:47 12 THE COURT: All right. And you haven't done any
09:36:49 13 research or watched any TV, social media, heard any radio,
09:36:55 14 read any internet, anything kind of like that; right?

09:37:01 15 THE JURY: No.

09:37:01 16 THE COURT: All right. Okay. All right. Let's
09:37:04 17 continue. Let's bring in Mr. Cleveland. Welcome back.

09:37:08 18 THE WITNESS: Good morning.

09:37:08 19 THE COURT: And sir, I'm just going to remind
09:37:10 20 you, you're still under oath. Okay.

09:37:14 21 THE WITNESS: Yes.

09:37:17 22 MR. LOWELL: Ready, Your Honor?

09:37:25 23 THE COURT: I am.

09:37:26 24 CROSS-EXAMINATION

09:37:26 25 BY MR. LOWELL

09:37:27 1 Q. Good morning, Mr. Cleveland, good morning, ladies and
09:37:29 2 gentlemen. Mr. Cleveland, sorry I didn't get to finish last
09:37:33 3 evening.

09:37:33 4 Yesterday we were talking about a government
09:37:36 5 exhibit, which is government Exhibit A, which is the
09:37:43 6 Form 4473. And you were asked questions about the questions
09:37:46 7 on the first page. Do you remember doing that yesterday?

09:37:49 8 A. Yes.

09:37:50 9 Q. And you identified one that is letter E. Do you
09:37:54 10 remember that?

09:37:55 11 A. Yes.

09:37:56 12 Q. I would like you to read through the other questions
09:37:58 13 that you said you saw Mr. Biden check the box for, okay?

09:38:02 14 A. Okay. So you want me to start with E?

09:38:04 15 Q. No, I'll do it as short as I can to save you and the
09:38:09 16 jury time.

09:38:09 17 A. Okay.

09:38:10 18 Q. A, for example, asks the question, are you the actual
09:38:13 19 transferee; correct?

09:38:15 20 A. Yes.

09:38:15 21 Q. And that question uses the word "are"?

09:38:20 22 A. Yes.

09:38:23 23 Q. Then B says, are you under indictment or
09:38:28 24 investigation, do you see that, for a felony?

09:38:30 25 A. Yes.

- 09:38:30 1 Q. It uses the word "are", correct?
- 09:38:34 2 A. Yes.
- 09:38:34 3 Q. It doesn't ask have you ever been indicted, does it?
- 09:38:38 4 A. No.
- 09:38:38 5 Q. Then C says, have you been convicted, do you see
- 09:38:42 6 that?
- 09:38:43 7 A. Yes.
- 09:38:43 8 Q. So that one has a "have you ever" or "have you been",
- 09:38:46 9 right?
- 09:38:49 10 A. Yes.
- 09:38:49 11 Q. D says are you a fugitive, it's another "are", do you
- 09:38:54 12 see that?
- 09:38:54 13 A. Yes.
- 09:38:54 14 Q. It doesn't ask have you ever been a fugitive,
- 09:38:58 15 correct?
- 09:38:59 16 A. Yes.
- 09:38:59 17 Q. E says, as you indicated, "are you", an unlawful user
- 09:39:04 18 of, or, it has the word "or" in it, right?
- 09:39:08 19 A. Yes.
- 09:39:08 20 Q. And then it says addicted. That's one that is an
- 09:39:12 21 are, A-R-E; right?
- 09:39:15 22 A. Yes, sir.
- 09:39:15 23 Q. F then says have you ever been adjudicated as a
- 09:39:20 24 mental defective, do you see that?
- 09:39:22 25 A. Yes.

- 09:39:22 1 Q. And that's a "have you", looking at the words have
09:39:26 2 you ever, do you see that?
- 09:39:27 3 A. It is.
- 09:39:27 4 Q. G says have you been discharged, and you see that
09:39:33 5 one?
- 09:39:33 6 A. Yes.
- 09:39:33 7 Q. That is also one that says "have you"; is that right?
- 09:39:36 8 A. Yes.
- 09:39:37 9 Q. And then H says are you subject to a court order
09:39:42 10 restraining you, do you see that?
- 09:39:44 11 A. Yes.
- 09:39:44 12 Q. That's an "are"?
- 09:39:45 13 A. Yes.
- 09:39:46 14 Q. It doesn't say "have you ever"?
- 09:39:48 15 A. No.
- 09:39:49 16 Q. In your experience selling weapons, would it give you
09:39:55 17 pause if somebody said "I used to have a restraining order
09:39:59 18 against me for my partner, my spouse, but I would like to
09:40:03 19 get a gun"?
- 09:40:04 20 A. Yes, it would have me stop the sale.
- 09:40:06 21 Q. But that's not what it asks, is it?
- 09:40:09 22 A. No.
- 09:40:09 23 Q. I says, have you ever been convicted, right?
- 09:40:12 24 A. Yes.
- 09:40:13 25 Q. That's a "have you"?

09:40:14 1 A. Yes, it is.

09:40:15 2 Q. 12B says, have you ever renounced, right?

09:40:19 3 A. Yes.

09:40:20 4 Q. It doesn't say are you presently renouncing, do you
09:40:23 5 plan to renounce, it says "have you"?

09:40:24 6 A. Yes.

09:40:25 7 Q. 12C says, are you an illegal -- sorry, are you an
09:40:32 8 alien illegally or unlawfully in the United States, right?

09:40:36 9 A. Yes.

09:40:37 10 Q. That's an "are", A-R-E, right?

09:40:39 11 A. Yes.

09:40:40 12 Q. It doesn't say have you ever been admitted illegally
09:40:43 13 or unlawfully, it doesn't look backwards, does it?

09:40:46 14 A. No.

09:40:46 15 Q. But to be clear, E is one of those ones that say
09:40:51 16 "are", A-R-E?

09:40:53 17 A. Yes.

09:40:56 18 Q. Okay. Then if you take that piece down.

09:41:00 19 Your testimony you said that you observed

09:41:03 20 Mr. Biden looking at the form, you told him to take his
09:41:06 21 time?

09:41:06 22 A. Yes.

09:41:06 23 Q. You remember that, right?

09:41:08 24 A. Yes.

09:41:09 25 Q. Okay. So the form has multiple pages on it, right?

09:41:13 1 A. Yes.

09:41:14 2 Q. And you saw him looking at each page?

09:41:16 3 A. Well, he only had to go ahead and look at the first

09:41:19 4 -- the front of it and the back when he went to go to the

09:41:22 5 certified, so yes.

09:41:24 6 Q. How about the instructions which explain what we just

09:41:26 7 went through, A, B, C, D, E, that's in the form, isn't it?

09:41:31 8 A. Yes.

09:41:31 9 Q. That's something that would be in the same form that

09:41:33 10 you handed him?

09:41:34 11 A. Yes.

09:41:34 12 Q. So it's a whole package?

09:41:37 13 A. Yes.

09:41:37 14 Q. And that's where directions, instructions, and

09:41:39 15 definitions apply for somebody who is filling out the form?

09:41:44 16 A. Yes, sir.

09:41:44 17 Q. If you'll turn to the page, put back 10(a),

09:41:49 18 Mr. Radic, if you will turn the page. Turn the page again.

09:41:55 19 Okay. So that's where your signature is and then it begins,

09:42:00 20 the series of instructions and definitions, right?

09:42:03 21 A. Yes.

09:42:03 22 Q. So if you look -- if you'll turn the page, Mr. Radic.

09:42:07 23 If you look at the -- the questions on that page

09:42:12 24 conform to the boxes, don't they?

09:42:14 25 A. Yes.

09:42:14 1 Q. So if you'll see, there is one for 9, there is one
09:42:19 2 for 10(a), et cetera, and then there is the 11 questions
09:42:22 3 starting at the bottom of the lower page, do you see that?

09:42:24 4 A. Yes, sir.

09:42:25 5 MR. HINES: Objection, actually it starts at the
09:42:27 6 top of the page.

09:42:28 7 BY MR. LOWELL:

09:42:28 8 Q. I'm sorry, go to the left, the bottom of the
09:42:31 9 left-hand column, letter A, "actual transferee", do you see
09:42:35 10 that. You don't have to blow it up yet Mr. Radic. That's
09:42:39 11 where there is a corresponding instruction for the parts of
09:42:42 12 the box you said that Mr. Biden signed?

09:42:44 13 A. Yes.

09:42:44 14 Q. And there is one more 11A, 11B, 11D, 11F, on the next
09:42:54 15 page, Mr. Radic?

09:42:56 16 MR. HINES: Objection. Sorry just to be clear,
09:43:00 17 11B(2), 212.

09:43:04 18 BY MR. LOWELL:

09:43:04 19 Q. Let me start again. You see there is an instruction
09:43:08 20 for 11A to bottom?

09:43:09 21 A. Yes.

09:43:09 22 Q. Then there is one for 11B.-12, do you see that?

09:43:14 23 A. Yes.

09:43:14 24 Q. And then there is a lot of words right between that
09:43:17 25 one and the next one?

- 09:43:18 1 A. Yes.
- 09:43:18 2 Q. And then it says 11D, right?
- 09:43:20 3 A. Yes.
- 09:43:21 4 Q. All right. 11A was actual transferor definition of
09:43:25 5 that, right?
- 09:43:26 6 A. Yes.
- 09:43:26 7 Q. And 11B-12 is addressing the issue of what's
09:43:33 8 prohibited in terms of transportation, shipment as it is
09:43:37 9 explained there, right?
- 09:43:38 10 A. Yes.
- 09:43:38 11 Q. And then 11D is phrased fugitive from justice?
- 09:43:43 12 A. Yes.
- 09:43:44 13 Q. And it explains that provision, correct?
- 09:43:48 14 A. Yes.
- 09:43:48 15 Q. 11F says adjudicated as a mental defective, and do
09:43:54 16 you see that?
- 09:43:55 17 A. Yes.
- 09:43:55 18 Q. And then it goes further, it says committed to, and
09:43:57 19 then there is an exception. Can you turn to the next page,
09:44:01 20 Mr. Radic. And then it goes more words to 11H, which says
09:44:06 21 "qualifying restraining order".
- 09:44:09 22 A. Yes.
- 09:44:09 23 Q. And it's talking again, that's the one that says "are
09:44:14 24 you", not have you?
- 09:44:15 25 A. Yes.

09:44:15 1 Q. And then 11I explains what a misdemeanor crime for
09:44:21 2 domestic violence is?

09:44:23 3 A. Yes.

09:44:23 4 Q. And 12D explains that question of immigration status
09:44:27 5 in the present tense?

09:44:28 6 A. Yes.

09:44:29 7 Q. And it doesn't go and ask have you ever, does it?

09:44:32 8 A. No.

09:44:35 9 Q. And then 13 explains further about the U.S. issued
09:44:41 10 alien number, correct?

09:44:41 11 A. Yes.

09:44:42 12 Q. If you go back a page, Mr. Radic. Do you see on the
09:44:45 13 page before where I said there is a definition for question
09:44:49 14 11D called fugitive from justice?

09:44:52 15 A. Yes.

09:44:53 16 Q. And then it goes to 11F, right?

09:44:55 17 A. Yes.

09:44:55 18 Q. There is no provision in this which defines or
09:44:59 19 instructs as to 11E, is there?

09:45:00 20 MR. HINES: Objection. May we approach?

09:46:25 21 (Side-bar discussion.)

09:46:25 22 MR. HINES: So really two issues, one there is
09:46:25 23 no foundation for these questions because there is a
09:46:25 24 question that addresses 11E, it's in the section that says
09:46:25 25 question B through 12 and what Mr. Lowell just did is he

09:46:25 1 skipped the part he is an unlawful user of or addicted to
09:46:25 2 marijuana or any depressant or narcotic drug, he's
09:46:25 3 suggesting there is nothing in these instructions related to
09:46:25 4 that, the second issue it's irrelevant because it doesn't
09:46:25 5 matter what Mr. Cleveland's interpretation are regarding
09:46:25 6 what we're going through with the instruction, it's an
09:46:25 7 irrelevant basis.

09:46:25 8 MR. LOWELL: As to the first, I don't mind going
09:46:25 9 backwards, all it does is repeat the question, it doesn't
09:46:25 10 define it. As to the second, I'm not asking the question
09:46:25 11 that he just asked, I am pointing out that they can readily
09:46:25 12 see which is, there is nothing on 11E, that's all end of the
09:46:25 13 story.

09:46:25 14 THE COURT: That's all your going to ask?

09:46:25 15 MR. LOWELL: Yes.

09:46:25 16 THE COURT: You can point out whatever you want
09:46:25 17 to point out.

09:46:25 18 MR. HINES: Okay.

09:46:26 19 BY MR. LOWELL:

09:46:27 20 Q. Mr. Radic, would you go back to the second column
09:46:30 21 which says questions 11B-12. 11B-12 references a statute
09:46:37 22 and it says what it prohibits, it prohibits receipt or
09:46:41 23 possession in or affecting interstate commerce of a firearm
09:46:46 24 by one who has been convicted of a felony in a federal state
09:46:51 25 or local court, right?

09:46:52 1 A. Yes.

09:46:52 2 Q. And that corresponds to one of the questions, yes?

09:46:55 3 A. Yes.

09:46:57 4 Q. And that's a has been. Than or any other crime

09:47:01 5 punishable by imprisonment, and then it explains it does not

09:47:04 6 include state misdemeanors, right?

09:47:06 7 A. Yes.

09:47:07 8 Q. Is a fugitive from justice?

09:47:09 9 A. Yes.

09:47:10 10 Q. It's not have you ever been. Is an unlawful user of

09:47:13 11 or addicted to marijuana or any depressant, stimulant,

09:47:14 12 narcotic drug or any other controlled substance, do you see

09:47:17 13 that one?

09:47:17 14 A. Yes.

09:47:17 15 Q. That matches E right?

09:47:20 16 A. Yes.

09:47:20 17 Q. In that paragraph, it doesn't say more than what the

09:47:23 18 11E space on the front of the form says, the exact same

09:47:26 19 words?

09:47:27 20 A. Yes.

09:47:27 21 Q. It doesn't have a definition?

09:47:28 22 A. No.

09:47:29 23 Q. Then it says has been adjudicated as a mental

09:47:32 24 defective, that's something that you and I went over on the

09:47:35 25 front of the form, right?

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- 09:47:36 1 A. Yes.
- 09:47:36 2 Q. And has been, that's another has been, discharged
- 09:47:39 3 from the armed forces, do you see that?
- 09:47:41 4 A. Yes.
- 09:47:42 5 Q. And then there is that "is", is subject to certain
- 09:47:45 6 restraining orders, right?
- 09:47:46 7 A. Yes.
- 09:47:46 8 Q. That's an is, I'm sorry, that's an is, not a has
- 09:47:52 9 been?
- 09:47:52 10 A. Yes.
- 09:47:52 11 Q. And then second line down, has renounced?
- 09:47:55 12 A. Yes.
- 09:47:56 13 Q. Do you see that one?
- 09:47:57 14 A. Yes.
- 09:47:57 15 Q. That just matches the words in the front of the form,
- 09:48:00 16 there are no specific definitions in those?
- 09:48:02 17 A. No.
- 09:48:02 18 Q. And then if you'll zoom out, Mr. Radic. And then all
- 09:48:05 19 I was asking you is that now we've looked at each of the
- 09:48:08 20 words in 11B-12, you go down the page, 11D says, "fugitive
- 09:48:14 21 from justice", that's where we're at, correct?
- 09:48:17 22 A. Yes, sir.
- 09:48:18 23 Q. And then it skips to 11F?
- 09:48:20 24 A. Yep.
- 09:48:20 25 Q. So all I'm asking you, in this form in that place, is

09:48:25 1 there an 11E definition? There is not, is there?

09:48:28 2 A. No.

09:48:31 3 Q. You can take that down, Mr. Radic.

09:48:33 4 Then in terms of the sequence of events, you
09:48:37 5 talked about the form being presented going into the back
09:48:42 6 room. And yesterday you were asked this question in terms
09:48:51 7 of when Mr. Biden signed the form. You were asked "what
09:48:57 8 happened next after you seen Mr. Biden sign the form and
09:48:59 9 date it?" And then you answered "what happens next is
09:49:05 10 Jason", is that referring to Jason Turner, right?

09:49:07 11 A. Yes, sir.

09:49:07 12 Q. "Said also we would need for the passport, another
09:49:10 13 form of like identification stating his address, it could be
09:49:16 14 a bill, or it could be vehicle registration", then question,
09:49:22 15 "what's the next thing you observed?" And the answer, "I
09:49:25 16 observed Mr. Biden leave out and then come back in."

09:49:28 17 That's what you said yesterday?

09:49:30 18 A. Yes.

09:49:31 19 Q. What was it that you brought to Mr. Jason Turner's
09:49:36 20 attention?

09:49:37 21 A. What did I bring -- you said what did I bring to
09:49:41 22 Jason Turner?

09:49:42 23 Q. You said Jason Turner did something, what did you say
09:49:46 24 to him?

09:49:46 25 A. I didn't say anything, I think Jason, I think he

09:49:49 1 realized that it needed to be --

09:49:52 2 MR. HINES: Objection.

09:49:52 3 THE COURT: Yes. So you don't have to speculate
09:49:54 4 on what Mr. Turner thought, if you don't know.

09:49:57 5 THE WITNESS: Yeah, I'm not a hundred percent
09:49:59 6 sure about that.

09:50:00 7 BY MR. LOWELL:

09:50:00 8 Q. Hundred percent. You presented Mr. Jason -- sorry,
09:50:03 9 you presented Mr. Turner with what?

09:50:05 10 A. I presented Mr. Turner with the form so that he could
09:50:09 11 go ahead and run the background check.

09:50:12 12 Q. Okay. And did you also provide him the
09:50:14 13 identification that existed at the time?

09:50:16 14 A. Yes.

09:50:17 15 Q. Okay. And then what did -- what did you say to him
09:50:20 16 when you did that, did you say anything?

09:50:22 17 A. I said it's ready to go.

09:50:24 18 Q. Okay.

09:50:25 19 A. Ready to run the background.

09:50:27 20 Q. Did you say anything to him about that you were
09:50:29 21 giving him a passport versus any other form?

09:50:32 22 A. No, he already had seen it.

09:50:35 23 Q. Okay. Tell me that. What did he see what?

09:50:38 24 A. He already knew about the passport.

09:50:40 25 MR. HINES: Objection. Asked and answered

09:50:42 1 yesterday.

09:50:43 2 THE COURT: Yes.

09:50:44 3 MR. LOWELL: I'm sorry, I know we asked it, you
09:50:48 4 asked it.

09:50:48 5 BY MR. LOWELL:

09:50:49 6 Q. I'm sorry, can I unwind that a second please. He had
09:50:52 7 already seen what?

09:50:53 8 A. The passport.

09:50:54 9 Q. When did he see that?

09:50:55 10 A. He seen that when I went to go ask about was it fine
09:50:59 11 to use.

09:51:00 12 Q. So you did say something to him?

09:51:02 13 A. Yes.

09:51:04 14 Q. And you said is it okay to use the passport?

09:51:06 15 A. Yes.

09:51:06 16 Q. Is that all you said?

09:51:07 17 A. Yeah, that was it.

09:51:08 18 Q. Why did you ask him that?

09:51:10 19 A. Because as I stated yesterday, I have --

09:51:13 20 MR. HINES: Objection.

09:51:22 21 THE COURT: I'm not -- I mean, come over here.

09:55:02 22 (Side-bar discussion.)

09:55:02 23 THE COURT: What's the objection?

09:55:02 24 MR. HINES: The issue is, maybe I jumped the gun
09:55:02 25 with the objection, I'll say that, but where are we going

09:55:02 1 with this and what's next, if he's just asking why did you
09:55:02 2 ask the question, but then if it is, was the reason you
09:55:02 3 asked that question was because you needed a secondary form
09:55:02 4 of identification, what is the state of mind at this point,
09:55:02 5 they're sort of packaged together, that's all irrelevant,
09:55:02 6 it's not a fact or consequence.

09:55:02 7 THE COURT: You're going to say why did you do
09:55:02 8 it and he said because I don't know if that was enough and
09:55:02 9 then what?

09:55:02 10 MR. LOWELL: That's the end of that question I
09:55:02 11 think.

09:55:02 12 THE COURT: I know that's the end of that
09:55:02 13 question but what comes next in your questions.

09:55:02 14 MR. LOWELL: Yesterday he testified that it
09:55:02 15 could be a bill, like a utility bill, he used the word bill,
09:55:02 16 it can't be a bill, he said it in testimony.

09:55:02 17 THE COURT: Okay.

09:55:02 18 MR. LOWELL: It can't be a bill, Your Honor.

09:55:02 19 THE COURT: No. No. I mean, that's not really
09:55:02 20 relevant to whether or not this guy checked the box. So you
09:55:02 21 can say did you ever get that, did you ever get it, you can
09:55:02 22 ask that. But you can't ask -- and you know it was illegal
09:55:02 23 that you used the a bill.

09:55:02 24 MR. LOWELL: I wasn't going to say that.

09:55:02 25 THE COURT: It wasn't allowed that you used just

09:55:02 1 a passport.

09:55:02 2 MR. LOWELL: Okay. The form is in evidence,
09:55:02 3 Your Honor, though, so when it comes to the definition of
09:55:02 4 what is the residence, I mean it's in evidence, I won't ask
09:55:02 5 him about it.

09:55:02 6 THE COURT: I understand. Look, I just put
09:55:02 7 someone in prison for a long time because he used the wrong
09:55:02 8 address and you said in your opening that he put the wrong
09:55:02 9 address on even though he doesn't live there. So you can
09:55:02 10 you know talk about that and the address and he can put
09:55:03 11 what's there, but I'm not sure it's helpful.

09:55:03 12 MR. LOWELL: On that point Your Honor, since you
09:55:03 13 raised it, that's where he was living when he was in
09:55:03 14 Delaware.

09:55:03 15 THE COURT: Okay. I'm just going by-- it
09:55:03 16 surprised me when you said it in your opening, I said holy
09:55:03 17 cow.

09:55:03 18 MR. LOWELL: It wasn't his permanent address,
09:55:03 19 but the relevance so that the record is as you and I are
09:55:03 20 doing it, if somebody said he went and got a car
09:55:03 21 registration at that address in the black Cadillac, it's his
09:55:03 22 father's car.

09:55:03 23 THE COURT: He already said it wasn't his car.
09:55:03 24 I think -- or maybe you said it.

09:55:03 25 MR. LOWELL: I said in opening.

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09:55:03 1 THE COURT: You said it wasn't his car. He knew
09:55:03 2 it wasn't his car.

09:55:03 3 MR. LOWELL: If they're going to profess that
09:55:03 4 the man came back with a car registration as maybe he or
09:55:03 5 somebody else.

09:55:03 6 MR. WISE: He didn't say that, he didn't say
09:55:03 7 that, he never said he came back with a registration.

09:55:03 8 MR. LOWELL: I'm sorry, because somebody said
09:55:03 9 something wrong once one way in an interview.

09:55:03 10 MR. WISE: He didn't say it on direct.

09:55:03 11 THE COURT: You can ask him did he ever see a
09:55:03 12 car, a registration.

09:55:03 13 MR. LOWELL: Yes.

09:55:03 14 THE COURT: That's it.

09:55:03 15 MR. LOWELL: Right, and then Mr. Turner will be
09:55:03 16 asked the same question.

09:55:03 17 MR. HINES: But our case-in-chief is ending, we
09:55:03 18 have proved it you can't dull Turner.

09:55:03 19 THE COURT: Just to impeach him.

09:55:03 20 MR. LOWELL: Not to impeach Mr. Cleveland.

09:55:03 21 THE COURT: Or you can't call him just to
09:55:03 22 impeach Mr. Turner, either ask him to say something if you
09:55:03 23 think he's going to lie on the stand. You can't put him up
09:55:03 24 there to lie because. You're not allowed the put someone up
09:55:03 25 there to lie and if they do, you can't put them up there

09:55:03 1 just to cross-examine him.

09:55:03 2 If you're going to call Mr. Turner and you
09:55:03 3 object, we can get a proffer. We don't need to find that
09:55:03 4 right now. That seems pointless.

09:55:08 5 (End of side-bar.)

09:55:08 6 BY MR. LOWELL:

09:55:11 7 Q. I'm trying to remember my last question, which was
09:55:13 8 did I ask you yet what did you say to Mr. Turner?

09:55:16 9 A. Yes.

09:55:17 10 Q. What did you say?

09:55:17 11 A. I said that the background check was ready.

09:55:20 12 Q. Before that you were, were you presenting the first
09:55:22 13 time with the passport what did you say?

09:55:24 14 A. I asked him was the passport fine to use.

09:55:26 15 Q. And then coming back he then did something you said
09:55:30 16 yesterday, you don't have to tell me what he said, but he
09:55:32 17 did something?

09:55:33 18 A. Yes.

09:55:33 19 Q. But yesterday you did say you got the okay?

09:55:36 20 A. Yeah.

09:55:36 21 Q. And who else was in the room when that happened?

09:55:39 22 A. Jason and Ronald Palimere.

09:55:41 23 Q. And was Mr. Palimere and Mr. Turner together when
09:55:45 24 this exchange was going on?

09:55:47 25 A. Yes.

09:55:48 1 Q. They both heard your -- sorry, Mr. Palimere was close
09:55:51 2 enough to Mr. Turner to hear what you were saying and what
09:55:54 3 Mr. Turner was saying?

09:55:56 4 A. Yes.

09:56:00 5 Q. When you were in the room with Mr. Palimere, did you
09:56:03 6 get an impression in your exchange of what Mr. Palimere was
09:56:07 7 seeking to get the sale done quickly?

09:56:11 8 A. He wanted the sale done quickly because he didn't
09:56:14 9 want him --

09:56:15 10 MR. HINES: Objection.

09:56:16 11 THE COURT: Yeah. Hearsay is when you're
09:56:20 12 talking about what someone else said out of court. So we
09:56:23 13 don't let in hearsay, and I sustain the objection.

09:56:27 14 MR. LOWELL: All he was asking, and I didn't ask
09:56:29 15 you for what he said, I said did you get the impression that
09:56:32 16 he wanted the sale to go quickly.

09:56:34 17 THE WITNESS: Yes.

09:56:34 18 BY MR. LOWELL:

09:56:34 19 Q. Now, after you said yesterday that Jason said that we
09:56:40 20 should need for the passport another form of identification
09:56:43 21 stating his address, it could be a bill, or it could be a
09:56:46 22 vehicle registration, then you said what's next, I observed
09:56:50 23 Mr. Biden leave out and then come back in?

09:56:52 24 A. Yes.

09:56:53 25 Q. Right, did he come back in with anything?

09:56:56 1 A. I believe so.

09:56:58 2 Q. When you say you believe so, what's that belief based
09:57:02 3 on?

09:57:02 4 A. I believe so because Jason was the one that was
09:57:05 5 handling the rest of that, taking over to run the background
09:57:08 6 check.

09:57:08 7 Q. So is it your testimony that you don't know and are
09:57:14 8 assuming that Mr. Turner did or got something or you saw
09:57:17 9 that, or what did you see Mr. Biden do and come back with,
09:57:21 10 if anything?

09:57:22 11 A. He just came back in, that's all I can say, he came
09:57:25 12 back in.

09:57:25 13 Q. Did you see him have a piece of paper in his hand?

09:57:28 14 A. No.

09:57:29 15 Q. Did you see him talk to Mr. Turner at that point?

09:57:32 16 A. Yes.

09:57:33 17 Q. So he comes back in and has a conversation with
09:57:37 18 Mr. Turner?

09:57:38 19 A. Yes.

09:57:38 20 Q. Did you see Mr. Biden give Mr. Turner anything?

09:57:41 21 A. No.

09:57:41 22 Q. And then what happened next in terms of the sequence,
09:57:46 23 did Mr. Turner go back into the back room?

09:57:48 24 A. Yes, to run a background.

09:57:50 25 Q. So that's when he ran the background?

09:57:52 1 A. Yes, we don't do it on the sales floor.

09:57:55 2 Q. Okay. Going back to the form, go to the first -- to
09:58:07 3 the second page, Mr. Radic.

09:58:10 4 In the form, you said that it was Mr. Turner who
09:58:15 5 filled out line 18(a)?

09:58:17 6 A. Yes.

09:58:17 7 Q. And that's where the passport is referred to?

09:58:20 8 A. Yes.

09:58:20 9 Q. And then 18(b) says supplement, do you see that?

09:58:24 10 A. Yes.

09:58:24 11 Q. Is there anything on the form about a supplement that
09:58:27 12 day?

09:58:28 13 A. No.

09:58:37 14 Q. Yesterday you said that you're the one who copied the
09:58:40 15 form and attached the form of identification to it?

09:58:45 16 A. Yes.

09:58:47 17 Q. Okay. Can we get back to government Exhibit 10A
09:58:52 18 again? So if we flip to the next page. And the next page.
09:58:58 19 And the next page. Sorry, keep going, please. And the next
09:59:03 20 page. Next page. Okay.

09:59:06 21 So it is the practice to take what it is a
09:59:10 22 person presents as their I.D., and then put it on the form?

09:59:14 23 A. Yes.

09:59:14 24 Q. And there was a passport, you talked about the
09:59:16 25 passport. Whose handwriting is on the left?

Cleveland - cross

09:59:19 1 A. Mine.

09:59:20 2 Q. So you did that and attached that; is that right?

09:59:25 3 A. Yes.

09:59:26 4 Q. And I notice that was in red?

09:59:29 5 A. Yes.

09:59:29 6 Q. Yesterday I think your -- and we saw your handwriting

09:59:34 7 was in blue?

09:59:35 8 A. Yes.

09:59:35 9 Q. Except for that date next to your signature which was

09:59:38 10 in red?

09:59:38 11 A. Yes.

09:59:39 12 Q. How did this become red?

09:59:40 13 A. Because with this form I don't have to fill out any

09:59:43 14 specific color, I can use whatever pen that I grab out of

09:59:47 15 the pen holder.

09:59:48 16 Q. I got it. I'm just trying to figure out like when

09:59:50 17 the blue came to red on this. So you had both or did you

09:59:54 18 take Jason's pen?

09:59:55 19 A. No, multiple different color pens in the pen holder.

10:00:01 20 Q. Okay. So you can -- that handwriting is yours?

10:00:04 21 A. Yes.

10:00:05 22 Q. And that's what you attached?

10:00:06 23 A. Yes.

10:00:07 24 Q. There is nothing after this passport, you didn't

10:00:10 25 attach any other form of I.D. that day?

Cleveland - cross

10:00:13 1

A. No.

10:00:14 2

Q. In terms of your interchange with Mr. Biden that day

10:00:19 3

-- now you can take it down.

10:00:20 4

Did you go through the checklist with him and

10:00:22 5

ask him if he was a fugitive or ask him whether or not he

10:00:26 6

was under a restraining order, or ask if he had ever been an

10:00:30 7

improper person in the country, did you go through and ask

10:00:33 8

him any of those orally?

10:00:34 9

A. No, he's supposed to read that and answer those

10:00:37 10

questions himself.

10:00:39 11

Q. Did you ask him any questions about whether or not he

10:00:41 12

ever drank or was presently drinking alcohol?

10:00:44 13

A. No.

10:00:45 14

Q. But I understand that that would be of concern to

10:00:48 15

you?

10:00:48 16

A. Yes.

10:00:49 17

Q. Even though it's not asked for on the form?

10:00:51 18

A. Yes.

10:00:54 19

Q. So are you -- am I right that there is no other form

10:00:58 20

that he was given that day that asked him about his use of

10:01:01 21

alcohol?

10:01:01 22

A. No.

10:01:03 23

Q. And you don't want to sell a gun, I imagine, to

10:01:06 24

somebody who you know to be either high or drunk or using a

10:01:12 25

drug or using alcohol, right?

10:01:14 1 A. No.

10:01:15 2 Q. Is it your practice to try to understand or glean or
10:01:20 3 observe a person?

10:01:20 4 A. Yes.

10:01:22 5 Q. And as I understand it, your practice would be that
10:01:26 6 you would try to see whether somebody is glassy eyed, right?

10:01:30 7 A. Yes.

10:01:30 8 Q. Or smells of alcohol?

10:01:32 9 A. Yes.

10:01:32 10 Q. Or smells of marijuana such that it gives a smell?

10:01:36 11 A. Yes.

10:01:36 12 Q. Or any other indication of a person?

10:01:39 13 A. Yeah.

10:01:39 14 Q. Not being in their normal sober condition?

10:01:42 15 A. Yes.

10:01:43 16 Q. And that day Mr. Biden didn't exhibit any of those
10:01:48 17 things that you try to observe?

10:01:50 18 A. Not at all.

10:01:53 19 Q. Then you indicated that Mr. Turner was the one to run
10:01:58 20 the background check, I'm not going to belabor that. I do
10:02:02 21 want to figure out just as best as I can the sequence.

10:02:05 22 Okay?

10:02:05 23 A. Okay.

10:02:06 24 Q. I promise I won't take a long time. If you'll put up
10:02:09 25 government Exhibit 12. So I'm referring to government

10:02:26 1 Exhibit 12A, which is in evidence. Do you recognize what
10:02:30 2 this is?

10:02:31 3 A. Yes.

10:02:31 4 Q. What is it?

10:02:32 5 A. That is the paperwork for when you run a NICS
10:02:37 6 background check.

10:02:38 7 Q. This would have been something Mr. Turner was
10:02:40 8 responsible for?

10:02:41 9 A. Yes.

10:02:41 10 Q. And Mr. Turner runs the check, and it indicates when
10:02:46 11 it was done on the top; right?

10:02:49 12 A. Yes.

10:02:50 13 Q. And that says on the 12th of October and the time is
10:02:54 14 6:36 p.m., do you see that?

10:02:56 15 A. Yes.

10:02:56 16 Q. And then it also indicates when the response came,
10:03:00 17 doesn't it?

10:03:01 18 A. Yes.

10:03:01 19 Q. And that would be three lines from the bottom of
10:03:05 20 6:37 p.m., right?

10:03:06 21 A. Yes.

10:03:07 22 Q. So it took a minute for this to happen, right?

10:03:10 23 A. Yes.

10:03:10 24 Q. And would you put up government Exhibit 13A, which is
10:03:20 25 the sales receipt.

10:03:22 1 And the sales receipt has a time on the top,
10:03:28 2 doesn't it?

10:03:29 3 A. Yes.

10:03:29 4 Q. What's that time?

10:03:31 5 A. 6:53.

10:03:33 6 Q. So the first time stamp of the check is 6:36, right?

10:03:40 7 A. Yes.

10:03:40 8 Q. Or 37 when it comes back?

10:03:42 9 A. Yes.

10:03:42 10 Q. And then this is all paid for on a cash -- on a cash
10:03:48 11 basis, a receipt that is 6:53?

10:03:51 12 A. Yes.

10:03:51 13 Q. So I'm just trying to make sure I have this right.
10:03:54 14 In the sequence of events, the following things happened
10:03:58 15 after you got the go ahead from Mr. Turner. You came back,
10:04:05 16 only the gun was there, and then the other events occurred?

10:04:08 17 A. Yes.

10:04:08 18 Q. That's when you spoke to Mr. Biden about bullets?

10:04:12 19 A. Yes.

10:04:12 20 Q. That's when you spoke the to him about speed loader?

10:04:16 21 A. Yes.

10:04:17 22 Q. That's when he, according to you, went and looked and
10:04:22 23 got the NEBO thing?

10:04:24 24 A. Yes.

10:04:24 25 Q. And then went over to the case where a BB gun was?

10:04:29 1 A. Yes.

10:04:30 2 Q. And then came back?

10:04:31 3 A. Yes.

10:04:31 4 Q. And then discussed with you all those purchases, put
10:04:36 5 it on the table, you had to ring it up?

10:04:38 6 A. Yes.

10:04:38 7 Q. And you said yesterday that, his looking at the BB
10:04:44 8 gun, his seeking the NEBO utility knife and the flash light
10:04:49 9 all happened after the gun was picked out, not before?

10:04:52 10 A. Yes.

10:04:52 11 Q. And therefore in your sequence, all the events I just
10:04:56 12 said, going in the back room, getting it, coming back,
10:05:00 13 saying it was okay, all the things I just said happened in
10:05:04 14 those 16 minutes?

10:05:05 15 MR. HINES: Objection. The form, he did it
10:05:11 16 before the background check.

10:05:12 17 BY MR. LOWELL:

10:05:13 18 Q. I'm sorry, all the events that I just went through
10:05:15 19 with you, all the ones that I detailed about whatever you
10:05:18 20 did after you got the okay, and you're saying it all happens
10:05:22 21 in terms of the utility knife, the flashlight, you said it
10:05:25 22 was after?

10:05:26 23 A. Yes.

10:05:26 24 Q. That happened in those 16 minutes?

10:05:29 25 A. Yes.

10:05:31 1 Q. So you ended up with that cash receipt and the sale
10:05:34 2 at that hour. And Mr. Biden purchased all of those events.
10:05:41 3 But the gun itself didn't go out of the store with the way
10:05:47 4 it was presented to the jury as just a handgun that he puts
10:05:51 5 in a bag and goes out, right?

10:05:53 6 A. No. It's leaving out in the case that it comes in
10:05:57 7 from the manufacturer.

10:05:57 8 Q. Which has a lock on it?

10:06:00 9 A. No. It doesn't have a lock.

10:06:01 10 Q. At the time it didn't?

10:06:03 11 A. No, when the guns go out, this they don't have a
10:06:07 12 lock, they have a lock inside to render them useless, you
10:06:11 13 usually put it through the barrel and put the slide back or
10:06:14 14 you open the cylinder on a revolver and you put the lock
10:06:17 15 through and lock it with a key.

10:06:19 16 MR. LOWELL: May I approach, Your Honor?

10:06:21 17 THE COURT: All right.

10:06:22 18 BY MR. LOWELL:

10:06:23 19 Q. Let me show you what's been marked as government
10:06:25 20 Exhibit 5A. Do you recognize that?

10:06:28 21 A. Yes.

10:06:29 22 Q. What does it depict?

10:06:32 23 A. I didn't hear you.

10:06:33 24 Q. What does it depict, what does it show?

10:06:35 25 A. It depicts the Colt case for the revolver and it has

10:06:39 1 a lock on it, which that lock would have been put on after
10:06:42 2 the fact, leaving the store.

10:06:44 3 Q. And you see that the lock that you were just talking
10:06:47 4 about has the name Colt on it?

10:06:49 5 A. Yes.

10:06:49 6 Q. It comes with the box?

10:06:52 7 A. Yes.

10:06:52 8 Q. Inside?

10:06:53 9 A. Yes.

10:06:53 10 Q. And then it gets put on the outside?

10:06:55 11 A. Yes.

10:06:56 12 Q. Is this an accurate depiction of the box that was
10:07:00 13 given to Mr. Biden or that he asked about? He asked about
10:07:03 14 the box, didn't he?

10:07:05 15 A. No, he didn't have to ask about the box, when you
10:07:08 16 present the firearm -- so, once the person picks out what
10:07:11 17 they want, I retrieve the box for it so the box is already
10:07:16 18 there with the firearm sitting in it.

10:07:18 19 Q. He didn't leave with the firearm outside of the box?

10:07:20 20 A. No.

10:07:21 21 Q. He left with it in this?

10:07:22 22 A. Yes.

10:07:23 23 MR. LOWELL: Your Honor we move into evidence
10:07:25 24 government Exhibit 5 and 5A.

10:07:27 25 MR. HINES: No objection.

Cleveland - cross

10:07:28 1 THE COURT: Thank you. Admitted.

10:07:30 2 MR. LOWELL: May I bring this to the attention
10:07:32 3 of the witness and the jury?

10:07:34 4 THE COURT: You may.

10:07:35 5 MR. LOWELL: Thank you.

10:07:35 6 (Government Exhibits No. 5 and 5(a) were
10:07:40 7 admitted into evidence)

10:07:40 8 BY MR. LOWELL:

10:07:41 9 Q. Mr. Cleveland, I'm looking at what is admitted as
10:07:43 10 Exhibit 5. Is this what you were talking about a moment
10:07:46 11 ago?

10:07:47 12 A. Yes.

10:07:47 13 Q. This is the lock on it that says Colt, just as in the
10:07:50 14 photo?

10:07:51 15 A. Yes.

10:08:13 16 Q. After Mr. Biden left the store with the material he
10:08:17 17 had purchased and the gun was in the lock box, correct?

10:08:20 18 A. Yes.

10:08:21 19 Q. Put in a lock box. Do you know what happened next,
10:08:24 20 where he went, what he did with it?

10:08:26 21 A. No.

10:08:26 22 Q. Did it ever come to your attention where he went
10:08:29 23 after that?

10:08:29 24 A. No.

10:08:30 25 Q. Or what happened to the gun?

Cleveland - redirect

10:08:31 1

A. No.

10:08:33 2

Q. I'm sorry, that I had you stay over. I have no other questions?

10:08:37 3

10:08:37 4

THE COURT: Redirect.

10:08:41 5

MR. HINES: Yes, Your Honor.

10:08:42 6

REDIRECT EXAMINATION

10:08:43 7

BY MR. HINES:

10:08:43 8

Q. Picking up where we left off, government's Exhibit 5, Mr. Cleveland, you see how today in court it has a lock on top?

10:08:46 9

10:08:50 10

A. Yes.

10:08:50 11

Q. Was this lock on the box when you presented this to Mr. Biden?

10:08:54 13

10:08:55 14

A. No.

10:08:55 15

Q. It was inside the box?

10:08:56 16

A. Yes.

10:08:57 17

Q. And when he left the store, was the lock on it?

10:09:00 18

A. No.

10:09:00 19

Q. Do you know whether law enforcement or someone else put the lock on this box or Mr. Biden, do you have any idea?

10:09:03 20

10:09:07 21

A. No.

10:09:08 22

Q. Do you know whether Mr. Biden actually put his revolver in this lock box when he had it in his possession?

10:09:10 23

10:09:16 24

A. No.

10:09:19 25

Q. Now, if we could have Exhibit 13A on the screen,

Cleveland - redirect

10:09:24 1 please. Mr. Lowell asked you a series of questions about
10:09:29 2 the events that occurred prior to 6:53, when this receipt
10:09:33 3 was generated. Do you recall those questions he was just
10:09:36 4 asking you?

10:09:36 5 A. Yes.

10:09:37 6 Q. And the background check was completed 16 minutes
10:09:40 7 earlier?

10:09:41 8 A. Yes.

10:09:41 9 Q. Was Mr. Biden out on the floor while the background
10:09:45 10 check was occurring?

10:09:47 11 A. Yes.

10:09:47 12 Q. And so he would have been on the floor for longer
10:09:52 13 than 16 minutes looking at items?

10:09:55 14 A. Yes.

10:09:55 15 Q. Now, if you look at the number of items after the
10:09:59 16 revolver, just 1, 2, 3, 4, 5 items on that receipt in
10:10:03 17 addition to the revolver, correct?

10:10:05 18 A. Yes.

10:10:08 19 Q. And then yesterday Mr. Lowell asked you some
10:10:12 20 questions, and actually again today, about government's
10:10:17 21 Exhibit 10A, and your signature on that on page 3. And
10:10:28 22 above your signature at the end of the certification it
10:10:31 23 says, "it is my belief that it is not unlawful for me to
10:10:34 24 sell, deliver, transport, or otherwise dispose of the
10:10:37 25 firearms listed on the form to the person identified in

10:10:40 1 section A". Is that what it says there at the bottom of the
10:10:42 2 certification?

10:10:43 3 A. Yes.

10:10:43 4 Q. Does that mean that you're responsible, too, and that
10:10:47 5 you're not able to sell someone a firearm if you knew that
10:10:50 6 they were an unlawful user or an addict?

10:10:53 7 A. Yes.

10:10:53 8 Q. Is that why that question 11E matters?

10:10:56 9 A. Yes.

10:10:56 10 Q. Mr. Lowell asked you about that question, why does it
10:11:00 11 matter?

10:11:01 12 A. It matters because on the form, you're not supposed
10:11:06 13 to be purchasing firearms using drugs, even with a medical
10:11:09 14 marijuana card, it's just the rules.

10:11:12 15 Q. Do you care?

10:11:13 16 A. Yes.

10:11:13 17 Q. Why do you care?

10:11:15 18 A. I mean, you have somebody under the influence,
10:11:18 19 anything could happen.

10:11:20 20 MR. HINES: No further questions, Your Honor.

10:11:21 21 THE COURT: Thank you. All right. Thank you so
10:11:24 22 much for coming back, Mr. Cleveland. You're excused.

10:11:27 23 THE WITNESS: All right.

10:11:28 24 THE COURT: What's next?

10:11:29 25 MR. WISE: Your Honor, the United States calls

Hallie Biden - direct

10:11:31 1 Hallie Biden.

10:11:48 2 COURTROOM DEPUTY: Please raise your right hand.

10:12:10 3 Please state and spell your full name for the record.

10:12:17 4 THE WITNESS: Hallie Biden, H-A-L-L-I-E,

10:12:34 5 B-I-D-E-N.

10:12:36 6 HALLIE BIDEN, having been duly sworn was

10:12:42 7 examined and testified as follows:

10:12:51 8 THE COURT: All right. Go ahead, Mr. Wise.

10:12:53 9 MR. WISE: Thank you, Your Honor.

10:12:53 10 DIRECT EXAMINATION

10:12:53 11 BY MR. WISE:

10:12:54 12 Q. Good morning, Ms. Biden.

10:12:55 13 A. Good morning.

10:12:56 14 Q. Do you know the about defendant?

10:12:58 15 A. Yes.

10:12:59 16 Q. And how do you know him?

10:13:00 17 A. He's my brother-in-law.

10:13:05 18 Q. How long have you known him?

10:13:06 19 A. Since I was young, actually, probably middle school.

10:13:09 20 Q. You testified he is your brother-in-law. Were you
10:13:13 21 married to his brother?

10:13:14 22 A. Yes.

10:13:14 23 Q. Did your husband die in 2015?

10:13:17 24 A. Yes. He did.

10:13:18 25 Q. At some point after the death of your husband, did

Hallie Biden - direct

- 10:13:21 1 you and the defendant begin a romantic relationship?
- 10:13:24 2 A. Yes.
- 10:13:24 3 Q. And approximately when was that?
- 10:13:26 4 A. Late 2015 or 2016, it was gradual.
- 10:13:32 5 Q. At some point after that, did you learn that the
- 10:13:35 6 defendant was using drugs?
- 10:13:36 7 A. Yes, I did.
- 10:13:38 8 Q. And approximately when did you learn that?
- 10:13:41 9 A. During the time that I was in a romantic relationship
- 10:13:45 10 with him, but I'm not sure exactly.
- 10:13:48 11 Q. And what kind of drugs was it that you learned he was
- 10:13:51 12 using?
- 10:13:52 13 A. Crack cocaine.
- 10:13:54 14 Q. And how did you first learn that?
- 10:13:56 15 A. I found it and I Googled it because I didn't know
- 10:14:03 16 what it was.
- 10:14:04 17 Q. Once you found it and you Googled it, did you talk to
- 10:14:09 18 the defendant about it?
- 10:14:11 19 A. Yes, I did.
- 10:14:14 20 Q. And what did he tell you, I'm not looking for a
- 10:14:17 21 quote, but what did he tell you?
- 10:14:19 22 A. He told me what it was.
- 10:14:20 23 Q. And what did he say it was?
- 10:14:22 24 A. Crack cocaine.
- 10:14:25 25 Q. Had you ever seen that before?

Hallie Biden - direct

- 10:14:26 1 A. I had not.
- 10:14:35 2 Q. Did he deny it was his?
- 10:14:37 3 A. No.
- 10:14:40 4 Q. And where were you when you first found it?
- 10:14:44 5 A. I think it was -- I'm not sure exactly but I believe
- 10:14:47 6 it was my house.
- 10:14:48 7 Q. And where was your house at the time?
- 10:14:50 8 A. In Wilmington, Delaware.
- 10:14:53 9 Q. And would the defendant stay at your house in
- 10:14:59 10 Wilmington, Delaware, from time to time?
- 10:15:01 11 A. Yes.
- 10:15:01 12 Q. After you first found it, did there come a time when
- 10:15:04 13 you actually saw him smoking crack?
- 10:15:06 14 A. Yes.
- 10:15:07 15 Q. And where was that?
- 10:15:08 16 A. I don't remember where -- it might have been in the
- 10:15:15 17 house or on the patio, I'm not sure exactly when I saw that.
- 10:15:20 18 Q. How frequently did you see him doing that once you
- 10:15:24 19 started seeing him do that?
- 10:15:26 20 A. Occasionally.
- 10:15:29 21 Q. In between the times you saw him using it, were you
- 10:15:33 22 also seeing him?
- 10:15:36 23 A. In between the times -- I'm confused.
- 10:15:38 24 Q. In between the times he was smoking crack, were you
- 10:15:42 25 also with him or seeing him?

Hallie Biden - direct

- 10:15:44 1 A. Yes.
- 10:15:44 2 Q. And at those times was he interacting with other
- 10:15:50 3 people?
- 10:15:50 4 A. Yes.
- 10:15:50 5 Q. Including members of your family?
- 10:15:52 6 A. Yes.
- 10:15:52 7 Q. And other acquaintances and family friends?
- 10:15:56 8 A. Yes.
- 10:15:56 9 Q. Was he also working?
- 10:15:58 10 A. Yes.
- 10:15:59 11 Q. All right. And did you see him smoking crack
- 10:16:07 12 anywhere other than in Wilmington somewhere in or around
- 10:16:11 13 your home?
- 10:16:13 14 A. In D.C., he had an apartment in D.C.
- 10:16:16 15 Q. Did you sometimes go there with him?
- 10:16:20 16 A. Yes.
- 10:16:21 17 Q. Where did he get the drugs from?
- 10:16:26 18 A. Various dealers.
- 10:16:27 19 Q. Did you sometimes see that?
- 10:16:29 20 A. Yes.
- 10:16:29 21 Q. Do you remember where you were when you saw that?
- 10:16:32 22 A. In D.C.
- 10:16:36 23 Q. And were you ever with him when he bought drugs from
- 10:16:39 24 the various dealers?
- 10:16:41 25 A. I was.

Hallie Biden - direct

10:16:44 1 Q. When he used drugs, did you notice a change or did
10:16:47 2 you observe a change in his demeanor or his behavior?

10:16:51 3 A. Yes.

10:16:52 4 Q. And describe what that was?

10:16:55 5 A. It varied, so it wasn't always consistent, but he
10:17:04 6 would be agitated and high strung. But then other times,
10:17:12 7 you know, functioning as well.

10:17:15 8 Q. Okay. And were there times when you were with him
10:17:18 9 out or interacting with other people where you knew he had
10:17:22 10 used drugs close in time to that?

10:17:26 11 A. Yes.

10:17:26 12 Q. And did he appear to be under the influence in those
10:17:29 13 settings or was he showing those signs you saw?

10:17:33 14 A. Sometimes yes, and sometimes no.

10:17:37 15 Q. Now in 2017 and 2018, did you and the defendant rent
10:17:46 16 a house together in Annapolis, Maryland?

10:17:51 17 A. Yes, we did.

10:17:52 18 Q. And approximately from when to when?

10:17:55 19 A. The school year basically.

10:17:57 20 Q. So sort of late, I guess fall '17 through?

10:18:00 21 A. Right.

10:18:01 22 Q. Through fall of '18?

10:18:03 23 A. Correct. We ended -- or I ended it early in July.

10:18:09 24 Q. And did the defendant stay at the house with you in
10:18:13 25 Annapolis in '17 and into '18?

- 10:18:16 1 A. Yes.
- 10:18:18 2 Q. And you testified that you saw him using drugs in the
- 10:18:23 3 house in Wilmington. The same question for the house in
- 10:18:26 4 Annapolis, did you see him using drugs there in '17 and '18?
- 10:18:31 5 A. Yes.
- 10:18:32 6 Q. And where in the house in Annapolis, if you recall?
- 10:18:35 7 A. It varied.
- 10:18:39 8 Q. Do you know where he kept the drugs?
- 10:18:42 9 A. Backpack or a car.
- 10:18:49 10 Q. And what kind of quantities did you see him with?
- 10:18:53 11 A. That varied as well.
- 10:18:55 12 Q. And so if you had to put it on a spectrum, what was
- 10:19:01 13 sort of the smallest to the largest I guess, because it
- 10:19:04 14 varied?
- 10:19:05 15 A. I don't really know how the quantities, whether it
- 10:19:09 16 goes by weight or size, I don't know what you mean.
- 10:19:12 17 Q. So is the smallest smaller than a marble?
- 10:19:17 18 A. Sure, yeah.
- 10:19:18 19 Q. And would the biggest be, the size of a ping pong
- 10:19:23 20 ball, bigger than that, smaller than that?
- 10:19:27 21 A. Maybe a ping pong ball, maybe a little bigger
- 10:19:31 22 sometimes.
- 10:19:31 23 Q. Were there times when you saw him with multiple ping
- 10:19:36 24 pong ball size rocks at a time?
- 10:19:39 25 A. Occasionally, maybe.

Hallie Biden - direct

10:19:40 1 Q. Did you discuss his drug use with him at the house in
10:19:44 2 Annapolis in '17 and '18?

10:19:46 3 A. I did.

10:19:47 4 Q. What did you discuss, I'm not looking for exact
10:19:49 5 quotes, but what did you discuss?

10:19:52 6 A. That this can't go on, we can't do this, a lot of,
10:19:58 7 you know, back and forth with that.

10:20:03 8 Q. And what did he say about his drug use?

10:20:07 9 A. It kind of would go back and forth, sometimes, you
10:20:12 10 know, leave me alone, I'm fine, I don't have a problem, and
10:20:16 11 other times, yes, I do, and I, you know, I'll figure it out
10:20:22 12 my way.

10:20:23 13 Q. Did he talk about it in terms of an addiction or
10:20:28 14 words to that effect or like that?

10:20:30 15 A. Sometimes, yes.

10:20:36 16 Q. During the time you were aware of him using drugs,
10:20:39 17 was he also drinking?

10:20:40 18 A. Yes.

10:20:40 19 Q. And did the two go hand in hand?

10:20:47 20 A. Not always hand in hand, but they were both issues.

10:20:52 21 Q. Was he frequently using both substances at the same
10:21:00 22 time?

10:21:00 23 A. Yes.

10:21:07 24 Q. So the same question for the house in Annapolis, how
10:21:11 25 frequently was he using when he was with you at the house in

10:21:15 1 **Annapolis?**

10:21:16 2 A. It became more and more frequently.

10:21:19 3 Q. And so, what did that -- what did that look like?

10:21:25 4 A. Well, he didn't -- he probably stayed there maybe
10:21:31 5 less than 50 percent of the time. So --

10:21:36 6 Q. So when he was there, how frequently was it?

10:21:38 7 A. When he was there, I think it was frequent. Daily,
10:21:44 8 if that's how you're asking, yes.

10:21:47 9 Q. Okay. And when he was using I guess daily, how long
10:21:51 10 would it go between I guess uses, if that's the right word?

10:21:56 11 A. Generally you know, I don't know, eight hours.

10:22:02 12 Q. So there were stretches of time in between when he
10:22:05 13 was using, when you observed when he wasn't using?

10:22:08 14 A. Yes.

10:22:10 15 **THE COURT:** Can you just speak clear, you were
10:22:13 16 talking about using alcohol.

10:22:14 17 **MR. WISE:** I'm sorry, I'll be clear.

10:22:16 18 **BY MR. LOWELL:**

10:22:16 19 Q. I'm focused on using, smoking crack at that time?

10:22:20 20 A. Okay.

10:22:20 21 Q. What were-- what were the intervals, if that's the
10:22:25 22 right word, in between when you saw him using crack?

10:22:29 23 A. You mean what were the breaks?

10:22:31 24 Q. What were the breaks.

10:22:33 25 A. Sleeping or when there was some obligation.

Hallie Biden - direct

10:22:38 1 Q. Okay. So similar question as I asked from the
10:22:41 2 Wilmington house, when you were with him in Annapolis, in
10:22:45 3 these breaks when he wasn't using, was he interacting with
10:22:49 4 other people?

10:22:51 5 A. Not when I -- he was really only there at the house
10:22:59 6 when he was there. So I didn't --

10:23:01 7 Q. Was there ever anyone at the house besides the two of
10:23:05 8 you?

10:23:06 9 A. Not often.

10:23:09 10 Q. But were there occasions where there were?

10:23:12 11 A. Yes.

10:23:12 12 Q. Like other family members?

10:23:14 13 A. Yes.

10:23:15 14 Q. And your children?

10:23:17 15 A. Yes.

10:23:17 16 Q. And were his children sometimes there as well?

10:23:21 17 A. No.

10:23:22 18 Q. Friends or acquaintances?

10:23:24 19 A. Occasionally.

10:23:26 20 Q. And when other people were at the house, was he able
10:23:32 21 to use the word you used, "function" with them?

10:23:35 22 A. Yes.

10:23:35 23 Q. And were there times when you knew he had used drugs
10:23:40 24 but the signs you described weren't apparent, I guess, when
10:23:45 25 he was interacting with other people?

Hallie Biden - direct

10:23:48 1 A. Yes.

10:23:48 2 Q. And you said also for, I think you said events or
10:23:52 3 something, did you understand he was going out to do other
10:23:55 4 things as well?

10:23:56 5 A. Right. Yes.

10:23:58 6 Q. Did he ever try and hide his drug use from you in
10:24:03 7 this period in '17 and '18?

10:24:07 8 A. I don't recall.

10:24:12 9 Q. Did he ever try and hide it, to your knowledge, from
10:24:15 10 other people like members of your family?

10:24:18 11 A. Yes.

10:24:18 12 Q. At some point did he start going to California?

10:24:24 13 A. I didn't know where he was going.

10:24:27 14 Q. Okay. At some point did you go to California to
10:24:30 15 visit him?

10:24:31 16 A. I did.

10:24:31 17 Q. And approximately when was that?

10:24:33 18 A. I believe it was around June of 2018.

10:24:38 19 Q. Okay. And what was the first place you remember
10:24:42 20 staying when you went to California to visit him?

10:24:45 21 A. The Roosevelt Hotel.

10:24:50 22 Q. And when you went to visit him in the Roosevelt
10:24:53 23 Hotel, was he using drugs? Was he smoking crack then?

10:24:57 24 A. Yes.

10:24:58 25 Q. And how frequently was it then?

- 10:25:11 1 A. Frequently.
- 10:25:12 2 Q. How long did you stay at that time?
- 10:25:16 3 A. A couple of days, I believe, I'm not sure exactly.
- 10:25:22 4 Q. At that point were you also using drugs?
- 10:25:26 5 A. Yes.
- 10:25:27 6 Q. And who had introduced you to it?
- 10:25:32 7 A. Hunter did.
- 10:25:34 8 Q. And was it also crack?
- 10:25:36 9 A. Yes. It was a terrible experience that I went
- 10:25:42 10 through, and I'm embarrassed and I'm ashamed, and I regret
- 10:25:47 11 that period of my life.
- 10:25:54 12 Q. And at some point did you stop, were you able to
- 10:25:57 13 stop?
- 10:25:58 14 A. Yes.
- 10:25:58 15 Q. And when was that?
- 10:25:59 16 A. August of 2018.
- 10:26:02 17 Q. During the time you were with him in June, did you go
- 10:26:09 18 out, did you do other things with him while you were in Los
- 10:26:14 19 Angeles?
- 10:26:14 20 A. It was -- no, not really because it was a bit
- 10:26:19 21 volatile, you know, like arguing.
- 10:26:24 22 Q. You testified at the beginning that you were in a
- 10:26:28 23 romantic relationship. By the, I guess by the summer, what
- 10:26:31 24 was the state of the relationship?
- 10:26:33 25 A. Off and on, and so we wouldn't talk often and then we

Hallie Biden - direct

- 10:26:44 1 would and be together and then not again.
- 10:26:48 2 Q. You testified you left after a couple of days?
- 10:26:52 3 A. Yeah.
- 10:26:53 4 Q. And then did you ever go back to LA when he was
- 10:26:57 5 there?
- 10:26:58 6 A. In August I did.
- 10:27:00 7 Q. Where did you stay when you went in August?
- 10:27:02 8 A. I was staying with a friend.
- 10:27:04 9 Q. And how long did you see the defendant for when you
- 10:27:07 10 went back in August?
- 10:27:09 11 A. Just a few hours.
- 10:27:11 12 Q. Where was he at that time?
- 10:27:13 13 A. He was at a treatment center.
- 10:27:15 14 Q. And you said you just stayed for a few hours?
- 10:27:17 15 A. Yeah, I was visiting him at the treatment center.
- 10:27:21 16 Q. Okay. All right. After you saw him for a few hours
- 10:27:34 17 in August, moving forward in time, did you see him again in
- 10:27:38 18 October of 2018?
- 10:27:41 19 A. I did.
- 10:27:42 20 Q. And did he come to stay with you either late at night
- 10:27:48 21 on October 22nd or early in the morning on October 23rd?
- 10:27:51 22 A. Yes.
- 10:27:52 23 Q. Do you remember which it was, whether it was late the
- 10:27:54 24 night before or early the following morning?
- 10:27:57 25 A. I believe it was in the morning, but I don't recall

Hallie Biden - direct

10:28:01 1 -- it was kind of a typical pattern, so I don't recall
10:28:04 2 exactly when he got there.

10:28:06 3 Q. And what was the typical pattern?

10:28:09 4 A. Where I didn't know where he was and I had been
10:28:12 5 trying to reach him for, it could be weeks. And then
10:28:16 6 talking and then him coming and spending the night.

10:28:22 7 Q. So you were awake when he got there, whether it was
10:28:27 8 the night before or the morning of?

10:28:29 9 A. Yes. Likely morning.

10:28:32 10 Q. Likely morning. What did you observe about him early
10:28:35 11 in the morning on the 23rd?

10:28:38 12 A. He was tired, exhausted, looked like he hadn't slept.

10:28:46 13 Q. Did you observe anything else about him?

10:28:52 14 A. I don't know.

10:28:53 15 Q. Did it look like he had been using drugs?

10:28:56 16 A. Could have been.

10:28:57 17 Q. Is that something you observed?

10:29:00 18 A. Yes.

10:29:01 19 Q. And what did he do after he got there?

10:29:07 20 A. He went to bed.

10:29:10 21 Q. And what did you do after he went to bed?

10:29:13 22 A. I went to clean out his car and his stuff hoping that
10:29:20 23 you know, after a certain amount of hours when he woke back
10:29:25 24 up we could, you know, help him start a new and deal with
10:29:30 25 stuff.

Hallie Biden - direct

- 10:29:30 1 Q. When you say help him start a new and deal with
10:29:34 2 stuff, what do you mean?
- 10:29:35 3 A. Get sober if he wasn't.
- 10:29:38 4 Q. And when you say sober, do you mean drugs or alcohol
10:29:42 5 or both?
- 10:29:43 6 A. Both.
- 10:29:44 7 Q. Based on what --
- 10:29:45 8 A. All.
- 10:29:46 9 Q. Based on what you had observed?
- 10:29:48 10 A. Yeah.
- 10:29:48 11 Q. And when you said you cleaned out his car; is that
10:29:52 12 right?
- 10:29:52 13 A. Yes. Or truck.
- 10:29:54 14 Q. Or truck. Right.
- 10:29:55 15 Did he drive a truck to your house early that
10:29:59 16 morning?
- 10:30:00 17 A. Yes.
- 10:30:00 18 Q. And where was the truck parked?
- 10:30:03 19 A. On the lawn on the side of the house.
- 10:30:09 20 Q. Is there a lot somewhere near your house?
- 10:30:13 21 A. I don't -- a lot? A parking lot?
- 10:30:18 22 Q. Something that would be referred to as a lot?
- 10:30:21 23 A. I don't -- not, there is a couple of properties in my
10:30:25 24 area.
- 10:30:25 25 Q. You said he parked on the lawn at your house?

Hallie Biden - direct

- 10:30:27 1 A. Right.
- 10:30:27 2 Q. And while he was asleep, you went in the car?
- 10:30:30 3 A. To clean it out.
- 10:30:31 4 Q. What were you looking for?
- 10:30:33 5 A. I was looking to clean it out, I wasn't necessarily
- 10:30:36 6 looking for anything. So...
- 10:30:42 7 Q. Was that the first time you had gone through a car he
- 10:30:45 8 had been driving?
- 10:30:46 9 A. No, that was kind of a pattern as well.
- 10:30:48 10 Q. What was the purpose of cleaning out the car, what
- 10:30:52 11 was looked for?
- 10:30:53 12 A. To clean out if there was any drugs or alcohol in the
- 10:30:56 13 car.
- 10:30:56 14 Q. And you said this was a pattern. Had you done this
- 10:31:00 15 on more than one occasion?
- 10:31:01 16 A. Yes.
- 10:31:02 17 Q. And why did you do that?
- 10:31:04 18 A. In an effort to help him get or stay sober.
- 10:31:10 19 Q. And that was including early in the morning on the
- 10:31:13 20 23rd?
- 10:31:13 21 A. Yes.
- 10:31:13 22 Q. Were there times also when your children cleaned out
- 10:31:16 23 his car looking for drugs?
- 10:31:18 24 A. Yes.
- 10:31:19 25 Q. Or other things?

10:31:21 1 A. Yes.

10:31:21 2 Q. When you searched his car, what did you find? Or
10:31:37 3 when you cleaned out his car, to use your words, when you
10:31:41 4 went through the car?

10:31:42 5 A. Aside from trash and clothes.

10:31:45 6 Q. Full of trash and clothes?

10:31:47 7 A. Yeah. I did find some remnants of crack cocaine and
10:31:52 8 some paraphernalia.

10:31:56 9 Q. And just to be clear, this is the morning of the
10:31:59 10 23rd?

10:32:00 11 A. Yes. Oh, and the gun, obviously.

10:32:06 12 Q. Understood. I'll ask you about that. I'm going to
10:32:11 13 ask you about each of the things you mentioned, the remnants
10:32:14 14 of crack cocaine and paraphernalia and the gun, before I do
10:32:19 15 that, about at some point did you have to take your kids to
10:32:23 16 school that morning?

10:32:24 17 A. I don't remember if it was a school day, of course I
10:32:27 18 would have, I always took my kids to school.

10:32:30 19 Q. Now you testified that you found remnants of crack
10:32:33 20 cocaine, paraphernalia, and a gun, correct?

10:32:35 21 A. Yes.

10:32:36 22 Q. What does remnants of crack cocaine mean, what does
10:32:38 23 that look like?

10:32:39 24 A. A dusting of powder, I guess.

10:32:43 25 Q. And how did that come about, how did the remnants get

10:32:47 1 left behind?

10:32:48 2 A. As you're using it, it breaks into pieces and a lot
10:32:51 3 of it gets lost and dropped.

10:32:54 4 Q. And then you said you found paraphernalia?

10:32:58 5 A. Yeah. I don't remember exactly what that was, you
10:33:03 6 know, like because I had seen that and cleaned that out
10:33:09 7 previously, so I don't recall exactly what.

10:33:11 8 Q. Generally speaking, what kind of paraphernalia would
10:33:14 9 you find when you did go through the car?

10:33:16 10 A. It would be crack pipes or broken pipes.

10:33:21 11 Q. And then you testified you found a gun, right?

10:33:25 12 A. Yes.

10:33:25 13 Q. Is that the first time you ever found a gun?

10:33:29 14 A. Yes.

10:33:29 15 Q. Had you ever seen a gun up close like that before?

10:33:33 16 A. No.

10:33:33 17 Q. Where did you find the gun in the truck?

10:33:36 18 A. In the console, the arm console, it was like a box.

10:33:43 19 Q. Was the box part of the truck like in the --

10:33:46 20 A. Yes.

10:33:47 21 Q. Was that box locked?

10:33:48 22 A. It had a lock, but the lock had been broken. So it
10:33:53 23 was like two inches ajar, you couldn't like click it.

10:33:59 24 Q. I see. And how had you gotten in the car? Was the
10:34:06 25 car locked?

Hallie Biden - direct

- 10:34:08 1 A. I think it was open.
- 10:34:10 2 Q. Did you have keys to the truck in any event?
- 10:34:13 3 A. I don't know, I don't have my own keys.
- 10:34:17 4 Q. I'm sorry, I didn't hear you?
- 10:34:19 5 A. I don't have my own keys, I don't have a set of keys,
- 10:34:23 6 I don't remember if it was open or the keys were in the car
- 10:34:25 7 or the keys were sitting out when he went to sleep.
- 10:34:28 8 Q. But the console you said was unlocked and actually
- 10:34:33 9 the lock was broken and it was actually up a couple of
- 10:34:36 10 inches, you said?
- 10:34:38 11 A. Yes.
- 10:34:40 12 MR. WISE: Can I have government Exhibit 1?
- 10:34:46 13 Your Honor, this is the same, in the same condition we
- 10:34:49 14 showed yesterday. Can I approach the witness with it?
- 10:34:53 15 THE COURT: Yes.
- 10:34:55 16 BY MR. WISE:
- 10:34:57 17 Q. Ms. Biden, do you see government Exhibit 1?
- 10:34:59 18 A. Yes.
- 10:35:00 19 Q. Is that the gun you found?
- 10:35:01 20 A. I mean, I can't know if that's the one, but it looks
- 10:35:05 21 like it.
- 10:35:05 22 Q. Have you ever seen another pistol?
- 10:35:08 23 A. No.
- 10:35:09 24 Q. Does this look like the pistol you found?
- 10:35:12 25 A. Yes.

Hallie Biden - direct

10:35:19 1 Q. And just so it's clear, I think the jurors saw this,
10:35:26 2 but can I have government Exhibit 1A on the screen. So this
10:35:30 3 is the pistol, this looks like the pistol you found?

10:35:35 4 A. Yes.

10:35:35 5 Q. Did you find any ammunition with the gun, any
10:35:38 6 bullets?

10:35:39 7 A. Yes.

10:35:41 8 Q. You can take that down.

10:35:43 9 When you found the gun and the bullets, what did
10:35:46 10 you do?

10:35:47 11 A. I panicked and I wanted to get rid of them.

10:35:54 12 Q. Why did you panic?

10:35:57 13 A. Because I didn't want him to hurt himself or I didn't
10:36:03 14 want my kids to find it and hurt themselves, and I just
10:36:09 15 panicked and wanted to get rid of it.

10:36:12 16 Q. What did you do then?

10:36:14 17 A. I was looking around for like what to do, I wasn't
10:36:18 18 sure. I considered hiding it somewhere but then I was
10:36:23 19 afraid one of my children would find it. So then I wanted
10:36:27 20 -- I thought about throwing it away. So I remember going
10:36:33 21 back into the house and finding like something to put it in.

10:36:37 22 Q. What was it that you found?

10:36:38 23 A. Like a -- like just like a little gift shopping bag.

10:36:43 24 Q. What color was it, do you remember?

10:36:46 25 A. I don't remember, dark.

Hallie Biden - direct

10:36:48 1 Q. Okay.

10:36:48 2 A. And then I went back out, like I didn't even -- like
10:36:53 3 I'm not -- I was afraid to touch it, I didn't know if it was
10:36:56 4 loaded, so I was trying to kind of put it in the bag and
10:37:01 5 then I realized that it was so visible, so then I was
10:37:04 6 looking around for something to put it in, which was the
10:37:08 7 pouch, and then I --

10:37:10 8 Q. So you were looking around the car for something?

10:37:12 9 A. I was looking around the car while sitting there like
10:37:15 10 what could I wrap this, what could I put this in and then
10:37:18 11 put it back in the bag so I could take it and get it off my
10:37:23 12 property and throw it away.

10:37:24 13 Q. I think you said you found a pouch in the car?

10:37:27 14 A. I did.

10:37:29 15 Q. I'm going to show you what's been marked -- I'm going
10:37:32 16 to show you what's been marked as government Exhibit 4.

10:37:40 17 A. Yes.

10:37:40 18 Q. Is that the pouch?

10:37:41 19 A. Yes.

10:37:42 20 MR. WISE: Your Honor, I move in admission
10:37:44 21 government Exhibit 4.

10:37:45 22 MR. LOWELL: No objection.

10:37:46 23 THE COURT: Thank you. It's admitted.

10:37:48 24 (Exhibit No. 4 was admitted into evidence.)

10:37:49 25 MR. WISE: I would like to have government

10:37:52 1 Exhibit 4A. I also move this in admission. The next one.

10:38:00 2 Next one.

10:38:02 3 BY MR. WISE:

10:38:02 4 Q. Is this the pouch that I just showed you?

10:38:04 5 A. Yes.

10:38:05 6 Q. Opened up?

10:38:07 7 THE COURT: So you offered the 4(a) into
10:38:09 8 evidence?

10:38:11 9 MR. WISE: Yes, I'm sorry.

10:38:11 10 THE COURT: Was there an objection?

10:38:12 11 MR. LOWELL: No objection, Your Honor.

10:38:13 12 THE COURT: Thank you. I just want to make sure
10:38:15 13 we have it clear so we can post the right things so it's
10:38:18 14 admitted.

10:38:19 15 MR. WISE: Thank you, Your Honor. My apologies.

10:38:22 16 (Exhibit No. 4A was admitted into evidence.)

10:38:22 17 BY MR. WISE:

10:38:23 18 Q. Had you seen the defendant with pouches before?

10:38:26 19 A. Yes, but not for a while.

10:38:29 20 Q. And what did he keep in the pouches?

10:38:31 21 A. Sometimes business cards, sometimes drugs, sometimes,
10:38:38 22 you know, any little things.

10:38:43 23 Q. So you said you found the pouch in the car and you
10:38:45 24 put the gun inside?

10:38:46 25 A. I did.

Hallie Biden - direct

10:38:47 1 Q. Did you put anything else in it, if you remember?

10:38:49 2 A. The bullets.

10:38:50 3 Q. And then what did you do with the pouch that now had
10:38:53 4 the gun and the bullets in it?

10:38:55 5 A. I put it into the little shopping bag that kind of
10:38:58 6 had a handle so that I could not touch it when I was
10:39:03 7 walking.

10:39:04 8 Q. Okay. And then after you did that, what did you do
10:39:13 9 next?

10:39:13 10 A. I took it to the grocery store up the road and I
10:39:23 11 threw it away.

10:39:24 12 Q. And you took it to the grocery store up the road and
10:39:27 13 threw it away?

10:39:28 14 A. Threw it in the outside trash can.

10:39:30 15 Q. And which grocery store was that?

10:39:33 16 A. Janssen's Market.

10:39:39 17 MR. WISE: Your Honor, we have a video, the
10:39:42 18 video from Janssen's Market. If there is no objection, I
10:39:46 19 would enter that into evidence and play it.

10:39:48 20 MR. LOWELL: There is no objection.

10:39:49 21 THE COURT: It's admitted.

10:39:52 22 MR. WISE: This is 39A, Ms. Vo.

10:39:54 23 (Exhibit No. 39A was admitted into evidence.)

10:39:54 24 BY MR. WISE:

10:39:55 25 Q. Do you see that on the screen, Ms. Biden?

Hallie Biden - direct

- 10:39:57 1 A. Yes.
- 10:39:58 2 Q. What's that, just generally speaking the set up where
- 10:40:02 3 we are?
- 10:40:02 4 A. The parking lot at Janssen's.
- 10:40:04 5 Q. The parking lot at Janssen's. Can we play the video?
- 10:40:13 6 (Video played.)
- 10:40:25 7 Is that your car?
- 10:40:26 8 A. Yes. I mean, I believe so.
- 10:40:58 9 Q. Is that you, Mrs. Biden?
- 10:41:03 10 A. Yes.
- 10:41:04 11 Q. What you got out of the back, or getting out, we'll
- 10:41:08 12 see in a second. Is that the bag?
- 10:41:11 13 A. Yes.
- 10:41:22 14 Q. And is that you putting it in the trash can?
- 10:41:25 15 A. Yes.
- 10:41:25 16 Q. And then what did you do after that, did you go
- 10:41:29 17 inside the store?
- 10:41:30 18 A. I forget. Probably, but I mean, I was so flustered
- 10:41:35 19 from the whole thing, so, I mean, if I see myself going in,
- 10:41:41 20 then yes. It was a stupid idea now, but I was panicking, so
- 10:41:50 21 I threw it in the trash.
- 10:41:51 22 MR. WISE: I would move in evidence 39B, which
- 10:41:54 23 is a clip from inside the store, unless there is an
- 10:41:57 24 objection.
- 10:41:57 25 MR. LOWELL: There is no objection.

Hallie Biden - direct

10:41:58 1 THE COURT: Thank you. It's admitted.

10:42:01 2 MR. WISE: If we could have 39B.

10:42:03 3 (Exhibit No. 39B was admitted into evidence.)

10:42:04 4 BY MR. WISE:

10:42:04 5 Q. Is that the inside of the store?

10:42:06 6 A. Yes.

10:42:07 7 Q. If you could play it.

10:42:10 8 (Video played.)

10:42:13 9 Is that you coming in?

10:42:15 10 A. Yes.

10:43:17 11 Q. After this, did you go back to your car and leave the
10:43:20 12 store?

10:43:21 13 A. I don't -- I mean, I -- did I shop, I don't recall.

10:43:27 14 Q. I'm asking, at some point did you leave the store?

10:43:30 15 A. Yes.

10:43:30 16 Q. Did you go back home?

10:43:31 17 A. I did.

10:43:31 18 Q. When you went home, did you discover that the
10:43:35 19 defendant had left?

10:43:36 20 A. I can't remember the order of that. I can't remember
10:43:40 21 if I saw him back at home or if he called me at that point.

10:43:45 22 Q. So at some point, though, did he leave your home
10:43:48 23 either when you were there or when you weren't there?

10:43:51 24 A. I -- I don't know.

10:43:56 25 Q. When you got home, was he still there?

Hallie Biden - direct

10:44:02 1 A. I -- that's where I'm not sure if I talked to him on
10:44:06 2 the phone or he was back at my house and he had already
10:44:10 3 left.

10:44:10 4 Q. So, and we're going to look at some messages. At
10:44:14 5 some point you did communicate with him, I guess later?

10:44:18 6 A. Correct.

10:44:18 7 Q. But do you have a memory of when you got back to the
10:44:21 8 house, you discovered he had left or was he still there?

10:44:25 9 A. That's what I'm not sure.

10:44:29 10 Q. Do you recall telling when you were interviewed by
10:44:31 11 the police and we'll talk about this later, that at some
10:44:35 12 point he had left your residence that morning?

10:44:37 13 A. I don't recall the -- him leaving or not leaving. I
10:44:43 14 remember him telling me to go back and file the police
10:44:47 15 report, so that -- what I'm saying, I can't remember if that
10:44:50 16 was on the phone or if that was in person.

10:44:52 17 Q. Okay. But you're clear that he was at your house
10:44:57 18 that morning?

10:44:58 19 A. Yes.

10:45:00 20 Q. Now you said either in person or over the phone --
10:45:05 21 well, I guess at some point, did he learn what you had --
10:45:09 22 that you had thrown the gun away?

10:45:11 23 A. Correct. Yes.

10:45:12 24 Q. And either in person or over the phone, what did he
10:45:17 25 tell you to do?

Hallie Biden - direct

10:45:18 1 A. To go back to the store and -- first go look for it,
10:45:23 2 and then when I went back to look for it and didn't find it,
10:45:26 3 he told me to file a police report for it because it was
10:45:30 4 registered in his name.

10:45:32 5 Q. Okay. And did you do that, did you go back to the
10:45:35 6 store to try to get it?

10:45:36 7 A. I did, yes.

10:45:38 8 MR. WISE: Your Honor, I would offer government
10:45:40 9 Exhibit 39D, which is a recording back at the store of
10:45:44 10 Ms. Biden coming back, unless there is an objection.

10:45:47 11 MR. LOWELL: One second, judge. What's the
10:45:50 12 number?

10:45:52 13 MR. WISE: 39D.

10:45:55 14 MR. LOWELL: No objection.

10:45:56 15 THE COURT: Thank you. It's admitted.

10:45:58 16 (Exhibit No. 39D was admitted into evidence.)

10:46:06 17 MR. WISE: You can play the clip.

10:46:24 18 (Video played.)

10:46:29 19 BY MR. WISE:

10:46:30 20 Q. Is that you coming back, Ms. Biden?

10:46:32 21 A. Yes.

10:46:38 22 Q. Is that you in the shop?

10:46:42 23 A. Yes, outside of the shop.

10:46:43 24 Q. And are you looking for it?

10:46:45 25 A. Yes.

Hallie Biden - direct

10:47:32 1 Q. Were you able to find it?

10:47:34 2 A. No.

10:47:34 3 Q. And you had nothing in your hand when you got back in
10:47:37 4 the car, right?

10:47:38 5 A. Right.

10:47:42 6 Q. What did you do after you couldn't find it?

10:47:49 7 A. I think I went in and talked to them at Janssen's and
10:47:55 8 asked if they had any -- you know did they take the trash
10:47:58 9 out or was there a security camera, tried to kind of figure
10:48:02 10 that out.

10:48:04 11 Q. Okay.

10:48:05 12 A. And then eventually I filed a police report while I
10:48:09 13 was at Janssen's with the manager that worked there.

10:48:15 14 Q. I think you testified that you communicated with the
10:48:19 15 defendant --

10:48:19 16 A. Throughout that.

10:48:20 17 Q. Throughout that.

10:48:23 18 In that time period, how did you communicate --
10:48:25 19 in October of 2018 and then moving forward in time, how did
10:48:29 20 you communicate with the defendant?

10:48:31 21 A. Cell phone.

10:48:31 22 Q. Including messages on the cell phone?

10:48:35 23 A. Texting, correct.

10:48:37 24 Q. Texting.

10:48:37 25 MR. WISE: I'm going to ask if we could have

Hallie Biden - direct

10:48:42 1 government Exhibit 18.

10:48:46 2 BY MR. WISE:

10:48:47 3 Q. And this should be in front of you, Ms. Biden, that
10:48:53 4 binder. This is already in evidence, and on the monitor, so
10:48:58 5 whatever is more convenient or comfortable for you, you can
10:49:01 6 look at it on the monitor or on the book, I'm going to be
10:49:05 7 enlarging some things so if you can't see it clearly, I can
10:49:10 8 do that.

10:49:11 9 A. Okay.

10:49:11 10 Q. If we could go to page 29. Just to orient us, if we
10:49:20 11 look across the top, you'll see it's got row, date, time,
10:49:25 12 from, to, and message. Do you see that?

10:49:30 13 A. Yes.

10:49:30 14 Q. And I'm not -- the next three columns I'm not going
10:49:34 15 to be asking you about.

10:49:36 16 And at that time, were you using a cell phone
10:49:40 17 that's at that number that ends in 3774?

10:49:44 18 A. Yes.

10:49:44 19 Q. Now, the first message is from October the 13th of
10:49:55 20 2018, so before the events that we just saw, right?

10:49:58 21 A. Yes.

10:49:58 22 Q. And the next message, or the message is, "I'm using
10:50:03 23 this until my other phone arrives by mail." Do you see
10:50:06 24 that?

10:50:06 25 A. Yes.

Hallie Biden - direct

10:50:07 1 Q. And that's with the number ending 2473?

10:50:11 2 A. Yes.

10:50:11 3 Q. At this time when you were communicating with the
10:50:14 4 defendant, was he using a phone number that had actually
10:50:17 5 been associated with his former spouse?

10:50:19 6 A. That number, yes.

10:50:20 7 Q. That number. And if we go to the next page, at the
10:50:27 8 top, did you say "that freaked me out"?

10:50:29 9 A. Yes.

10:50:29 10 Q. And then he said "this is Kathleen, and I'm going to
10:50:34 11 beat you up. If you come out of that." And you say,
10:50:37 12 "hello". So there is a gap. So just to be clear, this
10:50:42 13 number, you knew you were talking to the defendant even
10:50:45 14 though it had been a number you had previously known his
10:50:48 15 wife to use, ex-wife to use?

10:50:50 16 A. Correct.

10:50:51 17 Q. And then later in that same day, it looks like you
10:50:56 18 text him "hello" then "hi, are you on your way home? Call
10:51:01 19 me please." Right?

10:51:03 20 A. Yes.

10:51:04 21 Q. If we go to the next page, he responds "five."
10:51:10 22 Five." You can leave them. I think we can see it okay.
10:51:15 23 You say "you okay? Where are you? Truthfully." This is
10:51:20 24 all around 8:14, 8:15 on the 13th, right?

10:51:24 25 A. Yes.

Hallie Biden - direct

10:51:25 1 Q. If we go to the next page. He says "buy. I
10:51:32 2 guessing." So buying with an I guess in the middle, do you
10:51:36 3 see that?

10:51:36 4 A. Yes.

10:51:37 5 Q. And then he tells you "hold", we're now at 8:18 on
10:51:41 6 that day, on the 13th. Did you know what he was buying?

10:51:45 7 A. I mean, I -- I would guess, but I mean I didn't know
10:51:50 8 for sure.

10:51:51 9 Q. Okay. And if we go to the next page. You asked him
10:51:56 10 "where are you?" Or he asked you, "where are you?" He's
10:52:00 11 green, right, you're blue. And then you say "where? I'm
10:52:05 12 home." And then you say to him "in DE or D.C.", right?

10:52:12 13 A. Yes.

10:52:14 14 Q. And he responds "New Castle.", right.

10:52:19 15 Go to the next page. And then you tell him
10:52:23 16 "please be safe, I just want you safe." Now that's at 8:23,
10:52:31 17 8:24, now after 9 o'clock, he asked "do you want to go to
10:52:34 18 the latio" and then says "patio". What is that, do you know
10:52:38 19 what that is?

10:52:40 20 A. I don't know if that was --

10:52:43 21 Q. Is it like a bar or restaurant or something?

10:52:46 22 A. Not that I know of.

10:52:47 23 Q. If we go to the next page. And then he says "yes or
10:52:51 24 no?" You asked, "sure, what time?" Sort of later it looks
10:52:57 25 like. And then he says "trying to find out how long they

Hallie Biden - direct

10:53:01 1 will be there." And then you say, "what do you think?"

10:53:04 2 Again, this is all still on the 13th.

10:53:06 3 If we go to the next page. You say, "do you
10:53:11 4 want to go? I'll do whatever you want. Love you." And
10:53:14 5 then there is a question mark now a little before 10:00,
10:53:18 6 right?

10:53:18 7 A. Uh-huh.

10:53:19 8 Q. And then he responds, "I'll be home in an hour."
10:53:22 9 Right? Do you see that?

10:53:23 10 A. Yes.

10:53:24 11 Q. And then a few minutes later, "you okay? We staying
10:53:30 12 home?" That's what you said, right?

10:53:32 13 A. Yes.

10:53:32 14 Q. We go to the next page. Now at 10:25, you ask "why
10:53:38 15 won't you answer my calls? Where are you? Are you with
10:53:41 16 someone?" And then if we could, the next, in the next one
10:53:44 17 is kind of small, if you could enlarge the next three. Does
10:53:50 18 he respond "yes". It's in response to your question are you
10:53:55 19 with someone. "Yes, Bernard hangs at 7/11 on Greenhill and
10:54:02 20 Lancaster, I'm now off Maryland Avenue behind Blue Rocks
10:54:07 21 Stadium, waiting for a dealer named Mookie", do you see
10:54:10 22 that?

10:54:10 23 A. Yes.

10:54:10 24 Q. When he said dealer, what did you understand him to
10:54:14 25 mean?

Hallie Biden - direct

10:54:14 1 A. That he was buying crack cocaine.

10:54:17 2 Q. And then he said "his brother L is getting in car
10:54:21 3 now, I'm -- he has my money and I'm getting pissed". Do you
10:54:30 4 see that?

10:54:30 5 A. Yes.

10:54:33 6 Q. And that was at about 10:30 on the 13th, right?

10:54:40 7 A. Yes.

10:54:41 8 Q. Now if we move -- we can come out of that and go to
10:54:45 9 the next page. We move forward in time to the next day,
10:54:48 10 10:14 in the evening, do you see that at the top?

10:54:52 11 A. Yes.

10:54:52 12 Q. And did you text him "I called you 500 times in the
10:54:56 13 past 24 hours and you no answer. Practice what you preach."
10:55:01 14 Do you see those messages?

10:55:02 15 A. Yes.

10:55:02 16 Q. And then if you can enlarge the one on the bottom,
10:55:06 17 his response at 5:37, is his response "I was sleeping on a
10:55:11 18 car smoking crack on 4th Street and Rodney." Is that his
10:55:15 19 response?

10:55:15 20 A. Yes.

10:55:20 21 Q. And then if we go to the next page, he asked "where
10:55:26 22 were you?" And then he says "there's my truth." And then
10:55:31 23 repeats "where were you?" Do you see that?

10:55:36 24 A. Yes.

10:55:36 25 Q. If we go to the next day, 10:15, at the bottom if you

Hallie Biden - direct

10:55:42 1 could enlarge that, please?

10:55:44 2 You text, "I just want to help you get sober,
10:55:48 3 nothing that I do or you do is working. I'm sorry." Do you
10:55:52 4 see that?

10:55:52 5 A. Yes.

10:55:52 6 Q. And then if we go to the next page. You text, "I'm
10:55:59 7 afraid you are going to die." Do you see that?

10:56:02 8 A. Yes.

10:56:03 9 Q. Was that a fear you had at this time?

10:56:07 10 A. Yes.

10:56:09 11 Q. Were you afraid of him overdosing?

10:56:16 12 A. Maybe, or you know, suicide, you know, I didn't know.

10:56:22 13 Q. And then he responds on the 15th, a little bit later,
10:56:27 14 "what one thing have you done to help me get sober, Hallie?"

10:56:34 15 Had you tried to help him get sober?

10:56:37 16 A. Yeah.

10:56:37 17 Q. And when you tried to get -- help him get sober, was
10:56:42 18 it both to get off of crack and to stop drinking?

10:56:46 19 A. Yes.

10:56:47 20 Q. And then he says, "I'm almost there." And then he
10:56:51 21 says "I'm here can't get in." And then if we go to the next
10:56:56 22 page. I think that's it.

10:57:00 23 Now, if we move to the next page, 42. So that
10:57:03 24 was 10:15, if we go to the next page, 42. And if you could
10:57:08 25 enlarge. This is now 10:23, this is the, just to remind us,

Hallie Biden - direct

10:57:14 1 this is the morning where you found the gun in the unlocked
10:57:17 2 console, right?

10:57:18 3 A. Okay, yes.

10:57:19 4 Q. After he had come to your home, right?

10:57:21 5 A. Yes.

10:57:22 6 Q. And you said you don't remember if you talked to him
10:57:28 7 or if he -- or I guess if he texted you, right?

10:57:34 8 A. Right.

10:57:35 9 Q. So I guess -- if you remember, did he find that the
10:57:46 10 gun was missing and ask you about it or do you remember
10:57:50 11 telling him?

10:57:50 12 A. I did not tell him.

10:57:52 13 Q. You didn't tell him?

10:57:53 14 A. No. I wasn't-- I wasn't planning, I was just going
10:57:58 15 to pretend like it wasn't me.

10:58:00 16 Q. Okay. So you didn't tell him what you had done with
10:58:02 17 the gun?

10:58:03 18 A. No.

10:58:03 19 Q. He discovered it?

10:58:05 20 A. Correct.

10:58:05 21 Q. And you don't remember if the initial discussion was
10:58:07 22 -- when he discovered it if he was still there or if it was
10:58:11 23 over the phone or something?

10:58:12 24 A. Correct.

10:58:12 25 MR. LOWELL: It's been asked and answered.

Hallie Biden - direct

10:58:15 1 MR. WISE: I don't think I have, Your Honor.

10:58:19 2 THE COURT: Don't ask it again.

10:58:21 3 MR. WISE: Thank you, Your Honor.

10:58:23 4 BY MR. WISE:

10:58:24 5 Q. And so he texts you, and this is at 11:45 on the
10:58:28 6 morning of 10/23, "did you take that from me, Hallie?" What
10:58:34 7 did you understand him to be referring to when he said "did
10:58:37 8 you take that from me?"

10:58:39 9 A. The gun.

10:58:40 10 Q. "Are you insane. Tell me now. This is no game. And
10:58:44 11 you're being totally irresponsible and unhinged." And then
10:58:48 12 it looks like a few seconds later, tell me now, Hallie. And
10:58:53 13 then I guess a few minutes after that, he says, "you really
10:58:59 14 need to help me think right now, Hallie, this is very, very
10:59:03 15 serious."

10:59:06 16 Right?

10:59:07 17 A. Yes.

10:59:08 18 Q. And then if we move to the next page, page 43, the
10:59:16 19 last message was at 11:58, now at 12:17, you say "call me."

10:59:23 20 Right?

10:59:23 21 A. Right.

10:59:24 22 Q. So I guess by this point you weren't with him, that's
10:59:33 23 clear, right, because you asked him to call you. And then
10:59:39 24 at 1:06, do you remember talking to him after this text?

10:59:45 25 A. Yes.

Hallie Biden - direct

10:59:46 1 Q. Okay. What do you remember about that?

10:59:48 2 A. That he was angry with me.

10:59:51 3 Q. Okay. And then you respond, "I can't believe this,
10:59:55 4 you can blame me all you want. I know it was stupid, but
10:59:59 5 your part is dangerous and negligent. And because of this
11:00:04 6 and my stupidity for being worried about you, I'm dealing
11:00:07 7 with insanity and possibly I'm the one going to get in
11:00:11 8 trouble. Check yourself into a local rehab Hunter, this has
11:00:15 9 all got to stop. Don't run away again. Please don't
11:00:19 10 leave."

11:00:24 11 And then about 20 minutes later. You text
11:00:27 12 "police coming to talk to me now, I'll take full blame. I
11:00:31 13 don't want to live like this anymore. This too much for me
11:00:34 14 to handle." Are these messages being sent when you're still
11:00:38 15 at Janssen's?

11:00:40 16 A. I believe so, probably when we're waiting for the
11:00:43 17 police to arrive.

11:00:44 18 Q. Okay. And then the next message is several hours
11:00:51 19 later. If you can bring that out a little bit just to see
11:00:56 20 the time. It's 6:47, and he text you back, "the fucking FBI
11:01:01 21 Hallie, it's hard to believe anyone is that stupid. So
11:01:04 22 what's my fault here Hallie that you speak of. Owning a gun
11:01:08 23 that's in a locked car hidden on another property? You say
11:01:12 24 I invade your privacy. What more can I do than come back to
11:01:15 25 you to try again and you do this??? Who in their right mind

11:01:20 1 would trust you to help me get sober? Was it a locked car
11:01:28 2 on another property?"

11:01:31 3 A. "It was on my property, it was on the back side
11:01:36 4 yard."

11:01:38 5 Q. If we go to the next page, still on the 23rd, a
11:01:44 6 minute later, he says "do you want me dead." And then you
11:01:48 7 respond, "I'm sorry." If we could bring out her messages
11:01:52 8 because the text gets small at the bottom. "I'm sorry. I
11:01:55 9 just want you safe. That was not safe. And it was open,
11:01:59 10 unlocked and windows down, and the kids search your car."

11:02:02 11 Do you see that?

11:02:03 12 A. Yes.

11:02:04 13 Q. Do you remember the windows being down?

11:02:06 14 A. I mean, if I wrote that, then they were.

11:02:11 15 Q. And then you write "you have lost your mind, Hunter,
11:02:14 16 I'm sorry I handled it poorly today, but you are in a huge
11:02:17 17 denial about yourself and about that reality that I just
11:02:20 18 want you safe. You run away like a child and blame me for
11:02:24 19 your shit, it's to be expected that you go, you prove
11:02:27 20 repeatedly that you can't stay and really do work on
11:02:30 21 yourself, it's easier for you to avoid looking within and
11:02:34 22 cowardly to constantly point the blame on me." All right.
11:02:39 23 You can take that down.

11:02:40 24 Moving forward in time if we go to the next
11:02:43 25 page, that was 10:23, page 45. The next message I wanted to

Hallie Biden - direct

11:02:47 1 ask you about is on November the 3rd, so now we're less than
11:02:52 2 a week later, a little more than a week later. If you could
11:02:56 3 enlarge those three messages. The one at the top is from
11:03:00 4 him, right?

11:03:02 5 A. Yes.

11:03:03 6 Q. And it he says to you, "I'm a liar and a thief and a
11:03:07 7 blamer and a user, and I'm delusional and an addict unlike
11:03:12 8 beyond and above all other addicts that you know, and I've
11:03:15 9 ruined every relationship that I have ever cherished." Is
11:03:18 10 that what he wrote?

11:03:20 11 A. Yes.

11:03:20 12 Q. And then you respond, "let's do this right, come home
11:03:23 13 and talk with the kids, let's tell your family and your kids
11:03:26 14 the plan and let's stick to it. Everyone adores you and
11:03:29 15 wants to feel like you are safe and working on sobriety. We
11:03:33 16 can do this." When you talk on working on sobriety, are you
11:03:38 17 referring to drugs and alcohol?

11:03:40 18 A. Well, if you're sober, it's all of the above.

11:03:43 19 Q. "We can do this. Then I'll do therapy with you while
11:03:47 20 you are there. We can talk about everything you want once
11:03:50 21 you are there." And then the next message, "you are blaming
11:03:54 22 me again and for what? Do you know how much and what you
11:03:57 23 and your addiction has done to us all? When you humbly
11:04:02 24 realize how much damage you caused, then I'll know you are
11:04:05 25 ready to get sober. Blaming me, this is an excuse to avoid

Hallie Biden - direct

11:04:10 1 sobriety, if you want us, our love, our support, my help,
11:04:16 2 than shut up and come home and we can get you there." If we
11:04:20 3 go to the next page, did he respond within the same minute,
11:04:25 4 "no blame regarding sobriety." Is that what he said?

11:04:28 5 A. Yes. That's what it looks like.

11:04:31 6 Q. And then you write, "you are the one not sober and
11:04:34 7 brutally effecting all of us." And then did he write, "I'm
11:04:38 8 a drunk, an addict." And then if we go to the next page.
11:04:44 9 Did he say, "don't you want your crack back, Hallie?" And
11:04:49 10 did you respond "I can't take it anymore." And then did you
11:04:54 11 say "you want me to relapse?" Do you see that?

11:05:01 12 A. Yes.

11:05:01 13 Q. And then he said "for a long time." Right. Is that
11:05:05 14 what he said back?

11:05:06 15 A. That's what it looks like, yes.

11:05:10 16 Q. And then if we go to the next page, page 48, did you
11:05:14 17 respond, "focus on yourself and getting sober, not on me."?

11:05:19 18 A. Yes.

11:05:21 19 Q. Now, that was early November. I have one more --
11:05:32 20 well, before I do that, I have one message I want to ask you
11:05:39 21 about that's not in that chart. It should be in your
11:05:45 22 binder. This is 18G. Do you see 18G on the side, in the
11:06:19 23 binder?

11:06:20 24 A. You want me to look?

11:06:21 25 Q. If you could, otherwise I could hand you a copy.

Hallie Biden - direct

11:06:29 1 A. Yes.

11:06:30 2 Q. All right. And is this another series of text
11:06:33 3 messages between you and the defendant from October, so a
11:06:37 4 little bit before, October the 31st, a little bit before the
11:06:41 5 last message we just looked at?

11:06:44 6 A. Yes.

11:06:47 7 MR. WISE: And I would offer 18G into evidence.

11:06:49 8 MR. LOWELL: We need to approach.

11:11:38 9 (Side-bar discussion:)

11:11:38 10 MR. LOWELL: I'm being, trying to be generous,
11:11:38 11 that's not reciprocal. The e-mail account, EDH that's up
11:11:38 12 here is not one that has been previously identified and it
11:11:38 13 is not part of what I believe was put in in the exhibit in
11:11:38 14 which the underlying data was presented. So I don't know
11:11:38 15 what this account is and it hasn't been provided.

11:11:38 16 MR. WISE: It has been provided in discovery.

11:11:38 17 MR. LOWELL: It may every --

11:11:38 18 MR. WISE: This is part of the exhibits that we
11:11:38 19 disclosed some time ago and they didn't raise any questions
11:11:38 20 about it or ask us to show where it is, but this was
11:11:38 21 provided in discovery. And it has the page number from the
11:11:38 22 discovery at the bottom.

11:11:38 23 MR. LOWELL: But the agent didn't authenticate
11:11:38 24 this account, what she wrote, what she talked about.

11:11:38 25 MR. WISE: She can. She just said this is a

Hallie Biden - direct

11:11:38 1 text exchanged she had with him, she's already authenticated
11:11:38 2 it.

11:11:38 3 MR. LOWELL: Okay. So she'll be able to
11:11:39 4 identify this account and say this is something that she
11:11:39 5 received from him in this account?

11:11:39 6 MR. WISE: So this iCloud account was already on
11:11:39 7 the summary chart but she just said this was a text exchange
11:11:39 8 she had with him. This is what I'm going to ask her about,
11:11:39 9 she text him I just went into the library and sitting next
11:11:39 10 to Hunter, that's her son, is your brown leather pouch with
11:11:39 11 a stem in it laying on the chair next to him. That's the
11:11:39 12 one I'm going to ask her about.

11:11:39 13 MR. LOWELL: How does she know this is Hunter
11:11:39 14 operating this account?

11:11:39 15 MR. WISE: Well, first of all, the account is
11:11:39 16 already in evidence, it is on the summary chart but she just
11:11:39 17 testified the texts she had with him including this account
11:11:39 18 and this is another one.

11:11:39 19 THE COURT: Just so I understand, is this the
11:11:39 20 same brown pouch?

11:11:39 21 MR. WISE: A different one, he had more than
11:11:39 22 one. Ms. Krestan testified to that as well.

11:11:39 23 MR. LOWELL: All I can say is that the iCloud
11:11:39 24 extraction that the agent offered is not this one. It's not
11:11:39 25 this one. So -- look, what I'm trying to do is, this is not

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11:11:39 1 quite a goose and gander, but if they are going to say I'm
11:11:39 2 supposed to be looking at data to find this text to prove
11:11:39 3 that it's okay, not being able to do this, or she can say it
11:11:39 4 I can ask her the same question did you send a text, and she
11:11:39 5 can authenticate it and did it, that's fine, but they can't
11:11:39 6 say I need to find where it is ahead of time when they
11:11:39 7 haven't shown me.

11:11:39 8 MR. WISE: This has already been authenticated
11:11:39 9 this is part of the authentication motion in limine we filed
11:11:39 10 with this account, it's already been authenticated, the
11:11:39 11 problem with summary chart we couldn't tell what was on the
11:11:39 12 chart was accurate, this isn't a typed up summary, this is
11:11:39 13 the raw messages.

11:11:39 14 THE COURT: This is what I actually asked you to
11:11:39 15 use instead of the summary chart, is the raw messages.

11:11:39 16 MR. LOWELL: Right.

11:11:39 17 THE COURT: And you're saying this document with
11:11:39 18 the raw messages written like this was produced in
11:11:39 19 discovery?

11:11:39 20 MR. WISE: Yes.

11:11:39 21 THE COURT: Under this production number 1605?

11:11:39 22 MR. WISE: Yes.

11:11:39 23 MR. LOWELL: Authentication was not the issue
11:11:39 24 before, they agreed that what we were seeking was authentic,
11:11:39 25 they said they couldn't find it and, therefore, they

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11:11:39 1 couldn't check its accuracy.

11:11:39 2 THE COURT: In the summary document?

11:11:39 3 MR. LOWELL: Right.

11:11:39 4 MR. WISE: Because we had to compare the raw to
11:11:39 5 the summary document, we couldn't find the raw, this is the
11:11:39 6 raw, it's authenticating because the 902.11 search that was
11:11:39 7 parts of that motion in limine for this account, this
11:11:39 8 account was covered by that.

11:11:39 9 MR. LOWELL: I understand that both of us have
11:11:39 10 gotten stipulations of the authenticity of the material but
11:11:40 11 that wasn't your objection before, your objection before is
11:11:40 12 notwithstanding that it's authentic, you couldn't find it in
11:11:40 13 the extraction report. The account did not identify this
11:11:40 14 one as being in the extraction report so I want it on the
11:11:40 15 record that that did not happen. If you're asking her if
11:11:40 16 she can looking at this text and indicate that it's
11:11:40 17 something that she remembers and that it's something she
11:11:40 18 said --

11:11:40 19 THE COURT: How about if I let them take their
11:11:40 20 morning break. Okay.

11:11:40 21 Ladies and gentlemen how about you take your
11:11:40 22 morning break, fifteen minutes and then we'll come back.

11:11:43 23 (Jury exiting the courtroom at 11:11 a.m.)

11:11:59 24 THE COURT: Okay. Everyone can be seated.

11:12:05 25 So --

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11:12:07 1 MR. LOWELL: Your Honor.

11:12:09 2 THE COURT: I'm sorry, yes, actually, you should
11:12:12 3 go out in the hall since we're going to talk about this.
11:12:16 4 Your breaks are usually about 10 or 15 minutes.

11:12:20 5 THE WITNESS: Okay.

11:12:21 6 THE COURT: Thank you. Hold on. Let me just
11:12:47 7 look at the testimony that came up beforehand. By the way,
11:12:50 8 Mr. Wise, I can do it or you can do it, but ask the witness
11:12:53 9 to lean into the microphone, some of the jurors are having a
11:12:57 10 hard time hearing her.

11:12:59 11 MR. WISE: Sure.

11:12:59 12 THE COURT: Okay. Let me just look at this
11:13:01 13 question. So she said this is a series of text messages
11:13:12 14 between her and the defendant from October. A little bit
11:13:17 15 before October, 31st, a little bit before the November
11:13:20 16 messages that had just been on the screen.

11:13:24 17 MR. WISE: Right, our paralegal handed me the
11:13:28 18 extraction report that was produced in discovery where this
11:13:32 19 message appears on page --

11:13:36 20 THE COURT: 1605.

11:13:38 21 MR. WISE: 1605, this report is what was
11:13:41 22 produced to the defense and it's self authenticating.

11:13:46 23 THE COURT: You're complaint about them was he
11:13:47 24 didn't have the equivalent?

11:13:49 25 MR. HINES: We had a chart that purported to be

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11:13:52 1 typed up messages and we couldn't compare to see if they
11:13:56 2 were accurate, and for instance I looked at one that I did
11:13:59 3 recognize and it wasn't accurate. It's not that they
11:14:02 4 deliberately mistyped it, but that's the whole point why we
11:14:06 5 give them to each other. That's frankly why in our summary
11:14:09 6 chart we used the raw pictures to kind of cut down on,
11:14:12 7 somebody leaves out a word or leaves out a not or whatever,
11:14:16 8 that was my issue with the summary chart.

11:14:18 9 I just need to be able to know that something
11:14:21 10 they're putting in evidence in place of the underlying
11:14:24 11 evidence is accurate. That's the fairness we're looking
11:14:29 12 for.

11:14:29 13 But this is a series of exchanges that already
11:14:32 14 has been authenticated between her and the defendant. And
11:14:38 15 they had this -- they've had the report, they have had the
11:14:40 16 exhibit, they raised no objection, I'm going to ask about
11:14:43 17 the one I pointed to at side-bar and that's my question.

11:14:49 18 THE COURT: Mr. Lowell?

11:14:50 19 MR. LOWELL: Before the issue was not phrased as
11:14:54 20 authentication. The government doesn't contest that our
11:14:58 21 texts, Mr. Wise said there is one that he recognized had a
11:15:03 22 mistake in it, I don't know if it did or not, we have the
11:15:05 23 original text.

11:15:06 24 THE COURT: We can deal with mistakes.

11:15:08 25 MR. LOWELL: It's not an issue, before it wasn't

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11:15:10 1 an issue of authentication, it was an issue of whether or
11:15:13 2 not I had provided, we had provided in a way that they can
11:15:16 3 verify. And they indicated they hadn't. This is provided
11:15:21 4 in discovery is what Mr. Wise just said, it's the same way
11:15:25 5 that we got what we got and they sent it to us. So now it's
11:15:29 6 okay if it's just provided in discovery, it's up to us to go
11:15:33 7 find it. When we were given what they gave us and they're
11:15:35 8 saying they can't find it, that's not okay.

11:15:38 9 What I'm suggesting is, that they are now saying
11:15:41 10 something that should allow us to do what we did but we're
11:15:45 11 doing it your way when we get there, individual texts one by
11:15:48 12 one. I'm pointing out that the argument they're making
11:15:52 13 contradiction about what they said that we did. I'm
11:15:56 14 pointing out that the account said we are there too
11:15:58 15 authenticate their account and this is how we got it. In
11:16:01 16 her extraction testimony this wasn't there.

11:16:03 17 I can work out with Mr. Wise. At the end of the
11:16:06 18 day, this text is not the end of the day and if she can
11:16:10 19 identify it and say she received it, that's fine I'll work
11:16:13 20 it out with him, but I'm just pointing out that they are
11:16:16 21 making an argument to support what they want to do that's
11:16:20 22 different from what they're trying to object to what we are
11:16:23 23 asking to do, that's what I'll work out with him.

11:16:25 24 MR. WISE: That's just not true. We gave them
11:16:28 25 the report, it has page numbers on it, that's all we asked

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11:16:31 1 for from them and they would not do it.

11:16:34 2 MR. LOWELL: It's not that we would not do it,
11:16:35 3 Your Honor, we are doing our best, understanding if we told
11:16:38 4 him -- I don't want to belabor that point again. We
11:16:42 5 discussed that. I apologize.

11:16:44 6 I will explain to Mr. Wise at the break what we
11:16:48 7 can do about this one, and we do have now what we said we
11:16:51 8 can, I might need to check at the break, it might be fifteen
11:16:55 9 in order to get the individual text to ask her about. Okay.

11:16:58 10 THE COURT: Okay. Just to be clear on the
11:16:59 11 summary chart, part of the problem was that you had the
11:17:02 12 clearly hearsay other texts on there.

11:17:05 13 MR. LOWELL: And we understood that and I am
11:17:07 14 correcting that as well.

11:17:08 15 THE COURT: Okay. All right. We'll take
11:17:12 16 fifteen minutes and come back around 11:30.

11:17:15 17 MR. WISE: Thank you, Your Honor.

11:18:26 18 COURTROOM DEPUTY: All rise.

11:18:29 19 (A brief recess was taken.)

11:35:58 20 COURTROOM DEPUTY: All rise.

11:37:52 21 (Jury entering the courtroom at 11:37 a.m.)

11:38:15 22 THE COURT: All right, everyone. Welcome back.
11:38:21 23 Everyone, please be seated.

11:38:26 24 Mr. Wise.

11:38:35 25 MR. WISE: Thank you, Your Honor.

11:38:36 1 BY MR. WISE:

11:38:37 2 Q. When we broke, Ms. Biden, I had asked you if the text
11:38:42 3 exchange in government Exhibit 18G was one you had with the
11:38:45 4 defendant. Do you remember me asking you that?

11:38:49 5 A. This right here?

11:38:51 6 Q. Yes.

11:38:51 7 A. Yes.

11:38:52 8 Q. I think you testified that it was?

11:38:53 9 A. Yes.

11:38:55 10 MR. WISE: I move for the admission now of 18G
11:38:57 11 in evidence.

11:38:59 12 MR. LOWELL: With no objection.

11:39:02 13 THE COURT: Thank you. It's admitted.

11:39:05 14 (Exhibit No. 18G was admitted into evidence.)

11:39:06 15 BY MR. WISE:

11:39:08 16 Q. Ms. Vo, if you could enlarge the third bubble up from
11:39:13 17 the bottom, and in this message to the defendant, this is
11:39:19 18 from October 31st, you text, or write "I just went into
11:39:24 19 library and sitting next to Hunter was your brown leather
11:39:28 20 pouch with a stem in it laying in the chair next to him."

11:39:33 21 A. Yes.

11:39:33 22 Q. Did you have a room in your house at the time that
11:39:35 23 was referred to as the library?

11:39:37 24 A. Yes.

11:39:37 25 Q. Is that Hunter, is that the defendant or is that

11:39:39 1

someone else?

11:39:40 2

A. That's my son.

11:39:41 3

Q. And you write, "was your brown leather pouch with a

11:39:46 4

stem in it." What does a stem refer to?

11:39:48 5

A. A crack pipe.

11:39:50 6

Q. So you obviously testified that the government

11:39:54 7

Exhibit 4, was the brown leather pouch that you had found in

11:39:57 8

the defendant's truck on the 23rd that you put the gun in,

11:40:02 9

right?

11:40:02 10

A. Yes.

11:40:04 11

Q. Now at the end of October, is this another brown

11:40:07 12

leather pouch that you had found in your home?

11:40:09 13

A. Yes.

11:40:09 14

Q. And that you're asking the defendant about?

11:40:13 15

A. Yes.

11:40:13 16

Q. That apparently had drug paraphernalia in it,

11:40:16 17

correct?

11:40:18 18

A. Correct.

11:40:20 19

Q. Do you remember him having multiple leather pouches

11:40:25 20

over a period of time?

11:40:27 21

A. Yes.

11:40:27 22

Q. And then if we could go back to 18, I think there was

11:40:33 23

one last message I was going to ask you about, and that's at

11:40:41 24

page, Ms. Vo, 61. And this is from January of 28, 2019. If

11:40:56 25

you could enlarge that message, Ms. Vo, at the bottom, it's

11:41:00 1 partially redacted. This is a message from the defendant to
11:41:02 2 you and it reads "that's a line brighter than throwing my
11:41:07 3 gun in a full trash can in a busy grocery store and then
11:41:10 4 some kid blows his sisters head off and you go to prison for
11:41:15 5 the rest of your life." Do you see that?

11:41:17 6 A. I do.

11:41:17 7 Q. Is that a reference to what happened on October 23rd,
11:41:21 8 that is the throwing gun in a trash can?

11:41:24 9 A. Yes.

11:41:34 10 MR. WISE: Your Honor, I have nothing further.

11:41:35 11 THE COURT: All right. Thank you.

11:41:38 12 Cross-exam.

11:41:40 13 MR. LOWELL: Thank you, Your Honor.

11:41:58 14 Your Honor, may I approach?

11:42:01 15 THE COURT: You may.

11:42:02 16 CROSS-EXAMINATION

11:42:03 17 BY MR. LOWELL:

11:42:13 18 Q. Still good morning.

11:42:13 19 Good morning, Ms. Biden.

11:42:15 20 A. Good morning.

11:42:16 21 Q. I'm Abbe Lowell, one of Hunter's lawyers. We never
11:42:20 22 met.

11:42:20 23 A. We never met.

11:42:22 24 Q. We have never talked to each other. I'm sorry that
11:42:27 25 you need to be here.

11:42:29 1 I want to go backwards a bit. And you were
11:42:33 2 explaining to the jury, various times in the life of you and
11:42:39 3 Hunter in which drugs were involved. And you talked about
11:42:43 4 his use going backwards from the time that I think you and
11:42:48 5 he started dating, I'm using the word dating, becoming
11:42:53 6 involved at the end of '15, right?

11:42:55 7 A. Yes.

11:42:55 8 Q. And then you described his various uses and that was
11:43:00 9 in 2016 as well?

11:43:03 10 A. Yes.

11:43:04 11 Q. And then that carried into 2017?

11:43:07 12 A. Yes.

11:43:08 13 Q. But there were times when neither he nor you were
11:43:13 14 using drugs, right? There were various times?

11:43:17 15 A. Yes.

11:43:17 16 Q. And those could last for some period, correct?

11:43:20 17 A. Yes.

11:43:20 18 Q. And then in the beginning of 2018, I think you said
11:43:26 19 there came a point where you visited him in LA, but in the
11:43:30 20 first part of 2018, he wasn't living with you?

11:43:35 21 A. Like January, February --

11:43:38 22 Q. No, I'm sorry, living or visiting, sometimes staying
11:43:41 23 with you in January?

11:43:43 24 A. In the month of January.

11:43:44 25 Q. Of 18?

11:43:45 1 A. I don't recall.

11:43:46 2 Q. But you do know later in 2018, in the spring, he then
11:43:50 3 moved to -- took a trip to Los Angeles or California?

11:43:54 4 A. Yes.

11:43:55 5 Q. And at some point you visited him there?

11:43:58 6 A. Yes.

11:44:02 7 Q. I'll come back to 2018. In the period of time I
11:44:07 8 think that you had testified prior to our break, I think you
11:44:11 9 said there were instances, or many instances where he would
11:44:15 10 not be truthful with himself about what he was using and how
11:44:19 11 bad his problem was?

11:44:21 12 A. Yes.

11:44:21 13 Q. And that would be both as to alcohol and when he
11:44:26 14 started to use cocaine, crack cocaine?

11:44:28 15 A. Yes.

11:44:28 16 Q. And he would deny that, right?

11:44:30 17 A. Yes.

11:44:30 18 Q. Deny it to you?

11:44:32 19 A. Sometimes, yes.

11:44:33 20 Q. And deny it to himself?

11:44:35 21 A. Yes.

11:44:36 22 MR. WISE: Your Honor, I object, she can't say
11:44:40 23 what he's doing to himself. I would object.

11:44:43 24 BY MR. LOWELL:

11:44:43 25 Q. When he would speak out loud and say he would deny

11:44:47 1 it, he's the one who is speaking, correct?

11:44:50 2 A. Yes.

11:44:52 3 THE COURT: So we'll strike her speculation as
11:44:56 4 to what he was -- believed in his own mind.

11:45:02 5 BY MR. LOWELL:

11:45:02 6 Q. And I think in the events that you said in terms of
11:45:05 7 your back and forth with him, there came a point that you
11:45:09 8 also started using drugs?

11:45:11 9 A. Yes.

11:45:12 10 Q. And in that period of time, there were times where
11:45:16 11 both he and you were working together towards sobriety and
11:45:23 12 recovery and rehabilitation; correct?

11:45:25 13 A. Correct.

11:45:25 14 Q. And in fact, sometimes you did that together?

11:45:28 15 A. Yes.

11:45:28 16 Q. And in those occasions, he was also urging you to try
11:45:33 17 to become sober?

11:45:36 18 A. Yes.

11:45:36 19 Q. And you to him?

11:45:38 20 A. Yes.

11:45:39 21 Q. And on those occasions in which you were doing this,
11:45:42 22 either alone or apart, he was paying for all that, wasn't
11:45:47 23 he?

11:45:47 24 A. For his or mine?

11:45:49 25 Q. Sometimes yours and always his.

11:45:53 1 A. Uh --

11:45:54 2 Q. He paid for periods of time where you, for example --

11:45:57 3 A. Maybe -- maybe some things he paid for of mine, yeah.

11:46:02 4 Q. Sitting here today, I notice this morning that

11:46:05 5 sometimes you said maybe, sometimes you said you guess. I

11:46:08 6 have to assume that the events of October 2018, were fairly

11:46:14 7 upsetting?

11:46:15 8 A. Yes.

11:46:16 9 Q. And being here is not a picnic, either?

11:46:18 10 A. Yes.

11:46:19 11 Q. So in general, speaking about putting together the

11:46:23 12 sequence of time, is that a difficult thing for you to do to

11:46:28 13 remember blow by blow? I mean, I saw that they played a

11:46:32 14 video, and I think you said in one of them, I think that's

11:46:35 15 what I did, I'm not sure.

11:46:37 16 A. Yes.

11:46:37 17 Q. So reconstructing this is not easy?

11:46:40 18 A. Right.

11:46:45 19 Q. In the periods of time that you spoke with

11:46:52 20 prosecutors and investigators and recounted what you were

11:46:56 21 doing, whatever it was, whether it involved your use of

11:47:01 22 drugs or the events of October 22nd, you did tell them about

11:47:06 23 all that?

11:47:06 24 A. Yes.

11:47:06 25 Q. And you and they have an agreement that nothing that

11:47:10 1 you say to them can be used against you?

11:47:12 2 A. Correct.

11:47:14 3 Q. I want to turn to the beginning of October of 2018.

11:47:20 4 And see if we can -- will you help me construct the sequence
11:47:25 5 of events?

11:47:27 6 A. Yes.

11:47:27 7 Q. You talked about what happened later in October. I
11:47:31 8 would like to start backwards a bit.

11:47:33 9 Hunter came back from Los Angeles on or about
11:47:38 10 October 6th of 2018, do you recall that?

11:47:40 11 A. I believe so, I don't recall the dates.

11:47:42 12 Q. I'm sorry, to ask you to do this, would you speak a
11:47:45 13 little bit into the microphone?

11:47:47 14 A. Sure.

11:47:47 15 Q. So it was around then, do you know that that's when
11:47:50 16 it was?

11:47:51 17 A. I don't know the date, but if that's what it said,
11:47:56 18 then...

11:47:59 19 MR. LOWELL: May I approach to point out
11:48:00 20 something to the witness?

11:48:02 21 THE COURT: You may.

11:48:03 22 MR. LOWELL: Thank you, judge.

11:48:30 23 MR. WISE: Your Honor, I don't know what's going
11:48:32 24 on.

11:48:32 25 MR. LOWELL: I gave him the same thing as you

11:48:34 1 for the refreshing and other things.

11:48:36 2 MR. WISE: All she said is she doesn't remember.

11:48:38 3 MR. LOWELL: I'm asking to request if something
11:48:41 4 refreshes her recollection.

11:48:43 5 THE COURT: As to when he came back to the East
11:48:47 6 Coast?

11:48:47 7 MR. LOWELL: Yes.

11:48:47 8 THE COURT: You can ask her to look at it, but
11:48:49 9 don't --

11:48:50 10 MR. LOWELL: Yeah, I'll approach this a
11:48:52 11 different way.

11:48:52 12 BY MR. LOWELL:

11:48:53 13 Q. Do you recall in the beginning of October, that
11:48:55 14 Hunter came back to be with you for something that you were
11:49:01 15 doing in the beginning of October, having to do with your
11:49:05 16 sobriety?

11:49:07 17 A. I don't recall exactly.

11:49:10 18 Q. Okay. In the beginning of October, around the sixth,
11:49:14 19 were you familiar with a place called Caron, C-A-R-O-N?

11:49:19 20 A. Yes.

11:49:19 21 Q. What is Caron?

11:49:21 22 A. Caron is a rehab that I went to.

11:49:23 23 Q. Do you recall a specific incident in which in that
11:49:27 24 period of time he came back so that he could attend one of
11:49:31 25 those sessions with you on October 6th?

11:49:34 1 A. I think I know what you're referring to, but it's all
11:49:39 2 kind of vague.

11:49:41 3 Q. Okay. So generally speaking, you have a memory in
11:49:43 4 the beginning of October of Hunter coming back from Los
11:49:47 5 Angeles, that's true, right?

11:49:48 6 A. Yes.

11:49:48 7 Q. And I'm asking you whether, when he did that on the
11:49:51 8 beginning, do you recall in that same period, whether it's
11:49:54 9 the 5th or 6th or 4th, that he attended with you one of
11:49:59 10 those check-ins at Caron?

11:50:03 11 A. Yes.

11:50:04 12 Q. And that was right after he came back in that period?

11:50:08 13 A. Okay. Yes.

11:50:10 14 Q. And where is that facility?

11:50:13 15 A. Like an hour-and-a-half from Wilmington in
11:50:16 16 Pennsylvania.

11:50:16 17 Q. It's in Pennsylvania. And do you know that day
11:50:20 18 whether he came back on that day he flew into Philadelphia
11:50:26 19 so he could join you?

11:50:28 20 A. I do not recall.

11:50:29 21 Q. Do you know where he flew into?

11:50:31 22 A. I do not.

11:50:31 23 Q. You had said and described incidents, occasions is a
11:50:36 24 better word, where you would go into his car or you would be
11:50:40 25 in his car, maybe you were traveling with his car and I

11:50:44 1 think you said that there were times when you saw remnants
11:50:47 2 and paraphernalia?

11:50:48 3 A. Yes.

11:50:48 4 Q. Now, that would be as early as when you and he were
11:50:53 5 starting to become involved at the end of 2015 into 2016 and
11:50:59 6 into '17, correct?

11:51:01 7 A. Correct.

11:51:01 8 Q. I'm not asking you, but I imagine given what you said
11:51:04 9 about putting all this together, can you be sure at any of
11:51:08 10 those times when your discoveries occurred at any time in
11:51:11 11 2016 or just generally?

11:51:13 12 A. In 2016?

11:51:14 13 Q. Like, for example, 2016?

11:51:17 14 A. No.

11:51:18 15 Q. Yes, sorry.

11:51:19 16 A. Not if it wasn't a significant day or event.

11:51:22 17 Q. And when you said you would go into the car or you
11:51:26 18 would see in the car, and you would find those things, if I
11:51:29 19 asked you, for example, to help me construct when in 2016 or
11:51:34 20 '17 or even in the beginning of 2018 before he went to Los
11:51:39 21 Angeles, could you do that?

11:51:41 22 A. No.

11:51:49 23 Q. And then after he came back and you have this memory
11:51:52 24 that he attended with you a session that you were at Caron,
11:51:57 25 on that day when you were at Caron, you didn't see him using

11:52:01 1 drugs, did you?

11:52:02 2 A. No.

11:52:02 3 Q. In fact, from the time he came back to the time of
11:52:05 4 the incident with you finding the gun, you didn't use any
11:52:09 5 drugs in that period of time, right?

11:52:11 6 A. I did not, no.

11:52:12 7 Q. And did you see him?

11:52:13 8 A. I did not see him. I didn't see him for --

11:52:17 9 Q. I understand you're not with him every time, correct,
11:52:19 10 is that what you were saying?

11:52:20 11 A. Yes.

11:52:20 12 Q. But there were times where you did?

11:52:23 13 A. Right.

11:52:23 14 Q. And you can see between the time he came back and
11:52:26 15 came to see you at Caron, and then later when you were on
11:52:29 16 the 22nd, for example, and in that period of time, you never
11:52:34 17 saw him using drugs?

11:52:35 18 A. Correct.

11:52:35 19 Q. You had seen him using drugs when he was at your
11:52:39 20 house before?

11:52:39 21 A. Correct.

11:52:40 22 Q. He had been at your house in that window of time, but
11:52:42 23 you didn't see him using drugs then?

11:52:44 24 MR. WISE: I'm going to object, I don't know
11:52:46 25 what window of time we're talking about.

Hallie Biden - cross

11:52:48 1 MR. LOWELL: October 6th through October 22nd.

11:52:50 2 THE WITNESS: I honestly don't know if he was at
11:52:52 3 my house between that time.

11:52:54 4 BY MR. LOWELL:

11:52:54 5 Q. Okay. So then you would not have seen him if he
11:52:57 6 wasn't there?

11:52:57 7 A. Correct.

11:52:57 8 Q. We'll come back to whether he was there with some
11:53:00 9 documents, okay?

11:53:01 10 A. Okay.

11:53:03 11 Q. All right. So now on the day that you said you went
11:53:06 12 into his truck, we'll come back to later in terms of the
11:53:09 13 remnants, I just wanted to clarify that in his return, there
11:53:12 14 was never an occasion where you found, for example, in your
11:53:16 15 house or even in his car a rock, a marble, a ping pong ball
11:53:21 16 size piece of crack, you used the words remnants?

11:53:25 17 A. Correct.

11:53:25 18 Q. I take it if they were where you say they were, you
11:53:30 19 would have no idea when they were, I mean when they were put
11:53:32 20 there --

11:53:32 21 A. Correct.

11:53:34 22 Q. Sorry?

11:53:34 23 A. Correct.

11:53:34 24 Q. It could have been that day, it could have been a
11:53:37 25 week before, it could have been a month before, it could

11:53:40 1 have still been there, but you don't know?

11:53:42 2 A. Correct.

11:53:48 3 Q. You, I think, described your relationship over
11:53:51 4 whatever year, but I want to turn particularly to 2018. And
11:53:55 5 in 2018 after he's back in that period of time, I think you
11:54:01 6 used generally the phrase "on and off." Is that right?

11:54:05 7 A. Yes.

11:54:05 8 Q. Sometimes it was good and sometimes it was not as
11:54:08 9 good?

11:54:08 10 A. Correct.

11:54:10 11 Q. And sometimes it was intense, would that be a fair
11:54:14 12 statement?

11:54:15 13 A. Yes.

11:54:15 14 Q. And it was always complicated?

11:54:17 15 A. Yes.

11:54:20 16 Q. Is it a generally true statement that throughout your
11:54:23 17 relationship with him, he would say things to you or tell
11:54:26 18 you things or write you things that you knew were not true?

11:54:29 19 A. Yes.

11:54:31 20 Q. And in some occasions did he not want you to know
11:54:37 21 where he was and what he was doing?

11:54:39 22 A. Yes.

11:54:39 23 MR. WISE: I'm going to object, I don't think
11:54:42 24 she can testify to what he wanted.

11:54:44 25 BY MR. LOWELL:

11:54:44 1 Q. Sorry. There were times that you --

11:54:46 2 THE COURT: So hold on.

11:54:48 3 MR. LOWELL: I'll withdraw the question.

11:54:49 4 THE COURT: And that's sustained and stricken
11:54:52 5 because she did answer it.

11:54:53 6 BY MR. LOWELL:

11:54:54 7 Q. There were periods of time that he did not tell you
11:54:56 8 where he was?

11:54:57 9 A. Correct.

11:54:58 10 Q. There were periods of time where he told you where he
11:55:00 11 was, and then you later found out yourself that that was not
11:55:04 12 true?

11:55:04 13 A. Correct.

11:55:13 14 Q. Before the 22nd, I think he was back, between that
11:55:20 15 time you were saying you're not sure or you are sure that
11:55:25 16 you saw him between the 6th and the 22nd?

11:55:28 17 A. I'm not sure if there was the text messages then.

11:55:35 18 MR. LOWELL: One moment.

11:55:41 19 BY MR. LOWELL:

11:55:41 20 Q. If you'll look -- I'm sorry, if there was a text
11:55:46 21 exchange between you and Mr. Biden on a date, would that
11:55:53 22 help refresh your recollection of whether or not he was with
11:55:56 23 you?

11:55:57 24 A. Yes.

11:55:58 25 Q. With that in mind, let me make sure I'm at the right

11:56:03 1 page, please. If you'll look at the first entry on the
11:56:17 2 page, just look at it to yourself. Tell me when you're done
11:56:24 3 looking up.

11:56:24 4 A. You mean read it?

11:56:26 5 Q. No, not out loud, just look at it to yourself. If
11:56:31 6 you look at that document and I'm looking at the date of it
11:56:35 7 being October the 11th to start off with?

11:56:37 8 MR. WISE: Your Honor, it shouldn't be read into
11:56:39 9 the record.

11:56:40 10 MR. LOWELL: I'm not reading it, I'm just asking
11:56:40 11 her to read.

11:56:46 12 All right there is a row number. Row one does
11:56:49 13 that work for you. Reading that to yourself, does that
11:56:52 14 refresh your recollection that you were trying to see him
11:56:55 15 during that period of time.

11:56:56 16 MR. WISE: I'm objecting, he asked whether he
11:56:59 17 stayed with her, not whether she was trying to see him.

11:57:02 18 BY MR. LOWELL:

11:57:03 19 Q. Let me change that, does that refresh your
11:57:06 20 recollection as to whether or not, you and he saw each other
11:57:10 21 before the 22nd?

11:57:20 22 A. I believe that means he wasn't.

11:57:24 23 Q. Okay.

11:57:24 24 THE COURT: The question is does it make you
11:57:27 25 remember, refreshing your recollection is look at it and

11:57:30 1 think, gosh, I remember.

11:57:31 2 THE WITNESS: Yes. No, I think it's confusing
11:57:34 3 so I'm not sure, it confuses it further.

11:57:36 4 BY MR. LOWELL:

11:57:37 5 Q. Let me change the question then. In this period of
11:57:40 6 time, were you asking to see him?

11:57:42 7 A. Yes.

11:57:42 8 Q. And you're sitting here today not aware of whether
11:57:46 9 that happened or not?

11:57:46 10 A. On that day, correct.

11:57:48 11 Q. Until a later time in October where you testified?

11:57:50 12 A. Yes.

11:57:51 13 Q. And were there times where you would call him or text
11:57:55 14 him and ask him in that period of time where are you, will
11:57:58 15 you come home?

11:57:59 16 A. Yes.

11:57:59 17 Q. And he didn't respond?

11:58:02 18 A. Correct.

11:58:02 19 Q. And then he did respond after -- on one of the
11:58:09 20 occasions, you asked him, I think, maybe the government
11:58:12 21 heard you, you said you called him repeatedly and
11:58:16 22 repeatedly, do you remember that you did that?

11:58:17 23 A. Yes.

11:58:18 24 Q. And if you will put up, Mr. Radic, the government
11:58:21 25 Exhibit 18, Row 119. I'm going to bring your attention to

11:58:32 1 that date of October 13th, which is a week after he got --
11:58:37 2 and Row 119.

11:58:40 3 So you see on the above, can we go to 118, you
11:58:45 4 don't have to blow it up yet. This is that occasion on the
11:58:48 5 13th, "why won't you answer my calls? Where are you? Are
11:58:53 6 you with someone?" Correct?

11:58:54 7 A. Correct.

11:58:54 8 Q. When you said someone, were you thinking that he was
11:58:57 9 with a drug dealer or another woman?

11:59:00 10 A. A woman.

11:59:00 11 Q. And then he wrote, "yes, Bernard who hangs at 7-11 et
11:59:05 12 cetera" has been read to you, do you see that's his
11:59:08 13 response?

11:59:08 14 A. Yes.

11:59:08 15 Q. You mentioned that you can't trust what he says when
11:59:11 16 he writes you because you find out sometimes he's lying,
11:59:14 17 correct?

11:59:15 18 A. Correct.

11:59:15 19 Q. Do you know whether he was at the 7-11 on Greenhill
11:59:22 20 Maryland avenue, et cetera?

11:59:22 21 A. I do not.

11:59:24 22 Q. And later I think there is government exhibit, the
11:59:33 23 next day, Row 14. I'm sorry, no, I take that back, it's
11:59:38 24 Row 125. And there on the date of the 14th, you say, "I
11:59:46 25 called you 500 times in the past 24 hours. And you no

11:59:50 1 answer. Practice what you preach." Those were yours to
11:59:53 2 him, right?

11:59:54 3 A. Correct.

11:59:54 4 Q. And then he writes, a minute, not even a minute,
12:00:01 5 17 seconds after the last one, "I was sleeping on a car
12:00:03 6 smoking crack on 4th and Rodney", right?

12:00:06 7 A. Yes.

12:00:06 8 Q. And you have no idea whether he was just saying that
12:00:09 9 or whether he was actually there?

12:00:10 10 A. Correct.

12:00:30 11 Q. You can take that down.

12:00:33 12 So I would like to get to the time period of
12:00:36 13 what you testified to as being your discovery of the gun and
12:00:40 14 then the recovery of it, recovery by you. And this is where
12:00:45 15 I'm going to ask your help to put together the sequence.
12:00:50 16 Okay? You said that you found the gun sometime in the
12:00:53 17 morning of the 23rd of October.

12:00:57 18 A. Yes.

12:00:58 19 Q. The day before on October 22nd, you were not with
12:01:03 20 Hunter during the day; is that right?

12:01:06 21 A. Not that I recall.

12:01:08 22 Q. And during that day, you were reaching out to see
12:01:11 23 whether you could see him?

12:01:14 24 A. Is that the text messages that you have?

12:01:17 25 Q. It is in a text message that I'll ask you about if

12:01:20 1 you need to have your memory refreshed about that.

12:01:25 2 If you'll turn to what I gave you and look at
12:01:30 3 Row 15.

12:01:31 4 A. I'm sorry, under what?

12:01:33 5 Q. And read that to yourself.

12:01:35 6 That same place that I showed you.

12:01:54 7 So if you'll look at -- on what I have just
12:02:01 8 given you on the 22nd, is it Row 15? Tell me if Row 15 has
12:02:19 9 a date on it so you can acclimate yourself, is that on the
12:02:24 10 22nd I'm showing you something?

12:02:25 11 A. On the 22nd.

12:02:26 12 Q. Would you look at that?

12:02:28 13 A. Yes.

12:02:29 14 Q. Looking at it yourself?

12:02:30 15 A. Uh-huh.

12:02:31 16 Q. Were you seeking to see him that day?

12:02:33 17 MR. WISE: I think the question has to be does
12:02:35 18 it refresh your recollection.

12:02:36 19 BY MR. LOWELL:

12:02:36 20 Q. Does it refresh your recollection as to whether you
12:02:38 21 were trying to see him that day?

12:02:40 22 A. I don't recall that, but that sounds like --

12:02:43 23 Q. It does, you were trying?

12:02:45 24 A. That I was trying yes.

12:02:47 25 MR. WISE: I think she said I don't recall that.

12:02:51 1 By MR. LOWELL:

12:02:51 2 Q. Go slower for me, look down and read that, and when
12:02:55 3 you're done, look up?

12:02:56 4 THE COURT: And the question was does it refresh
12:02:58 5 your recollection, which is to start answering yes or no
12:03:01 6 before we get further, we can take it in steps.

12:03:04 7 THE WITNESS: Vaguely, but not times.

12:03:05 8 BY MR. LOWELL:

12:03:06 9 Q. Not by the exact time?

12:03:07 10 A. Correct.

12:03:08 11 Q. But that day?

12:03:09 12 A. Like that doesn't bring me back to that day.

12:03:12 13 Q. In that period of time, as before texts when I asked
12:03:16 14 whether or not you were wondering with whom he was, were you
12:03:19 15 still wondering when whom he was spending time during this
12:03:23 16 period of time?

12:03:23 17 A. Yes.

12:03:24 18 Q. Did you sometimes write him and ask are you with
12:03:26 19 somebody, another woman?

12:03:28 20 A. Yes.

12:03:28 21 Q. And in that October 22nd period of time, in the day
12:03:34 22 of the 22nd, does looking down at that refresh your
12:03:38 23 recollection of whether you were with him at that moment?

12:03:42 24 MR. WISE: Objection, she already said it
12:03:45 25 doesn't.

12:03:45 1 THE WITNESS: I was just asking "are you in New
12:03:47 2 York?"

12:03:47 3 MR. LOWELL: No, don't answer. I'm sorry.

12:03:48 4 THE COURT: Again. It's not your fault, it's
12:03:51 5 the way the rules of evidence work, you need to take these
12:03:55 6 when he's asking you to refresh your recollection, one step
12:03:58 7 at a time.

12:03:58 8 THE WITNESS: Okay.

12:03:59 9 THE COURT: Okay. So you're looking at it and
12:04:02 10 basically what's in there doesn't come into evidence unless
12:04:05 11 it refreshes your recollection, we have to take it a step at
12:04:10 12 a time.

12:04:10 13 If you start saying what you're reading, it kind
12:04:14 14 of defeats the purpose. So we start with does it, and oh
12:04:17 15 gosh, now I remember, it could have been something where
12:04:20 16 someone said I saw you at the birthday party, you could be
12:04:24 17 like oh yeah, now I remember the birthday party. You don't
12:04:28 18 need to know what the rules of evidence are.

12:04:30 19 BY MR. LOWELL:

12:04:31 20 Q. So my question was on the 22nd, do you first and
12:04:33 21 foremost know whether you were with him?

12:04:38 22 A. I am not sure.

12:04:41 23 Q. Okay. And did you on that day send him a text asking
12:04:44 24 him where he was?

12:04:47 25 A. Yes.

12:04:48 1 Q. You did. And did --

12:04:50 2 A. Now -- are you not now doing what --

12:04:54 3 Q. So far so good?

12:04:55 4 MR. WISE: Well, no.

12:04:59 5 THE COURT: You could be a lawyer.

12:05:01 6 MR. WISE: Your Honor, you know, she asked if
12:05:04 7 you sent him a text, she looked at the exhibit, which is in
12:05:07 8 evidence, and said yes I did, that's not refreshing.

12:05:10 9 MR. LOWELL: Now maybe go to side-bar.

12:11:28 10 (Side-bar discussion.)

12:11:28 11 MR. LOWELL: We have provided the government at
12:11:28 12 the break what they asked for and put into individual texts
12:11:28 13 and individual sources and individual places to find them.
12:11:28 14 And then the government said okay, so where we're at is the
12:11:28 15 hearsay objections and that's where we're at. Now it could
12:11:28 16 be a text from her that she does or does not remember. If
12:11:28 17 she does, fine, if she doesn't then it's past recollection
12:11:28 18 recorded. It's something that she did, it's something that
12:11:28 19 she said, that's what I asked you before, can you ask
12:11:28 20 somebody did you do something. Her state of mind as to why
12:11:28 21 she was going into his car looking for drugs is what she
12:11:28 22 said, she told the Delaware State Police she went into the
12:11:28 23 car because she was looking for evidence of him being with
12:11:28 24 another woman, I think her state of mind is an issue because
12:11:28 25 it was impeachment as to why he she went into his car is one

12:11:28 1 of the reasons.

12:11:28 2 MR. WISE: There is a lot there. He can't ask
12:11:28 3 us her to read-he can't ask her to use this to say what he
12:11:28 4 can't introduce. So the question has to be, were you with
12:11:28 5 him on the 22nd, she said I don't remember, as you tried to
12:11:28 6 say, does that refresh your memory, if she says yes, then
12:11:28 7 she says I was with him on the 22nd, not anything about a
12:11:28 8 text, if she says no, he's got to move on. Whatever she
12:11:28 9 says to the Delaware State Police he may be able to impeach
12:11:28 10 by calling somebody from the Delaware State Police but he
12:11:29 11 can't do with these text messages.

12:11:29 12 THE COURT: It should be clearer to her that
12:11:29 13 she's not to testify from these text messages, she needs to
12:11:29 14 close it unless he gets somewhere where he needs to ask her
12:11:29 15 a question, she can look at it and do the same drill, does
12:11:29 16 this refresh your memory, fine, if she says no, she move on
12:11:29 17 to the next question.

12:11:29 18 MR. LOWELL: I'm at the point now I will move
12:11:29 19 this line now that we have established the first obstacle of
12:11:29 20 getting this into evidence for the reasons I said.

12:11:29 21 THE COURT: He said it's not hearsay, it's a
12:11:29 22 recorded recollection, it's a past or recorded recollection.

12:11:29 23 MR. WISE: I can bring the rule up, this is not
12:11:29 24 a recorded recollection.

12:11:29 25 MR. LOWELL: But --

12:11:29 1 MR. WISE: A recorded recollection is write down
12:11:29 2 what you remember. These are contemporaneous text messages.

12:11:29 3 THE COURT: In a matter the ones knew about but
12:11:29 4 cannot recall well enough to testify fully and accurately,
12:11:29 5 this is a recorded recollection is a record on a matter the
12:11:29 6 witness once knew about but now cannot recall well enough to
12:11:29 7 testify fully and accurately was made or adopted by the
12:11:29 8 witness when the matter was fresh in the witness's memory,
12:11:29 9 and accurately refreshes the witness's knowledge. If
12:11:29 10 admitted the record may be read into evidence but may be
12:11:29 11 received only if offered by an adverse party.

12:11:29 12 MR. WISE: So it doesn't -- the last part, the
12:11:29 13 accurately refreshes.

12:11:29 14 THE COURT: Accurately reflects the witness's
12:11:29 15 knowledge.

12:11:29 16 MR. WISE: So this is not, you know, on this --
12:11:29 17 for instance, this day I did the following things, this is a
12:11:29 18 text message that says I'm asking if he's there. It's not
12:11:29 19 that if she remembers, she's written something down saying I
12:11:29 20 remember, I asked him if he was there.

12:11:29 21 THE COURT: Well what I am -- so let's say you
12:11:29 22 can get it in, you can't then ask her, so that means you
12:11:29 23 weren't -- because if her recollection is she was looking
12:11:29 24 for him, then -- and she says no, it doesn't refresh my
12:11:29 25 recollection and let's say you get the text in, you can't

12:11:29 1 then say so you -- you knew you weren't with him because
12:11:29 2 that's not her recollection.

12:11:29 3 MR. LOWELL: No, that's right, that's right.

12:11:29 4 THE COURT: You just want to argue it.

12:11:29 5 MR. LOWELL: At some point I have the ability to
12:11:29 6 make an argument of whatever is in evidence, but it fits in
12:11:29 7 the exact definition that you just read into there, if she
12:11:29 8 identifies it as a text that she wrote at the time,
12:11:29 9 contemporaneously.

12:11:29 10 THE COURT: So let me see this text, what is the
12:11:29 11 one we're talking about?

12:11:29 12 MR. WISE: So it's --

12:11:29 13 MR. LOWELL: Which one is it.

12:11:29 14 MR. WISE: I think he said line 15, are you in
12:11:29 15 New York with Zoe.

12:11:29 16 THE COURT: And you're going to say did you
12:11:29 17 wonder if he was with someone and then you show her that and
12:11:30 18 say does that refresh your recollection and let's say she
12:11:30 19 says no.

12:11:30 20 MR. LOWELL: Then I'll move it into evidence,
12:11:30 21 I'll read it into the record, I mean, whatever the rules
12:11:30 22 say.

12:11:30 23 Sorry, what was that part?

12:11:30 24 THE COURT: A record that is on a matter the
12:11:30 25 witness once knew, and you're not going to say so you sent

12:11:30 1 this text -- I mean, what do you do when you get it in
12:11:30 2 evidence? You just move on?

12:11:30 3 MR. LOWELL: Yeah. Well I move on and say did
12:11:30 4 you inquire where he was on that day and ask him whether he
12:11:30 5 was in New York? And then she answers and then we find out.

12:11:30 6 MR. WISE: I mean, you can ask that without
12:11:30 7 showing her the text. At that point she's just testifying
12:11:30 8 about stuff she says she doesn't remember based on a text.

12:11:30 9 MR. LOWELL: But based on past recollection
12:11:30 10 recorded.

12:11:30 11 MR. WISE: All I can do even if you can get it
12:11:30 12 in, which I don't think you can, you can't say okay now that
12:11:30 13 you got this text in front of you.

12:11:30 14 THE COURT: You know you did.

12:11:30 15 MR. WISE: Right, let's talk about this.

12:11:30 16 THE COURT: And he's saying he's not going to do
12:11:30 17 that, he's just going to say in argument she had no idea
12:11:30 18 where he was.

12:11:30 19 MR. LOWELL: Right. Okay. Thank you, Judge.

12:11:30 20 (End of side-bar.)

12:11:30 21 BY MR. LOWELL:

12:11:37 22 Q. On October 22nd is where we were at and I was
12:11:40 23 asking --

12:11:41 24 THE COURT: Can you hold on one second. Let me
12:11:43 25 just look at one thing. I apologize. Okay. Go ahead.

- 12:13:26 1 MR. LOWELL: Thank you, judge.
- 12:13:27 2 BY MR. LOWELL:
- 12:13:28 3 Q. Ms. Biden, on the 22nd is where we were place marking
- 12:13:31 4 the date, and I was trying to figure out whether on that
- 12:13:34 5 day, since you say you're not sure when Mr. Biden and you
- 12:13:38 6 saw each other. So do you understand the context?
- 12:13:41 7 A. Yeah. Uh-huh.
- 12:13:42 8 Q. On that date in the middle of the afternoon, if
- 12:13:45 9 you'll just look at me to begin with, don't read that yet,
- 12:13:49 10 please. I'm sorry. Did you inquire where he was?
- 12:13:52 11 A. Yes.
- 12:13:52 12 Q. And if you were inquiring where he was, it meant he
- 12:13:56 13 wasn't with you?
- 12:13:57 14 A. Yes.
- 12:13:57 15 Q. And in the middle of the afternoon, did you make a
- 12:14:00 16 specific inquiry if he was in New York?
- 12:14:02 17 A. Yes.
- 12:14:03 18 Q. And did you text him that way?
- 12:14:05 19 A. Yes.
- 12:14:07 20 Q. And do you remember what you said?
- 12:14:09 21 A. Can I look --
- 12:14:10 22 Q. Do you remember as you're looking at me what you
- 12:14:13 23 said?
- 12:14:13 24 A. No.
- 12:14:14 25 Q. At the time, though, did you send a text, you do know

12:14:18 1 that?

12:14:18 2 A. Yes.

12:14:19 3 Q. And at the time that reflected what you said at the
12:14:23 4 time?

12:14:23 5 A. Yes.

12:14:23 6 Q. It is something you would do, you would text him?

12:14:26 7 A. Yes.

12:14:26 8 Q. And on that day you recall having texts with him?

12:14:29 9 A. Yes.

12:14:29 10 Q. Including in the middle of the afternoon?

12:14:31 11 A. Yes.

12:14:31 12 Q. In the middle of the afternoon?

12:14:33 13 MR. LOWELL: Your Honor, pursuant to your bench
12:14:35 14 conference, I would like to read into the record the exhibit
12:14:38 15 -- the text we're talking about.

12:14:40 16 THE COURT: Okay.

12:14:42 17 BY MR. LOWELL:

12:14:43 18 Q. Now you can look down and I am going to ask you if I
12:14:46 19 read this correctly. October 22nd, 2018, at 2:55 in the
12:14:51 20 afternoon. Did you write him, "are you in NY with Zoe?"

12:14:57 21 A. Yes.

12:14:58 22 Q. You did do that?

12:14:59 23 A. From this paper, correct.

12:15:00 24 Q. Yes. You don't have to remember it now because your
12:15:03 25 text is something that you recognize as a text you sent?

12:15:06 1 A. Yes.

12:15:06 2 Q. And that's what you said, meaning you weren't with
12:15:09 3 him at that moment?

12:15:10 4 A. Correct.

12:15:11 5 Q. And then later that afternoon, did you inquire where
12:15:16 6 he was again?

12:15:17 7 A. Yes.

12:15:18 8 Q. And if you look up at me --

12:15:21 9 THE COURT: Just to be clear, are you saying yes
12:15:23 10 because you remember that or because you're reading
12:15:25 11 something?

12:15:26 12 MR. LOWELL: Let me take the book away for a
12:15:29 13 moment. I'm just going to put this over here, don't look at
12:15:35 14 it until there is a moment. Hopefully that works better.

12:15:35 15 BY MR. LOWELL:

12:15:41 16 Q. Later in the afternoon, did you inquire again where
12:15:44 17 he was, do you recall?

12:15:47 18 A. Not just from recalling without text messages.

12:15:51 19 Q. Okay. I understand.

12:15:52 20 Now, you can -- sorry. I'll do this better if I
12:15:59 21 can. Now, I'm just going to ask you to look at that just
12:16:04 22 first for the purposes of seeing if it refreshes your
12:16:06 23 recollection about that. So if you'll look at Row 17.

12:16:14 24 A. Yes.

12:16:15 25 Q. Look down and then read it to yourself.

12:16:18 1 A. Wait a second. Yes.

12:16:22 2 Q. Now look up?

12:16:24 3 A. Wait, 17?

12:16:26 4 Q. Row 17, there are row numbers on the left side?

12:16:28 5 A. Mine goes from 16 to 18.

12:16:31 6 Q. I'm sorry, hold on. No, no, no. Look at Row 17.

12:16:44 7 Not 17, I got that wrong, I'm so sorry. Look first at

12:16:51 8 Row 16. And when you have read it to yourself, look up so

12:16:55 9 I'll know.

12:16:56 10 Looking at that, does it refresh your
12:16:58 11 recollection of sending him another text in the afternoon
12:17:01 12 seeking where he is?

12:17:02 13 A. Yes.

12:17:03 14 Q. And you did that then, and looking up, what were you
12:17:07 15 asking him at that point?

12:17:10 16 A. Another way of saying I don't know where you are.

12:17:13 17 Q. And that you recall the date, the time would be
12:17:18 18 4:32 in the afternoon, not that you recall it, but would it
12:17:20 19 be later than the first one?

12:17:22 20 A. Yes.

12:17:23 21 Q. And then proceeding, did you continue to text him?

12:17:28 22 A. Yes.

12:17:30 23 Q. And --

12:17:31 24 A. Can I look?

12:17:32 25 Q. And later being after the time of the first two, so

12:17:37 1 do you remember it then getting to be later in the afternoon
12:17:41 2 around 5:30? Do you remember?

12:17:44 3 A. I don't remember that from like --

12:17:47 4 Q. Now, can I --

12:17:48 5 THE COURT: Time marches on.

12:17:52 6 BY MR. LOWELL:

12:17:52 7 Q. Except when I'm asking questions?

12:17:53 8 A. Right. And if I could look at these, this refreshes
12:17:58 9 -- there is obviously a time stamp of my conversation.

12:18:01 10 Q. If you could look at that and see that was later in
12:18:04 11 the afternoon around 5:30, would that refresh your
12:18:06 12 recollection around the time?

12:18:07 13 A. Yes.

12:18:08 14 THE COURT: So again. Refreshing your
12:18:10 15 recollection is I read it, I don't remember it, but it says
12:18:13 16 it, so I'll believe it, that's not refreshing your
12:18:16 17 recollection. Refreshing your recollection is if someone
12:18:21 18 says remember we met in 2024, or you say no but yes to be
12:18:25 19 polite, but you don't really, and then they say remember it
12:18:29 20 was Bob's birthday party and we talked about the pizza that
12:18:33 21 was great and you say oh my gosh, I remember that, so this
12:18:37 22 is a little bit different. This is if you read a message
12:18:40 23 and you say oh my God, I do remember sending that message,
12:18:44 24 then it refreshes your recollection. If not, the answer
12:18:49 25 does it refresh your recollection is no, and then he just

12:18:52 1 has to go through a few more steps to make sure we have the
12:18:56 2 evidence.

12:18:56 3 THE WITNESS: It's a process.

12:18:57 4 THE COURT: It's a legal process.

12:18:59 5 THE WITNESS: Okay.

12:18:59 6 BY MR. LOWELL:

12:19:00 7 Q. Let's try that again, okay. All right. So going
12:19:02 8 back to Row 16, right, look down and see whether it
12:19:07 9 refreshes your recollection of what time you sent a text to
12:19:11 10 Hunter and what it said. And if you look up. It does?

12:19:14 11 A. Yes.

12:19:14 12 Q. What time does that refresh your recollection. Don't
12:19:17 13 look down, just look up at me. What time does it refresh
12:19:21 14 your recollection that you sent that?

12:19:23 15 A. 4:30ish.

12:19:25 16 Q. And in that, what is it that you recall asking him,
12:19:28 17 you were asking him-- what was it you recall you saying?

12:19:32 18 A. Again, where are you, or --

12:19:35 19 Q. Or what are you doing?

12:19:37 20 A. What are you doing?

12:19:38 21 Q. And then later in that same day, because we're trying
12:19:42 22 to get the time sequence, okay?

12:19:44 23 A. Okay.

12:19:44 24 Q. Later than that, do you recall continuing to have a
12:19:47 25 text exchange with him?

12:19:49 1 A. Likely.

12:19:50 2 Q. Likely. Well, to start, look down and see if you see
12:19:54 3 additional text that could refresh your recollection that it
12:19:57 4 continued to happen?

12:19:58 5 A. Yes.

12:19:58 6 Q. And did you then write to him, or do you recall
12:20:03 7 having another exchange where you are asking him further
12:20:08 8 either in words or to the effect where are you and what
12:20:11 9 you're doing?

12:20:12 10 A. Yes.

12:20:12 11 Q. And looking up, do you know that that was later than
12:20:15 12 that last one, this one now being at about 5:30?

12:20:19 13 A. Yes.

12:20:19 14 Q. And in that, do you recall telling him that you
12:20:22 15 thought you knew where he was?

12:20:25 16 A. Yes.

12:20:27 17 Q. And what is it that you recall you said?

12:20:32 18 A. Like, I know where you are.

12:20:35 19 Q. Okay. And where did you think he was when you said
12:20:39 20 that?

12:20:39 21 A. I don't know.

12:20:40 22 Q. But you said to him, "I know where you are"?

12:20:43 23 A. I know, but I don't know if I really knew where he
12:20:46 24 was.

12:20:46 25 Q. But that's what you wrote, why did you write it that

12:20:49 1 way?

12:20:49 2 A. I don't recall.

12:20:52 3 Q. Okay. And then into the evening, in terms of where
12:20:59 4 you were and whether he was there, do you recall continuing
12:21:04 5 another text in which you are exchanging and sending to him
12:21:10 6 something reflecting whether you were with him at the time
12:21:13 7 that evening or not?

12:21:15 8 A. Yes.

12:21:15 9 Q. And was that in the evening?

12:21:18 10 A. Yes.

12:21:18 11 Q. Do you know what, without looking down, do you know
12:21:22 12 off hand what time in the evening?

12:21:24 13 A. 8ish.

12:21:25 14 Q. Or later?

12:21:26 15 A. Or later.

12:21:27 16 Q. And in that period of time, did you reach out to him
12:21:29 17 and say come over or words to that effect?

12:21:34 18 A. Yes.

12:21:34 19 Q. Or if you asked -- offered for you to go wherever he
12:21:38 20 was?

12:21:38 21 A. Right, correct.

12:21:39 22 Q. Okay. So at 8:49 or later, eight something as far as
12:21:44 23 you can remember, you're still not with him?

12:21:46 24 A. Correct.

12:21:47 25 Q. And you're reaching out to him and asking him to

12:21:50 1 either come or for you to go wherever he is?

12:21:53 2 A. Yes.

12:21:54 3 Q. And then after that, did you text him again and
12:21:58 4 indicate how he could get there?

12:22:00 5 A. Can I --

12:22:03 6 Q. I'm sorry, I take that back. Sorry, full day, never
12:22:07 7 mind, I'm in a different day.

12:22:11 8 MR. LOWELL: Judge should I keep going or if I'm
12:22:13 9 in the next day should we take a lunch break, it's up to
12:22:16 10 you?

12:22:17 11 THE COURT: Keep going.

12:22:18 12 MR. LOWELL: Okay. Thank you.

12:22:19 13 BY MR. LOWELL:

12:22:20 14 Q. Then you testified that October 22nd, now having gone
12:22:23 15 through those texts, or at least refreshing on those that
12:22:28 16 you did, does that help you remember whether at any point on
12:22:33 17 the evening of the 22nd you ever went to wherever Hunter was
12:22:38 18 as you were asking him or he ever came to your house?

12:22:41 19 A. I did not see him, no.

12:22:45 20 Q. So we can pretty well establish you didn't see him
12:22:48 21 that night?

12:22:49 22 A. Correct.

12:22:49 23 Q. Now, let's turn to the next day. I get the sequence
12:23:01 24 the next morning, it was a weekday, I think on the 23rd of
12:23:05 25 October, yes?

- 12:23:06 1 A. Yes.
- 12:23:06 2 Q. And you were, your two children were school aged?
- 12:23:10 3 A. Yes.
- 12:23:10 4 Q. One is named Hunter?
- 12:23:12 5 A. Yes.
- 12:23:12 6 Q. And the other one's name is Natalie?
- 12:23:15 7 A. Natalie, yes.
- 12:23:16 8 Q. And you would normally in your routine get up and get
- 12:23:22 9 them ready for school?
- 12:23:23 10 A. Yes.
- 12:23:23 11 Q. And you would drive them?
- 12:23:25 12 A. Correct.
- 12:23:25 13 Q. And if it was a weekday, even though you don't have a
- 12:23:29 14 specific memory, it would be likely that that's what
- 12:23:31 15 happened that morning?
- 12:23:32 16 A. Yes.
- 12:23:32 17 Q. What time is it that they needed to get to school?
- 12:23:35 18 A. By 8:00.
- 12:23:38 19 Q. And then you would leave how early in the morning to
- 12:23:41 20 get them there, eight or when?
- 12:23:43 21 A. It's like a mile away.
- 12:23:45 22 Q. So you did that as far as we can reconstruct in the
- 12:23:48 23 morning of that morning?
- 12:23:49 24 A. Yes.
- 12:23:49 25 Q. And when you left, given that we have established

12:23:51 1 that Hunter wasn't there the night before, do you have any
12:23:55 2 recall that at that moment he was there?

12:23:57 3 A. I do not.

12:23:59 4 Q. Still don't know where he was. So now you leave and
12:24:03 5 you bring your kids to school?

12:24:05 6 A. Yes.

12:24:05 7 Q. Did you stop after dropping them off at school before
12:24:09 8 you came back to the house?

12:24:10 9 A. Not that I recall.

12:24:11 10 Q. How long would it be between the time that you went,
12:24:14 11 left the house, dropped them off at school, and then would
12:24:17 12 have come back?

12:24:18 13 A. 15 minutes.

12:24:19 14 Q. You were back at the house then perhaps by 8:30?

12:24:23 15 A. Correct.

12:24:24 16 Q. Now, in the sequence of events, you pull into your
12:24:28 17 driveway?

12:24:29 18 A. Yes.

12:24:29 19 Q. Is that right? And is that when you see the truck?

12:24:33 20 A. I don't recall when I first saw the truck.

12:24:37 21 Q. Okay. But somewhere you did?

12:24:40 22 A. Yes.

12:24:40 23 Q. Sometime you did?

12:24:41 24 A. Yes.

12:24:42 25 Q. You don't know whether it was before you took them to

12:24:45 1 school, but certainly you saw it after you came back?

12:24:48 2 A. Right. I guess what I'm unclear about is if he came
12:24:54 3 in the middle of the night and that -- got into bed and then
12:24:57 4 I -- after I took the kids to school, cleaned it out, or if
12:25:02 5 he arrived at like the 10:00 a.m., I don't recall.

12:25:06 6 Q. You just said something about got into bed. I
12:25:09 7 thought a few moments ago we said that on the night of the
12:25:13 8 22nd he wasn't with you, you were asking where he is?

12:25:15 9 A. It could have been at 2 in the morning.

12:25:18 10 Q. It could have been, but what I'm asking is do you
12:25:21 11 recall?

12:25:21 12 A. I do not recall.

12:25:22 13 Q. You don't know when the truck was put there, whether
12:25:25 14 it was early morning hours of the 23rd, right?

12:25:28 15 A. Right.

12:25:28 16 Q. But certainly you know it's not before, and you're
12:25:31 17 asking him later in the evening around 9 o'clock where are
12:25:34 18 you?

12:25:34 19 A. Yes.

12:25:35 20 Q. And then you cannot tell whether at the point that
12:25:38 21 you saw the truck it was before or after you dropped your
12:25:42 22 kids off?

12:25:44 23 A. Correct.

12:25:44 24 Q. But certainly you didn't go into the truck until
12:25:47 25 afterwards?

12:25:48 1 A. Right.

12:25:48 2 Q. So you come back from dropping them off from school
12:25:52 3 as I get it, and do you go into the house, do you
12:25:55 4 immediately go to the truck, do you go inside to get the
12:25:58 5 keys, what are you doing?

12:26:01 6 A. That's where I'm still unclear if he had even arrived
12:26:05 7 yet. If he had already been there, because like I said it
12:26:08 8 was kind of a pattern. So I don't -- I can do --

12:26:14 9 Q. Sorry, go ahead?

12:26:15 10 A. I can go from cleaning out the truck that day, does
12:26:19 11 that make sense?

12:26:20 12 Q. It does. But we do have two benchmarks right, we
12:26:24 13 know you're going to drop your kids off at around 8:30, and
12:26:28 14 we know of the time stamp of when you get to Janssen's?

12:26:31 15 A. Which is what time?

12:26:32 16 Q. 11:20.

12:26:33 17 A. Okay. We have that.

12:26:35 18 Q. We have that.

12:26:36 19 A. We have that as your--

12:26:38 20 Q. You are back at the house, but you don't remember
12:26:41 21 specifically, did you have a pattern, let's say the truck
12:26:43 22 was there, it was wherever it was on the grass, is that
12:26:46 23 where you're saying, it was on the grass?

12:26:48 24 A. Yes.

12:26:48 25 Q. Can you tell whether it was on the grass at your

12:26:51 1 house or behind or whether there was another lot, do you
12:26:54 2 remember that specifically at this point?

12:26:55 3 A. Yeah, on the yard, on my --

12:26:58 4 Q. On the grass and behind your house, is there another
12:27:01 5 property I think you said, I think the question was is there
12:27:03 6 a lot, but not a parking lot, there is another house?

12:27:08 7 A. There is a house, there could be a half a mile
12:27:14 8 between us, not a mile, sorry, half an acre.

12:27:17 9 Q. Sorry, half an acre?

12:27:19 10 A. Yes.

12:27:19 11 Q. Is that a property you know to be a house or a
12:27:22 12 property owned by a family named Hobbs?

12:27:25 13 A. Yes.

12:27:25 14 Q. Do you know whether the truck was on your part of
12:27:29 15 that, their parts of it, or do you have any specific memory
12:27:32 16 of that piece?

12:27:33 17 A. I believe it was on my property.

12:27:35 18 Q. But nevertheless it was on the grass?

12:27:37 19 A. Correct.

12:27:37 20 Q. Not on the driveway?

12:27:39 21 A. Right.

12:27:39 22 Q. Given the normal way of dropping your kids off and
12:27:42 23 coming back, what I'm asking is do you recall today whether
12:27:45 24 when you came back, that's immediately when you went to the
12:27:48 25 truck, did you go inside, did you get keys, what can you

12:27:51 1 recall about the time you came back and the time you went
12:27:53 2 inside the truck?

12:27:54 3 A. I don't recall if the car was there, the truck was
12:27:59 4 there, when I got back or if he drove it in at 9:00. I
12:28:04 5 don't recall.

12:28:06 6 Q. Okay.

12:28:06 7 A. Sorry.

12:28:07 8 Q. No, don't be sorry, that's why I asked if you'll help
12:28:12 9 me do the sequence. In the sequence, I think in your
12:28:15 10 testimony prior to the break, you said at some point you do
12:28:17 11 have a memory of seeing him, but I don't know that you can
12:28:20 12 place that hour or a moment on the 23rd?

12:28:23 13 A. Correct.

12:28:24 14 Q. Is that right. If you can't do that, can you tell me
12:28:27 15 then when he looked exhausted, when was it that he looked
12:28:30 16 like he hadn't slept, do you know where in the sequence that
12:28:34 17 would be?

12:28:36 18 A. Either in 2:00 in the morning, those hours, if it was
12:28:42 19 then, or if it was from that 8:30 to 10 or 11:00 when I
12:28:52 20 threw it away.

12:28:54 21 Q. Okay. But what your memory, whenever you saw him,
12:28:59 22 was tired and exhausted, right?

12:29:01 23 A. Yes.

12:29:01 24 Q. And I think you were asked whether or not then you
12:29:07 25 would suppose, guess, wonder, whether that was because he

12:29:12 1 was either using drugs or alcohol?

12:29:14 2 MR. WISE: Objection, I didn't say "wonder" in
12:29:20 3 the question.

12:29:20 4 BY MR. LOWELL:

12:29:20 5 Q. You didn't see him doing any alcohol or drugs,
12:29:22 6 correct?

12:29:23 7 A. Correct.

12:29:23 8 Q. Whether you saw him exhausted or whatever the phrase
12:29:26 9 you used, you don't know whether he was just exhausted and
12:29:31 10 didn't have any sleep?

12:29:33 11 A. Correct.

12:29:35 12 Q. Next step along the time sequence.

12:30:02 13 On the morning of the 23rd, I want to see if we
12:30:04 14 can construct when you saw him, okay?

12:30:06 15 A. Okay.

12:30:07 16 Q. Now, again on that morning, do you recall writing him
12:30:14 17 any texts or calling him and asking him where he was?

12:30:20 18 A. Can I look at this?

12:30:22 19 Q. Well first tell me if you can recall?

12:30:25 20 A. I don't recall.

12:30:26 21 Q. Now, if you'll look at Row 19.

12:30:37 22 A. Okay.

12:30:38 23 Q. When you have done that, look up.

12:30:41 24 Does that refresh your recollection as to
12:30:43 25 whether or not in the morning you reached out to him?

12:30:47 1 A. I have on the 19th, that was the evening before.

12:30:51 2 Q. I'm sorry, I did that wrong, didn't I? Look at

12:31:05 3 Row 20. And now look up after you have done that?

12:31:12 4 A. Okay.

12:31:13 5 Q. Okay. So looking at Row 20, does that refresh your
12:31:17 6 recollection if you reached out to him in the morning of the

12:31:20 7 23rd mid-morning, in some fashion to find out where he was?

12:31:28 8 A. I don't really understand that because of the
12:31:32 9 context, so I don't recall.

12:31:34 10 Q. If he was with you at that time, and if he was, as
12:31:40 11 you pointed it out, may have been there, would you ask him
12:31:45 12 anything about an Uber?

12:31:47 13 A. No.

12:31:48 14 Q. So if you were asking him anything about an Uber,
12:31:52 15 would that be for him to come with an Uber to where you
12:31:56 16 were, or where?

12:32:01 17 A. I don't know.

12:32:02 18 Q. Okay.

12:32:03 19 A. Because why wouldn't I drive?

12:32:06 20 Q. I can't answer that. But do you recall at the time
12:32:10 21 being in a text exchange with Hunter? We've said on the
12:32:15 22 22nd and clearly we're on the 23rd, right?

12:32:19 23 A. Right.

12:32:20 24 Q. And you remember that you were sending texts in the
12:32:22 25 morning of the 23rd as well?

12:32:24 1 A. Correct.

12:32:24 2 Q. And when you sent him a text, you knew how to text
12:32:28 3 him, what number it was going to?

12:32:30 4 A. Yes.

12:32:30 5 Q. And with the texts that you have seen that the
12:32:35 6 government has shown you, and one that I have entered into
12:32:38 7 evidence by reading, would that be an accurate depiction of
12:32:42 8 what you would have sent him?

12:32:44 9 A. Yes.

12:32:44 10 MR. LOWELL: Your Honor, we move in, so that I
12:32:46 11 can read the text at ten, on October 23rd at 10:23.

12:32:53 12 THE COURT: 10/24?

12:32:57 13 MR. LOWELL: 10/23 at Row 20.

12:33:03 14 THE COURT: You can read it in.

12:33:07 15 MR. LOWELL: Thank you.

12:33:08 16 BY MR. LOWELL:

12:33:08 17 Q. So on 10/23, October 23rd, 10:23 in the morning, did
12:33:14 18 you say to him "call Uber"?

12:33:17 19 A. Yes.

12:33:17 20 Q. And then following that, did you remember texting him
12:33:22 21 again. Can you look up and tell me, was there an exchange
12:33:27 22 with him, you texted him "call Uber." Did you text him
12:33:31 23 again?

12:33:31 24 A. I don't recall off the top of my head.

12:33:34 25 Q. Now, would you please look down on Row 21, and look

12:33:37 1 up when you have done it?

12:33:40 2 A. Yes.

12:33:40 3 Q. Okay. Having done that, does it refresh your
12:33:44 4 recollection that you were asking him to come home?

12:33:46 5 A. Yes.

12:33:47 6 Q. And that's a minute later than the one I read into
12:33:49 7 the record?

12:33:50 8 A. Yes.

12:33:50 9 Q. So if you're asking him to come home at 10:24, that
12:33:56 10 would obviously mean he wasn't there then?

12:33:58 11 A. Correct.

12:34:07 12 Q. Did you understand at that time in the morning or in
12:34:10 13 the night before, that he was staying at a hotel?

12:34:16 14 A. I don't think I knew where he was.

12:34:18 15 Q. Okay. You do remember being in an exchange, will you
12:34:24 16 now look at Row 22? And doing so, look up after you've read
12:34:29 17 it. Do you remember having an exchange with him as the
12:34:35 18 morning progressed? The last one I read in where the time
12:34:39 19 was 10:24. Do you remember that you continued to text
12:34:43 20 exchange with him that morning?

12:34:45 21 A. I see that.

12:34:46 22 Q. I'm asking if you remember?

12:34:47 23 A. I don't remember, no.

12:34:48 24 Q. And my question was do you remember whether he was
12:34:51 25 staying at a hotel?

12:34:52 1 A. I don't remember.

12:34:53 2 Q. Now looking down, does that refresh your recollection
12:34:56 3 that you did in fact know that he was staying at a hotel?

12:35:00 4 MR. WISE: I'll object, that's not what the --
12:35:03 5 we're looking at the text, that's not what that said.

12:35:06 6 MR. LOWELL: Row 22.

12:35:08 7 MR. WISE: That doesn't mean she knows he was
12:35:11 8 staying at a hotel.

12:35:12 9 MR. LOWELL: I asked whether it refreshed her
12:35:14 10 recollection whether or not she knew that he was at a hotel.

12:35:17 11 THE COURT: She can say yes or no as to whether
12:35:19 12 that reminds her, refreshed her recollection that she knew
12:35:23 13 he was.

12:35:23 14 THE WITNESS: Yes.

12:35:25 15 MR. LOWELL: That's what I hoped I did, so if I
12:35:28 16 didn't, let me do it again. Does that refresh your
12:35:31 17 recollection as to whether or not you knew he was at a
12:35:33 18 hotel?

12:35:34 19 THE WITNESS: Yes.

12:35:34 20 BY MR. LOWELL:

12:35:34 21 Q. So having looked at that, as of the mid-morning, you
12:35:40 22 now are refreshed that he was not at your house, that he was
12:35:43 23 at a hotel?

12:35:47 24 A. Yes.

12:35:50 25 MR. WISE: Well which, that's a compound

12:35:52 1 question.

12:35:52 2 THE COURT: I know. It's very confusing because
12:35:56 3 I don't know if that means he left, he came back.

12:35:58 4 THE WITNESS: Right, I don't remember either.

12:35:59 5 THE COURT: So if -- it's just better if you
12:36:04 6 don't remember, you -- we want the record to be clear what
12:36:07 7 you remember and what you don't remember. If you don't
12:36:09 8 remember, it's okay, nobody is going to think, as long as
12:36:13 9 it's truthfully you don't remember, that's okay.

12:36:16 10 THE WITNESS: Okay.

12:36:16 11 THE COURT: When he says does it refresh your
12:36:18 12 recollection, you can say yes or no.

12:36:21 13 THE WITNESS: Okay.

12:36:21 14 THE COURT: It does, I still don't remember it,
12:36:24 15 I see there is text, we all get e-mails and texts every day
12:36:27 16 that you don't remember.

12:36:29 17 THE WITNESS: Okay, I don't remember.

12:36:30 18 THE COURT: But then he can follow up and try
12:36:32 19 and say well, would you have recorded this at the time,
12:36:36 20 whatever, and he can try and deal with it differently.

12:36:38 21 THE WITNESS: Okay. I don't remember.

12:36:39 22 BY MR. LOWELL:

12:36:40 23 Q. So now you don't remember?

12:36:41 24 A. I don't remember.

12:36:42 25 Q. As I asked you before, you understand and you agree

12:36:45 1 that you're sending a text?

12:36:46 2 A. Yes.

12:36:46 3 Q. And the ones you identified are among those?

12:36:49 4 A. Yes.

12:36:49 5 Q. And that text exchange continued and it reflects what
12:36:53 6 you would have sent him that day?

12:36:55 7 A. Yes.

12:36:55 8 Q. It was the same day that you were identifying other
12:36:58 9 texts?

12:36:58 10 A. Yes.

12:36:59 11 Q. You knew where to send it to?

12:37:01 12 A. Yes.

12:37:01 13 Q. Having done that, I am now going to read into the
12:37:04 14 record what you in fact said in that text exchange. And on
12:37:12 15 October 23rd, 2018, at 10:46, you wrote, if I say it right
12:37:19 16 "where is hotel and room number??" Two question marks.
12:37:25 17 Right, I read that correctly?

12:37:26 18 A. Yes.

12:37:27 19 Q. And you sent that to him then?

12:37:30 20 A. Yes.

12:37:30 21 Q. That reflects that at that moment you had an
12:37:33 22 understanding --

12:37:33 23 THE COURT: Wait, wait, wait, no, we decided
12:37:35 24 that --

12:37:36 25 MR. LOWELL: Okay, I stand corrected. Judge, I

12:37:38 1 am trying to do this carefully.

12:37:40 2 THE COURT: I know, you're trying to do it
12:37:42 3 carefully and it's difficult, but we had an agreement on
12:37:45 4 that.

12:37:46 5 MR. LOWELL: Okay. So you did send that text
12:37:48 6 and it does use the word "hotel"?

12:37:50 7 THE WITNESS: Yes.

12:37:50 8 BY MR. LOWELL:

12:37:51 9 Q. And then I want you to look at what I just read in
12:37:56 10 and the time. Right? And it says 10:46. That's the time
12:38:01 11 of that one?

12:38:02 12 A. Okay.

12:38:03 13 Q. You dropped your kids off at 8:30, I'm sorry, before,
12:38:07 14 and you came back. Had you yet gone into his truck at this
12:38:11 15 point? It's two hours and change later?

12:38:19 16 A. Then no, if he's not at my house.

12:38:22 17 Q. Well, but you said you're not sure that the truck
12:38:25 18 wasn't there at that time. The truck could be there and he
12:38:28 19 not be there, right?

12:38:29 20 A. Well, how?

12:38:31 21 Q. Okay. I mean, he could drop the truck off--

12:38:35 22 MR. WISE: She can't ask him questions.

12:38:37 23 THE WITNESS: Sorry.

12:38:38 24 THE COURT: And what he says is not evidence.

12:38:42 25 THE WITNESS: Okay.

12:38:43 1 BY MR. LOWELL:

12:38:43 2 Q. Okay. Somebody could have -- be in their car and
12:38:48 3 somebody else be in the car next to them and drop a truck
12:38:51 4 off and then go in that person's car and leave, could that
12:38:54 5 happen?

12:38:55 6 A. That could.

12:38:55 7 Q. Somebody could call an Uber, you saw a reference to
12:38:59 8 an Uber?

12:39:00 9 A. Yes.

12:39:00 10 Q. What I'm asking, again going backwards in time,
12:39:04 11 you're not sure when the truck was on the property you
12:39:07 12 identified?

12:39:08 13 A. Correct.

12:39:08 14 Q. But now that I'm looking at 10:46 as a time stamp,
12:39:13 15 you're not sure whether you did or did not find the gun
12:39:17 16 before then?

12:39:21 17 A. If we're not talking about the gun, I don't think I
12:39:24 18 found it yet.

12:39:25 19 Q. Okay. That was going to be my next question to you.
12:39:29 20 If you had found the gun by any particular time in the
12:39:34 21 morning, you have testified about what you did when you did
12:39:39 22 it, and we know from some time stamp that at 11:20 you're at
12:39:44 23 Janssen's, is there anything you recall, calling him
12:39:48 24 immediately and telling him?

12:39:50 25 A. No, I did not call him and tell him.

- 12:39:54 1 Q. Okay. Then the next sequence is I think you were
12:40:06 2 asked whether or not you know when, if the truck left the
12:40:13 3 property you identified, do you remember?
- 12:40:18 4 A. When it left?
- 12:40:19 5 Q. The grass, the property? You obviously found
12:40:24 6 something in it; right?
- 12:40:25 7 A. Right.
- 12:40:26 8 Q. And then at some point later when you came back, it
12:40:30 9 wasn't there, later in the day?
- 12:40:33 10 A. Well, he drove it to Janssen's --
- 12:40:37 11 Q. Do you know if he drove it directly to Janssen's. Do
12:40:41 12 you know where he was before the incident when you and he
12:40:46 13 were at Janssen's?
- 12:40:47 14 A. I'm not sure.
- 12:40:48 15 Q. Do you know whether or not on that day he had an
12:40:50 16 indication that he was going to Washington D.C. on the 23rd?
- 12:40:54 17 A. I don't recall.
- 12:40:55 18 Q. Do you recall anything about one of his daughters
12:41:00 19 living in D.C. at the time?
- 12:41:01 20 A. Yes.
- 12:41:02 21 Q. Was there a daughter named Maisy that he had?
- 12:41:05 22 A. Yes.
- 12:41:05 23 Q. Was Maisy in school in Washington at that period of
12:41:09 24 time?
- 12:41:09 25 A. Yes.

12:41:10 1 Q. And she was in high school?

12:41:12 2 A. Yes.

12:41:13 3 Q. Do you recall Mr. Biden, Hunter, telling you he was
12:41:18 4 going to see Maisy at Washington for a game?

12:41:23 5 A. Via text message or in person?

12:41:25 6 Q. I'm asking you, do you recall any conversation about
12:41:28 7 where he was intending to go on the 23rd?

12:41:30 8 A. No, because I can only see it from the text messages.

12:41:35 9 Q. I want you to look, see if this refreshes your
12:41:39 10 recollection, if you will look at Row 24?

12:41:42 11 A. Mine says --

12:41:43 12 Q. Don't say what it says?

12:41:44 13 A. No, I meant I don't have Row 24.

12:41:47 14 THE COURT: You're asking for hearsay, right,
12:41:49 15 are you asking what he said or what she said?

12:41:52 16 MR. LOWELL: I'm asking whether looking at
12:41:53 17 anything refreshes her recollection, not whether it's in the
12:41:57 18 record, not whether it can be admissible, but anything can
12:42:00 19 refresh the witness so I'm asking.

12:42:03 20 MR. WISE: I think there is no Row 24.

12:42:07 21 MR. LOWELL: I'm sorry. May I approach?

12:42:13 22 BY MR. LOWELL:

12:42:13 23 Q. What I want you to do is what we have done before,
12:42:16 24 take a look at this page and look at Row 24, just Row 24,
12:42:20 25 and read it to yourself.

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12:42:22 1 THE COURT: And then does it refresh your
12:42:23 2 recollection, not what you're reading.

12:42:28 3 BY MR. LOWELL:

12:42:28 4 Q. Do you see it? Does reading that refresh your
12:42:31 5 recollection of whether or not you understood he was on his
12:42:35 6 way to Washington D.C. to see his daughter Maisy?

12:42:39 7 A. That that was the intention?

12:42:40 8 Q. Yes?

12:42:41 9 A. Yes.

12:42:44 10 MR. LOWELL: Your Honor, keep going, I mean, I
12:42:47 11 just don't want to keep people.

12:42:49 12 THE COURT: It's 12:42. We'll take our lunch
12:42:53 13 break.

12:42:53 14 COURTROOM DEPUTY: All rise.

12:42:56 15 (Jury exiting the courtroom at 12:42 p.m.)

12:43:18 16 THE COURT: All right. We usually take about an
12:43:26 17 hour. Is that all right?

12:43:27 18 THE WITNESS: Sure.

12:43:29 19 MR. LOWELL: May we approach before you leave
12:43:30 20 the bench?

12:43:31 21 THE COURT: You can go.

12:43:34 22 (A luncheon recess was taken.)

13:14:28 23 (Side-bar discussion:)

13:14:28 24 THE COURT: So one of the jurors said to Mark
13:14:28 25 when she was leaving that when we were over here at

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13:14:28 1 side-bar, that they noticed that she was communicating with
13:14:28 2 someone in the back. Now, I don't know if she has a lawyer
13:14:28 3 here.

13:14:28 4 MR. HINES: She does.

13:14:28 5 MR. WISE: Well, it's her husband. She got
13:14:28 6 married this weekend and I can see him in back.

13:14:28 7 THE COURT: So she was communicating with
13:14:28 8 someone. They were like mouthing something to her. My
13:14:28 9 guess is it was something on the order of, you know --

13:14:28 10 MR. LOWELL: What a jerk I am.

13:14:28 11 THE COURT: My guess.

13:14:28 12 MR. LOWELL: Could you clean that one up. What
13:14:28 13 a jerk I am. Thank you.

13:14:28 14 MR. HINES: No objection.

13:14:28 15 THE COURT: Okay. So they noticed -- so one
13:14:28 16 juror, it's the second alternate, so we know we have the two
13:14:28 17 younger women, so it's one of them. And then she said to
13:14:28 18 him -- and you can ask Mark questions, too, she said to him
13:14:28 19 and other jurors noticed, too.

13:14:28 20 MR. LOWELL: So I'm sorry to get this right,
13:14:28 21 Mark, Mr. Buckson, the first -- second alternate says it to
13:14:28 22 you?

13:14:28 23 COURTROOM DEPUTY: She stays behind and says, "I
13:14:28 24 have to talk to you a minute."

13:14:28 25 MR. LOWELL: When she did, she said other jurors

13:14:28 1 saw it, too?

13:14:28 2 COURTROOM DEPUTY: She told me what happened and
13:14:28 3 said other jurors saw it, too.

13:14:28 4 MR. LOWELL: Meaning that they talked about it.

13:14:28 5 THE COURT: That's what I said to Mark, that's
13:14:28 6 why I want to tell you guys everything that they said.

13:14:28 7 Now what I don't know -- my guess is, it was on
13:14:29 8 the way out the door, so it wasn't like they had talked
13:14:29 9 about it in the jury room. It was probably one of those
13:14:29 10 things where they were like this, you know, but I don't know
13:14:29 11 that.

13:14:29 12 MR. LOWELL: I understand.

13:14:29 13 THE COURT: So if you guys want to ask, you can.
13:14:29 14 So what I thought I would do is tell you now, even though I
13:14:29 15 interrupted your lunch, so you can go back, you can figure
13:14:29 16 out who the person was.

13:14:29 17 MR. WISE: I saw him.

13:14:29 18 MR. LOWELL: She also has her lawyer.

13:14:29 19 MR. WISE: I mean, if someone is mouthing like
13:14:29 20 hang in there, doing, whatever it is, I'm guessing it's the
13:14:29 21 husband, I don't think a lawyer is mouthing something.

13:14:29 22 THE COURT: I don't know who she was doing it
13:14:29 23 with. Maybe you can go figure out. Maybe you can find out
13:14:29 24 what they are saying and you guys can figure out what you
13:14:29 25 want to do if you want to talk to the jury or you want me to

13:14:29 1 talk to the jury.

13:14:29 2 MR. LOWELL: Or maybe we let it be.

13:14:29 3 THE COURT: Let it be with a reminder that don't
13:14:29 4 talk to each other.

13:14:29 5 MR. WISE: My only concern if she think she's
13:14:29 6 being coached or something.

13:14:29 7 THE COURT: If she's doing something improper.

13:14:29 8 MR. WISE: I don't want that impression to be
13:14:29 9 left on them.

13:14:29 10 MR. LOWELL: Unfortunately, to figure that out,
13:14:29 11 you would have to start inquiring who were you talking to,
13:14:29 12 what were you mouthing, what was he mouthing back, and that
13:14:29 13 concerns me as much as, you know, as anything because why --
13:14:29 14 how is that helpful, right.

13:14:29 15 Let's figure out before we bring them back what
13:14:29 16 is the least that is necessary, if anything, because if you
13:14:29 17 start inquiring, how is that helpful, right, I don't think
13:14:29 18 that's helpful. I understand you don't want the jury to
13:14:29 19 think she's being coached, certainly not by my party.

13:14:29 20 MR. WISE: Right.

13:14:29 21 MR. LOWELL: But I wonder how do you do that
13:14:29 22 with finesse. Nothing comes to my mind at the moment, but
13:14:29 23 I'll try to put my mind to it.

13:14:29 24 Thank you for telling us. And right now I don't
13:14:29 25 have anything I would suggest, but I'll talk to you all

13:14:29 1 about it.

13:14:29 2 THE COURT: Maybe you guys, somebody can just
13:14:29 3 check with her lawyer and husband and find out what that
13:14:29 4 was.

13:14:29 5 MR. LOWELL: Thanks, Your Honor, for bringing it
13:14:29 6 to our attention.

13:43:51 7 (End of side-bar.)

13:43:51 8 COURTROOM DEPUTY: All rise.

13:48:37 9 THE COURT: All right. So can I just see
13:48:44 10 counsel for one second.

13:53:43 11 (Side-bar discussion.)

13:53:43 12 THE COURT: So you want me to do what?

13:53:43 13 MR. LOWELL: I thought the, we talked, I think
13:53:43 14 what we agreed was you don't have to do it right away or
13:53:43 15 whenever you would, it would just be the normal instructions
13:53:43 16 to the jury just a reminder that you shouldn't be talking to
13:53:43 17 each other about the case, among yourselves of anything
13:53:43 18 that's happening, you have that, I don't know exactly the
13:53:43 19 words.

13:53:43 20 THE COURT: And then with respect to the
13:53:43 21 discussions, are you okay if they just want to ask her, do
13:53:43 22 you have someone here supporting you or something so the
13:53:43 23 jury understands?

13:53:43 24 MR. LOWELL: I would object to that as somebody
13:53:43 25 here supporting you.

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13:53:43 1 THE COURT: Someone here --

13:53:43 2 MR. LOWELL: I mean, if you want to say do you
13:53:43 3 have a relative -- I mean, I don't know. My view is do the
13:53:43 4 least. But if you feel like something needs to be said.
13:53:43 5 But I don't know how that doesn't make it worse.

13:53:43 6 MR. WISE: Was your impression that they thought
13:53:43 7 it was something wrong going on?

13:53:43 8 COURTROOM DEPUTY: Kind of.

13:53:43 9 MR. WISE: Okay.

13:53:43 10 COURTROOM DEPUTY: It was a suspicious.

13:53:43 11 MR. LOWELL: Let's say she has a relative, the
13:53:43 12 problem, it still opens the door, what was your relative
13:53:43 13 saying to you, were they just giving you a high five.

13:53:43 14 MR. WISE: The question would be Ms. Biden were
13:53:43 15 you recently married, yes, just this week, is your husband
13:53:43 16 here in audience to support you, yes.

13:53:43 17 MR. LOWELL: Not support you.

13:53:43 18 MR. WISE: Yeah, that's what spouses do.

13:53:43 19 THE COURT: Is your husband here with you.

13:53:43 20 MR. WISE: At the breaks, have you been looking
13:53:43 21 at him and exchanging supportive words, has anyone been
13:53:43 22 telling you what to testify about.

13:53:44 23 MR. LOWELL: I object to all those questions.

13:53:44 24 THE COURT: Well, I don't object to has anyone
13:53:44 25 told you what to testify.

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13:53:44 1 MR. LOWELL: I mean in general, yeah.

13:53:44 2 MR. WISE: I don't know what the prejudice is
13:53:44 3 for her to say my husband is in the audience, I have been
13:53:44 4 looking at him and he's been looking at me for support.

13:53:44 5 MR. LOWELL: For support, how about I have been
13:53:44 6 looking at him and he's been looking at me.

13:53:44 7 THE COURT: And anything in that, was he telling
13:53:44 8 you what to say, or something like that?

13:53:44 9 MR. WISE: Okay.

13:53:44 10 THE COURT: People are telling you what your
13:53:44 11 testimony should be, something like that.

13:53:44 12 MR. WISE: Yeah.

13:53:44 13 THE COURT: Because I -- look, I'm just
13:53:44 14 concerned that the jury, there was nothing -- I don't think
13:53:44 15 there is anything that she did wrong.

13:53:44 16 MR. WISE: We confirmed with the lawyer, we said
13:53:44 17 is she talking to you, no, no, the husband is here.

13:53:44 18 He's not going to obviously tell her anything
13:53:44 19 about her testimony, but I am concerned that we're leaving
13:53:44 20 an impression with the jury that she's doing something
13:53:44 21 wrong, so if you just want to say, were you recently
13:53:44 22 married, is your husband here with you, and then have you
13:53:44 23 during breaks looked to him, and did anything that you do --
13:53:44 24 any of your interactions about your testimony or something
13:53:44 25 like that.

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13:53:44 1 MR. WISE: Okay.

13:53:44 2 MR. LOWELL: Say that, were any of your
13:53:44 3 interactions, sorry, were any of your interactions about
13:53:44 4 your testimony.

13:53:44 5 THE COURT: Yes.

13:53:44 6 MR. LOWELL: Is that the phrase?

13:53:44 7 THE COURT: Yes. I was just trying to get at
13:53:44 8 that it's not influencing her testimony, but if there is a
13:53:44 9 better word for that.

13:53:44 10 MR. WISE: I think maybe while you are on the
13:53:44 11 stand.

13:53:44 12 THE COURT: Yes. While you were on the stand
13:53:44 13 did you occasionally look to him, was any of that about your
13:53:44 14 testimony?

13:53:44 15 MR. LOWELL: I mean --

13:53:44 16 THE COURT: I know, and you can object and if
13:53:44 17 you have to object now.

13:53:44 18 MR. LOWELL: Why don't, we could that now, let
13:53:44 19 me do it now. Yeah, I just think the more we inquire, the
13:53:44 20 worse it gets, so I object to anything other than the
13:53:44 21 instruction to the jury, telling them that you're not
13:53:44 22 supposed to be talking about the case before you deliberate.

13:53:44 23 THE COURT: I understand. The problem is that
13:53:44 24 horse is out of the barn and I can instruct them on that
13:53:44 25 going forward, but for this particular horse and barn, I

13:53:44 1 don't want the jury left with the impression that something
13:53:44 2 nefarious was going on. I have enough issues with her
13:53:44 3 testimony let alone something wrong.

13:53:44 4 MR. LOWELL: Let's put this horse back in the
13:53:44 5 barn, but can we do it with the fewest number of kicks to
13:53:44 6 the side, to use the analogy.

13:53:44 7 THE COURT: Yes. I think that's what it is, if
13:53:44 8 you think there is a way that we can kick less, I took out
13:53:44 9 support.

13:53:44 10 MR. LOWELL: Right.

13:53:44 11 THE COURT: I took out support and all I wanted
13:53:45 12 to clarify is it didn't have anything to do with -- he
13:53:45 13 doesn't know anything about her testimony.

13:53:45 14 MR. LOWELL: But we don't have to explain that.

13:53:45 15 THE COURT: Exactly.

13:53:45 16 MR. LOWELL: Okay.

13:53:53 17 (End of side-bar.)

13:53:57 18 THE COURT: All right. We can bring in the
13:54:00 19 jury.

13:54:17 20 (Jury entering the courtroom at 1:54 p.m.)

13:55:43 21 THE COURT: All right, everyone, welcome back.

13:55:50 22 You can be seated. Members of the jury. Welcome back. And
13:55:53 23 I hope if you went outside, you're able to enjoy the less
13:55:58 24 humid weather in here if it's a little chilly. Mr. Lowell
13:56:04 25 please continue.

13:56:05 1 MR. LOWELL: Thank you, Your Honor. Good
13:56:06 2 afternoon, ladies and gentlemen, good afternoon, Ms. Biden.
13:56:08 3 And thank you for helping put together the sequence and I
13:56:11 4 don't have a lot more.

13:56:12 5 BY MR. LOWELL:

13:56:13 6 Q. Where we left off before lunch was still trying to
13:56:15 7 figure out the time sequence on the morning of the 23rd. Do
13:56:19 8 you remember that that's where we left off?

13:56:21 9 A. Yes.

13:56:22 10 Q. So with that in mind, I want to turn first to
13:56:28 11 figuring out as best as you can you at some point we know go
13:56:34 12 into the truck, we know that.

13:56:36 13 A. Yes.

13:56:36 14 Q. And you're searching around, we know that?

13:56:39 15 A. Yes.

13:56:39 16 Q. We know that's when you found the gun?

13:56:42 17 A. Correct.

13:56:42 18 Q. And you said in your testimony this morning that you
13:56:44 19 believed you also had seen, I think what you called,
13:56:47 20 remnants or also paraphernalia?

13:56:51 21 A. Yes.

13:56:51 22 Q. Okay. You had done that many times in the past I
13:56:55 23 think you said in the earlier years when you and Mr. Biden
13:56:58 24 were using?

13:56:59 25 A. Yes.

13:57:00 1 Q. And I imagine there was more than one of those?

13:57:03 2 A. Yes.

13:57:03 3 Q. So on that day, I don't know if you said this and if
13:57:11 4 so I'll skip it again, remnants meaning, what did you think
13:57:15 5 you saw?

13:57:16 6 A. Like dusting.

13:57:18 7 Q. Dusting. Okay. Not a piece?

13:57:21 8 A. No.

13:57:22 9 Q. But a dust?

13:57:23 10 A. Correct.

13:57:23 11 Q. And search your memory, on the car seat, on the
13:57:29 12 steering wheel, on the outside of the console, on the mat?

13:57:35 13 A. I don't recall.

13:57:37 14 Q. And paraphernalia, not like the thing you said you
13:57:41 15 found in the pouch at the end of October, what do you
13:57:46 16 recall, if anything, about what that was that day?

13:57:49 17 A. I don't recall exactly what it was.

13:57:53 18 Q. And on that day as we've established, you don't have
13:57:57 19 a specific memory about where he was or when he was there,
13:58:03 20 and other of the details, and in here, too, you just have
13:58:07 21 this general memory of that?

13:58:10 22 MR. WISE: Your Honor, I'll object, her
13:58:11 23 testimony was he was at the house, he didn't --

13:58:15 24 MR. LOWELL: I'll withdraw and restate, okay.

13:58:17 25 THE COURT: Okay. So you're withdrawing your

13:58:21 1 question?

13:58:21 2 MR. LOWELL: I withdraw the question.

13:58:23 3 BY MR. LOWELL:

13:58:24 4 Q. So on that morning you're not certain when you went
13:58:26 5 in the car?

13:58:27 6 A. Correct.

13:58:27 7 Q. You're not certain when you saw him?

13:58:33 8 A. Correct.

13:58:33 9 Q. You're not certain as to the sequence of whether it
13:58:37 10 happened when after you came back from dropping your kids?

13:58:40 11 A. Correct.

13:58:41 12 Q. And similarly, you have this general impression that
13:58:43 13 there was, to use your phrase, some powder and some
13:58:48 14 paraphernalia and you don't know what that was?

13:58:50 15 MR. WISE: Again, object, it wasn't a general
13:58:53 16 impression, she testified that's what she found.

13:58:56 17 THE COURT: Okay. So the jury can, both the
13:59:00 18 lawyers stuff is not evidence, you can remember what she
13:59:03 19 said. And but Mr. Lowell, if you'll just ask her, take out
13:59:11 20 your generalizations and if you'll make an objection without
13:59:14 21 giving so many specifics.

13:59:17 22 MR. WISE: Thank you, Your Honor.

13:59:18 23 MR. LOWELL: Okay.

13:59:20 24 BY MR. LOWELL:

13:59:20 25 Q. I'm just trying to compare the specificity of what

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13:59:24 1 you remember versus some general. Okay? And if I didn't do
13:59:29 2 it right, I'll try it again.

13:59:30 3 Powder I understand, remnants, you're not having
13:59:34 4 a memory of what, if anything, that was; is that right?

13:59:39 5 A. Correct.

13:59:40 6 Q. So we do know that at some point you're doing what
13:59:47 7 you described your morning events to be, and now I would
13:59:51 8 like to turn to in your book, if you'll turn to Exhibit 17.

14:00:09 9 In that morning you also -- I think you testified that you
14:00:13 10 had phone conversations with Hunter, as well. On the
14:00:18 11 morning of the --

14:00:19 12 A. Do I look at the book?

14:00:21 13 Q. Sorry, no, first --

14:00:23 14 A. Okay.

14:00:24 15 Q. Before looking at anything.

14:00:26 16 A. Okay.

14:00:27 17 Q. In the morning, you had telephone conversations with
14:00:31 18 Hunter, as well as texts; is that a fair statement?

14:00:34 19 A. I don't recall them.

14:00:36 20 Q. Okay. But I'm generally speaking, do you recall that
14:00:40 21 you guys talked by phone on the day that you recovered the
14:00:44 22 gun?

14:00:45 23 A. Yes.

14:00:45 24 Q. And my question, then, is if you don't remember the
14:00:50 25 specifics, if you'll -- hold on.

14:01:02 1 So if you will turn, please, to page -- to
14:01:07 2 DX-17, it should be in the book and if you can't find it,
14:01:11 3 let me know. It should have a tab. Tell me when you're
14:01:21 4 there.

14:01:21 5 A. I'm there.

14:01:21 6 Q. Okay. So for the purposes of my questioning of you,
14:01:25 7 I'm going to only read to you for the morning of
14:01:30 8 October 23rd, times of calls from you to him or him to you.

14:01:36 9 A. Okay.

14:01:36 10 Q. Okay. So I would like you to look at that. Am I
14:01:40 11 correct that on October 23rd of 2018 at 9:51 a.m., you
14:01:45 12 called him?

14:01:47 13 A. I'm on the wrong --

14:01:49 14 Q. I'm sorry.

14:01:50 15 MR. LOWELL: Can I approach?

14:01:53 16 THE WITNESS: Page 2 of that.

14:01:55 17 BY MR. LOWELL:

14:01:55 18 Q. I think it's page -- 10/23. I'm sorry. Page 3. And
14:02:04 19 I'll tell you which, look at the time stamp, please. So if
14:02:12 20 you look at Row 68?

14:02:19 21 A. Yes.

14:02:20 22 Q. I'm sorry, so yes, and at 9:51, you're calling him?

14:02:25 23 A. Yes. That's what this says.

14:02:28 24 Q. And there is an indication in the columns that there
14:02:30 25 was no answer?

14:02:32 1 A. Yes.

14:02:32 2 Q. At 9:51, when you tried to call him, were you calling
14:02:39 3 him because by that point in the sequence of events you had
14:02:43 4 found the gun?

14:02:44 5 A. I don't recall.

14:02:45 6 Q. Then a few minutes later on the same morning, if
14:02:53 7 you'll look at Row 69 at 9:56, he calls you. Yes?

14:03:00 8 A. Yes.

14:03:01 9 Q. Okay. And that one was a call for a minute and
14:03:05 10 20 seconds?

14:03:06 11 A. Yes.

14:03:06 12 Q. Now, if you're calling him in the morning at those
14:03:09 13 two places, is it right that you wouldn't be calling him if
14:03:15 14 he was either in your house, or right in the driveway?

14:03:19 15 A. Correct.

14:03:19 16 Q. So he's someplace else?

14:03:21 17 A. Yes.

14:03:21 18 Q. In the morning?

14:03:23 19 A. Yes.

14:03:23 20 Q. And then if you'll look again, and that's a minute
14:03:26 21 and 20, yes?

14:03:29 22 A. Yes.

14:03:30 23 Q. Okay. And I'm sure that would be the case that five
14:03:34 24 years later, you don't know what was spoken in that minute
14:03:38 25 and 20?

- 14:03:38 1 A. Correct.
- 14:03:39 2 Q. Is it your memory, though, that at that point, you
- 14:03:44 3 had found the gun? You just don't know?
- 14:03:45 4 A. I don't recall.
- 14:03:46 5 Q. And then six minutes later, if you look at Row 70,
- 14:03:50 6 it's now 10:02, right?
- 14:03:53 7 A. Yes.
- 14:03:53 8 Q. And he calls you, correct?
- 14:03:57 9 A. Yes.
- 14:03:57 10 Q. And that call is 1 minute and 33?
- 14:04:03 11 A. Yes.
- 14:04:03 12 Q. Now at 10:02 in the morning, I'm imaging from your
- 14:04:07 13 testimony and what we saw in the video that you're still
- 14:04:14 14 home?
- 14:04:14 15 A. Yes.
- 14:04:15 16 Q. So he's not there either?
- 14:04:17 17 A. Yes.
- 14:04:18 18 Q. And then 28 minutes later on the same morning, you
- 14:04:23 19 call him. And that's at 10:30; right?
- 14:04:29 20 A. Yes.
- 14:04:30 21 Q. And that one lasts a little bit more than a minute?
- 14:04:35 22 A. Yes.
- 14:04:36 23 Q. And so far at that point at 10:30, if you're calling
- 14:04:41 24 him, we can establish that at 10:30, he's not there?
- 14:04:47 25 A. Yes.

14:04:58 1 Q. In your testimony before lunch, you had talked about
14:05:04 2 finding the gun, looking for someplace to put it, and at
14:05:10 3 some point, you went in your house to get a bag. Is that
14:05:17 4 right?

14:05:17 5 A. Correct.

14:05:18 6 Q. Now, I want to establish in the sequence whether you
14:05:22 7 went in the house to get a bag, and then you said you
14:05:27 8 retrieved a leather pouch, or it's the other way around?

14:05:31 9 A. I don't recall.

14:05:33 10 Q. But you went into the house and you got a bag and the
14:05:37 11 first bag was like -- how did you describe it, a gift bag?

14:05:41 12 A. Like a little gift shopping bag.

14:05:44 13 Q. Show me the size.

14:05:45 14 A. Like that.

14:05:45 15 Q. Is that where you ended up putting what you found?

14:05:48 16 A. Yes.

14:05:49 17 Q. Is that what you ended up bringing to Janssen's?

14:05:52 18 A. Yes.

14:05:53 19 Q. If you saw in the video that the government's
14:05:56 20 attorneys played, you see it and it was like a purple bag?

14:06:00 21 A. Yes.

14:06:02 22 Q. And after you put it in the bag, and again, you can't
14:06:07 23 tell us today whether the gift bag or the pouch came first;
14:06:12 24 right?

14:06:13 25 A. Correct.

14:06:13 1 Q. But nevertheless, at some point they came together.

14:06:18 2 A. Yes.

14:06:18 3 Q. And I heard you say that you got the leather pouch
14:06:21 4 from the car as opposed to the library of your house or any
14:06:25 5 other place in the house or do you know?

14:06:27 6 A. From the car.

14:06:28 7 Q. Where in the truck, front seat, back seat, what would
14:06:34 8 you call that, truck bed?

14:06:35 9 A. Like, just around, it was a lot of stuff. I don't
14:06:40 10 recall exactly where I pulled it from.

14:06:44 11 Q. Was it sitting on top of the stuff, was it underneath
14:06:48 12 the stuff, where was it?

14:06:51 13 A. I don't recall.

14:06:52 14 Q. And so the next thing that I understand is you, I
14:06:57 15 think the phrase that either Mr. Wise used or you used, "you
14:07:04 16 panicked" about finding the gun, certainly understandable?

14:07:07 17 A. Yes.

14:07:07 18 Q. But your reaction was to go put it in a bag, a gift
14:07:11 19 bag, is that right, not a gift bag, but to put it in a bag?

14:07:15 20 A. I didn't want to hold it like a gun.

14:07:17 21 Q. And you had no idea if it was loaded at the time?

14:07:19 22 A. Correct.

14:07:20 23 Q. But you did see a box of bullets that were next to
14:07:23 24 it?

14:07:23 25 A. Yes.

- 14:07:24 1 Q. And it had bullets in it?
- 14:07:25 2 A. I don't know.
- 14:07:26 3 Q. You didn't shake it, open it up?
- 14:07:28 4 A. The bullets?
- 14:07:29 5 Q. The box.
- 14:07:30 6 A. Some were out and I think it had some weight to it
- 14:07:33 7 too.
- 14:07:33 8 Q. It had some weight. But did you open it to see
- 14:07:36 9 whether they were all there, not all there, how did you
- 14:07:39 10 know?
- 14:07:39 11 A. Some were loose out of the box.
- 14:07:42 12 Q. Did you scoop those up?
- 14:07:44 13 A. I did, I put those in there, as well.
- 14:07:46 14 Q. You put those in where, as well?
- 14:07:48 15 A. In the pouch.
- 14:07:49 16 Q. So there were some in the box and you thought there
- 14:07:51 17 were some that were in the same steel underneath the console
- 14:07:56 18 part?
- 14:07:56 19 A. In the console, there were some loose bullets that
- 14:08:00 20 were just sitting there, and then next to it was the box
- 14:08:04 21 that they came from.
- 14:08:05 22 Q. So they had fallen out of the box?
- 14:08:07 23 A. Correct. But all of that, all of that, all into the
- 14:08:12 24 pouch.
- 14:08:12 25 Q. They weren't in the gun, they were next to the box?

- 14:08:15 1 A. Correct.
- 14:08:16 2 Q. Now I understand. So now you take -- and the speed
- 14:08:19 3 loader was there? I'm sorry, speed loader, there was a
- 14:08:23 4 thing other than the box and the gun, right?
- 14:08:25 5 A. I don't know what that is.
- 14:08:26 6 Q. Was there another device, another object that you
- 14:08:33 7 scooped out?
- 14:08:33 8 A. I--
- 14:08:33 9 Q. Whatever was there, you scooped out.
- 14:08:36 10 A. Whatever looked like it was gun related I put in the
- 14:08:39 11 pouch.
- 14:08:39 12 Q. Okay. There was whatever -- strike that.
- 14:08:43 13 So in the sequence you take it out and put it
- 14:08:47 14 either in the pouch in the bag, or the bag in the pouch, you
- 14:08:50 15 can't figure out which came first?
- 14:08:52 16 A. Correct.
- 14:08:52 17 Q. But either way it gets into the bag?
- 14:08:55 18 A. Correct.
- 14:09:00 19 Q. And then you were asked whether or not, and you saw a
- 14:09:02 20 text that there is a different pouch later at the very end
- 14:09:05 21 of the month?
- 14:09:06 22 A. Correct.
- 14:09:06 23 Q. You saw a text that says the pouch with Hunter in the
- 14:09:11 24 library?
- 14:09:12 25 A. Right.

- 14:09:12 1 Q. In that pouch, lot of leather pouches?
- 14:09:16 2 A. Yes.
- 14:09:16 3 Q. There are a lot of leather pouches, you said you had
- 14:09:20 4 leather pouches, sometimes in cars or sometimes where he
- 14:09:23 5 would put his drugs?
- 14:09:24 6 A. Right.
- 14:09:24 7 Q. In that particular one, that you are texting him
- 14:09:28 8 about on October 31st, we established that's not the pouch
- 14:09:31 9 you threw away on October 23rd, when did that pouch get into
- 14:09:35 10 your house?
- 14:09:36 11 A. I don't recall.
- 14:09:36 12 Q. Could it have been there for a while?
- 14:09:39 13 A. I mean --
- 14:09:40 14 Q. You just don't know when?
- 14:09:42 15 A. I don't know.
- 14:09:42 16 Q. And when you said inside of it was a -- I forget what
- 14:09:53 17 you called it, a stem, a pipe or something?
- 14:09:55 18 A. Yes.
- 14:09:56 19 Q. Do you know when that was put into that pouch that
- 14:09:58 20 you found in your house on the 31st?
- 14:10:00 21 A. I don't know.
- 14:10:02 22 Q. Was it your intention to go to Janssen's that morning
- 14:10:07 23 anyway?
- 14:10:07 24 A. Yes.
- 14:10:08 25 Q. And so when you first discovered the gun, in the time

14:10:14 1 sequence that I'm trying to recreate with you given the
14:10:17 2 phone calls and the texts, what we can establish is that you
14:10:20 3 find it and immediately you call him on the phone, that
14:10:23 4 didn't happen?

14:10:23 5 A. That didn't happen.

14:10:24 6 Q. You decided on your own to put it into the gift bag?
14:10:29 7 He didn't tell you to do that?

14:10:30 8 A. No, he did not tell me to do that, he didn't know I
14:10:34 9 was doing that.

14:10:34 10 Q. And so you decided on your own to put it in the
14:10:38 11 pouch?

14:10:38 12 A. Correct.

14:10:39 13 Q. And then you decided on your own that you were going
14:10:41 14 to take all that?

14:10:43 15 A. Correct.

14:10:43 16 Q. And drive it to the grocery store?

14:10:45 17 A. Yes.

14:10:46 18 Q. And so can I put up, please -- oh, wait.

14:10:55 19 MR. LOWELL: I move into evidence Defense
14:11:01 20 Exhibit 22.

14:11:01 21 MR. WISE: No objection.

14:11:02 22 THE COURT: Thank you. It's admitted.

14:11:04 23 (DTX Exhibit No. 22 was admitted into evidence.)

14:11:05 24 BY MR. LOWELL:

14:11:06 25 Q. Would you put it up on there? I'm showing you on the

14:11:09 1 screen, a picture of a store called Janssen's Market. Does
14:11:15 2 that fairly depict?

14:11:16 3 A. Yes.

14:11:17 4 Q. The Janssen's that you went to?

14:11:19 5 A. Yes.

14:11:19 6 Q. And I see in front there are -- there is at least one
14:11:23 7 trash can. Do you see that one?

14:11:25 8 A. Yes.

14:11:25 9 Q. And I take it there were others just like that down
14:11:27 10 the row?

14:11:28 11 A. Yes.

14:11:29 12 Q. Were they behind -- I'm sorry, in between each of
14:11:33 13 those columns?

14:11:34 14 A. Yes.

14:11:35 15 Q. Okay. But that's the kind of thing that you could
14:11:38 16 recall?

14:11:38 17 A. Yes.

14:11:39 18 Q. So we saw you pull up, and if you remember the
14:11:52 19 screen, I want to go backwards because colleagues with
14:11:55 20 better memories remind me of something. When you gathered
14:11:59 21 the things, was there also an iPhone box?

14:12:02 22 A. I don't recall.

14:12:04 23 Q. Okay. Do you recall how many things fit into the
14:12:08 24 pouch that has been put into evidence, which was like this
14:12:11 25 big by that big? You don't?

14:12:14 1 A. I don't know. I mean, the pouch wasn't that big.

14:12:16 2 Q. I'm sorry, it wasn't that big?

14:12:18 3 A. But you have the pouch, so I don't know what would
14:12:21 4 actually --

14:12:22 5 Q. Do you have the pouch?

14:12:27 6 A. They showed it to me.

14:12:29 7 Q. Yeah I know they showed it to you, but sometimes with
14:12:33 8 a picture it's hard to get the dimensions.

14:12:44 9 MR. LOWELL: May I approach?

14:12:45 10 THE COURT: You may.

14:12:46 11 BY MR. LOWELL:

14:12:46 12 Q. So this has been entered into evidence as exhibit,
14:12:49 13 government Exhibit 4. And you have identified this as the
14:12:53 14 pouch?

14:12:53 15 A. Yes.

14:12:53 16 Q. So as you're looking at this, you're saying that in
14:12:58 17 this, you put a gun?

14:13:00 18 A. Correct.

14:13:01 19 Q. A box of bullets?

14:13:02 20 A. Correct.

14:13:02 21 Q. Whatever else you found?

14:13:05 22 A. Right.

14:13:05 23 Q. And you can't remember what else?

14:13:10 24 A. Correct.

14:13:12 25 Q. So if an iPhone box was recovered in the bag, that

14:13:19 1 was thrown out by you and recovered by somebody else, do you
14:13:22 2 have any memory of that box?

14:13:24 3 A. I don't recall the iPhone box.

14:13:27 4 Q. All right. So we -- you pulled up at 11:20 and you
14:13:31 5 saw that. And by now, you definitely have found this. The
14:13:36 6 video showed you throwing it out. And then leaving. I'm
14:13:42 7 sorry, then going into the store. I think you were standing
14:13:45 8 at, it might have been an ATM machine, that is what that
14:13:49 9 was?

14:13:50 10 A. That's what it looked like.

14:13:51 11 Q. And then you got cash, I take it you got cash?

14:13:55 12 A. Uh-huh.

14:13:55 13 Q. And then you did or did not remember whether you went
14:13:59 14 shopping?

14:13:59 15 A. I don't know if I did.

14:14:03 16 Q. At that point still you hadn't called Hunter, right?

14:14:07 17 A. Correct.

14:14:07 18 Q. And what we do know, is that later than when you
14:14:11 19 arrived, that you arrived at 11:20, and then some minutes
14:14:15 20 later, Hunter texts you. Can you put up the government
14:14:24 21 Exhibit 18, and turn to Row 139. Row 139, please.

14:14:40 22 And this is at 11:45, right?

14:14:44 23 A. Correct.

14:14:44 24 Q. So it's after you dropped it off before you return at
14:14:48 25 11:52?

14:14:50 1 A. Correct.

14:14:50 2 Q. And he writes you, "did you take that from me,
14:14:54 3 Hallie?" Is that how you say your name, Hallie?

14:14:57 4 A. Hallie.

14:14:58 5 Q. I'm sorry, I knew that. I listened to them and I got
14:15:02 6 it wrong.

14:15:03 7 "Are you insane. Tell me now. This is no game.
14:15:07 8 And you're being totally irresponsible", that's when he
14:15:12 9 first contacts you, is that right?

14:15:14 10 A. Yes.

14:15:14 11 Q. And then eight seconds or so later, he writes, "tell
14:15:19 12 me now Hallie."

14:15:26 13 A. Yes.

14:15:26 14 Q. And then about 13 minutes later, he text you again?

14:15:31 15 A. Yes.

14:15:32 16 Q. Okay. But in between there was a phone call; right?

14:15:35 17 A. I don't recall.

14:15:36 18 Q. Okay. So if you'll look back to what was in front of
14:15:41 19 you, and I had you stop at Row 71 at 10:30, will you look at
14:15:48 20 Row 72 in the book, Exhibit 17. So it would be Row 72, it's
14:15:58 21 page 3.

14:16:07 22 A. Yes.

14:16:08 23 Q. When he calls you at 11:46, a minute after the text
14:16:14 24 that we ended up at 11:45, right, so to do the sequence
14:16:19 25 right, that's what happens next, he calls you?

- 14:16:21 1 A. Correct.
- 14:16:22 2 Q. You didn't call him, he calls you?
- 14:16:24 3 A. Correct.
- 14:16:25 4 Q. You speak for 1 minute and 56 seconds, almost two?
- 14:16:28 5 A. Correct.
- 14:16:28 6 Q. That's the conversation in which you do tell him that
- 14:16:31 7 you found the gun; is that right?
- 14:16:34 8 A. Correct.
- 14:16:34 9 Q. And by now, you have left the store?
- 14:16:39 10 A. Yes.
- 14:16:40 11 Q. And gone back --
- 14:16:41 12 A. I don't recall.
- 14:16:42 13 Q. Okay. But you know you come back at 11:52, we know
- 14:16:47 14 that you've dropped it off at 11:20, you certainly weren't
- 14:16:52 15 there for the 32 minutes in between, right? You dropped it
- 14:16:56 16 off and threw it out at 11:20, we have the video?
- 14:17:00 17 A. Correct.
- 14:17:00 18 Q. And then you left?
- 14:17:01 19 A. Right, but I don't know where I went.
- 14:17:03 20 Q. I know you don't -- I said home, I'm sorry. You left
- 14:17:06 21 the store?
- 14:17:07 22 A. Correct.
- 14:17:07 23 Q. And you came back later at 11:52, that's what the
- 14:17:11 24 video showed? It's okay, it's in evidence.
- 14:17:15 25 A. Okay.

14:17:15 1 Q. What I'm trying to do is establish a timeline?

14:17:18 2 A. Okay.

14:17:18 3 Q. We know about, those are two bookmarks. We left, and
14:17:22 4 that's when he text you and you told him for 1 minute 56
14:17:26 5 what happened, right?

14:17:27 6 A. Yes.

14:17:28 7 Q. I think you testified that in that conversation he
14:17:30 8 spoke to you and your understanding was he said among other
14:17:33 9 things I'm sure, "go back and get it"?

14:17:37 10 A. Yes.

14:17:37 11 Q. You had already left, okay. Yes?

14:17:40 12 A. Yes.

14:17:41 13 Q. And then you go back; right?

14:17:44 14 A. Yes.

14:17:45 15 Q. And we saw the video. You can take that down for
14:17:48 16 now, Mr. Radic. And you went back and you looked and we saw
14:17:51 17 you looking and you didn't find it?

14:17:53 18 A. Yes.

14:17:53 19 Q. And then we saw you come back into your car and then
14:17:56 20 you called him to tell him I didn't find it?

14:18:01 21 A. Yes.

14:18:02 22 Q. If you look at Row 73. You see it says Row 73 at
14:18:11 23 11:53, you call him?

14:18:12 24 A. Yes.

14:18:13 25 Q. And it says 1:47?

- 14:18:16 1 A. Yes.
- 14:18:16 2 Q. So you spoke to him for 1 minute and 47 seconds after
- 14:18:20 3 it is that you found that the gun was gone?
- 14:18:23 4 A. Right.
- 14:18:23 5 Q. That the bag was gone?
- 14:18:25 6 A. Yes.
- 14:18:25 7 Q. And I think you said in that conversation, he said to
- 14:18:29 8 you, "go tell somebody", go tell or make, I think to use
- 14:18:33 9 your phrase, a police report; right?
- 14:18:37 10 A. Right.
- 14:18:38 11 Q. So he asked you to do that?
- 14:18:39 12 A. Correct.
- 14:18:40 13 Q. Okay. So he wanted you to see what could be done to
- 14:18:44 14 recover the gun?
- 14:18:45 15 A. Correct.
- 14:18:45 16 Q. That's when -- what happens next, do you go back into
- 14:18:49 17 Janssen's?
- 14:18:50 18 A. Yes.
- 14:18:51 19 Q. Whom did you speak with there?
- 14:18:53 20 A. I forget her name.
- 14:18:55 21 Q. Somebody in the store?
- 14:18:57 22 A. Yeah, in the back office I went. I think it's the
- 14:19:01 23 owner's daughter.
- 14:19:02 24 Q. An office person?
- 14:19:03 25 A. Yes.

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14:19:03 1 Q. And you told them what had happened?

14:19:06 2 A. Yes.

14:19:06 3 Q. Do you remember what you told them?

14:19:08 4 A. I told her what happened, because at first I think I
14:19:12 5 was trying to see if they had any -- if you know, like did
14:19:16 6 you guys take the trash out that quickly, and do you have
14:19:20 7 some cameras that we could look at and then she was looking
14:19:24 8 for that, and then we saw we couldn't figure it out, I said
14:19:29 9 that Hunter told me to file a police report, and you know,
14:19:35 10 she said let's -- do you want me -- you know, we did it
14:19:38 11 together in her office.

14:19:39 12 Q. Meaning you called the police?

14:19:40 13 A. We called the police and had them come out and we
14:19:43 14 filed a report on the missing gun.

14:19:45 15 Q. In terms of a minute by minute time sequence, you
14:19:48 16 went in the office and you spoke to the person you just
14:19:51 17 described?

14:19:51 18 A. Correct.

14:19:52 19 Q. Explained to her what happened, and then the two of
14:19:55 20 you, as you recall it, I don't know if both of you can dial.

14:19:58 21 A. Yeah, she called on speaker, I was upset.

14:20:01 22 Q. I'm sure. Who wouldn't be?

14:20:03 23 A. Right.

14:20:03 24 Q. So then you called the police, but she called on the
14:20:06 25 speaker phone?

14:20:07 1 A. Correct.

14:20:07 2 Q. Did you talk to the police at that point or just she
14:20:10 3 summoned them to come because there was an issue?

14:20:13 4 A. Yeah, can you come here, we want to file a police
14:20:16 5 report, and yes.

14:20:16 6 Q. On that phone call do you recall her or you saying
14:20:20 7 because I threw a gun out in a bag in the trash, or that
14:20:23 8 didn't happen until they came?

14:20:25 9 A. I don't recall.

14:20:25 10 Q. So do you remember how much later that happened that
14:20:29 11 they came?

14:20:30 12 A. I don't recall.

14:20:32 13 Q. But they did come?

14:20:33 14 A. Yes. I mean I sat there and waited.

14:20:36 15 Q. And then in that period of time, that would be, if
14:20:40 16 you came back at 11:52, and he told you to please go in, and
14:20:45 17 maybe he didn't use the word please, to go have this report
14:20:49 18 done, then you have additional phone calls in this next
14:20:52 19 period of time. You call him back at 11:59, if you'll look
14:20:59 20 at Row 74?

14:21:00 21 A. Yes.

14:21:01 22 Q. And that one is 3 minutes and -- 3 minutes and
14:21:06 23 37 seconds. Do you got that?

14:21:08 24 A. Yes.

14:21:08 25 Q. Now, in the sequence, were the police there yet?

14:21:15 1 A. I don't know.

14:21:16 2 Q. And then the next one -- by the way, when you were
14:21:19 3 calling him, you don't know where he is, I take it, or you
14:21:23 4 do at this point?

14:21:23 5 A. He was at my house.

14:21:25 6 Q. At this hour, are you sure?

14:21:28 7 A. No, I don't, I don't know.

14:21:30 8 Q. Before lunch you indicated that you did know his
14:21:33 9 intention was to drive to Washington D.C.?

14:21:35 10 A. Well, that's what the text said.

14:21:37 11 Q. Right.

14:21:38 12 A. Right.

14:21:39 13 Q. Okay. Was it your understanding when he texted that
14:21:43 14 that could be a lie?

14:21:45 15 A. I don't recall.

14:21:46 16 Q. If you're at the store and you're calling him all
14:21:48 17 these times, you don't know where he is, do you, he's not at
14:21:52 18 your house at this period of time?

14:21:54 19 A. At one point he was at my house, because when I
14:21:57 20 called -- when the police were there and I called and said
14:22:00 21 they want you to come over, he came over.

14:22:03 22 Q. 20 minutes later?

14:22:04 23 A. I don't know.

14:22:05 24 Q. Well, the report of the police will indicate how
14:22:09 25 long?

- 14:22:09 1 A. Yeah.
- 14:22:09 2 Q. How far is your house from Janssen's?
- 14:22:12 3 A. Two minutes.
- 14:22:14 4 Q. So if when you called him and said that you need to
- 14:22:17 5 come back, if he was at your house, unless he decided to
- 14:22:22 6 delay for some period of time, that would have been two
- 14:22:26 7 minutes?
- 14:22:26 8 A. If he left right away, yes.
- 14:22:29 9 Q. But again, you're not at the house to know where he
- 14:22:32 10 was?
- 14:22:32 11 A. Correct.
- 14:22:33 12 Q. So now at the next period of time, 4 minutes later,
- 14:22:38 13 at 10/23/18 at 12:06, you call him again?
- 14:22:43 14 A. Correct.
- 14:22:44 15 Q. That's 1 minute and 12, do you see that?
- 14:22:47 16 A. Yes.
- 14:22:47 17 Q. And then without going through it laboriously, the
- 14:22:52 18 next four lines down the page are 12:14, 12:14, 12:15,
- 14:22:58 19 12:18, 12:23, correct?
- 14:23:01 20 A. Correct.
- 14:23:01 21 Q. And you're calling him each of those occasions and on
- 14:23:06 22 12:27, if you look at Row 82, now you're talking to him for
- 14:23:12 23 four-and-a-half minutes; right?
- 14:23:14 24 A. Yes.
- 14:23:16 25 Q. And 15 minutes later, you call him and it's a 4

14:23:22 1 minute phone call; right?

14:23:24 2 A. Correct.

14:23:25 3 Q. So if you had already told him that the police were
14:23:29 4 there, or they want to speak to him, from the time that
14:23:32 5 happened, we're now, I don't know, at least 30 minutes from
14:23:38 6 that, if not more, and you keep calling him; right?

14:23:42 7 A. Right.

14:23:43 8 Q. Meaning he's not there yet?

14:23:45 9 A. Right. He didn't -- I didn't -- the police didn't
14:23:48 10 ask him to until like three quarters of the way for him to
14:23:52 11 come out there, so there was a lot of process.

14:23:55 12 Q. Okay. So what are these calls to him if you're still
14:23:59 13 in the process, that is lasting as many minutes as they're
14:24:03 14 lasting?

14:24:05 15 A. I don't recall.

14:24:05 16 Q. And then nevertheless, at some point he shows up and
14:24:09 17 your memory is is it's some time after you were talking to
14:24:14 18 the woman in the store and then the police came, sometime
14:24:17 19 after that?

14:24:17 20 A. Correct.

14:24:17 21 Q. And you can't place that from these calls?

14:24:20 22 A. Correct.

14:24:20 23 Q. And so the next thing that happens, the police show
14:24:23 24 up, do you remember the names of the officers?

14:24:25 25 A. I don't.

Hallie Biden - cross

- 14:24:26 1 Q. And did they talk to you?
- 14:24:29 2 A. Yes.
- 14:24:29 3 Q. Was the person from the store with you when you were
14:24:32 4 being talked to?
- 14:24:32 5 A. Yes.
- 14:24:33 6 Q. Was it in the office?
- 14:24:34 7 A. In the office.
- 14:24:35 8 Q. Okay. So they asked you the questions they asked
14:24:37 9 you?
- 14:24:38 10 A. Correct.
- 14:24:38 11 Q. In the office?
- 14:24:39 12 A. Correct.
- 14:24:40 13 Q. With that person? Okay. That's right so far, I have
14:24:44 14 it right?
- 14:24:44 15 A. Yes.
- 14:24:44 16 Q. And then how long did that take?
- 14:24:47 17 A. A long time, well it felt long.
- 14:24:49 18 Q. Probably felt like an eternity.
- 14:24:52 19 A. Yeah.
- 14:24:52 20 Q. Just speaking here, you don't know --
- 14:24:54 21 A. I don't know.
- 14:24:55 22 Q. Okay. And was it one officer, or two, or do you
14:24:59 23 know?
- 14:24:59 24 A. Two.
- 14:25:00 25 Q. Was it two from the beginning, or one and then

14:25:03 1 another person came?

14:25:04 2 A. I don't recall.

14:25:04 3 Q. But by the time it was done, there were two?

14:25:07 4 A. Yeah.

14:25:07 5 Q. Were both of them taking notes or just one?

14:25:10 6 A. I don't know who was taking notes.

14:25:11 7 Q. Or if either of them were?

14:25:14 8 A. Excuse me?

14:25:15 9 Q. Or if either of them were?

14:25:17 10 A. No, I don't recall note taking.

14:25:22 11 Q. In that period of time, we saw a text, and that text

14:25:27 12 I think was the one where -- can you put up government

14:25:33 13 Exhibit 18. Would you put up government Exhibit 18 and go

14:25:50 14 to Row 145, please. If you look at 145, that is Row 145.

14:25:54 15 No, not that one. I'm sorry. Sorry. You can pull that

14:26:00 16 down.

14:26:01 17 Would you put up government Exhibit 18 and go to

14:26:19 18 Row 144. And you have read this before. This is at 1:23

14:26:24 19 and you're texting him.

14:26:27 20 A. Okay.

14:26:27 21 Q. So if you remember the call exchanges that I asked

14:26:31 22 you about, they were 11:00, 11 and change, 12:00, all the

14:26:35 23 way until I asked you whether or not there is one on page 3

14:26:44 24 of the phone calls at 1:15. Do you see Row 58? Back on

14:26:55 25 Exhibit 17, page 3, Row 58.

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14:27:09 1 MR. WISE: Is that from the preceding day?

14:27:12 2 MR. LOWELL: I'm sorry, I screwed that up again,
14:27:14 3 I'm back there. Thank you for pointing that out.

14:27:18 4 BY MR. LOWELL:

14:27:18 5 Q. Would you go to page 4, and look at Rows 84 and 85.

14:27:23 6 A. Yes.

14:27:24 7 Q. Do you see there is one at 12:55; correct?

14:27:28 8 A. Correct.

14:27:29 9 Q. And then one at 1:11.

14:27:32 10 A. Correct.

14:27:33 11 Q. The first one you call him, the second one he calls
14:27:36 12 you; right?

14:27:38 13 A. Correct.

14:27:42 14 Q. In Row 84, you're calling him.

14:27:46 15 A. Yes.

14:27:46 16 Q. And in 85, he's calling you.

14:27:48 17 A. Yes.

14:27:49 18 Q. And that's 15 minutes apart?

14:27:53 19 A. Yes.

14:27:54 20 Q. Okay. But that last call is at 1:11 in the
14:27:57 21 afternoon, right?

14:27:58 22 A. Yes.

14:27:58 23 Q. And then this text, is your sending it to him ten
14:28:04 24 minutes later, 11-12 minutes later, do you see that one?

14:28:08 25 A. Yes.

- 14:28:08 1 Q. "Police coming to talk to me now, I'll take full
14:28:12 2 blame, I don't want to live like this anymore, this is too
14:28:15 3 much for me to handle." You read that one before lunch.
14:28:19 4 You said you will a take full blame, because "blame" as I
14:28:21 5 understand it, you're the one who took the gun, put it in
14:28:25 6 the pouch, put it in the bag, put it in the trash, threw it
14:28:30 7 out, the gun is now missing, that's what you meant?
- 14:28:33 8 A. Yes.
- 14:28:34 9 Q. So we can at least know the police haven't arrived
14:28:37 10 yet because they say they're coming?
- 14:28:39 11 A. Right.
- 14:28:47 12 Q. I'm sorry, I said that, now can you please go back to
14:28:51 13 GX-18, and go to the right thereafter. And that's the one
14:28:56 14 that you read in which Hunter says "the fucking FBI, it's
14:29:02 15 hard to believe" et cetera, and then it says at the end,
14:29:05 16 "who in their right mind would trust you to help them get
14:29:12 17 sober", do you see that?
- 14:29:13 18 A. Yes.
- 14:29:15 19 Q. "Me get sober", sorry, starting to wear glasses, it's
14:29:19 20 not working very well. It says help me get sober, correct?
- 14:29:23 21 A. Correct.
- 14:29:24 22 Q. When he, in prior text, you sometimes use the word
14:29:28 23 clean and sometimes the word sober, right?
- 14:29:30 24 A. Correct.
- 14:29:31 25 Q. And you testify that he's using alcohol in this

14:29:34 1 period of time?

14:29:35 2 A. Yes. Yes.

14:29:36 3 Q. And so when he is saying to help me get sober, you
14:29:41 4 have no way of knowing whether when he uses that word he's
14:29:44 5 talking about alcohol, drugs, both, or whatever?

14:29:49 6 A. Correct.

14:29:50 7 Q. So now we've established that you got visited by the
14:29:53 8 police, you have given a statement or you have talked to
14:29:57 9 them and then Hunter shows up. Were you there when he
14:30:01 10 showed up?

14:30:02 11 A. Yes.

14:30:02 12 Q. Did he come over to you and see how you were? Were
14:30:07 13 you outside the office yet?

14:30:08 14 A. No, I was still in the office with the -- but the
14:30:12 15 door, the back door was open, so he came up through the
14:30:15 16 back.

14:30:16 17 Q. So he came through the back and he saw you?

14:30:18 18 A. Yes.

14:30:19 19 Q. Asked you how you were?

14:30:20 20 A. I don't recall if he asked.

14:30:21 21 Q. You don't know anything about what that exchange was?

14:30:24 22 A. Yeah, I don't recall.

14:30:25 23 Q. And do you know then what happened next? Did then
14:30:29 24 the police talk to him?

14:30:30 25 A. The police talked to him, they went back out.

- 14:30:32 1 Q. Together?
- 14:30:33 2 A. Together, he walked with the police and I stayed in
14:30:36 3 there.
- 14:30:36 4 Q. And how long was he with the police, do you remember?
- 14:30:39 5 A. I don't recall.
- 14:30:41 6 Q. But eventually he was done talking to them?
- 14:30:44 7 A. Correct.
- 14:30:44 8 Q. And at that point, both of you left after that all
14:30:49 9 occurred?
- 14:30:50 10 A. Yeah.
- 14:30:51 11 Q. Do you know how long that was between the time the
14:30:54 12 police came and spoke to you and spoke to him and then you
14:30:57 13 both left?
- 14:30:58 14 A. I don't recall.
- 14:30:58 15 Q. I know again it must feel like a week, but was it an
14:31:03 16 hour, two hours?
- 14:31:05 17 A. I don't know.
- 14:31:05 18 Q. I understand. So then you went home?
- 14:31:08 19 A. I believe so.
- 14:31:09 20 Q. You don't remember where you went? I'm sorry, I
14:31:12 21 didn't hear you?
- 14:31:13 22 A. I believe so.
- 14:31:14 23 Q. No memory, this is a traumatic day and I'm not trying
14:31:19 24 to test your blow by blow unless I could give you something
14:31:23 25 that would help?

- 14:31:23 1 A. Right.
- 14:31:24 2 Q. Do you think you went home or do you think you went
14:31:26 3 someplace else?
- 14:31:27 4 A. I mean, I would probably go home, but I just don't
14:31:32 5 recall driving and getting home.
- 14:31:34 6 Q. Hunter didn't come back with you then?
- 14:31:36 7 A. I don't recall.
- 14:31:37 8 Q. So you don't know where he went? All right. So
14:31:41 9 that's on the 23rd. And thereafter you guys started, poorly
14:31:48 10 phrased, Hunter and you started to continue to talk or text
14:31:54 11 or be communicating. Yes?
- 14:31:57 12 A. Yes.
- 14:31:57 13 Q. And when you talked to the police, did you explain to
14:32:03 14 them, or did they ask you why it is that you were going into
14:32:08 15 his vehicle, his truck?
- 14:32:11 16 A. I believe so, but I don't totally remember.
- 14:32:17 17 Q. Okay. And you would therefore not remember what you
14:32:21 18 told them at the time?
- 14:32:22 19 A. I don't recall.
- 14:32:22 20 Q. Did you tell them that you went in looking for drugs?
- 14:32:26 21 A. I wouldn't have said that.
- 14:32:27 22 Q. I'm refreshing your recollection. Did you tell them
14:32:30 23 you were looking for any evidence that he was with another
14:32:33 24 woman?
- 14:32:33 25 A. Maybe, but I don't recall.

14:32:34 1 Q. Again, ma'am, I'm sorry, I just need to make sure I
14:32:38 2 do know what you recall and what you don't. On this issue,
14:32:41 3 you don't recall?

14:32:42 4 A. I don't recall.

14:32:43 5 Q. I can show you if you'll look at the exhibit in front
14:32:51 6 of you on the front of the book that's now put in front of
14:32:56 7 the book, it was 16, that should be right in front. Let me
14:33:00 8 make sure it's where I want it to be. Do you remember that
14:33:04 9 text back and forth?

14:33:06 10 A. Yes.

14:33:07 11 Q. Take a look at that. Do you remember that then after
14:33:10 12 the incident with the gun on the 23rd --

14:33:12 13 A. This is back to the 13th.

14:33:14 14 Q. I know, but I'm going to a different page.

14:33:17 15 A. What page?

14:33:19 16 Q. I'll get there, I'm going to try to do this the right
14:33:23 17 way. I'm asking you if you remember after the 23rd you're
14:33:26 18 in touch with him, by text or phone?

14:33:28 19 A. Likely, yes.

14:33:29 20 Q. But you don't know where he is on those days
14:33:32 21 necessarily?

14:33:32 22 A. I did not.

14:33:33 23 Q. Did you reach out for him to come back to your house,
14:33:36 24 do you recall?

14:33:36 25 A. I don't recall.

14:33:37 1 Q. If you'll turn to Row 31 on that exhibit, just look
14:33:43 2 down.

14:33:50 3 A. Yes.

14:33:54 4 Q. I think I'm right about the row, let me check. Yes,
14:34:02 5 if you look at Row 31?

14:34:04 6 A. Yes.

14:34:04 7 Q. Look at that. And after you have read it to
14:34:08 8 yourself, would you look up and tell me whether it refreshes
14:34:11 9 your recollection as to whether or not you were reaching out
14:34:14 10 to come back?

14:34:14 11 A. It doesn't recall a recollection.

14:34:16 12 Q. But again, in this period of time, you're texting
14:34:19 13 him, right?

14:34:20 14 A. Correct.

14:34:20 15 Q. And you were texting him to the same place that this
14:34:24 16 morning I asked you about?

14:34:25 17 A. Yes.

14:34:26 18 Q. I mean his phone from your phone?

14:34:28 19 A. Yes.

14:34:28 20 Q. And you knew that at the time you were writing what
14:34:32 21 you were writing contemporaneously by texting him, this is
14:34:36 22 not afterwards, this is at the time?

14:34:38 23 A. Correct.

14:34:41 24 MR. LOWELL: So with that I am going to ask to
14:34:43 25 read that line as I earlier did on other texts.

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14:34:48 1 MR. WISE: No objection, Your Honor.

14:34:49 2 THE COURT: Excuse me?

14:34:51 3 MR. WISE: No objection, Your Honor.

14:34:53 4 BY MR. LOWELL:

14:34:53 5 Q. On October 27th of 2018 at 10:27, you write, "don't
14:34:58 6 come back to the house, obviously you have something in New
14:35:01 7 York more important to you than me." Right? That's what
14:35:06 8 that said?

14:35:07 9 A. That's what that said.

14:35:08 10 Q. So you were concerned that he was with somebody else?

14:35:12 11 A. That's what that says, yes.

14:35:13 12 Q. And that's on the 27th? How would you characterize
14:35:18 13 at that point after the gun incident the nature of your
14:35:21 14 relationship with him, more tense, less tense, back to
14:35:25 15 normal?

14:35:26 16 A. More tense.

14:35:28 17 Q. Nevertheless, right after that, remember I asked you
14:35:32 18 before lunch whether Hunter came back from California, and
14:35:36 19 on that first day went with you to that facility that I
14:35:39 20 called, or I think it's named Caron?

14:35:42 21 A. Yes.

14:35:43 22 Q. I think that's C-A-R-O-N?

14:35:45 23 A. Correct.

14:35:46 24 Q. At that period of time when you were still, or he was
14:35:49 25 doing check-ins or any rehabilitation, he went with you

14:35:53 1 again?

14:35:53 2 A. I don't recall.

14:35:54 3 Q. Do you recall going to either an AA, AA means

14:36:02 4 Alcoholics Anonymous, meeting later in the month right after
14:36:04 5 this event?

14:36:04 6 A. I mean, I don't recall, but I was going every day.

14:36:09 7 Q. And do you remember at the end of the month, he went
14:36:11 8 with you to one of them?

14:36:14 9 A. I don't recall exactly.

14:36:16 10 Q. Okay. Again, to see if it refreshes your
14:36:23 11 recollection, if you'll look at Rows 39, 40, and 41. Take a
14:36:34 12 look at that and tell me when you're done?

14:36:36 13 MR. WISE: There is no 41.

14:36:38 14 THE WITNESS: There is just 42.

14:36:39 15 BY MR. LOWELL:

14:36:40 16 Q. Oh, I'm sorry, yes, I'm sorry. I'm sorry, I did that
14:36:44 17 wrong, I just thought they were sequential. 39, 40 and 42.
14:36:50 18 Take a look and tell me when you have read that?

14:36:53 19 A. Yes.

14:36:53 20 Q. Does that refresh your recollection that you were at
14:36:55 21 a facility, facility is a bad word, doing what you said you
14:37:00 22 were going every day?

14:37:01 23 A. Yes.

14:37:01 24 Q. Does that refresh your recollection that he joined
14:37:03 25 you there?

14:37:04 1 A. I mean, I don't recall all this, but that's what that
14:37:07 2 says.

14:37:07 3 Q. If you don't recall it, that's fine, again, I'm just
14:37:10 4 going to go through.

14:37:11 5 A. Yes.

14:37:11 6 Q. I'm sorry, this is the text you sent?

14:37:13 7 MR. WISE: I'm going to object, Your Honor, this
14:37:16 8 doesn't actually reflect an AA meeting.

14:37:20 9 BY MR. LOWELL:

14:37:20 10 Q. Did he at the end of the month -- I?

14:37:23 11 MR. LOWELL: I withdraw the question and I'll do
14:37:24 12 it again.

14:37:25 13 BY MR. LOWELL:

14:37:26 14 Q. You're not disputing with me that he would go with
14:37:29 15 you to such a meeting at the end of the month?

14:37:30 16 A. I don't recall.

14:37:31 17 Q. One way or the other, no recall at all?

14:37:35 18 A. Right.

14:37:35 19 Q. There are some things you remember and many things
14:37:37 20 you don't?

14:37:38 21 A. I don't recall him coming to an AA meeting with me.

14:37:41 22 Q. And looking at this set of texts doesn't refresh your
14:37:45 23 recollection about that?

14:37:45 24 A. It does not.

14:37:46 25 Q. Later in November, this is at the end of the month,

14:37:49 1 you were shown some other texts, one of which he is telling
14:37:53 2 you on the 3rd, looking at himself, he says "I'm a drunk,
14:37:57 3 I'm an addict, I've ruined every relationship I have ever
14:38:02 4 been in", you were asked questions about that, right?

14:38:04 5 A. Yes.

14:38:04 6 Q. When you go to an Alcoholics Anonymous meeting, is it
14:38:08 7 typical for the meeting to start with saying "hi, I'm Hunter
14:38:12 8 Biden, and I'm an alcoholic" or "I'm an addict"?

14:38:16 9 A. Yes.

14:38:17 10 Q. You understand, have you ever had to say that, not
14:38:20 11 had to, do you ever say that?

14:38:21 12 A. Yes, I do.

14:38:22 13 Q. At the time you say that, that doesn't mean you're an
14:38:25 14 addict other than in the sense that you're always an addict?

14:38:28 15 A. Correct.

14:38:29 16 Q. And then at some point at the beginning of November,
14:38:32 17 you had a text where he said that and then you know that he
14:38:35 18 then in November, after the gun incident, went to a
14:38:38 19 different kind of treatment; correct?

14:38:41 20 A. Correct.

14:38:41 21 Q. In Massachusetts?

14:38:42 22 A. Yes.

14:38:42 23 Q. And that was in November?

14:38:46 24 A. Yes.

14:38:47 25 Q. That was a month after the gun sale?

- 14:38:49 1 A. Yes.
- 14:38:49 2 Q. Weeks after the event with the police investigating
14:38:54 3 and talking to him?
- 14:38:55 4 A. I don't know that.
- 14:38:57 5 Q. In November, you know it was in November?
- 14:39:00 6 A. What was in November?
- 14:39:01 7 Q. That he went to Massachusetts?
- 14:39:03 8 A. No, I thought you meant the police, and you said --
- 14:39:05 9 Q. The police talking to you on October 23rd?
- 14:39:08 10 A. Yeah, I'm sorry.
- 14:39:09 11 Q. I'm sorry, again, bad question. October 23rd and
14:39:12 12 then weeks later he's up going to Massachusetts?
- 14:39:15 13 A. Yes.
- 14:39:15 14 Q. And indeed you drove him?
- 14:39:18 15 A. Yes.
- 14:39:18 16 Q. That you remember; right?
- 14:39:21 17 A. I do remember the drive.
- 14:39:23 18 Q. Okay. So he and you were still working together at
14:39:27 19 least in terms of trying to help him?
- 14:39:28 20 A. Yes.
- 14:39:28 21 Q. And you do remember he was attending some meetings
14:39:32 22 with you even if you can't say that's one of them?
- 14:39:34 23 A. Correct.
- 14:39:35 24 Q. You drove him up, right?
- 14:39:36 25 A. Yes.

14:39:36 1 Q. And then you didn't see him for a bit I take it after
14:39:40 2 that?

14:39:41 3 A. Correct.

14:39:41 4 Q. So lastly, between October the 6th and October
14:39:48 5 the 12th, you don't know that you ever saw him in that
14:39:51 6 six-day period; right?

14:39:52 7 A. Correct.

14:39:52 8 Q. You don't know if he was drinking, using, or either
14:39:56 9 of the above?

14:39:57 10 A. I don't know.

14:39:58 11 Q. And between the 12th and the 23rd, when the gun
14:40:02 12 incident occurred, you did not see him do drugs or even
14:40:05 13 alcohol in that period of time, did you?

14:40:07 14 A. Correct.

14:40:07 15 Q. And then afterward back in November is when he's
14:40:11 16 checking himself back in to rehab in Massachusetts?

14:40:14 17 A. Yes.

14:40:15 18 MR. LOWELL: Sorry I took so long. That's all
14:40:17 19 the questions I have.

14:40:19 20 THE COURT: Thank you.

14:40:19 21 Mr. Wise, redirect.

14:40:22 22 MR. WISE: Thank you, Your Honor.

14:40:23 23 REDIRECT EXAMINATION

14:40:25 24 BY MR. WISE:

14:40:35 25 Q. I just have a few questions, Ms. Biden. The first is

14:40:39 1 were you married just this past weekend, recently?

14:40:42 2 A. Yes.

14:40:43 3 Q. And is your husband in the audience?

14:40:45 4 A. Yes.

14:40:46 5 Q. And at the breaks have you been looking at him and
14:40:49 6 him looking at you?

14:40:50 7 A. Yes.

14:40:50 8 Q. Has any of that had anything to do with your -- the
14:40:54 9 substance of your testimony?

14:40:55 10 A. No, just support.

14:40:57 11 Q. Now, Mr. Lowell asked you, he asked you about some
14:41:01 12 phone records, I want to briefly touch on that. He asked
14:41:04 13 you whether you had a call on the morning of the 23rd at
14:41:08 14 9:51 with Mr. Biden, that he didn't answer, the defendant,
14:41:13 15 that he didn't answer. Do you remember that, do you
14:41:15 16 remember him asking that?

14:41:16 17 A. I'm getting awfully confused now with the phone calls
14:41:20 18 and I don't have a picture in front of me.

14:41:22 19 THE COURT: Slow down.

14:41:24 20 BY MR. WISE:

14:41:24 21 Q. I think Mr. Lowell asked you, he had you look at some
14:41:27 22 phone records, which was Defense Exhibit 17, which I think
14:41:30 23 is still -- in his book?

14:41:33 24 Yeah, it should be still up there.

14:41:35 25 A. Uh-huh. And the --

14:41:37 1 Q. Go to the first one in a second, but just to be
14:41:41 2 clear, you saw the defendant, as you testified on direct,
14:41:45 3 either late in the evening on the 22nd or in the middle of
14:41:48 4 the night or that morning on the 23rd, right?

14:41:51 5 A. Yeah.

14:41:52 6 Q. And I think you used the phrase, if he came in in the
14:41:55 7 middle of the night, came into bed in the middle of the
14:41:59 8 night or the next morning, you put eyes on him?

14:42:02 9 A. Yes.

14:42:02 10 Q. That's when you testified that he looked exhausted,
14:42:05 11 you weren't sure if he had been using drugs, right?

14:42:08 12 A. Correct.

14:42:08 13 Q. And that's why you went and searched the car; right?

14:42:11 14 A. Correct.

14:42:12 15 Q. Based on your observations of him?

14:42:14 16 A. Yes.

14:42:16 17 Q. At some point that morning, he left your house;
14:42:20 18 right?

14:42:21 19 A. Yes.

14:42:21 20 Q. And you don't remember when?

14:42:23 21 A. Correct.

14:42:23 22 Q. And if you look at 17, defense 17 on page 3,

14:42:29 23 Mr. Lowell asked you about a phone call. This is line 68.

14:42:35 24 The earliest phone call in this string is 9:51 a.m., right?

14:42:40 25 A. Yes.

14:42:40 1 Q. So if you come in the middle of the night or early in
14:42:43 2 the morning, this call would have been long after that,
14:42:46 3 right?

14:42:47 4 MR. LOWELL: It depends on when in the early
14:42:49 5 morning you're talking about, judge, right? Object to the
14:42:51 6 way he characterizes it, he's leading her.

14:42:55 7 MR. WISE: I'm sorry, let me do that again.

14:42:57 8 MR. LOWELL: Objection, leading.

14:42:58 9 THE COURT: Okay. Do you want to ask it in an
14:43:01 10 un-leading way?

14:43:02 11 MR. WISE: Sure.

14:43:03 12 BY MR. WISE:

14:43:03 13 Q. Did he come to your house?

14:43:05 14 A. Yes.

14:43:05 15 Q. Do you remember when?

14:43:08 16 A. I don't.

14:43:10 17 Q. Was it the middle of the night?

14:43:13 18 A. I don't know.

14:43:15 19 Q. Or the early morning?

14:43:16 20 A. Could have been the early morning.

14:43:18 21 Q. But you saw him at some point either middle of the
14:43:23 22 night or early morning?

14:43:24 23 A. Yeah.

14:43:25 24 MR. LOWELL: Objection, four times.

14:43:26 25 THE COURT: Did you -- ask it in an open ended

14:43:30 1 way.

14:43:31 2 MR. LOWELL: That's the fourth time he's asked
14:43:33 3 the same question.

14:43:33 4 THE COURT: I think he's trying.

14:43:35 5 MR. LOWELL: I understand, all right, just
14:43:37 6 leading.

14:43:37 7 BY MR. WISE:

14:43:38 8 Q. Did you see him that morning?

14:43:39 9 A. Yes.

14:43:39 10 Q. At some point, you left, right?

14:43:42 11 A. Correct.

14:43:43 12 Q. And at some point he left?

14:43:45 13 A. Correct.

14:43:45 14 Q. And at some point you talked on the phone?

14:43:48 15 A. Correct.

14:43:49 16 Q. And the earliest phone call that Mr. Lowell asked you
14:43:54 17 about was defense 17, line 68, was 9:51 a.m.; right?

14:44:01 18 A. Correct.

14:44:03 19 Q. That's not in the middle of the night, right?

14:44:06 20 A. Correct.

14:44:06 21 Q. And that's not early in the morning?

14:44:08 22 A. Correct.

14:44:08 23 Q. And then he asked you about some text messages, the
14:44:11 24 first one was the one that referenced Uber, and this is
14:44:17 25 defense 16. And the time, do you have that, 16? Defense

14:44:29 1 16, it should be the one right before it.

14:44:41 2 A. At what time now?

14:44:43 3 Q. Line 20?

14:44:44 4 A. Yes.

14:44:44 5 Q. And that text he read into the record was even later,

14:44:49 6 that's 10:23 a.m.; right?

14:44:51 7 A. Right.

14:44:52 8 Q. Again, not the middle of the night; right?

14:44:55 9 A. Right.

14:44:55 10 Q. Not early in the morning?

14:44:57 11 A. Correct.

14:44:58 12 Q. Now he asked you about AA meetings, right?

14:45:08 13 A. Yes.

14:45:08 14 Q. And he said when people go to these meetings, they

14:45:12 15 introduce themselves and they say their name and they say

14:45:15 16 I'm an addict; right?

14:45:18 17 A. Or an alcoholic, yes.

14:45:19 18 Q. Or an alcoholic. In your experience, why would they

14:45:23 19 say that?

14:45:25 20 A. Because that's what you say -- I mean, because you

14:45:32 21 believe that's what you are. But -- but I go to AA, which

14:45:38 22 is alcoholics anonymous, even though, you know, my addiction

14:45:43 23 was drugs. So I just like it better. So you can, you know,

14:45:48 24 use it in all different ways.

14:45:50 25 Q. Sure. But you say it because you mean it, right?

Marley - direct

14:45:55 1 A. Correct.

14:45:55 2 MR. WISE: Thank you. Nothing further.

14:45:57 3 THE COURT: All right. Thank you.

14:46:27 4 THE COURT: All right. What's next?

14:46:29 5 MR. HINES: Your Honor, the United States calls
14:46:33 6 Joshua Marley.

14:46:36 7 COURTROOM DEPUTY: Please raise your right hand.

14:46:41 8 Please state and spell your full name for the record.

14:46:45 9 THE WITNESS: Joshua Marley. J-O-S-H-U-A,
14:46:55 10 M-A-R-L-E-Y.

14:46:56 11 JOSHUA MARLEY, having been duly sworn was
14:47:00 12 examined and testified as follows:

14:47:04 13 DIRECT EXAMINATION

14:47:05 14 BY MR. HINES:

14:47:13 15 Q. Good afternoon, sir.

14:47:14 16 A. Good afternoon.

14:47:14 17 Q. What do you do for a living?

14:47:16 18 A. I'm a State Trooper for State of Delaware.

14:47:19 19 Q. How long have you been a State Trooper for the
14:47:22 20 Delaware State Police?

14:47:23 21 A. Approximately 15 years.

14:47:24 22 Q. And what is your current title?

14:47:26 23 A. I am a master corporal with uniformed patrol division
14:47:31 24 troop 9.

14:47:32 25 Q. Can you describe for us your training and experience

Marley - direct

14:47:36 1 over the years?

14:47:36 2 A. Sure. The academy lasts six months, it's a live-in
14:47:40 3 academy, it's three months to the road with a seasoned
14:47:42 4 officer, and then ongoing education throughout the life span
14:47:47 5 of the career.

14:47:48 6 Q. Are you familiar with Janssen's Market in the suburbs
14:47:53 7 of Wilmington here?

14:47:54 8 A. Yes.

14:47:54 9 Q. Where is Janssen's Market located?

14:47:57 10 A. It's on Route 52 in Greenville.

14:48:00 11 Q. Do you get many calls to that location?

14:48:02 12 A. Rarely, Greenville is a pretty quiet neighborhood.

14:48:06 13 Q. Did you respond to an incident at Janssen's Market on
14:48:09 14 October 23rd, 2018?

14:48:11 15 A. I did.

14:48:11 16 Q. Were you on patrol that day?

14:48:14 17 A. Correct.

14:48:14 18 Q. What was the incident you responded to on
14:48:17 19 October 23rd, 2018?

14:48:18 20 A. A stolen handgun.

14:48:20 21 Q. Did you go to the Janssen's Market?

14:48:22 22 A. Yes.

14:48:23 23 Q. What did do you when you arrived?

14:48:25 24 A. I viewed video in reference to the handgun being
14:48:30 25 disposed of in a trash can on the east side of the exterior

Marley - direct

- 14:48:33 1 and then searched the trash cans.
- 14:48:37 2 Q. So had you been advised that a handgun was missing
- 14:48:41 3 and was in a trash can?
- 14:48:42 4 A. Yes.
- 14:48:43 5 Q. Is that why you began looking at the video
- 14:48:45 6 surveillance?
- 14:48:46 7 A. Yes.
- 14:48:46 8 Q. Ultimately, were you able -- did you take any steps
- 14:48:50 9 to look for the handgun?
- 14:48:51 10 A. Yes, we emptied the trash cans.
- 14:48:53 11 Q. Around the exterior?
- 14:48:54 12 A. Yes, on the -- yeah.
- 14:48:56 13 Q. How long did that take?
- 14:48:58 14 A. Maybe 10 or 15 minutes.
- 14:49:01 15 Q. Were there any other officers there with you that
- 14:49:05 16 day?
- 14:49:05 17 A. Yes, Sergeant Clemons.
- 14:49:06 18 Q. Did Hunter Biden arrive at the Janssen's Market at
- 14:49:11 19 some point in time later that day?
- 14:49:13 20 A. Yes.
- 14:49:13 21 Q. Was he interviewed in your presence, and did you
- 14:49:16 22 participate in an interview with him?
- 14:49:18 23 A. He was interviewed in my presence, I don't know if I
- 14:49:21 24 participated much.
- 14:49:22 25 Q. How far away were you standing from him during the

Marley - direct

14:49:25 1 course of this interview?

14:49:26 2 A. If I recall correctly, just a couple of feet.

14:49:29 3 Q. Who else was with you?

14:49:30 4 A. Sergeant Clemons.

14:49:31 5 Q. Was Sergeant Clemons asking the questions and you

14:49:34 6 were sort of recording the answers?

14:49:36 7 A. Correct.

14:49:36 8 Q. When you interviewed Hunter Biden, were you looking

14:49:39 9 for the missing gun?

14:49:41 10 A. Yes, I think at that point, the gun, we couldn't find

14:49:45 11 the gun in the trash can.

14:49:47 12 Q. Was it a voluntary interview in the sense that Hunter

14:49:51 13 Biden was not under arrest, he was there, he was free to

14:49:53 14 leave if he wanted to?

14:49:54 15 A. Correct, I believed he was the victim the entire

14:49:57 16 time.

14:49:57 17 Q. Do you believe he was the victim because his handgun

14:50:00 18 had been stolen, or was that at least the investigation at

14:50:03 19 that time?

14:50:03 20 A. Yes.

14:50:04 21 Q. And is that how it was reported at least?

14:50:06 22 A. Yes, that the gun was removed from his vehicle.

14:50:10 23 Q. Did Hunter Biden say anything about who owned the gun

14:50:13 24 that was missing?

14:50:14 25 A. Yeah, he said he had purchased the gun on either the

Marley - direct

14:50:17 1 12th or the 13th from StarQuest Shooter.

14:50:20 2 Q. Hunter Biden had said he himself had purchased the
14:50:23 3 gun?

14:50:24 4 A. Yes.

14:50:24 5 Q. Did he say anything about how he discovered the gun
14:50:27 6 was missing?

14:50:28 7 A. I believe he just went into his vehicle and found it
14:50:32 8 was missing from the center console.

14:50:34 9 Q. Did he say that?

14:50:34 10 A. I think so.

14:50:35 11 Q. Did you prepare a report?

14:50:36 12 A. Yes.

14:50:37 13 Q. Would that be reflected in your report, if he had
14:50:42 14 said it?

14:50:42 15 A. Yes.

14:50:43 16 Q. Would it refresh your recollection to see that
14:50:45 17 report?

14:50:45 18 A. Sure, yeah.

14:50:54 19 MR. HINES: May I approach, Your Honor?

14:50:56 20 THE COURT: You may.

14:51:03 21 BY MR. HINES:

14:51:04 22 Q. Could you read that second sentence there, starting
14:51:07 23 with that word?

14:51:10 24 A. To be advised --

14:51:12 25 Q. No, just read it to yourself?

Marley - direct

14:51:14 1 A. I'm sorry, okay.

14:51:16 2 Q. Does that refresh your recollection as to whether or

14:51:20 3 not Hunter Biden said where he had -- his gun had been?

14:51:25 4 A. Yes.

14:51:25 5 Q. What did he say?

14:51:26 6 A. That it was missing from the center console of the

14:51:28 7 vehicle.

14:51:32 8 Q. He indicated where he had purchased the gun?

14:51:37 9 A. Yes.

14:51:37 10 Q. What was the location where he had purchased it?

14:51:39 11 A. The StarQuest Shooters gun shop on Concord Pike.

14:51:43 12 Q. What did you do next in the course of your

14:51:46 13 investigation?

14:51:46 14 A. I responded there to recover the serial number,

14:51:48 15 because Mr. Biden was not sure of what that was.

14:51:51 16 Q. Before you had left, had you asked Mr. Biden what the

14:51:55 17 serial number was?

14:51:55 18 A. I think Sergeant Clemons did.

14:51:57 19 Q. Did he answer that he didn't know?

14:51:59 20 A. That he didn't know.

14:52:00 21 Q. Did he say anything about a case for the weapon?

14:52:03 22 A. That I think in my report it says that he wasn't

14:52:08 23 quite sure where the case was, and it wasn't with him at the

14:52:10 24 time, it was important that we got that serial number and

14:52:13 25 entered the gun as stolen in the NCIC in a timely fashion.

Marley - cross

14:52:18 1 Q. Ultimately, did you go to StarQuest and confirm what
14:52:21 2 that serial number was?

14:52:23 3 A. No.

14:52:23 4 Q. Did you write a report that day reflecting the events
14:52:27 5 of that day?

14:52:27 6 A. Yes.

14:52:28 7 Q. And then is it your understanding that Lieutenant
14:52:32 8 Millard Greer was assigned to follow-up on your report after
14:52:35 9 October 23rd, 2018?

14:52:36 10 A. Correct.

14:52:41 11 MR. HINES: No further questions.

14:52:43 12 THE COURT: Mr. Lowell.

14:52:44 13 MR. LOWELL: Yes, ma'am.

14:52:46 14 CROSS-EXAMINATION

14:52:46 15 BY MR. LOWELL:

14:52:47 16 Q. Good afternoon.

14:52:48 17 A. Sir.

14:52:49 18 Q. My name is Abbe Lowell, I'm one of Mr. Biden's
14:52:53 19 attorneys.

14:52:53 20 In the sequence of events, did you arrive at
14:52:58 21 Janssen's first or did Sergeant Clemons?

14:53:02 22 A. Sergeant Clemons.

14:53:03 23 Q. How soon after he arrived did you arrive?

14:53:06 24 A. I'm not sure.

14:53:08 25 Q. Momentarily or could it have been some minutes?

Marley - cross

14:53:11 1 A. Probably some minutes.

14:53:12 2 Q. Was he already in the office of the store talking to
14:53:17 3 Ms. Biden when you arrived?

14:53:18 4 A. I'm not sure.

14:53:20 5 Q. Okay. But at some point did you also go into that
14:53:23 6 office? You said that you saw him, him being Mr. Clemons?

14:53:28 7 A. I spoke with Mr. Clemons, or Sergeant Clemons
14:53:32 8 outside, and I know I viewed the video, but I'm not sure if
14:53:35 9 I was ever in the office with anyone else at the same time.

14:53:38 10 Q. So if there is any part of the police report about
14:53:44 11 the questions asked, like the ones that Mr. Hines just asked
14:53:48 12 you about what Mr. Biden said, that's not in your earshot
14:53:53 13 because you're outside and it's Mr. Clemons doing this, is
14:53:58 14 that right?

14:53:58 15 A. Correct. I was outside by the loading docks.

14:54:01 16 Q. Right.

14:54:02 17 A. But if there was --

14:54:04 18 Q. Sorry go ahead?

14:54:05 19 A. If there was something inside, I probably wasn't
14:54:08 20 there.

14:54:08 21 Q. So anything that Ms. Biden said, you weren't there to
14:54:13 22 hear?

14:54:13 23 A. Correct. I never -- I don't think I ever even saw
14:54:16 24 Ms. Biden.

14:54:17 25 Q. And your arrival, did that come before, at the same

Marley - cross

14:54:21 1 time or after Hunter arrived?

14:54:23 2 A. I think I was there before.

14:54:25 3 Q. You're not sure?

14:54:26 4 A. I'm not sure.

14:54:28 5 Q. And you have no idea where he came from?

14:54:30 6 A. Like previous to the market?

14:54:32 7 Q. Right. Before the moment he arrives at Janssen's, do

14:54:36 8 you know where he was?

14:54:37 9 A. No.

14:54:37 10 Q. Do you know how long it took to get him there?

14:54:40 11 A. No.

14:54:41 12 Q. At some point you said that I think you were seeking,

14:54:44 13 of course, to get the serial number, to see if it was in the

14:54:48 14 system?

14:54:48 15 A. Getting the serial number so we could enter it into

14:54:52 16 the system as stolen.

14:54:53 17 Q. To enter it as stolen?

14:54:55 18 A. Correct, with it being stolen by, we didn't know who

14:54:58 19 at that time, it was important to get it in as stolen before

14:55:02 20 it could be used in a crime.

14:55:04 21 Q. Did you collaborate with Sergeant Clemons to write

14:55:07 22 the police report that you were shown to refresh your

14:55:11 23 recollection?

14:55:11 24 A. Collaborate as far as, I did my report and he also

14:55:17 25 wrote his report on his own.

14:55:18 1 Q. Say that last part?

14:55:19 2 A. He also did a report.

14:55:20 3 Q. So if in the police report of that day at the bottom

14:55:24 4 of the page it has the name Sergeant Clemons, does that mean

14:55:27 5 what's on the page was his or it's something that you both

14:55:32 6 would have collaborated about, but he wrote it?

14:55:35 7 A. I'm not --

14:55:37 8 Q. Do you still have -- did you give him that?

14:55:42 9 MR. LOWELL: May I approach?

14:55:43 10 THE COURT: You may.

14:55:44 11 MR. LOWELL: Thank you.

14:55:45 12 BY MR. LOWELL:

14:55:46 13 Q. You were shown this to refresh your recollection.

14:55:48 14 Can you do that again for me? Just take a look at that,

14:55:51 15 look down, I want you to see the bottom, I want you to see

14:55:55 16 where there are names, and tell us whether or not that

14:55:57 17 refreshes your recollection as to who is responsible for the

14:55:59 18 words on a page?

14:56:00 19 A. So this one would be myself.

14:56:02 20 Q. This one, meaning the front page?

14:56:05 21 A. Correct.

14:56:05 22 Q. Now if you'll turn to the second page.

14:56:09 23 A. Also myself.

14:56:11 24 Q. Okay. Third page?

14:56:12 25 A. Still myself.

Marley - cross

- 14:56:13 1 Q. Now on the fourth page, if your report has again, as
14:56:17 2 I was asking, a name at the bottom, does that reflect what?
- 14:56:21 3 A. That would be Sergeant Clemons.
- 14:56:23 4 Q. That's not your writing, if he asked questions,
14:56:25 5 that's what is reflected in the report?
- 14:56:28 6 A. Right. So that would be his report.
- 14:56:31 7 Q. Okay. I understand. Did you review what he wrote?
- 14:56:35 8 A. No.
- 14:56:36 9 Q. And whether he wrote this, it's all typed up in a
14:56:39 10 nice form. That's not what was done on the scene, right?
- 14:56:43 11 A. No, this would be later.
- 14:56:44 12 Q. Later the day, later the next day, do you know when?
- 14:56:47 13 A. We have three days to complete a report. So I'm not
14:56:52 14 exactly sure.
- 14:56:53 15 Q. Okay. Before it becomes finalized, whatever that
14:56:57 16 means, do you read it? The report?
- 14:57:01 17 A. Before I submit it in for approval?
- 14:57:04 18 Q. Yes.
- 14:57:05 19 A. Yes, I read it.
- 14:57:06 20 Q. At the point at which you did that for this form, had
14:57:09 21 Mr. Clemons already put his part in?
- 14:57:12 22 A. I don't know.
- 14:57:13 23 Q. But you see it in the report that it's a number of
14:57:16 24 pages, some his and some yours?
- 14:57:18 25 A. Correct. So it would be two separate reports under

Marley - cross

14:57:22 1 the same number, so like a supplement.

14:57:24 2 Q. So part could happen one time, and then the next part
14:57:28 3 happens another time, and at the end of the process it's one
14:57:31 4 report which has all the parts in it?

14:57:33 5 A. Yes, if it's the same report number, yes, you could
14:57:36 6 do supplements at any given time, you know, a day later, a
14:57:40 7 month later if new evidence comes up or whatever.

14:57:43 8 Q. Got it. If there is something about what Ms. Biden
14:57:46 9 said, you weren't in her earshot, but it would be in the
14:57:50 10 report if Mr. Clemons took that interview?

14:57:52 11 A. I would imagine.

14:57:53 12 Q. Did you know, did you review what it was he wrote
14:57:57 13 down that she said?

14:57:58 14 A. No.

14:57:58 15 Q. And you have never looked at that?

14:58:00 16 A. Not that I remember.

14:58:01 17 Q. And the next thing that happened is after you were
14:58:05 18 there, Mr. Clemons was also the one, I'm going to use the
14:58:09 19 word interview, but asked questions of Mr. Biden?

14:58:12 20 A. Yes.

14:58:13 21 Q. And I think you were outside, but were you in
14:58:17 22 earshot, did you say?

14:58:17 23 A. Right, I think all three of us were outside.

14:58:20 24 Q. Mr. Biden, Mr. Clemons and yourself?

14:58:23 25 A. Yes.

Marley - cross

- 14:58:24 1 Q. And Ms. Biden was not there?
- 14:58:25 2 A. Correct. I don't really ever recall even seeing
- 14:58:29 3 here.
- 14:58:29 4 Q. So he's interviewing Mr. Biden, you're not doing
- 14:58:34 5 that?
- 14:58:34 6 A. Yes.
- 14:58:34 7 Q. He would be responsible for putting down what you
- 14:58:38 8 were refreshed as to what Mr. Biden said?
- 14:58:39 9 A. Yes.
- 14:58:40 10 Q. When you were doing that, you were refreshed that he
- 14:58:43 11 admitted right away that he had been the one to buy the gun?
- 14:58:46 12 A. Yes.
- 14:58:46 13 Q. He told you where?
- 14:58:47 14 A. Correct.
- 14:58:48 15 Q. And he told you where he thought it was?
- 14:58:51 16 A. Yes.
- 14:58:51 17 Q. And then after that you were seeking the serial
- 14:58:55 18 number?
- 14:58:55 19 A. Yes.
- 14:58:55 20 Q. He didn't know that by heart I take it, right?
- 14:58:59 21 A. Right.
- 14:59:00 22 Q. At some point, was it you or Mr. Clemons asked him if
- 14:59:04 23 he could go find the seal serial number for the box in which
- 14:59:08 24 it came, did you do that?
- 14:59:09 25 A. I did not.

Marley - cross

- 14:59:09 1 Q. That would have been Mr. Clemons?
- 14:59:11 2 A. Yes.
- 14:59:12 3 Q. Were you there when he left to do that, or do you
14:59:14 4 know if he went to do that?
- 14:59:15 5 A. I don't know. I think I had left pretty quickly to
14:59:19 6 go try and attempt to get it on my own.
- 14:59:21 7 Q. So you went to StarQuest and you don't know whether,
14:59:25 8 or when Mr. Biden went wherever he went?
- 14:59:27 9 A. Right, I don't think I returned back to Janssen's.
- 14:59:31 10 Q. That was what I wanted to know if you went back, you
14:59:34 11 didn't?
- 14:59:34 12 A. No.
- 14:59:35 13 Q. You went to StarQuest?
- 14:59:36 14 A. Uh-huh.
- 14:59:36 15 Q. And when you went to StarQuest, you asked them if
14:59:39 16 they had a record for the sale?
- 14:59:40 17 A. Yes.
- 14:59:40 18 Q. And did you -- did they or did they just give you the
14:59:44 19 serial number which is what you were looking for?
- 14:59:47 20 A. I'm not sure if they gave me a register receipt or
14:59:50 21 they read it off the computer terminal and I copied it and
14:59:54 22 made the phone call and put it in NCIC.
- 14:59:57 23 Q. Oh the report you made, there is no copy on of what
15:00:01 24 StarQuest gave you that day if they gave you anything?
- 15:00:03 25 A. Okay.

Marley - cross

- 15:00:04 1 Q. I'm asking?
- 15:00:05 2 A. Oh, yeah, if it's not.
- 15:00:06 3 Q. If it's not there, it's not part of the report?
- 15:00:09 4 A. Right.
- 15:00:09 5 Q. You might have just asked for the serial number?
- 15:00:12 6 A. Yes.
- 15:00:12 7 Q. You didn't ask for a ATF Form 4473 on that day?
- 15:00:17 8 A. No.
- 15:00:17 9 Q. You just wanted the serial number?
- 15:00:19 10 A. Exactly.
- 15:00:19 11 Q. Were you involved after that, in getting the people
- 15:00:22 12 at StarQuest to send you the actual form that was filled out
- 15:00:25 13 by the gun buyer?
- 15:00:26 14 A. No.
- 15:00:27 15 Q. And then after you did that, after you went to
- 15:00:31 16 StarQuest you didn't go back, then your role in this would
- 15:00:35 17 then after, to then write your report?
- 15:00:36 18 A. That was it.
- 15:00:37 19 Q. And in that report, and in your dealings with
- 15:00:41 20 Mr. Biden, I think you said that he was listed as the victim
- 15:00:44 21 of a crime?
- 15:00:45 22 A. Yes.
- 15:00:45 23 Q. When you were there, did you hear him express
- 15:00:48 24 concerns about whether you were going to charge Ms. Biden?
- 15:00:51 25 A. I don't remember.

15:00:52 1 Q. But you called him a victim?

15:00:54 2 A. Right.

15:00:55 3 MR. LOWELL: That's all the questions I have.

15:00:57 4 THE COURT: All right. Redirect.

15:01:01 5 MR. HINES: Just briefly

15:01:02 6 REDIRECT EXAMINATION

15:01:02 7 BY MR. HINES:

15:01:03 8 Q. There were a lot of questions about the reports and
15:01:05 9 who wrote them. Corporal, just to be clear, the bottom of
15:01:10 10 the report clearly reflects who wrote the report, right?

15:01:13 11 A. Yes.

15:01:13 12 Q. And you wrote the first report in the sequence and
15:01:17 13 had nothing to do with the second report that Sergeant
15:01:20 14 Clemons wrote, right?

15:01:21 15 A. Correct.

15:01:21 16 MR. HINES: No further questions.

15:01:22 17 THE COURT: Thank you. Thank you, sir. You're
15:01:25 18 excused.

15:01:26 19 Okay. Should we take our afternoon break?

15:01:29 20 MR. HINES: That would be fine, Your Honor.

15:01:31 21 Thank you.

15:01:31 22 THE COURT: Let's take our afternoon break.

15:01:32 23 We'll come back in fifteen minutes.

15:01:34 24 COURTROOM DEPUTY: All rise.

15:01:36 25 (Jury exiting the courtroom at 3:01 p.m.)

Greer - direct

15:02:06 1 THE COURT: All right. Anything we need to talk
15:02:10 2 about?

15:02:11 3 MR. HINES: No, Your Honor.

15:14:12 4 (A brief recess was taken.)

15:23:19 5 COURTROOM DEPUTY: All rise.

15:23:20 6 THE COURT: All right. Bring in the jury.

15:23:28 7 (Jury entering the courtroom at 3:23 p.m.)

15:23:36 8 THE COURT: All right. Everyone, welcome back.

15:23:57 9 Everyone else may be seated. Mr. Hines, what's next?

15:23:59 10 MR. HINES: The United States calls Millard
15:24:02 11 Greer.

15:24:04 12 COURTROOM DEPUTY: Please raise your right hand.

15:24:07 13 Please state and spell your full name for the record.

15:24:11 14 THE WITNESS: Millard, M-I-L-L-A-R-D, middle
15:24:23 15 initial A, Greer, G-R-E-E-R.

15:24:26 16 MILLARD GREER, having been duly sworn, was
15:24:31 17 examined and testified as follows:

15:24:33 18 DIRECT EXAMINATION

15:24:34 19 BY MR. HINES:

15:24:38 20 Q. Good afternoon, sir.

15:24:39 21 A. Good afternoon.

15:24:40 22 Q. Are you currently employed?

15:24:42 23 A. Yes.

15:24:42 24 Q. How are you currently employed?

15:24:44 25 A. I'm a special investigator for the Delaware

Greer - direct

15:24:48 1 Department of Justice.

15:24:48 2 Q. How long have been a special investigator for the
15:24:51 3 Delaware Department of Justice?

15:24:53 4 A. Just shy of three years.

15:24:55 5 Q. What did you do prior to that?

15:24:56 6 A. I worked for the Delaware State Police.

15:24:58 7 Q. In what capacity?

15:25:00 8 A. At retirement, I was a Lieutenant in the criminal
15:25:03 9 investigation unit for New Castle County.

15:25:04 10 Q. How long were you a Delaware State Police Officer?

15:25:07 11 A. Just shy of 25 years.

15:25:09 12 Q. So Lieutenant was your last rank?

15:25:12 13 A. Yes.

15:25:12 14 Q. And what was your rank in 2018?

15:25:15 15 A. Lieutenant.

15:25:16 16 Q. I would like to direct your attention to October of
15:25:19 17 2018. Were a signed to do follow-up investigative work
15:25:23 18 regarding an incident at Janssen's Market?

15:25:26 19 A. Yes.

15:25:26 20 Q. Who assigned you to that incident?

15:25:28 21 A. My lead supervisor at the time was Captain Pete
15:25:33 22 Sawyer.

15:25:33 23 Q. When were you assigned to do investigative work?

15:25:36 24 A. I believe that was the afternoon, evening of October
15:25:42 25 the 25th, 2018.

Greer - direct

- 15:25:43 1 Q. In connection with that follow-up investigation --
- 15:25:48 2 A. 24th, I believe that was the 24th.
- 15:25:50 3 Q. So October 24th is your recollection?
- 15:25:52 4 A. I believe -- is that a Thursday?
- 15:25:58 5 Q. October 24th, 2018, is that what you believe the day
- 15:26:02 6 was?
- 15:26:02 7 A. Yeah. Yes.
- 15:26:03 8 Q. Did you review video footage in connection with your
- 15:26:08 9 follow-up investigation?
- 15:26:08 10 A. The following day, yes, the 25th I believe. Friday.
- 15:26:14 11 I was assigned on a Thursday, on Friday I looked at the
- 15:26:17 12 video.
- 15:26:17 13 Q. Tell us what steps you took to get that video footage
- 15:26:21 14 and what it showed and what you did with it?
- 15:26:24 15 A. I responded up to Janssen's Market, initially I met
- 15:26:29 16 with Paul Janssen and reviewed the interior video footage.
- 15:26:35 17 I then met with the owner of the security company,
- 15:26:40 18 Addlestone Security, and went to a security room, and viewed
- 15:26:45 19 the video footage on their system.
- 15:26:48 20 Mr. -- the owner of that company then gave me a
- 15:26:54 21 U.S. B that contained all the video footage as did Ms.
- 15:26:59 22 Janssen. I went back to my office and reviewed it
- 15:27:03 23 extensively over the next few days.
- 15:27:05 24 Q. Did some of those video show Hallie Biden arriving at
- 15:27:10 25 Janssen's Market, walking through Janssen's Market and

Greer - direct

15:27:12 1 leaving Janssen's Market?

15:27:13 2 A. It did.

15:27:14 3 Q. The jury has already seen those. Was there an
15:27:18 4 additional video that was of significance to the
15:27:20 5 investigation?

15:27:22 6 A. Yes.

15:27:23 7 Q. And what did that additional video show?

15:27:26 8 A. There is exterior video that shows the -- an elderly
15:27:36 9 gentleman park a vehicle at the far end of the parking lot
15:27:40 10 and then begin to look through trash cans at the market.

15:27:47 11 Q. And is that -- I'm going to show you in a moment, in
15:27:51 12 advance of your testimony today, did you look at
15:27:53 13 government's Exhibit 39C, and review that video footage?

15:27:57 14 A. I did.

15:27:58 15 MR. HINES: With the Court's permission, I would
15:28:00 16 like to admit that exhibit and play it.

15:28:02 17 MR. LOWELL: Without objection.

15:28:03 18 THE COURT: All right. Thank you. It's
15:28:04 19 admitted.

15:28:05 20 (Exhibit No. 39C was admitted into evidence.)

15:28:07 21 MR. HINES: Would you please play 39C, Ms. Vo.

15:28:13 22 (Video played.)

15:28:16 23 BY MR. HINES:

15:28:16 24 Q. Does the video show the man that is approaching the
15:28:20 25 exterior trash can that you described a moment ago?

Greer - direct

15:28:22 1 A. It does.

15:28:22 2 Q. Does it get cut off because there is sort of an
15:28:26 3 awning?

15:28:26 4 A. It does.

15:28:27 5 Q. Right here. So the angle only shows kind of the
15:28:30 6 right side of the trash can?

15:28:32 7 A. Correct. He's currently at a trash can that's not
15:28:35 8 related to why we're here. But he eventually makes his way
15:28:41 9 down.

15:28:41 10 Q. All right. So now at this time in the video, are we
15:28:46 11 seeing the man walk down to the trash can that is related to
15:28:49 12 this investigation?

15:28:50 13 A. Yes.

15:28:50 14 Q. Or in the vicinity of it?

15:28:53 15 A. Yes.

15:28:54 16 Q. Do you see him kind of bending over a head right
15:28:57 17 there, is that right?

15:28:58 18 MR. LOWELL: I'm sorry, can you say that again?

15:29:01 19 BY MR. HINES:

15:29:01 20 Q. Do you see a head right above the trash can that was
15:29:04 21 just bent over there a moment ago?

15:29:06 22 A. Yes. To be honest I can't tell that it's a head, I
15:29:10 23 can tell that there is movement at that trash can.

15:29:13 24 Q. All right. So did you take any steps to try and
15:29:17 25 ascertain the identity of that man, that individual that

Greer - direct

15:29:21 1 just walked toward that trash can?

15:29:23 2 A. I did.

15:29:23 3 Q. What steps did you try to take to ascertain his
15:29:27 4 identity?

15:29:27 5 A. Interviewed a number of people at Janssen's Market
15:29:30 6 and at the Greenville Shopping Center and Greenville Center
15:29:35 7 Shopping Center next door, I think it's called. There were
15:29:37 8 a lot of people familiar with, there was an elderly
15:29:41 9 gentleman that would routinely come and rummage the trash
15:29:44 10 cans for recyclables. I eventually spoke to a maintenance
15:29:49 11 worker who had a first name of Ed for this subject.
15:29:53 12 However, that's all he could provide, he couldn't provide
15:29:56 13 any further name information or vehicle or anything of that
15:30:00 14 nature.

15:30:01 15 He did point me toward the Fidelity Investments
15:30:09 16 Office.

15:30:09 17 Q. I didn't mean to cut you off, at some point in time
15:30:13 18 based on that information it was someone named Ed and the
15:30:16 19 location he was frequenting, did you begin to do some
15:30:19 20 surveillance to try to see this man looking for recyclables?

15:30:23 21 A. I did, I did multiple days of surveillance.
15:30:28 22 Eventually I did see him rummaging through trash cans. I
15:30:35 23 actually received a phone call and was told that he was in
15:30:38 24 the area while I was there, so I was able to locate him.

15:30:43 25 I then watched him over the period of the next

Greer - direct

15:30:46 1 15 minutes, I believe. And then he approached a car, I
15:30:50 2 believe it was a Chevy Equinox, that was parked over near
15:30:54 3 Janssen's Market. At that time I approached him. I
15:30:57 4 identified myself as a Delaware State Trooper, and advised
15:31:02 5 him that I was there because somebody had placed something
15:31:05 6 in a trash can that shouldn't have been there. His
15:31:08 7 immediate response was yes, they did.

15:31:10 8 I then asked him what might that be, he said a
15:31:14 9 38 Special. I then advised him that I immediately needed
15:31:19 10 that weapon, he says it's at my house. I then took his ID
15:31:25 11 to make sure he didn't have any active warrants. He
15:31:29 12 explained that he was a Navy veteran. He was retired from
15:31:33 13 --

15:31:33 14 MR. LOWELL: Objection, I was allowing the
15:31:35 15 context, now it's getting --

15:31:38 16 MR. HINES: I'll move you forward a little bit,
15:31:41 17 Lieutenant Greer. So after he indicated that he did have a
15:31:45 18 38 special, did he ultimately take you, with his consent, to
15:31:51 19 his residence to locate that firearm.

15:31:54 20 THE WITNESS: He did. Yes.

15:31:56 21 BY MR. HINES:

15:31:56 22 Q. And you went there and did you retrieve any items?

15:32:01 23 A. Yes. We responded to [REDACTED] in
15:32:06 24 Wilmington, Delaware, and he retrieved a black box from an
15:32:12 25 upstairs room, brought it down the steps, and presented it

Greer - direct

15:32:17 1 to me. He didn't present the box to me, he was holding it,
15:32:21 2 it had a number of socks in it. He pulled a gun out of one
15:32:24 3 of the socks and handed it to me and it was a .38 special.
15:32:29 4 Ultimately I was able to confirm the serial number of that
15:32:32 5 gun matched the serial number on the stolen -- theft of
15:32:36 6 firearm report taken by Trooper Marley.

15:32:39 7 Q. And in that box, you said there was a 38 special
15:32:44 8 revolver. In advance of your testimony today, did you have
15:32:46 9 a chance to look at government's Exhibit 1?

15:32:50 10 A. Yes.

15:32:50 11 Q. And is this -- is government's Exhibit 1 the 38
15:32:54 12 special revolver that Mr. Banner turned over to you?

15:32:57 13 A. Yes.

15:32:57 14 Q. Did you identify that based on the serial number
15:33:00 15 there?

15:33:00 16 A. Yes.

15:33:00 17 Q. How did he present the revolver to you, it was in the
15:33:04 18 sock you said?

15:33:04 19 A. It was in a sock, yes.

15:33:06 20 Q. And then in like a larger box?

15:33:08 21 A. Yeah, a larger black box that I would describe as a
15:33:13 22 shoe, it was a larger shoebox as maybe some high top
15:33:17 23 sneakers or boots came in it.

15:33:19 24 Q. Is there anything else that he indicated that he
15:33:21 25 retrieved from the trash receptacle that day that he turned

Greer - direct

15:33:25 1 over to you?

15:33:26 2 A. Yes, he then handed me a leather pouch that contained
15:33:30 3 a number of other items, I believe some -- a tube of chap
15:33:38 4 stick, a speed loader, that holds bullets so you can load a
15:33:44 5 revolver at one time. And a box of I believe it was Hornady
15:33:54 6 38-caliber ammunition.

15:33:59 7 MR. HINES: May I approach, Your Honor?

15:34:00 8 THE COURT: You may.

15:34:01 9 BY MR. HINES:

15:34:02 10 Q. I'm showing you government's Exhibit 4. Is this the
15:34:05 11 leather pouch that you described?

15:34:07 12 A. Yes.

15:34:07 13 Q. And what is government Exhibit 3?

15:34:10 14 A. That's the speed loader.

15:34:12 15 Q. And I'm showing you government's Exhibit 2, what is
15:34:16 16 2?

15:34:16 17 A. That's the box of ammunition.

15:34:18 18 Q. How were these items presented to you?

15:34:21 19 A. As I recall, it was just kind of all cupped in his
15:34:25 20 hand and kind of handed it all over, these items were kind
15:34:29 21 of laying in the, cupped in the pouch.

15:34:32 22 Q. So this pouch was like sort of folded open?

15:34:36 23 A. Yes. Yes. If I remember it's like a flap that goes
15:34:40 24 over and has a pocket inside of it, I believe. And I think
15:34:44 25 everything was just laying in the center and it was just

Greer - direct

15:34:46 1

opened.

15:34:47 2

Q. So kind, he kind of presented it to you like this,

15:34:51 3

like altogether?

15:34:52 4

A. Yes.

15:34:53 5

Q. How many cartridges of ammunition were in the box

15:34:59 6

when he presented it to you?

15:35:02 7

A. 23.

15:35:03 8

Q. So there were two missing from the 25 cartridge box?

15:35:07 9

A. Yes.

15:35:07 10

Q. Now, when you received those items, what did you do

15:35:14 11

with them?

15:35:16 12

A. Well before I took it, I put latex gloves on, and I

15:35:24 13

placed them in an evidence bag that I put in my -- it wasn't

15:35:31 14

a patrol car, it was an administration car, put in my police

15:35:36 15

car and drove back to Troop 2, where it was later packaged

15:35:40 16

for storage for evidence.

15:35:42 17

Q. When you say packaged and stored as evidence, did it

15:35:45 18

get placed in a Delaware State Police evidence vault?

15:35:48 19

A. It did.

15:35:49 20

Q. Is that where it remained for some period of time

15:35:52 21

thereafter?

15:35:53 22

A. Yes. I turned it all over to the evidence Sergeant,

15:35:57 23

who placed it in the evidence area. All that took place at

15:36:01 24

my office.

15:36:02 25

Q. Before putting these items in, did you do anything to

Greer - direct

15:36:06 1 examine the brown leather pouch closely, did you look at it
15:36:13 2 very closely?

15:36:14 3 A. No.

15:36:15 4 Q. At that time, what was the report you were
15:36:18 5 investigating?

15:36:19 6 A. Theft of a firearm.

15:36:22 7 Q. Did Mr. Banner indicate that all of these items, 1,
15:36:27 8 2, 3, and 4 had all come from that exterior trash can?

15:36:32 9 A. He did.

15:36:35 10 Q. Now, at that point of your investigation having
15:36:38 11 retrieved the missing items, did you reach out to the
15:36:41 12 defendant, Robert Hunter Biden?

15:36:44 13 A. I did.

15:36:46 14 Q. And did you end up communicating with Mr. Biden by
15:36:50 15 phone?

15:36:50 16 A. I did.

15:36:51 17 Q. Did Mr. Biden express anything about whether he
15:36:54 18 wanted to participate further in any investigation?

15:36:58 19 A. He was the victim of a theft of a firearm, I advised
15:37:04 20 him that I was calling to see if he sought any prosecution
15:37:08 21 of the person who took that firearm and he did not.

15:37:12 22 Q. Because Mr. Biden had declined further prosecution,
15:37:17 23 did you take any additional investigative steps at that
15:37:23 24 time?

15:37:23 25 A. Investigative steps, no.

Greer - direct

15:37:26 1 Q. So did these items just get logged into evidence and
15:37:32 2 remain there until a federal investigation was underway and
15:37:37 3 agents retrieved these items for this case?

15:37:40 4 A. Yes. But I believe the firearm was probably sent
15:37:43 5 down to the forensic firearms services unit lab for a test
15:37:48 6 fire to -- for comparison to see if it came back for a match
15:37:54 7 in anything, what's known as the NIBIN system, a system that
15:37:59 8 identifies shell casings that has special markings so we
15:38:03 9 test fire all guns that we recover.

15:38:06 10 Q. Was there any match in this case?

15:38:07 11 A. I was not advised of any matches.

15:38:10 12 Q. And there were two pieces of ammunition missing,
15:38:13 13 there was nothing in the system that suggested that those
15:38:16 14 had been linked to a known crime?

15:38:19 15 A. No, if they were, that unit would have composed a
15:38:24 16 report and sent back to me and it would have been attached
15:38:27 17 to my report, and to the best of my knowledge, I never heard
15:38:31 18 anything back from them which indicates that it was not.

15:38:33 19 Q. Did Mr. Banner also turnover an additional firearm to
15:38:37 20 you?

15:38:37 21 A. He did.

15:38:38 22 Q. And what were the circumstances regarding that
15:38:41 23 additional firearm?

15:38:42 24 A. Out of that same box he took out another sock and he
15:38:46 25 says you may want this as well, or something to that effect,

Greer - direct

15:38:51 1 going on almost six years ago now. But he handed over a
15:38:56 2 Sundance 25-caliber semiautomatic handgun, he advised that
15:39:02 3 it had been given to him by a coworker when he worked at
15:39:06 4 General Motors.

15:39:07 5 MR. LOWELL: I'm sorry, objection to the hearsay
15:39:10 6 part of this, finish the sentence, finish that, but let's
15:39:13 7 not --

15:39:16 8 THE COURT: So you can finish your sentence he
15:39:18 9 said, it's just talking about what someone told you is
15:39:23 10 different than saying what someone gave you or what you said
15:39:26 11 to someone, or what you understood, that's okay, it's what
15:39:31 12 they said.

15:39:31 13 MR. LOWELL: He should finish the thought
15:39:33 14 because I interrupted him.

15:39:36 15 THE WITNESS: I thought he did finish it.

15:39:39 16 BY MR. HINES:

15:39:40 17 Q. Did you take that additional firearm?

15:39:42 18 A. I did.

15:39:44 19 Q. And why did you take it?

15:39:46 20 A. For the same reason, I mean those are some very
15:39:49 21 suspicious circumstances there that we wanted to test fire
15:39:53 22 that gun and make sure it wasn't related to another crime.

15:39:57 23 Q. You said at this time you were investigating a theft
15:40:00 24 of a firearm, in this case, did investigators like you have
15:40:05 25 any iCloud messages or anything like that of the defendants

15:40:09 1 at that time?

15:40:09 2 A. No.

15:40:10 3 Q. This was in 2018, so had the defendant written a book
15:40:16 4 at that time indicating any drug activity to your knowledge?

15:40:19 5 A. No. I'm not sure when he wrote the book. I wasn't
15:40:23 6 aware of a book in 2018, I'm pretty sure.

15:40:27 7 Q. So based on the information known then, a separate
15:40:30 8 investigation of the defendant was not opened at that time
15:40:33 9 and at the state level, is that right?

15:40:36 10 A. No.

15:40:38 11 MR. HINES: No further questions, Your Honor.

15:40:39 12 THE COURT: All right. Thank you. Cross-exam.

15:40:43 13 CROSS-EXAMINATION

15:40:43 14 BY MR. LOWELL:

15:40:45 15 Q. Good afternoon, Lieutenant Greer. Is that in your
15:40:48 16 Delaware DOJ, what is your rank?

15:40:51 17 A. I'm just an investigator there.

15:40:53 18 Q. So I'll call you detective if that's okay?

15:40:57 19 A. Millard would be just fine.

15:41:00 20 Q. My name is Abbe Lowell, I'm one of the attorneys that
15:41:04 21 represents Hunter, okay?

15:41:05 22 A. Good afternoon, sir.

15:41:06 23 Q. Good afternoon to you. You were asked some questions
15:41:09 24 at the end, a few moments ago. At the time of this incident
15:41:13 25 in 2018, I think you mentioned that it was being

15:41:15 1 investigated because Hunter was deemed to be the victim of a
15:41:20 2 gun theft; right?

15:41:21 3 A. Yes, sir.

15:41:22 4 Q. And that's what the report states, victim?

15:41:25 5 A. Yes.

15:41:25 6 Q. As I understand the sequence, when did you get
15:41:31 7 assigned to try to do what was needed in your investigation,
15:41:37 8 what day of October, can you recall that?

15:41:41 9 A. The day after Marley took his report.

15:41:45 10 Q. So if Marley took his report on the 23rd, that would
15:41:48 11 make it the 24th?

15:41:49 12 A. Thank you, yes, the 24th.

15:41:50 13 Q. You're welcome.

15:41:51 14 And so you're assigned and then the point is to
15:41:55 15 try to find the gun as I understand it?

15:41:57 16 A. Yes.

15:41:57 17 Q. And I think you said what you did, you went and
15:42:01 18 looked at the -- to find if there was surveillance video,
15:42:06 19 correct?

15:42:06 20 A. Yes. I was aware that there was surveillance video.

15:42:09 21 Q. So you were looking to get it to review it?

15:42:12 22 A. Yes.

15:42:12 23 Q. And I think you said the first time you did that was
15:42:15 24 where? Was it at the store or at the security place?

15:42:18 25 A. The first video I looked at was at the store, but

Greer - cross

15:42:22 1 that was only interior. There is two different systems, the
15:42:26 2 interior and the exterior.

15:42:27 3 Q. Okay. So which one did you see first, the interior
15:42:30 4 or the --

15:42:31 5 A. Interior.

15:42:32 6 Q. And anything of relevance did you see on the
15:42:36 7 interior?

15:42:37 8 A. The reason I looked at the interior first is because
15:42:44 9 -- I was told that there was a person of interest who had
15:42:47 10 been seen carrying out something. I don't know if I'm
15:42:52 11 getting into hearsay here or not.

15:42:54 12 Q. No, you're not saying -- oh, you were told. Were you
15:42:57 13 looking to see if it was evidence of who either put it in
15:43:00 14 the trash or took it out of the trash?

15:43:03 15 A. Yeah, I was looking to see someone walking out with
15:43:06 16 something that was surrounded in some type of purple bag or
15:43:10 17 paper or tissue or something. I can clear that up now if
15:43:14 18 you let me.

15:43:14 19 Q. You can clear it up. You obviously knew something
15:43:18 20 about a color being purple?

15:43:19 21 A. Yes, the owners of the security company thought that
15:43:22 22 the bag that it was placed into the trash can looked purple
15:43:26 23 to them.

15:43:27 24 Q. Okay. So you went -- you were looking at the
15:43:30 25 interior to see if you could find such a thing?

Greer - cross

- 15:43:34 1 A. Yes.
- 15:43:34 2 Q. And you didn't see that in the interior?
- 15:43:36 3 A. I saw the purple tissue that he was talking about.
- 15:43:40 4 Q. Oh, that turned out not to be --
- 15:43:42 5 A. Had nothing to do with this.
- 15:43:44 6 Q. Understand. The wrapping flowers?
- 15:43:47 7 A. Yes. They wrap every floral arrangement in purple
- 15:43:52 8 tissue paper.
- 15:43:52 9 Q. Got it. So you looked at that, and then the exterior
- 15:43:56 10 video was not there at that point or is it was?
- 15:43:59 11 A. Janssen's does not have access to the exterior video,
- 15:44:04 12 only the security company does. So I moved from inside
- 15:44:08 13 Janssen's Market, to an office that is in the rear of the
- 15:44:11 14 shopping center down underneath kind of like, in a basement
- 15:44:15 15 area where they had their Multiplex system set up for kind
- 15:44:21 16 of a command center for the security video.
- 15:44:23 17 Q. And that's where you went?
- 15:44:24 18 A. That's where I went, yes.
- 15:44:26 19 Q. And that's where you saw the video?
- 15:44:28 20 A. The first time, yes.
- 15:44:29 21 Q. And then you got a USB?
- 15:44:31 22 A. Yes.
- 15:44:31 23 Q. A thumb drive, right?
- 15:44:33 24 A. Yes.
- 15:44:33 25 Q. And you went back to your office to look at it and

- 15:44:36 1 review it again?
- 15:44:37 2 A. Yes.
- 15:44:38 3 Q. And I think that's where you were shown the actual
- 15:44:41 4 video. I would like to put that back -- a moment ago you
- 15:44:46 5 were looking at it and identifying a video?
- 15:44:48 6 A. Yes.
- 15:44:49 7 Q. And that's government Exhibit 39C?
- 15:44:51 8 A. Yes.
- 15:44:52 9 Q. Would you put, Mr. Radic, 39C back up, please.
- 15:44:58 10 I want to run this again because of what
- 15:45:01 11 Mr. Hines and you discussed. So in this video as it starts
- 15:45:05 12 you'll see a man wearing a purple shirt. Stop there,
- 15:45:10 13 Mr. Radic.
- 15:45:11 14 A. I think it's actually a blue jacket.
- 15:45:13 15 Q. Blue purple, okay. In that clip, that guy wasn't
- 15:45:18 16 carrying a bag, at this point you saw him walking with
- 15:45:21 17 nothing in his hand?
- 15:45:22 18 A. Yes.
- 15:45:23 19 Q. And then he goes into the interior, right?
- 15:45:26 20 A. Yes.
- 15:45:26 21 Q. And there is no camera of that?
- 15:45:28 22 A. Unfortunately there is not.
- 15:45:30 23 Q. It would have made your job a lot easier than it was?
- 15:45:33 24 A. Yes.
- 15:45:34 25 Q. Keep going, Mr. Radic. Then I think you were asked,

Greer - cross

15:45:38 1 and this same person seems to be the person who comes out.

15:45:41 2 And when that happens, Mr. Radic, will you freeze it.

15:45:45 3 Stop there. He's not carrying a bag in that
15:45:58 4 picture, is he?

15:46:00 5 A. He does not appear to be.

15:46:04 6 Q. Keep playing Mr. Radic. He'll put his arm down.

15:46:08 7 Right there, stop, so he's not carrying a bag?

15:46:10 8 A. No.

15:46:11 9 Q. Now you'll see him go to that interior again?

15:46:14 10 A. Yes.

15:46:15 11 Q. Keep playing it. And now he's gone. Stop there. So
15:46:18 12 you can't tell what he's doing there?

15:46:20 13 A. No.

15:46:20 14 Q. Keep going. And then right there. That's where

15:46:28 15 Mr. Hines asked you if that's -- do you see his head. But
15:46:33 16 you can't identify that as a head, can you?

15:46:36 17 A. I can't say it's a head. I seen motion in the area.

15:46:42 18 Q. You can see motion. It's not a picture of him, it's
15:46:45 19 not a shirt that you saw the color of. I just wanted to
15:46:49 20 identify what that was if you could and it doesn't look to
15:46:51 21 me --

15:46:52 22 A. I think we're a little bit out of sequence here if
15:46:55 23 you'll allow me to clarify, maybe.

15:46:57 24 Q. Yeah, I just said --

15:46:59 25 A. I viewed this video countless times. It wasn't until

15:47:05 1 after I had encountered Mr. Banner and had the gun back and
15:47:10 2 went back and reviewed it more, because at that point, I
15:47:13 3 knew where he parked, how he walked up, and so prior to
15:47:17 4 recovering the gun, I had no idea that the person in that
15:47:22 5 blue jacket had anything, and I didn't notice that motion
15:47:28 6 over the trash can at that time because I had a 32-minute
15:47:34 7 window that I was looking at, not just -- I didn't notice
15:47:41 8 that motion at the trash can until after.

15:47:43 9 Q. Right.

15:47:43 10 A. I had recovered the gun.

15:47:45 11 Q. I get it. I'm just trying to figure out whether that
15:47:48 12 helps you determine that it was him at that moment with the
15:47:51 13 motion because all you I see is a little round thing and you
15:47:54 14 were asked whether or not that was the person's head and I
15:47:56 15 think you said you can't identify it as a head?

15:47:59 16 A. I cannot.

15:47:59 17 Q. Can you finish the video. That was it? Okay. So in
15:48:08 18 that video, you don't see him putting his hand in the trash?

15:48:13 19 A. No.

15:48:13 20 Q. And you didn't see him taking a bag out?

15:48:16 21 A. No.

15:48:16 22 Q. And you don't see in what condition any bag came out;
15:48:20 23 correct?

15:48:21 24 A. No.

15:48:21 25 Q. And you didn't see whether the bag was right side up

15:48:24 1 or upside down?

15:48:25 2 A. No.

15:48:26 3 Q. And you don't know at that point what's in either the
15:48:28 4 bag or anything in the bag?

15:48:30 5 A. No.

15:48:30 6 Q. And that was the end of your ability to identify what
15:48:33 7 happened on the video?

15:48:36 8 A. Yes.

15:48:36 9 Q. As I understood it then you were doing your job and
15:48:39 10 trying to figure out if anybody knew what had happened?

15:48:42 11 A. Yes.

15:48:42 12 Q. And somebody told you that there was a person who
15:48:44 13 from time to time came and looked through the trash, did
15:48:49 14 that person tell you what that person's understanding was of
15:48:53 15 why the person went through trash?

15:48:56 16 A. There were -- it was -- it seemed to be common
15:49:00 17 knowledge among the businesses there that this gentleman
15:49:06 18 rummaged for recyclables.

15:49:08 19 Q. Okay. So somebody who picks up things and then tries
15:49:11 20 to sell them --

15:49:14 21 A. Yes, it's unusual for the area. Greenville,
15:49:18 22 Centerville, it's a very affluent area that's not a lot of
15:49:24 23 people rummaging.

15:49:24 24 Q. You were told something about that and that was your
15:49:27 25 lead?

Greer - cross

- 15:49:27 1 A. Yes.
- 15:49:27 2 Q. After that you then tried to track down people who
- 15:49:31 3 might identify the person who did this?
- 15:49:33 4 A. Yes.
- 15:49:33 5 Q. And you got a name, Ed, right?
- 15:49:35 6 A. Yes.
- 15:49:35 7 Q. And then at some point as I got the sequence, later,
- 15:49:41 8 a couple of days later, somebody called you and told you
- 15:49:44 9 that that person who was identified was back in the parking
- 15:49:47 10 lot looking through trash, is that kind of right?
- 15:49:50 11 A. He was actually in an office when they called me.
- 15:49:54 12 Q. He, being the person who grabbed the material?
- 15:50:00 13 A. Ed was inside the Fidelity Investment Office at the
- 15:50:04 14 time.
- 15:50:04 15 Q. He was inside. Now I get it, he was inside the
- 15:50:07 16 offices of Fidelity doing something, not going through trash
- 15:50:11 17 at that point?
- 15:50:12 18 A. Correct.
- 15:50:12 19 Q. That's when you confronted him in the office?
- 15:50:16 20 A. No.
- 15:50:17 21 Q. You waited for him to come out?
- 15:50:18 22 A. I waited for him to come outside.
- 15:50:20 23 Q. And that's when you interviewed him?
- 15:50:22 24 A. No, I observed him for, close to an hour.
- 15:50:25 25 Q. In that hour after Fidelity, to the hour, was it

15:50:29 1 after that amount of time that you saw him going through
15:50:32 2 trash again?

15:50:33 3 A. Yes.

15:50:33 4 Q. So in that hour after Fidelity, before the trash,
15:50:36 5 what was he doing, it's an hour, 60 minutes, what was
15:50:41 6 happening in that 60 minutes?

15:50:42 7 A. So, I'm up there doing surveillance, I'm across the
15:50:46 8 street, I get a call from somebody at Fidelity Investments
15:50:51 9 saying hi, the subject you were looking for is here, I said
15:50:54 10 thank you, and that was because they had refused to identify
15:50:58 11 him, they knew who he was, but they wouldn't tell me his
15:51:03 12 name before because he was a client, they agreed to call if
15:51:05 13 he came back to the area and let me know he was in the area.
15:51:08 14 As luck would have it, they did call and I was there, so I
15:51:11 15 was able to see, they described his clothing, I was able to
15:51:14 16 see him come out of the office. I then watched him for, I
15:51:19 17 would have to look at my report to be sure, I think it was
15:51:22 18 50 minutes, I think it was from 10:50 to 11 o'clock, I
15:51:26 19 believe. Or 10:10 until 11 o'clock, 50 minutes. During
15:51:32 20 that time, he went by each trash can in the two shopping
15:51:39 21 centers and would literally lean over and dig through and I
15:51:42 22 saw him pull out plastic and aluminum.

15:51:46 23 Q. I'm just trying to suggest, not suggest, I'm trying
15:51:49 24 to ask, you said there was a period of time, 50, I'm just
15:51:52 25 asking if you're observing him going through trash for that

15:51:56 1 period of time?

15:51:57 2 A. Yes.

15:51:57 3 Q. Just in front of Janssen's?

15:51:59 4 A. No, no, he was doing both shopping centers.

15:52:01 5 Q. That's what I wanted to find out, it didn't seem like
15:52:05 6 he could be looking at three trash cans at Janssen's for 50
15:52:08 7 minutes.

15:52:09 8 A. No, I didn't count the number of trash cans that he
15:52:11 9 went through, it was quite a few, it was two shopping
15:52:14 10 centers.

15:52:14 11 Q. And then you saw him taking things out?

15:52:16 12 A. Yes.

15:52:16 13 Q. And that's when you went up to him?

15:52:18 14 A. I waited until he went to his car.

15:52:21 15 Q. Okay. So now he's at his car and then you asked him
15:52:24 16 questions?

15:52:25 17 A. Yes.

15:52:25 18 Q. Did you introduce yourself?

15:52:27 19 A. Yes, his car was parked at Janssen's, pretty much
15:52:31 20 where it was parked on that video.

15:52:32 21 Q. So you identified yourself?

15:52:34 22 A. I did.

15:52:34 23 Q. And I think you explained what you said that you were
15:52:37 24 looking for something that somebody threw out in the trash
15:52:40 25 and should not have, or something like that?

Greer - cross

15:52:42 1 A. Yes.

15:52:42 2 Q. And he agreed that that's what the case was; is that
15:52:46 3 right?

15:52:46 4 A. Yes.

15:52:46 5 Q. At that point, did you ask or did he tell you what he
15:52:50 6 was doing to have obtained that, did he tell you that's what
15:52:54 7 I do, I go through trash cans?

15:52:56 8 A. Yes.

15:52:56 9 Q. And you asked him whether he found something and
15:53:00 10 that's when he told you he had?

15:53:03 11 A. No, I didn't ask him if he found something, I said
15:53:05 12 the reason I'm contacting you, the reason I'm here in the
15:53:08 13 area and contacting you is because somebody placed something
15:53:12 14 in a trash can here that they should not have placed here.

15:53:16 15 Q. And he said?

15:53:17 16 A. And he immediately said oh, yes, they did.

15:53:19 17 Q. When did you the discover that yes they did meant the
15:53:23 18 gun, right then than or later?

15:53:25 19 A. Right then, I said what may that be.

15:53:27 20 Q. And then he identified that may be, to be a gun?

15:53:30 21 A. He said a .38 special.

15:53:33 22 Q. And at that point is when you ran, a check, a
15:53:36 23 background on-- a check of any kind on him, you got his
15:53:40 24 name?

15:53:40 25 A. I asked him for his license. And the typical police

15:53:44 1 stuff, who are you, what's your date of birth, do you do
15:53:48 2 business abroad, blah, blah, blah, and he was very
15:53:52 3 cooperative.

15:53:52 4 Q. And then at that point, you ran the check and seen
15:53:56 5 that he didn't have a criminal record or any outstanding
15:53:59 6 warrants, is that what you were looking for?

15:54:01 7 A. Correct.

15:54:01 8 Q. At that point, did you tell him in words or in effect
15:54:04 9 that it was not normal for law abiding citizens to place
15:54:09 10 guns in trash cans and that such items were critical pieces
15:54:12 11 of evidence related to the potential of serious crimes?

15:54:15 12 A. Yes, something of that nature.

15:54:17 13 Q. In words, I'm not quoting you directly. At that
15:54:20 14 point his response was to apologize, right?

15:54:23 15 A. Yes.

15:54:24 16 Q. Now, at that point, did he indicate to you after you
15:54:27 17 told him that, and apologized, and by the way, I have
15:54:31 18 another gun in my house, did he say anything about that?

15:54:34 19 A. He didn't say anything about that.

15:54:35 20 Q. Then the two of you then, you asked him where he
15:54:39 21 lived or you had his license and he said, he told you where
15:54:42 22 it was?

15:54:42 23 A. Yeah --

15:54:43 24 Q. I'm sorry, I asked a bad question. He told you that
15:54:47 25 the gun he had identified was at his house?

Greer - cross

- 15:54:49 1 A. Yes, he did.
- 15:54:51 2 Q. And then the two of you went there?
- 15:54:53 3 A. We did, I held on to his license, he drove his car, I
- 15:54:57 4 followed him over.
- 15:54:58 5 Q. And you get to the house, when you got to the house,
- 15:55:02 6 he opened the door, and was there anybody else there at the
- 15:55:09 7 time?
- 15:55:09 8 A. Well, he got to the house, he didn't have his key, he
- 15:55:12 9 had locked himself out of the house.
- 15:55:15 10 Q. He knew how to find a gun but not necessarily a key.
- 15:55:20 11 Okay. Keep going?
- 15:55:20 12 A. Yes. So we tried calling, his wife was home he said.
- 15:55:27 13 There was no answer. So we ended up pounding on -- he was
- 15:55:32 14 pounding on the door and side window, he was kind of
- 15:55:35 15 panicking a little bit, but eventually she woke up and
- 15:55:39 16 answered the door, yes.
- 15:55:40 17 Q. Okay. By the time you said you were there, and an
- 15:55:43 18 hour had went by, that started at 11ish in the morning, you
- 15:55:48 19 said --
- 15:55:48 20 A. Those times are all on my supplement.
- 15:55:51 21 Q. But you said that she eventually woke up, she had
- 15:55:54 22 been sleeping?
- 15:55:54 23 A. Yes.
- 15:55:55 24 Q. In the middle of the day?
- 15:55:56 25 A. Yes.

Greer - cross

- 15:55:57 1 Q. And she gets up and opens the door?
- 15:55:59 2 A. Yes.
- 15:55:59 3 Q. You did you talk to her?
- 15:56:03 4 A. At that moment, at that moment, no.
- 15:56:09 5 Q. Okay.
- 15:56:10 6 A. Things got a little weird at that moment.
- 15:56:13 7 Q. I would say so.
- 15:56:14 8 A. So weird in that he is now pounding on the door, his
- 15:56:18 9 wife wakes up, opens the door, you both go in. It's a split
- 15:56:25 10 level -- well there is a living room to the right, there is
- 15:56:28 11 steps that go up as soon as you go in, and as soon as she
- 15:56:32 12 finally opens, again he was kind of panicking that she
- 15:56:35 13 wasn't opening the door. As soon as she opened the door, he
- 15:56:39 14 goes running up the steps.
- 15:56:40 15 Q. He's started running up the steps?
- 15:56:42 16 A. Yes.
- 15:56:44 17 Q. You were still down --
- 15:56:45 18 A. At that point I was like whoa, whoa, whoa, we're
- 15:56:48 19 dealing with guns here, hold on.
- 15:56:50 20 Q. Well no gun here at the moment, right?
- 15:56:52 21 A. No, I had a gun, too.
- 15:56:54 22 Q. But not in a sock in his drawer?
- 15:56:57 23 A. No, no, I'm sorry.
- 15:56:59 24 Q. So he runs up and his spouse is still with you?
- 15:57:03 25 A. Yes.

Greer - cross

- 15:57:04 1 Q. Do you run up after him at that point?
- 15:57:07 2 A. No. He stopped, I asked him to stop.
- 15:57:11 3 Q. You asked him to stop? Okay. He stopped?
- 15:57:13 4 A. Yes. And I stood a couple of steps up, and he says
- 15:57:17 5 the box is right here, he's pointing towards what I assume
- 15:57:20 6 is a closet area and I said okay, well, bring it down here,
- 15:57:24 7 and he calmed down and slowly retrieved the box and walked
- 15:57:29 8 it down.
- 15:57:30 9 Q. The box was upstairs, you're on stairs, he goes and
- 15:57:34 10 gets them in your eyesight and brings the box down is that,
- 15:57:37 11 is that right or tell me why it's wrong?
- 15:57:39 12 A. I didn't see where the box was exactly staying.
- 15:57:42 13 Q. Upstairs?
- 15:57:43 14 A. It was upstairs.
- 15:57:44 15 Q. And you're on the stairs or downstairs?
- 15:57:46 16 A. I am probably standing 1 or 2 stairs up, because I
- 15:57:50 17 was beginning to chase him down.
- 15:57:52 18 Q. I get it. I get it.
- 15:57:54 19 So you're watching him, he goes and retrieves a
- 15:57:58 20 box?
- 15:57:58 21 A. Yes.
- 15:57:59 22 Q. Shoebox, did you say?
- 15:58:01 23 A. Similar to a shoebox. I believe it was probably the
- 15:58:06 24 bottom part of a shoebox that had a lid, I didn't see the
- 15:58:10 25 lid if there was a lid.

Greer - cross

15:58:11 1 Q. At this point you're with his spouse, on the steps
15:58:16 2 going up, are you conversing with her?

15:58:18 3 A. I may have had some small talk with her, said, I'm
15:58:23 4 Lieutenant Greer with the state police, please be calm,
15:58:26 5 we're okay here, I'm just conducting an investigation.

15:58:29 6 Q. And did she say anything about a gun or anything like
15:58:33 7 that at the time?

15:58:34 8 A. No.

15:58:34 9 Q. So he comes back with the box, and is the box open or
15:58:38 10 closed at the point at which that happened? I'm asking if
15:58:43 11 it has a cover or not?

15:58:45 12 A. I describe it as a shoebox that didn't have the top.

15:58:49 13 Q. Okay. So in the box was whatever was in the box
15:58:51 14 without a cover?

15:58:52 15 A. Yes.

15:58:53 16 Q. And if I understand what you said, in the box were
15:58:59 17 socks?

15:58:59 18 A. Socks, like if you're familiar when you take a pair
15:59:05 19 of socks and roll them up in a ball and stick them in your
15:59:08 20 drawer, that's what I would describe that as.

15:59:10 21 Q. But if they were rolled up in a ball, did you say the
15:59:14 22 gun was in a sock?

15:59:15 23 A. The gun was in a sock, yes.

15:59:17 24 Q. But not -- that sock couldn't have been rolled up
15:59:20 25 with a gun in it?

15:59:21 1 A. If I recall right, the rolled up socks were all on
15:59:24 2 top and these stocks that contained guns were under them.

15:59:27 3 Q. There were multiple socks in this box, but the ones
15:59:30 4 that you are talking about --

15:59:31 5 A. He had this pouch and all this other stuff were in
15:59:34 6 that box too.

15:59:35 7 Q. What was on top, the socks or the pouch or the guns?

15:59:38 8 A. The rolled up socks.

15:59:40 9 Q. Sorry?

15:59:40 10 A. The rolled up socks. What I remember seeing is a
15:59:43 11 bunch of socks.

15:59:44 12 Q. And under were the other things?

15:59:46 13 A. Yes.

15:59:46 14 Q. And the exhibit that you identified as the Colt gun,
15:59:51 15 it was inside a sock?

15:59:52 16 A. A sock, yes.

15:59:53 17 Q. See did you have the box, did he give it you to you
15:59:57 18 to look at it, or is he giving it to you himself?

16:00:01 19 A. From what I recall, he's holding the box and he pulls
16:00:05 20 out -- he reaches down and he says I think this is what
16:00:09 21 you're looking for and he pulled out a sock that has the gun
16:00:13 22 in it. I put on latex gloves and pulled the gun out.

16:00:17 23 Q. I'm going to come back to the latex gloves in a
16:00:20 24 second. He gives you the sock and you pull the gun out of
16:00:22 25 the sock?

16:00:23 1 A. Yes.

16:00:23 2 Q. Now you have the gun out of the sock, right? And you

16:00:27 3 indicated that there was also other things in that box,

16:00:31 4 right?

16:00:32 5 A. Yes.

16:00:32 6 Q. There was, for example, I think you mentioned a

16:00:37 7 leather pouch?

16:00:38 8 A. Yes.

16:00:39 9 Q. Now, at the point of there being a leather pouch, the

16:00:43 10 gun was not in that pouch at this point because you just

16:00:46 11 said it was in a sock?

16:00:48 12 A. Yes.

16:00:48 13 Q. So in the pouch was there-- was at that point, would

16:00:52 14 you call it a speed loader, was that inside the pouch, or

16:00:56 15 was that lying next to it?

16:00:58 16 A. Again, we're almost six years out.

16:01:01 17 Q. And if you don't remember, that's fine, I just want

16:01:03 18 to understand.

16:01:04 19 A. What I remember is he just kind of handed me, this is

16:01:08 20 with it too, or something, I don't know the exact words.

16:01:10 21 Q. Okay.

16:01:11 22 A. But he handed me this pouch and I believe it was kind

16:01:15 23 of like cupped with all this stuff laying inside.

16:01:18 24 Q. And did it all fit in the pouch, so the gun is not

16:01:21 25 there, was the box of bullets inside or outside?

Greer - cross

- 16:01:24 1 A. I don't think it was -- by inside you mean --
- 16:01:27 2 Q. Inside the pouch?
- 16:01:28 3 A. It was laying -- I think the pouch was open and all
- 16:01:31 4 this stuff was kind of laying.
- 16:01:33 5 Q. All the stuff, not the gun, bullets, speed loader you
- 16:01:36 6 mean, right?
- 16:01:37 7 A. Everything but the gun.
- 16:01:38 8 Q. Chap stick?
- 16:01:39 9 A. Chap stick, yeah.
- 16:01:40 10 Q. Was there a cell phone box in the box?
- 16:01:44 11 A. I would have to look at my report.
- 16:01:47 12 Q. You don't remember sitting here --
- 16:01:49 13 A. If you bring one up, there probably was.
- 16:01:52 14 Q. But that would have been in the pouch, or was it?
- 16:01:56 15 A. It was with all the stuff.
- 16:01:59 16 Q. The cell phone box?
- 16:02:03 17 A. From what -- I don't think all this stuff would fit
- 16:02:04 18 inside the pocket of the pouch.
- 16:02:05 19 Q. Exactly, that's what I'm asking. So it was in the
- 16:02:08 20 shoebox but where in the shoebox, some of it was in the
- 16:02:11 21 pouch, some not, is that correct?
- 16:02:14 22 A. I'll agree with you on that, yeah.
- 16:02:18 23 Q. All right. So now you have the box and you have
- 16:02:20 24 among other things the bullets and you have the speed
- 16:02:24 25 loader. There were no bullets in the gun when it was

16:02:26 1 retrieved were there?

16:02:27 2 A. No.

16:02:28 3 Q. And you have a box and you said there were 23 of the
16:02:31 4 bullets that there were holes for 25, correct?

16:02:35 5 A. Correct.

16:02:35 6 Q. And two loose bullets weren't in the box, right?

16:02:40 7 A. No.

16:02:40 8 Q. But they weren't in the gun?

16:02:42 9 A. No.

16:02:43 10 Q. As you looked at the gun, given your experience,
16:02:46 11 could you even see whether it had ever been fired?

16:02:51 12 A. I didn't check to see if it had been fired.

16:02:54 13 Q. You said earlier, too, that there was, you think,
16:02:59 14 maybe you're sure that there was some investigation to bring
16:03:01 15 the gun somewhere and fire it. Are you sure about that?

16:03:05 16 A. Am I sure about what?

16:03:06 17 Q. That somebody after you got the gun, brought it to
16:03:10 18 someplace and put a bullet in it and fired it?

16:03:12 19 A. I'm not sure, I never got a report back from them.

16:03:15 20 Q. You're not sure that that happened, you assume, but
16:03:18 21 you don't know that that happened?

16:03:19 22 A. I would be very surprised if it didn't.

16:03:21 23 Q. I understand what you're saying about being
16:03:24 24 surprised, but I'm looking through the material and I'm
16:03:26 25 asking whether there is any report of that happening, did

16:03:29 1 you see one?

16:03:30 2 A. I don't have one, no.

16:03:31 3 Q. So you would be surprised but you don't know if
16:03:34 4 somebody did that?

16:03:35 5 A. I do not, no.

16:03:36 6 Q. Now we're back to the box and you get the material
16:03:39 7 and you put the latex gloves on, I'll come back to that,
16:03:43 8 too.

16:03:43 9 Did you find out that day when he got the
16:03:48 10 material that he was giving you?

16:03:52 11 A. Did I --

16:03:54 12 Q. Right. Did you find out on October 29th when you are
16:03:57 13 in his house when it was that he -- did he tell you when he
16:04:04 14 had retrieved that material?

16:04:05 15 A. Not that I recall.

16:04:06 16 Q. Did he tell you anything about the specifics about
16:04:10 17 when he went into the trash, the pouch was upside down or it
16:04:13 18 was right side up or whether or not the bullets were full or
16:04:16 19 whether the bullets weren't full or anything like that that
16:04:19 20 day?

16:04:20 21 A. No, I was just concerned with recovering a stolen
16:04:25 22 firearm.

16:04:25 23 Q. At any point did he tell you or did you come to learn
16:04:29 24 whether anybody went into the trash looking for the two
16:04:32 25 stray bullets?

16:04:33 1 A. No.

16:04:34 2 Q. So you get this material and if I understand it

16:04:37 3 correctly, you're now getting it and is he that volunteers

16:04:44 4 and by the way, you might want this, too?

16:04:50 5 A. He did.

16:04:51 6 Q. And that was another gun, right?

16:04:52 7 A. It was.

16:04:53 8 Q. And it was in a different sock in the same box?

16:04:57 9 A. Yes.

16:04:57 10 Q. And underneath where the other folded socks were?

16:05:00 11 A. Yes.

16:05:01 12 Q. When you got the gun from him, the first gun or

16:05:05 13 confronted him, did you ask him when you fished out this gun

16:05:10 14 from the trash, Mr. So and so, I don't know if he said his

16:05:14 15 name yet?

16:05:15 16 A. Banner.

16:05:15 17 Q. Banner, did you report it to the police, did you ask

16:05:18 18 him that?

16:05:21 19 A. I did.

16:05:22 20 Q. Did you ask Mr. Banner if he's the one who fished it

16:05:25 21 out, why did he not call the police when he fished out a

16:05:29 22 gun, did you ask him that?

16:05:30 23 A. Yes, I did.

16:05:31 24 Q. And his response?

16:05:32 25 A. He didn't have a response.

16:05:34 1 Q. So now you've got him saying to you, and by the way,
16:05:38 2 you may want this too, right?

16:05:40 3 A. Yes.

16:05:41 4 Q. I think you identified he said that he had another
16:05:43 5 gun, right?

16:05:44 6 A. Yes.

16:05:44 7 Q. And you identified what it was, it was some sort of
16:05:47 8 semiautomatic?

16:05:48 9 A. It was a Sundance 25-caliber semiautomatic.

16:05:52 10 Q. So the Colt is a revolver with five chambers, right?

16:05:55 11 A. Correct.

16:05:56 12 Q. What's a semiautomatic?

16:05:59 13 A. I wasn't allowed to bring a gun in here.

16:06:04 14 Q. You don't have to, you can describe it, there are too
16:06:07 15 many guns in here right now.

16:06:09 16 A. If you're holding a gun in your hand, the handle
16:06:11 17 comes down in your hand right here, from the bottom, there
16:06:15 18 is an item referred to as a magazine that slides up into the
16:06:19 19 handle. It has bullets stacked in it, there is a spring at
16:06:25 20 the bottom, so there is, up at the top there is a thing
16:06:29 21 called a firing chamber and you pull the trigger there is a
16:06:33 22 hammer comes forward, hits the back of that bullet that's in
16:06:36 23 the firing chamber, there is a primer, when it strikes the
16:06:40 24 primer it creates an explosion, and sends the bullet out of
16:06:45 25 the gun.

Greer - cross

16:06:45 1 Q. Thank you, that was way too much information than I
16:06:49 2 wanted.

16:06:50 3 A. That's why it's a semiautomatic.

16:06:52 4 Q. A different kind of a handgun than one that has a
16:06:56 5 revolving chamber?

16:06:56 6 A. Yes.

16:06:57 7 Q. So he gave you that one, too?

16:06:59 8 A. Yes.

16:06:59 9 Q. Was that one loaded at the time?

16:07:01 10 MR. HINES: Objection, Your Honor may we
16:07:03 11 approach?

16:08:47 12 (Side-bar discussion.)

16:08:47 13 MR. HINES: So we've obviously given Mr. Lowell
16:08:47 14 some leeway. The crosses have been consistently lengthy,
16:08:47 15 two times our directs. He's asked thirty questions about
16:08:47 16 Mr. Banners' socks.

16:08:47 17 THE COURT: I was wondering if it was outside
16:08:47 18 the scope.

16:08:47 19 MR. HINES: We're giving some leeway, I don't
16:08:47 20 know if we're running out the clock here, but we have two
16:08:47 21 witnesses waiting who are 80 years old and we're trying too
16:08:47 22 move forward, I think it's irrelevant all these questions
16:08:47 23 about this other firearm.

16:08:47 24 MR. LOWELL: As to outside the scope, he talked
16:08:47 25 about the man giving him another gun, he already talked

16:08:47 1 about the fact that the guy explained about that gun, I have
16:08:47 2 maybe three questions about that, I don't see how that's
16:08:47 3 outside the door since you open the door about where the gun
16:08:47 4 was, I didn't --

16:08:47 5 THE COURT: This is going on a little long.

16:08:47 6 MR. LOWELL: I will cut him off.

16:08:47 7 THE COURT: I got jurors over there nodding off,
16:08:47 8 do you that at your peril, but they are half sleeping.

16:08:47 9 MR. HINES: The other thing I'm up here, I would
16:08:47 10 like to request, I did not intend to elicit this, and he
16:08:47 11 indicated the address of the Banners and I would like to
16:08:47 12 request that we strike that from the transcript.

16:08:47 13 MR. LOWELL: I see that.

16:08:47 14 THE COURT: I actually heard that and I was
16:08:47 15 wondering that so we'll strike that from the transcripts.

16:08:47 16 (End of side-bar.)

16:08:47 17 BY MR. LOWELL:

16:08:47 18 Q. So we're at the part of the story where there is a
16:08:49 19 semiautomatic gun acquired, too. Did you ask him how he got
16:08:52 20 that?

16:08:52 21 A. I did.

16:08:53 22 Q. Did you indicate that the friend gave it to him
16:08:57 23 because the friends's brother was in some form of trouble?

16:08:59 24 A. Coworker.

16:09:00 25 Q. Coworker brother was in some form of trouble?

Greer - cross

- 16:09:03 1 A. Yes.
- 16:09:03 2 Q. At that point you said you did run a check of that
- 16:09:07 3 gun, right?
- 16:09:08 4 A. Yes.
- 16:09:08 5 Q. Did you ask him anything about what was the name of
- 16:09:11 6 the coworker?
- 16:09:11 7 A. Yes.
- 16:09:12 8 Q. And did he tell you?
- 16:09:13 9 A. He couldn't recall.
- 16:09:14 10 Q. And did he ask you the name ---so he couldn't answer
- 16:09:19 11 that question, he didn't know the name of the brother who
- 16:09:21 12 was quote in trouble, is that correct?
- 16:09:24 13 A. Correct.
- 16:09:24 14 Q. So then he gave you both guns. The did you ask him
- 16:09:28 15 what was he going to do with the Colt if you had not come
- 16:09:31 16 and gotten it from him?
- 16:09:32 17 A. I did.
- 16:09:33 18 Q. What did he say?
- 16:09:34 19 A. He said it would probably sit in that box for years
- 16:09:38 20 just like the other one did.
- 16:09:39 21 Q. Did he say that the first one had been there for
- 16:09:42 22 years?
- 16:09:42 23 A. Yes.
- 16:09:42 24 Q. So now you have both and you leave. And you said
- 16:09:45 25 that you put latex gloves on?

16:09:47 1 A. Yes.

16:09:47 2 Q. Why did you do that?

16:09:49 3 A. So that to protect the evidentiary value of the item.

16:09:54 4 Q. At the point at which you were acquiring it, right?

16:09:58 5 A. Yes.

16:09:58 6 Q. But by then he had actually had the items in his

16:10:02 7 possession, right?

16:10:03 8 A. Yes.

16:10:03 9 Q. Without having latex gloves on as far as you could

16:10:06 10 tell?

16:10:07 11 A. Correct.

16:10:07 12 Q. And he, at that point, confirmed he had taken it from

16:10:10 13 the trash, right?

16:10:11 14 A. Correct.

16:10:11 15 Q. And you don't know if anybody touched it in that

16:10:14 16 period of time?

16:10:15 17 A. I do not.

16:10:16 18 Q. Right. So at that point you're just making sure that

16:10:19 19 when you get it it's in the form that you got it?

16:10:21 20 A. Yes, just trying not to contaminate it any further

16:10:25 21 than it's already been.

16:10:26 22 Q. Okay. And so the next thing that happens is I hear

16:10:30 23 you took all the material. Did you ask him as to that

16:10:34 24 second gun when he got it, did he call the police when he

16:10:40 25 got the first gun, whenever that first gun, the

Greer - cross

16:10:43 1 semiautomatic, did you ask him why he didn't call the police
16:10:46 2 about that one?

16:10:47 3 A. I don't recall. I already knew he didn't call the
16:10:52 4 police about the first one.

16:10:53 5 Q. You didn't have to ask him. You put it in the box
16:10:55 6 and you take it to Delaware State Police headquarters and
16:10:58 7 put it in a vault?

16:10:59 8 A. Troop 2.

16:11:00 9 Q. Sorry?

16:11:01 10 A. Troop 2, not headquarters.

16:11:04 11 Q. I'm sorry, some Delaware State Police facility,
16:11:08 12 right?

16:11:08 13 A. Yes.

16:11:08 14 Q. After you did that, I hear you said that you
16:11:11 15 contacted Mr. Biden who was in the police report a victim of
16:11:14 16 a stolen gun?

16:11:16 17 A. Yes.

16:11:16 18 Q. And you told him you had recovered it?

16:11:18 19 A. Yes.

16:11:18 20 Q. And I think you were asked some questions, Mr. Biden
16:11:23 21 indicated he didn't want to press charges against anybody,
16:11:26 22 either the person who threw it out or the person who
16:11:28 23 retrieved it, right?

16:11:29 24 A. Correct.

16:11:30 25 Q. And at that point, he said he didn't want the gun

16:11:32 1 back, right?

16:11:34 2 A. I don't recall him saying he didn't want the gun
16:11:36 3 back.

16:11:36 4 Q. But you didn't give it back?

16:11:38 5 A. I explained that there were some procedural things
16:11:40 6 that we needed to do before it could be returned.

16:11:43 7 Q. But you said it could be returned?

16:11:45 8 A. I said before it could be returned, yes.

16:11:47 9 Q. And then what happened is I think Mr. Hines asked you
16:11:50 10 that that was in 2018 and then years later some new
16:11:54 11 investigation occurred, right?

16:11:55 12 A. Correct.

16:11:56 13 Q. And the gun stayed in the possession of the Delaware
16:12:00 14 State Police for all that time?

16:12:01 15 A. Correct.

16:12:01 16 Q. Meaning it was never returned to Mr. Biden?

16:12:03 17 A. It was not.

16:12:04 18 Q. And then when you say that it happened over a number
16:12:08 19 of years, these events are October of 2018, right?

16:12:11 20 A. Yes.

16:12:12 21 Q. And the number of years in which this investigation
16:12:15 22 that you understand occurred were how many years later?

16:12:18 23 A. We're almost six years later now.

16:12:21 24 Q. Now, but when the investigation began, a couple of
16:12:23 25 years, three years?

Greer - cross

16:12:24 1 A. I'm not certain.

16:12:26 2 Q. Did you know what happened to the material that you
16:12:28 3 got from Mr. Banner that day that you put into the Delaware
16:12:32 4 State Police facility between the time it was retrieved and
16:12:35 5 the time that any other investigation occurred?

16:12:37 6 A. I assume it stayed in the evidence lock.

16:12:40 7 Q. I said you assumed. Do you know?

16:12:44 8 A. I never saw it again after I turned it over to
16:12:48 9 Sergeant Smith.

16:12:48 10 Q. So you wouldn't know what happened in those
16:12:50 11 intervening years?

16:12:51 12 A. No.

16:12:52 13 MR. LOWELL: Thank you for the time. I have no
16:12:54 14 other questions.

16:12:55 15 MR. HINES: No questions.

16:12:56 16 THE COURT: All right. Thank you. Thank you,
16:12:57 17 sir. You're excused. What's next.

16:12:59 18 MR. HINES: The United States calls Edward
16:13:03 19 Thomas Banner.

16:13:18 20 COURTROOM DEPUTY: Please raise your right hand.
16:13:31 21 Please state and spell your name for the record.

16:13:41 22 THE WITNESS: Edward T Banner. E-D-W-A-R-D. T
16:13:54 23 for Thomas. B-A-N-N-E-R.

16:13:57 24 EDWARD THOMAS BANNER, having been duly sworn was
16:14:03 25 examined and testified as follows:

Banner - direct

16:14:06 1 DIRECT EXAMINATION

16:14:08 2 THE COURT: All right. You can sit down, sir.

16:14:10 3 Thank you. Thank you, sir. You can sit down. You probably
16:14:18 4 want to get in the chair before it.

16:14:26 5 THE WITNESS: Thank you.

16:14:30 6 BY MR. HINES:

16:14:31 7 Q. Good afternoon, Mr. Banner. Can you hear me okay
16:14:35 8 from there? Mr. Banner, can you hear me? Good afternoon,
16:14:51 9 Mr. Banner, can you hear me? Testing, testing?

16:15:01 10 THE COURT: Do you want to stand up a little
16:15:05 11 closer.

16:15:05 12 MR. HINES: May I, Your Honor? May I stand
16:15:17 13 here, Your Honor.

16:15:18 14 THE COURT: Yes.

16:15:20 15 BY MR. HINES:

16:15:20 16 Q. Good afternoon, Mr. Banner?

16:15:22 17 A. Good afternoon.

16:15:23 18 Q. If you could speak towards this microphone, I'm going
16:15:25 19 to position it right here for you. Can you hear me okay
16:15:29 20 right now?

16:15:29 21 A. Yes.

16:15:30 22 Q. Is it better if we speak when we're closer together
16:15:34 23 so you can see my lips moving when we talk?

16:15:37 24 A. Yes.

16:15:37 25 Q. How old are you, sir?

16:15:39 1 A. 80.

16:15:41 2 Q. Are you retired?

16:15:42 3 A. Yes.

16:15:43 4 Q. How long have you been retired?

16:15:45 5 A. Since '06.

16:15:47 6 Q. What did you previously do for a living?

16:15:49 7 A. I worked at General Motors for 43 -- well over

16:15:53 8 40 years.

16:15:53 9 Q. What did you do while you were working at General

16:15:56 10 Motors for over 40 years?

16:15:58 11 A. I did production, and they shipped me out and I was

16:16:02 12 the janitor, or environmental one, and they would sometimes

16:16:13 13 they would send me to the body shop when I was work in

16:16:18 14 production.

16:16:20 15 Q. Prior to working at General Motors, did you serve in

16:16:23 16 the military?

16:16:24 17 A. I served four years while I was working at General

16:16:30 18 Motors, so I went in -- I worked about a year at General

16:16:33 19 Motors, then I went in the Navy for four years.

16:16:36 20 Q. Now, after you retired, did you acquire a hobby where

16:16:42 21 you would collect recyclables from trash cans and then

16:16:45 22 recycle them?

16:16:46 23 A. Yes, I actually started doing that before I retired

16:16:50 24 from General Motors, mostly with the aluminum cans and

16:16:54 25 plastic bottles and I would take them to New York a lot of

Banner - direct

16:16:59 1 times, and got a nickel apiece then. But now you only get
16:17:06 2 so much a pound. Anywheres, I was getting anywhere from
16:17:09 3 \$0.25 a pound to \$0.75 a pound. And they take them to a
16:17:15 4 recycle place because in New York, it's too dangerous for me
16:17:22 5 to go up there and too far, but I would get like a \$120 when
16:17:27 6 I took them to New York for plastic and cans. Now I only do
16:17:31 7 cans because plastic is not -- I don't know nothing about
16:17:35 8 plastic now.

16:17:36 9 Q. So you're both saving the environment and making a
16:17:39 10 little money on the side?

16:17:40 11 A. Yes, especially now with the gas prices.

16:17:43 12 Q. And did you have a family member in New York that you
16:17:46 13 would go visit and use that money --

16:17:48 14 A. Oh, absolutely, yes, I had family up there. And they
16:17:51 15 had two restaurants, I think they're sort of getting out of
16:17:56 16 it now, I don't know for sure.

16:17:57 17 Q. Well, let's -- I would like to direct your attention
16:18:01 18 to a particular date, October 23rd, 2018. Do you recall
16:18:07 19 finding something special at the Janssen's Market that day?

16:18:12 20 A. Yes. I don't remember the date specifically but I
16:18:17 21 definitely remember finding that, yes.

16:18:22 22 Q. And we'll go over that in a moment. In advance of
16:18:23 23 your testimony today, were you shown a video of exterior
16:18:27 24 footage from the Janssen's Market? In advance of your
16:18:31 25 testimony today, were you shown a video of the exterior of

16:18:36 1 Janssen's Market?

16:18:36 2 A. Oh, yes, yes.

16:18:37 3 Q. Did that video show you in it?

16:18:40 4 A. Yes. Yes it did.

16:18:42 5 Q. Play what's been in evidence of video 39C,

16:18:46 6 Exhibit 39C, please. And if you look at the screen before

16:18:51 7 you, Mr. Banner, it should come up in a moment. All right.

16:19:10 8 If we can pause it right there, Ms. Vo. Is that you,

16:19:15 9 Mr. Banner, in the video?

16:19:16 10 A. It sure looks like me.

16:19:18 11 Q. And now if we keep playing the video a little

16:19:23 12 further. What are you doing as you dip out of the frame

16:19:26 13 here in this first part of the video?

16:19:28 14 A. Apparently I'm looking in the trash can bin.

16:19:31 15 Q. Does Janssen's have a couple of exterior trash cans?

16:19:34 16 A. They have two right there by where you enter, one at

16:19:38 17 the entrance and one just down a little bit.

16:19:41 18 Q. We'll wait a moment. And is that you now continuing

16:19:47 19 to walk to the next trash can?

16:19:50 20 A. Uh-huh.

16:19:53 21 Q. And now when you dip out of frame again, is there a

16:19:56 22 trash can right near where that white box is on the screen?

16:19:59 23 A. Right.

16:20:00 24 Q. Do you see a little object here above the trash can?

16:20:03 25 A. Yeah.

Banner - direct

- 16:20:04 1 Q. Were you looking in that trash can?
- 16:20:06 2 A. Absolutely.
- 16:20:08 3 Q. What did you find in that trash can on that day?
- 16:20:11 4 A. Apparently I found a 38.
- 16:20:13 5 Q. A 38 what?
- 16:20:14 6 A. Pistol, or handgun.
- 16:20:18 7 Q. Now, I remember --
- 16:20:20 8 A. And there was a lot of other stuff with it, like a
- 16:20:24 9 black cylinder type thing that you load the gun with or
- 16:20:29 10 whatever, and it was within a floss or parchment, the gun
- 16:20:38 11 was, there was other stuff along with it. That pertained to
- 16:20:42 12 the gun.
- 16:20:43 13 Q. Okay. You found several items in that trash can?
- 16:20:47 14 A. Yes.
- 16:20:47 15 Q. We're going to go through each of them. In advance
- 16:20:50 16 of your testimony today, did you have an opportunity to look
- 16:20:52 17 at some of those items again?
- 16:20:55 18 A. Yes, I did.
- 16:21:03 19 Q. Let me first show you what's in evidence of, and
- 16:21:09 20 still in the same condition as yesterday, government's
- 16:21:11 21 Exhibit 1. Do you recognize this, sir, government's
- 16:21:16 22 Exhibit 1?
- 16:21:16 23 A. More than likely, yes.
- 16:21:18 24 Q. How do you recognize it?
- 16:21:19 25 A. It's a 38. And the ammo was with it. And it was two

16:21:25 1 cartridges missing.

16:21:28 2 Q. Now, government's Exhibit 2, is this the ammunition?

16:21:34 3 A. I assume that it is, if there is two missing, it's
16:21:38 4 more than likely the one.

16:21:39 5 Q. Would you please put up Exhibit 2A. And if you go to
16:21:45 6 the second page, the third page.

16:21:51 7 A. Yeah, that's it.

16:21:52 8 Q. Do you see how there is two missing there?

16:21:54 9 A. Yeah, that's it.

16:21:55 10 Q. And was there two missing when you found it out of
16:21:59 11 the trash can?

16:22:00 12 A. Yes, there was.

16:22:01 13 Q. Is this the other item that you were describing?

16:22:03 14 A. Yeah, that's a black thing I was just referring to.

16:22:06 15 Q. Do you know what this is?

16:22:08 16 A. You put the shells in it to load the gun, fast load
16:22:11 17 or something.

16:22:14 18 Q. Okay. For the record that was government's Exhibit 3
16:22:19 19 that I was just showing Mr. Banner.

16:22:21 20 Now, was this the parchment that you were just
16:22:27 21 describing, government's Exhibit 4?

16:22:32 22 A. Is this the what?

16:22:33 23 Q. You mentioned there was a parchment, I think your
16:22:37 24 word was parchment or words to that effect, was there an
16:22:43 25 item that had the items inside of it when you found it?

Banner - direct

- 16:22:46 1 A. The parchment, the gun was in that.
- 16:22:52 2 Q. This was in a sealed envelope. Can I show him 4A,
16:22:54 3 please. I'm going to show you a photograph.
- 16:22:57 4 A. Yeah, that looks like it.
- 16:22:59 5 Q. If you scroll down a little bit.
- 16:23:01 6 A. Because it was brown leather.
- 16:23:03 7 Q. There on page 3?
- 16:23:04 8 A. Yeah. No, I would say that was it.
- 16:23:10 9 Q. So when you got these items out of the trash can,
16:23:14 10 what did you do with them?
- 16:23:17 11 A. Well, I had a lunch thing that I got at General
16:23:26 12 Motors, and I put the items in that. And I didn't -- I
16:23:30 13 never looked at it again until the police officer come and
16:23:35 14 wanted to know about this particular situation.
- 16:23:39 15 Q. All right. So you took the items home after you
16:23:41 16 found them in the trash can?
- 16:23:42 17 A. Right.
- 16:23:43 18 Q. Did they stay in that object that you were
16:23:46 19 describing, did you put them in that object and did they
16:23:49 20 stay there until the police came?
- 16:23:51 21 A. Yes, they did.
- 16:23:52 22 Q. Did you do anything with the gun, did you shoot it,
16:23:54 23 did you play with it?
- 16:23:55 24 A. No, no, I put it up on the top shelf in the closet,
16:24:01 25 actually it was, I can't think of the name, but it was the

Banner - direct

16:24:07 1 lunch box that we got from General Motors, and I put it in
16:24:11 2 there.

16:24:11 3 Q. Did you have other items in there as well, like
16:24:14 4 clothing or other things like that?

16:24:16 5 A. Oh, in the closet. It was on a shelf like and that
16:24:21 6 was on the top shelf.

16:24:23 7 Q. And then --

16:24:24 8 A. Or definitely near the top, you know.

16:24:28 9 Q. Is your next memory that the police came and asked
16:24:32 10 you about the firearm?

16:24:34 11 A. Yes. Yes. I don't know whether it was weeks or
16:24:37 12 months or how long it was, but yeah, it was after that.

16:24:40 13 Q. But between the time that the police -- between the
16:24:44 14 time that you found the firearm and the police came, you
16:24:47 15 didn't touch the firearm after putting it away?

16:24:50 16 A. No, I didn't look at the items until I sort of got a
16:24:54 17 little hazy about them because I never looked at them again
16:24:58 18 until they -- until I gave him the gun.

16:25:00 19 Q. Now did the police officer come to your home and ask
16:25:03 20 you to provide him with the gun?

16:25:06 21 A. They came to my home and they started asking me
16:25:09 22 questions and they got to that subject, yes.

16:25:12 23 Q. And had the police officer first approached you in a
16:25:15 24 parking lot before he came to your home and talked to you?

16:25:18 25 A. In the parking lot, possibly, I don't remember

Banner - direct

16:25:21 1 exactly how that all came about. But I was amazed, I'm glad
16:25:28 2 that he took all this stuff down because I didn't record
16:25:32 3 anything, you know, I didn't write down when I got it, I
16:25:35 4 didn't, you know.

16:25:36 5 Q. So did you just turn everything over to the police
16:25:39 6 that you had gotten out of that trash can?

16:25:41 7 A. Yes, I did, as a matter of fact, I had another gun
16:25:44 8 that somebody at General Motors gave me years before this,
16:25:49 9 and I retired in '06 so it was years before that, and I gave
16:25:54 10 him that one, too, because I had that, either in that one or
16:25:58 11 in another lunch box just like it because somebody at work
16:26:02 12 had given me another one. I got one from the plant and then
16:26:06 13 they give me another one, so I had it either in the same one
16:26:10 14 or in a different one, you know another one.

16:26:12 15 Q. Did you ever fire or use that second gun from the
16:26:16 16 plant?

16:26:16 17 A. No, no, all 50 ammunition was with that one, but my
16:26:21 18 nephew got rid of it when I lived there because he didn't
16:26:24 19 want to take any chance on anybody getting-- start using it
16:26:29 20 for something you know, because it was in the garage then.

16:26:32 21 Q. I see like someone breaking in and taking it?

16:26:35 22 A. Yeah.

16:26:36 23 Q. So you had no ammunition for that firearm in this
16:26:39 24 house?

16:26:39 25 A. No, I gave him that gun, too.

Banner - direct

16:26:41 1 Q. The police officer, you gave him both guns?

16:26:44 2 A. Yes, I did.

16:26:44 3 Q. Turned it over. Was your wife home that day?

16:26:47 4 A. I think she was.

16:26:48 5 Q. And your wife's first name is?

16:26:50 6 A. Joanne.

16:26:51 7 Q. And how long have you guys been married?

16:26:55 8 A. I think 11 years.

16:26:58 9 Q. 11 years?

16:26:59 10 A. Yeah, I think so. She'll know better than I do.

16:27:05 11 Q. All right. Mr. Banner, this may sound like an

16:27:09 12 unusual question, but does anyone in your household use

16:27:13 13 cocaine?

16:27:14 14 A. No. No.

16:27:16 15 Q. And in your closet or your dresser or your bedroom,

16:27:21 16 have you ever seen cocaine or residue or anything like that?

16:27:24 17 A. Not that I know of.

16:27:27 18 Q. All right.

16:27:27 19 MR. HINES: I have no further questions. Thank

16:27:29 20 you.

16:27:30 21 THE COURT: Mr. Lowell.

16:27:31 22 MR. LOWELL: Thank you.

16:27:32 23 Is it okay if I do the same thing?

16:27:35 24 THE COURT: You may come on down.

16:27:37 25 MR. LOWELL: Thank you

16:27:38 1

CROSS-EXAMINATION

16:27:39 2

BY MR. LOWELL:

16:27:39 3

Q. Good afternoon, Mr. Banner, can you hear me okay?

16:27:41 4

A. I hear you better the closer you get.

16:27:43 5

MR. LOWELL: Can I be this close?

16:27:45 6

THE WITNESS: Yeah, that's all right.

16:27:47 7

BY MR. LOWELL:

16:27:47 8

Q. I'll tell you as a word of wisdom, one is best

16:27:51 9

knowing how many years you have been married to a spouse, I

16:27:54 10

can tell you.

16:27:54 11

A. What.

16:27:55 12

Q. You best know how many years you have been married to

16:27:58 13

a spouse, you said eleven years?

16:27:59 14

A. Yeah, absolutely.

16:28:00 15

Q. I just have a few questions. You said you were at

16:28:03 16

Janssen's --

16:28:04 17

A. No, I don't work there.

16:28:05 18

Q. No, not work there, I'm sorry, that's where you found

16:28:08 19

the gun, is that right?

16:28:10 20

A. Yeah, that's where I found the gun.

16:28:11 21

Q. And do you that because you were looking for

16:28:15 22

recyclable material?

16:28:16 23

A. Right.

16:28:16 24

Q. When you found the gun in the trash, was it in a bag

16:28:19 25

or not in the bag?

- 16:28:21 1 A. Was it what?
- 16:28:23 2 Q. Was it in a bag?
- 16:28:24 3 A. Well that piece of brown material, whatever it is.
- 16:28:27 4 Q. That's where it was, but was it in a shopping bag or
- 16:28:30 5 a gift bag?
- 16:28:32 6 A. I don't recall that.
- 16:28:33 7 Q. Okay.
- 16:28:34 8 A. But all the parts were there, whatever I found, they
- 16:28:36 9 were all in the trash can. I don't think they were in a
- 16:28:39 10 bag, they could have been in a bag, I don't recall that.
- 16:28:42 11 Q. Okay. And do you recall or other than today, whether
- 16:28:47 12 or not at the time you remember getting a leather pouch?
- 16:28:54 13 A. The gun was apparently in that.
- 16:28:56 14 Q. I know apparently. But were you interviewed prior to
- 16:29:00 15 today by anybody in the prosecution in which you said you do
- 16:29:03 16 not recall the leather pouch?
- 16:29:05 17 A. I recall it to a large degree, but exactly whether it
- 16:29:10 18 was wrapped in it real tight or if it was loose or what, but
- 16:29:15 19 it was all in there in the trash can with it.
- 16:29:18 20 Q. So in your understanding, whether it was in a bag,
- 16:29:22 21 there is the gun, yes, the gun, the gun?
- 16:29:25 22 A. As far as I know it wasn't in a bag, it might have
- 16:29:28 23 been in that parchment but it wasn't in a bag, as far as I
- 16:29:32 24 know.
- 16:29:32 25 Q. And the bullets, a box of bullets?

16:29:34 1 A. Yes, there was.

16:29:35 2 Q. When you retrieved the gunned, it wasn't loaded, was

16:29:39 3 it?

16:29:39 4 A. I don't think so, unless it's loaded now. If it was

16:29:42 5 loaded, it should be still loaded. I didn't --

16:29:46 6 Q. You didn't look?

16:29:47 7 A. Well not that I recall, because I certainly didn't

16:29:50 8 take any out and I didn't put any in.

16:29:53 9 Q. Did you look in the trash to see if there were any

16:29:57 10 bullets that had fallen out of the box?

16:29:59 11 A. No, no, because if they -- I only processed the top,

16:30:04 12 I don't dig down to the bottom. Especially if they're full.

16:30:09 13 Q. Okay. So you took it out of the trash?

16:30:12 14 A. Yes, sir.

16:30:12 15 Q. And then did you put it or was it in a bag or was it

16:30:16 16 all just in the parchment?

16:30:18 17 A. I might have put it in a bag with the cans, or

16:30:22 18 whatever, plastic bottles, whatever I was doing at the time.

16:30:25 19 Q. And then you brought it home to your house?

16:30:28 20 A. Yes. I don't know if I brought it directly home, I

16:30:31 21 might have been around somewhere else in town there.

16:30:34 22 Q. At some point?

16:30:35 23 A. Greenville.

16:30:36 24 Q. At some point you did bring it home?

16:30:38 25 A. Absolutely.

Banner - cross

16:30:40 1 Q. Okay. And you said when you did, you put it in a
16:30:44 2 lunch box kind of thing?

16:30:47 3 A. Yeah.

16:30:47 4 Q. Like a lunch box?

16:30:48 5 A. Not a lunch box.

16:30:50 6 Q. Tell me.

16:30:51 7 A. It's sort of like a bag, it's about that big, and I
16:30:55 8 can't think of the name of it, but suggestion plan, a
16:31:01 9 suggestion plan lunch box from General Motors and I put the
16:31:05 10 stuff in there.

16:31:06 11 Q. Now I understand like a suggestion box where people
16:31:09 12 put suggestions in?

16:31:10 13 A. Sort of like a cloth thing that you would put a lunch
16:31:13 14 in, but I never put lunches in them, I apparently used it
16:31:17 15 for that.

16:31:18 16 Q. Okay. Do you have any recall about taking the gun
16:31:21 17 you found and putting it in a sock, a sock, you know, a
16:31:26 18 sock, did you put it in a sock?

16:31:28 19 A. I didn't put it in no sock, no.

16:31:31 20 Q. Okay. So as far as you remember, no sock?

16:31:34 21 A. No sock, I don't remember no sock.

16:31:36 22 Q. And you said this box was put on the top shelf, is
16:31:39 23 that right?

16:31:40 24 A. Either the top or at near the top, you know, there
16:31:44 25 might have been something else above it, I don't know.

Banner - cross

16:31:46 1 Q. And then when the officer came and asked you
16:31:50 2 questions and you gave it to them?

16:31:52 3 A. I went up and got it, yeah.

16:31:54 4 Q. And then did you then tell him you had another gun?

16:31:59 5 A. Yeah, I might have had it right in the same one, I'm
16:32:02 6 not sure, that's a box.

16:32:06 7 Q. And when you have that other gun in the same or
16:32:09 8 another box, was that also in a sock?

16:32:13 9 A. Was what?

16:32:14 10 Q. Was that in a sock, the second one?

16:32:16 11 A. In a sock?

16:32:17 12 Q. In a sock.

16:32:19 13 A. I know nothing about a sock, that parchment or
16:32:23 14 whatever was shown there, it was in that, the other gun was
16:32:26 15 never in that.

16:32:26 16 Q. Where was the other gun?

16:32:28 17 A. It was in a -- in a suggestion plan box, the same one
16:32:34 18 or another one just like it because somebody at work had
16:32:37 19 given me a second one that was theirs, and I had two of them
16:32:42 20 as far as I know. And it might have been in a separate one
16:32:45 21 or whatever, but I didn't need either gun, I mean, I wasn't
16:32:50 22 --

16:32:50 23 Q. But you had two guns in the boxes, two?

16:32:53 24 A. Yeah, I had two guns up there together, one might
16:32:57 25 have been in one suggestion plan lunch box and the other one

Banner - cross

16:33:01 1 could have been in the other one or they both could have
16:33:04 2 been in the same one, but I don't know if they would fit, so
16:33:07 3 I didn't want to try to differentiate that, but they were
16:33:12 4 definitely separate guns.

16:33:13 5 Q. I understand, but I want to follow-up on just one
16:33:16 6 thing. When you got that first gun, the one from your
16:33:19 7 co-worker, I think you said there were bullets when you got
16:33:22 8 it?

16:33:22 9 A. No, they were not bullets in the gun, there were 50
16:33:25 10 bullets in a box just like the other box, there was two
16:33:30 11 black men, the one that gave me the gun was the brother and
16:33:33 12 he said it was his brother's gun and he didn't want his
16:33:37 13 brother to get in trouble with it, that's why he gave it to
16:33:40 14 me, so I had that one several years longer than the other
16:33:43 15 one.

16:33:43 16 Q. And it had a box of ammunition?

16:33:46 17 A. Yes.

16:33:47 18 Q. Your nephew took it away early, after that?

16:33:50 19 A. The ammunition was gone when I put the other gun in
16:33:53 20 the other.

16:33:54 21 Q. Right.

16:33:55 22 A. Because my nephew at the time I was living at my
16:33:59 23 nephews and, or where he lives, and he didn't want the
16:34:05 24 ammunition because he had two little, they were little, but
16:34:10 25 he was worried about the ammunition, somebody getting the

16:34:14 1 gun and using it, the same as I was about the other gun.

16:34:17 2 Q. When you took the material out of the trash, you held
16:34:19 3 it in your hands, you held the gun, you held the pouch?

16:34:23 4 A. I imagine I held it one way or the other when it was
16:34:27 5 in the pouch or whether it was out of the pouch, but I took
16:34:32 6 it out and looked at it at some point or I wouldn't have
16:34:35 7 known what it was.

16:34:36 8 Q. And then on October 29th when detective Greer came to
16:34:40 9 your house, you gave it all to him?

16:34:42 10 A. That's right.

16:34:43 11 MR. LOWELL: I have no other questions.

16:34:44 12 THE COURT: Thank you. Any redirect?

16:34:47 13 MR. HINES: No, Your Honor. Thank you.

16:34:48 14 THE COURT: Thank you, sir. Thank you very
16:34:50 15 much.

16:34:51 16 THE WITNESS: You're welcome.

16:34:52 17 THE COURT: You're excused. Be careful stepping
16:34:55 18 down there.

16:34:57 19 THE WITNESS: All right.

16:35:01 20 THE COURT: Mr. Hines, what's next?

16:35:03 21 MR. HINES: We're going to move on to --

16:35:08 22 THE COURT: You're not going to call her.

16:35:11 23 MR. HINES: No.

16:35:12 24 THE COURT: So then we can finish. All right.

16:35:18 25 So at this point we're going to take our evening break and

16:35:21 1 I'll just ask you not to talk to anybody, listen to anybody,
16:35:24 2 do any internet search or listen to any reports anywhere of
16:35:28 3 any kind. And I'll see you here tomorrow at 9 o'clock.

16:35:33 4 Thank you.

16:35:34 5 COURTROOM DEPUTY: All rise.

16:35:36 6 (Jury exiting the courtroom at 4:35 p.m.)

16:36:03 7 THE COURT: Mr. Lowell, like the movies, you get
16:36:10 8 to get right in their face when you cross-examine, it's not
16:36:13 9 like it's made out to be like it's in movies.

16:36:17 10 MR. LOWELL: No, it's not like Perry Mason did.

16:36:20 11 THE COURT: All right. I forgot to ask the
16:36:25 12 jurors not to talk to each other, but I will do that
16:36:28 13 tomorrow, I promise, before we do anything, and they're
16:36:31 14 going to leave right now, anyway.

16:36:33 15 The government, so defendant put in a
16:36:40 16 supplemental jury instruction document last week, a couple
16:36:48 17 weeks ago. For the most part I think I understand what
16:36:53 18 their positions are and what yours are from our prior
16:36:56 19 discussions and from their written part. There is a good
16:37:00 20 faith instruction, I don't know what the government's
16:37:02 21 position is on that, if you guys can -- you don't have to
16:37:05 22 tell me right now, but you can either submit something or
16:37:08 23 tell me in the morning so I can understand where we are.

16:37:11 24 MR. HINES: Yes, Your Honor. Will do.

16:37:13 25 THE COURT: Anything else we need to talk about?

16:37:15 1 MR. LOWELL: I'm sorry, judge.

16:37:16 2 MR. HINES: We have two witnesses in the
16:37:20 3 morning, it's the chemist and then the drug expert. We
16:37:23 4 anticipate we will rest in the morning.

16:37:28 5 THE COURT: The drug expert?

16:37:29 6 MR. HINES: Yeah, Joshua Romig from the DEA,
16:37:33 7 both we will qualify as experts in the case, the chemist is
16:37:37 8 Dr. Jason Brewer of the FBI, he's very short witness and the
16:37:41 9 drug expert, Joshua Romig from the DEA, he is in our view
16:37:45 10 not a long witness, we think we will rest in the morning.

16:37:48 11 THE COURT: Okay.

16:37:48 12 MR. LOWELL: On that judge, one hold over item.
16:37:52 13 So if you remember on our last --

16:37:55 14 THE COURT: Everybody else can be seated,
16:37:57 15 apologize.

16:37:59 16 MR. LOWELL: On our lab expert, you wanted to
16:38:02 17 hear from them, we're not deciding whether we're going to
16:38:04 18 call him until I hear Agent Brewer, but he'll be here if we
16:38:08 19 decide to do that so you can voir dire him if that's what
16:38:11 20 you want to do.

16:38:12 21 THE COURT: Yes.

16:38:13 22 MR. LOWELL: Okay thank you.

16:38:15 23 THE COURT: And so yeah, actually why don't we
16:38:18 24 do this, if they rest, then maybe we can take a little bit
16:38:21 25 longer of a break if you want, before you put on your case,

16:38:25 1 if you want to do that, or you can-- we can do it at
16:38:28 2 lunchtime, take a little bit longer lunch and you can think
16:38:32 3 about whether you want to put him on.

16:38:34 4 MR. LOWELL: That would be helpful, also in
16:38:37 5 terms of timing, this is not going to delay the game because
16:38:40 6 no matter what we would have on this point depending on that
16:38:44 7 witness, very few, 2 or 3, maybe not even witnesses, we told
16:38:48 8 the government who they are, and then we would make the
16:38:51 9 decision as to whether Mr. Biden is going to testify. Even
16:38:54 10 if that happened, judge, the whole thing can be done
16:38:57 11 testimony by Monday at the end of the day, so if we took a
16:39:00 12 longer break, that may be good because we also want to
16:39:03 13 present to you which we'll file whatever way you want it,
16:39:06 14 the Rule 29.

16:39:07 15 THE COURT: Got it. Okay.

16:39:08 16 MR. LOWELL: Thank you.

16:39:09 17 THE COURT: Anything you all have?

16:39:10 18 MR. HINES: No, Your Honor, thank you.

16:39:12 19 THE COURT: All right. Then we'll see you in
16:39:13 20 the morning.

16:39:14 21 COURTROOM DEPUTY: All rise. Court is
16:39:26 22 adjourned.

16:39:26 23 (Court adjourned at 4:39 p.m.)

24

25

1 I hereby certify the foregoing is a true and
2 accurate transcript from my stenographic notes in the proceeding.

3 /s/ Dale C. Hawkins
4 Official Court Reporter
5 U.S. District Court
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