

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ORAL HILLARY,

Plaintiff,

-vs-

Docket#: 12-CV-01669

VILLAGE OF POTSDAM, EDWARD TISCHLER,
Individually and in his Official
Capacity, MARK MURRAY, Individually and
in his Official Capacity, CHARLIE
DANIELS, Individually and in his
Official Capacity, MICHAEL AMES,
Individually and in his Official
Capacity, POLICE OFFICERS JOHN DOE
1-100, Individually and in their
Official Capacity,
Defendants.

DEPOSITION OF:

MARK R. MURRAY
[REDACTED]

DATE:

Potsdam, New York 13676

TIME:

February 4, 2014

LOCATION:

2:00 p.m. to 5:55 p.m.

2 Park Street

Potsdam, New York 13676

TAKEN BY:

Counsel for the Plaintiff

ORIGINAL

APPEARANCES:

FOR THE PLAINTIFF:

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ALSO PRESENT:

Edward F. Tischler

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INDEX TO EXHIBITS

Murray

EXHIBIT	DESCRIPTION	PAGE:LINE
1	Handwritten notes	7:03
2	Forensic Latent Print Exam	110:08

OBJECTIONS MARKED FOR RULING

PAGE:LINE
67:09
138:15

STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED by and between
the attorneys for the respective parties hereto as follows:

THAT the presence of a Referee be waived;

THAT the filing of the transcript be waived;

THAT all objections to questions except as to the
form thereof be reserved until the time of trial;

THAT the transcript of testimony may be signed
before any Notary Public or other officer authorized to
administer oaths;

THAT this Deposition may be utilized for all
purposes as provided by the Federal Rules of Civil Procedure;
and

THAT all rights provided to all parties by the
Federal Rules of Civil Procedure shall not be deemed waived
and the appropriate sections of the Federal Rules of Civil
Procedure shall be controlling with respect hereto.

1 Thereupon,

2 MARK R. MURRAY,

3 a Witness, after having been first duly sworn, was examined
4 and testified as follows:

5 EXAMINATION

6 BY MR. TAFARI:

7 Q. All right. Hello, Lieutenant Murray. Do you
8 believe that Garrett Phillips was posing for child
9 pornography?

10 MR. MORTATI: Objection to form. You may answer.

11 A. No, I do not.

12 Q. Did you ever write down anywhere that you believe
13 Garrett Phillips may be posing for child pornography?

14 A. Could you clarify the question? Do I believe
15 personally or did I write down that as a lead?

16 Q. Well, that was the first question.

17 A. Can you please repeat the question?

18 Q. Okay. I'll go back to the first one. Do you
19 believe Garrett Phillips was posing for child pornography?

20 A. No.

21 Q. Did you ever write down anywhere that you believed
22 Garrett Phillips may have been posing for child pornography?

23 A. I do not recall if I wrote that down, but I do

1 remember that coming up as a potential lead to see if that
2 was the case.

3 Q. And why did that come up?

4 A. I believe there was an unfounded e-mail anonymously
5 sent to Chief Tischler and myself or forwarded to myself
6 regarding that kind of allegation.

7 Q. And who sent Chief Tischler and yourself that
8 e-mail?

9 A. Ultimately, there were two e-mails. Both of them
10 were sent by Richard O'Hanlon.

11 (Murray Exhibit No. 1 was marked for
12 identification.)

13 Q. And in those e-mails, what from those e-mails led
14 you to believe that Garrett may have been posing for child
15 porn?

16 MR. MORTATI: Objection. He testified he didn't
17 believe Garrett was posing for child porn so your
18 question is improper. You may answer over objection.

19 A. Like I testified before, I do not believe Garrett
20 Phillips posed for child pornography.

21 Q. Was there something about the e-mail sent from
22 Richard O'Hanlon that had you investigate that?

23 MR. MORTATI: Objection to form. You may answer.

1 A. Without actually seeing the e-mail and the content
2 of the body, I wouldn't recall the exact content.

3 Q. All right. I'm going to have you to -- I'm going
4 to ask you to look this over, please, Lieutenant Murray. And
5 I'm going to -- and I'm going to state to you that that was
6 given over -- handed over to me as a part of the discovery
7 received from Potsdam village.

8 A. Okay.

9 Q. Now, first of all, do you recognize --

10 A. Just give me a second, please.

11 (Witness examining document.)

12 A. I'm assuming --

13 Q. I'll ask the question first.

14 A. Can we go off the record or --

15 Q. No, I'll just ask the question and you can answer
16 it.

17 MR. MORTATI: If the witness has a question about
18 the exhibit, Mr. Tafari, he's allowed to state whatever
19 concern he has about the exhibit he's looking at.

20 THE WITNESS: I'm just assuming this is a two --
21 it's a one sheet, two sides, that's why there's some
22 transparency, it's the print from the --

23 MR. MORTATI: Okay. I see what you mean.

1 THE WITNESS: I just wanted to make sure. Go
2 ahead.

3 Q. Okay. My question is: Do you recognize the
4 handwriting on that document?

5 A. Yes, I do. This has refreshed my recollection.

6 Q. And whose handwriting is on that document?

7 A. There's at least three different, if not four
8 different persons -- actually, there are at least four
9 different persons' handwriting on this document.

10 Q. Is your handwriting on that document?

11 A. Yes.

12 Q. And where is your handwriting on the document?

13 A. At the top left portion of the page one.

14 Q. And do you recognize the handwriting underneath
15 that document?

16 A. I do.

17 Q. And whose is that?

18 A. It appears to be Officer Matthew Seymour's
19 handwriting.

20 Q. Okay. And what does it say on that first page?

21 A. It says 10/29/12 12:30 hours abbreviated, from MAS
22 to LT, and then crossed out is dell and crossed out is series
23 21 and it's Anne Johnson 265-2619, Dan Carranza - babysat for

Burnham Reporting (315) 379-0205

22 Q. Okay. And why was the scene secure?

23 A. To back up, I initially received a phone call from

Burnham Reporting (315) 379-0205

1 them when Dan was in jail - cheated her on an antique. And
2 it says porn all over apartment. Garrett may have posing for
3 kiddy porn.

4 Q. Okay. Now, do you know why the officer wrote that
5 narrative?

6 A. I'm assuming it was a lead that he was given or
7 generated.

8 Q. Okay. And have you seen that document before
9 today?

10 A. Yes.

11 Q. Okay. Did you ever investigate whether or not
12 Garrett Phillips was posing for child porn?

13 A. Yes.

14 Q. And what was the results of those investigations?

15 A. My findings were that that allegation was
16 unfounded.

17 Q. Okay. Now, on October 24th, 2011, when did you
18 first arrive at 100 Market Street?

19 A. I don't recall arriving at 100 Market Street that
20 night. It would have been later after the scene was secured.
21 I'd estimate 6:30 area.

22 Q. Okay. And why was the scene secure?

23 A. To back up, I initially received a phone call from

1 my dispatch stating that there was an unresponsive
2 12-year-old at 100 Market Street. That's all the information
3 I had initially. I responded because I was -- at the time I
4 was in South Colton coaching a soccer game, responded
5 immediately to the hospital because that's where the victim
6 had been taken. And the shift supervisor or the senior
7 officer working had -- or both patrol units had secured the
8 scene, as we do with any unattended death.

9 Q. When you say secured the scene, could you explain
10 in regular people talk what that means?

11 A. Physically stood by the door, entrances to the
12 apartment, and made -- you know, made sure that no one came
13 or went.

14 Q. Okay. Now, was anyone who was not a police
15 officer, whether Potsdam PD or a sheriff, allowed to enter
16 100 Market Street, Apartment 4, when the scene was secured?

17 A. During what time period?

18 Q. During the time period you were there.

19 A. I wasn't -- I responded to the hospital, which I
20 wasn't responsible for securing the scene.

21 Q. Okay.

22 A. My understanding was the scene was secured.

23 Q. Do you know why they would secure a scene?

1 A. For any unattended death or any suspicious injury,
2 a serious injury, manpower permitting, it would be a good
3 idea to secure your scene, not knowing if it's a crime scene
4 potentially or not.

5 Q. So do you recall what time you arrived at the
6 hospital that night, October 24th, 2011?

7 A. My estimation is I arrived at the hospital
8 approximately in the area between 5:45 to 6:00 p.m., to the
9 best of my recollection.

10 Q. Okay. And when you arrived there, was Garrett
11 Phillips already at the hospital?

12 A. My understanding is that he was receiving medical
13 treatment inside the emergency room of the hospital, yes.

14 Q. Do you recall what time Garrett Phillips actually
15 died on 10/24/2011?

16 MR. MORTATI: Objection to form.

17 A. No.

18 MR. MORTATI: Declared dead? I mean, there's -- no
19 one can know that, but you can answer over objection.

20 A. I do not recall.

21 Q. All right. After you left the hospital, Lieutenant
22 Murray, where did you go?

23 A. I believe I responded either with Chief Tischler or

1 -- either in the same vehicle or separately together to 100
2 Market Street.

3 Q. And did you actually enter Garrett Phillips's
4 apartment?

5 A. No, I did not.

6 Q. Why not?

7 A. I don't recall the exact reason because the scene
8 was secure, but also my understanding was it was going to
9 either -- we had already been -- back up to the hospital we
10 had already been in contact with the state police major crime
11 units and the troop B major crimes investigators and we were
12 coordinating to have their forensic investigation unit
13 process that scene.

14 Q. Okay. Now, you're -- as a lieutenant you are
15 qualified to enter a secured scene; correct?

16 A. Yes.

17 Q. Okay. So if you had wanted to go to the apartment,
18 no one could stop you, could they?

19 MR. MORTATI: Objection to form. You can answer.

20 A. My chief could tell me not to go. I have superior
21 officers.

22 Q. And Chief Tischler is your superior officer;
23 correct?

1 MR. MORTATI: Objection.

2 Q. Was your superior officer; correct?

3 A. At the time of October 24th, 2011, yes, he was.

4 Q. Did Chief Tischler ever tell you not to go in the
5 apartment?

6 A. I do not recall him telling me to not go or to go.

7 Q. And, again, you don't know why you didn't go inside
8 the apartment?

9 MR. MORTATI: Asked and answered. You can answer
10 again.

11 A. I may have gone to the door of 100 Market to speak
12 with the patrols that were there or to just get an initial
13 overview of the scene.

14 Q. Okay. Now, you had signed -- you had written -- in
15 fact, you had written an affidavit to secure a search warrant
16 for Mr. Hillary; correct?

17 A. Yes.

18 Q. Okay. And the information contained in that
19 affidavit, was that your personal knowledge or was that
20 hearsay information?

21 MR. MORTATI: Objection to form. That calls for a
22 legal conclusion, the second half of your question,
23 Mani. You can answer over objection.

1 A. I'm not sure -- you're talking about -- you're
2 specifically referring to my affidavit for the search warrant
3 of Nick Hillary's person?

4 Q. Correct.

5 A. It has all the above. It has my personal
6 knowledge, the knowledge of other investigators, sworn
7 affidavits from witnesses, and other information and beliefs.

8 Q. Okay. And you wrote this affidavit on October 26,
9 2011; correct?

10 A. If I could look at the document, I could confirm
11 it. I believe, yes.

12 MR. TAFARI: Okay. All right. This was marked
13 before for Mr. Tischler.

14 MR. MORTATI: No, no, no, don't take the exhibit
15 sticker off.

16 MR. TAFARI: No. I'm saying this was marked before
17 for Mr. Tischler. Could we have this marked for Mr.
18 Murray?

19 MR. MORTATI: You don't need to re-mark it, you can
20 just identify it as whatever exhibit number from the
21 deposition of Mr. Tischler.

22 Q. Okay. All right. Mr. Murray, I'm going to show
23 you what was previously marked as Exhibit 2 for you to take a

1 look at.

2 A. Okay. As far as the numbering, the Exhibit 1 over
3 there, this is Exhibit 1 here. Does it have to be like 1A or
4 something?

5 Q. No, no.

6 MR. MORTATI: This is Exhibit 1 from your
7 deposition. Exhibit 2 that you are being shown is the
8 Exhibit 2 marked during the deposition of Mr. Tischler.

9 THE WITNESS: Okay.

10 (Witness examining document.)

11 A. Okay.

12 Q. Thank you. Now, after October 24, 2011, when was
13 the next time you went to 100 Market Street?

14 A. I do not recall.

15 Q. Okay. Now, in your affidavit that you wrote for
16 the search warrant --

17 A. To go back to the prior question, my best
18 recollection would be 10/25, the next day after the forensic
19 investigation unit had concluded their search and processing
20 of that scene. I believe they walked me through.

21 MR. MORTATI: When you say 10/25, you mean the date
22 or the time?

23 THE WITNESS: 10/25/2011, October.

1 MR. MORTATI: Thank you.

2 Q. All right. Now -- thank you. Now, you state --
3 now, when you went to Market Street on 10/25, did you go to
4 Apartment 4F? I'm sorry. Did you go to Apartment 4?

5 A. I'm not sure of the number without having my memory
6 refreshed, but it was the apartment that was rented and
7 habitated by Tandy Cyrus, Garrett Phillips and Aaron Collins.

8 Q. Okay. On 10/25 you went to that apartment?

9 A. My recollection is I went to that scene after it
10 was processed, yes.

11 Q. Now, where were you at 5:00 p.m. on October 24,
12 2011?

13 A. I was at Swift Field, South Colton.

14 Q. And you said you were coaching soccer; correct?

15 A. Yes, sir.

16 Q. Was those -- was it kids you were coaching soccer
17 to?

18 A. By kids you mean --

19 Q. Children.

20 A. They're young adults. I would say -- it was the
21 varsity -- boys varsity level so, you know, anywhere from a
22 freshman in high school to a senior in high school.

23 Q. Is that something you've done a lot, soccer

1 coaching?

2 A. Not a lot. In three years exp -- I've coached
3 several teams.

4 Q. Okay. Do you have any experience playing soccer?

5 A. Yes, I do.

6 Q. Okay. Did you play soccer in high school?

7 A. Yes, I did.

8 Q. Did you play in college?

9 A. Yes, I did.

10 Q. Okay. What school did you play for?

11 A. I play -- I played for Potsdam High School at the
12 high school level and then SUNY Potsdam at the collegiate
13 level.

14 Q. And what years did you play for SUNY Potsdam?

15 A. From '99 to 2000.

16 Q. Were you ever coached by Nick Hillary?

17 A. No, I was not.

18 Q. Okay. Did you ever play against St. Lawrence
19 during '99 or 2000?

20 A. I did.

21 Q. All right. And were you at South Colton when you
22 first received the call that an incident had occurred at
23 Market Street?

1 A. Yes. I remember it because it was my -- my brother
2 was a senior captain and it was -- I think it was parents
3 night or -- and I had to abruptly leave.

4 Q. And did you leave immediately?

5 A. Yes, once I received the phone call.

6 Q. And South Colton, that's approximately 30 minutes
7 away; is that correct?

8 A. No, approximately 15, 20 minutes.

9 Q. Okay. And how long did it take you to drive to
10 Potsdam on 10/24/2011?

11 A. I don't recall. I made the best time I could.

12 Q. Now, you visited Mr. Hillary's apartment on Monday,
13 10/24/2011; correct?

14 A. Yes.

15 Q. Were you told to visit Mr. Hillary's apartment by
16 Chief Tischler?

17 A. Yes.

18 Q. What exactly did Chief Tischler instruct you to do
19 on 10/24/2011?

20 A. I remember we had a discussion in my office just to
21 the fact it -- the incident itself was still -- still highly
22 unknown and obviously we were treating it as a suspicious
23 injury or death. And any -- it seems like many or all the

1 family members that had had most recent contact or any
2 contact with Garrett were at the hospital already. The only
3 -- the only person we could think of that we hadn't touched
4 base with as far as someone that would have had contact or
5 knowledge of Garrett, father figure or otherwise, was
6 Mr. Nick Hillary.

7 Q. Okay.

8 A. So we -- Chief Tischler decided I should contact
9 him by -- make contact with him. And first of all, to see if
10 he even knew something had happened to Garrett, almost like a
11 death notification scenario.

12 Q. So you went to Mr. Hillary simply to notify him of
13 Garrett's death?

14 A. No. I called Mr. Hillary first from my recorded
15 phone line at the police station and asked him if he could
16 come down to the station. He said yes.

17 Q. Sorry.

18 A. That he'd have his assistant drive him down, and we
19 ended the phone call. And then approximately five -- not
20 even 10 minutes later, he called me back, said he couldn't
21 come down because his kids were at the apartment sleeping and
22 I asked if I could come up there, if it would be okay and he
23 said yes. And myself, Investigator Gary Snell of the state

1 police and Investigator Woodruff of the state police
2 responded up to Meadow East, Leroy Street, to Mr. Hillary's
3 apartment.

4 Q. Okay. Was Mr. Casey Collins at the hospital on
5 10/24/2011?

6 A. Yes. I had -- I had actually called him in transit
7 from South Colton to Potsdam. I had his cell phone number.
8 I can't -- I can't recall if I called him -- I think I called
9 him directly. I'm not sure if I got an answer. And then I
10 called his sister Mindy Collins, and now Mindy Thompson,
11 asking where Casey was, that if they were aware that
12 something had happened to Garrett and they should respond to
13 the hospital if they could. So I'm not sure if I -- if she
14 contacted Casey to go to the hospital or if I did. I don't
15 recall.

16 Q. Did you speak to Casey Collins when he was at the
17 hospital?

18 A. I don't recall exactly who I talked to, it was a
19 circus. Every which person or every person from his family
20 were circling, coming in and out of the ER wailing and
21 crying, inconsolable. It was a horrific scene.

22 Q. Did Chief Tischler speak to Casey Collins at the
23 hospital on 10/24/2011?

1 A. I don't recall if Chief -- who Chief Tischler
2 talked to other than myself and the members of the state
3 police that responded.

4 Q. Okay. Now, you stated earlier that Mr. Hillary was
5 the only person or father figure that you -- the police
6 hadn't spoken to previously; correct?

7 A. One of the -- one of the persons that we hadn't
8 made contact with, and I'm not sure if he was the only
9 person. I know that John Jones was at the -- was at the
10 hospital, Casey Collins was at the hospital, all of the
11 Phillips, Mr. and Mrs. Paul, Brian Phillips. And I wasn't
12 completely aware of Garrett's family dynamics at that point
13 in time.

14 Q. Okay. But you didn't make contact with Casey
15 Collins at the hospital though; correct?

16 A. I may have. I don't recall. I think I did talk to
17 him there but I don't recall.

18 Q. When was the first time you spoke to Casey Collins
19 after Garrett Phillips had died?

20 A. Assuming that he -- the time of death is the 24th,
21 evening, and assuming that I talked to him at the hospital,
22 that would have been the first time. After that I spoke to
23 him on October 25th at approximately 8:00 in the morning,

1 8:30 in the morning.

2 Q. But you don't know if you spoke to him at the
3 hospital on 10/24; correct?

4 A. I believe I did, but I don't recall.

5 Q. So is it that you do not remember whether or not
6 you spoke to him?

7 A. I believe I did.

8 Q. What did you say to him?

9 A. I do not recall.

10 Q. Do you recall if you asked him his whereabouts at
11 the time Garrett was killed?

12 A. I don't recall.

13 Q. Do you recall if you asked him when the last time
14 was he spoke to Garrett Phillips?

15 A. As I testified, I don't recall what our -- the
16 content of our conversation was.

17 MR. MORTATI: You're referring to at CPH, correct,
18 Mani?

19 MR. TAFARI: Yes.

20 THE WITNESS: The 24th; right?

21 MR. MORTATI: Right.

22 Q. Did you notate or memorialize any of the
23 conversations you had with individuals on 10/24/2011?

1 A. Yes.

2 Q. Did you notate the conversation you had with
3 Mr. Hillary on 10/24/2011?

4 A. Yes, yes.

5 MR. TAFARI: All right. Mr. Mortati, I'm going to
6 request a copy of that. We didn't receive it.

7 MR. MORTATI: We've provided you the entire
8 investigative file. It should be in the investigative
9 file.

10 A. The recorded phone calls placed to Mr. Hillary
11 to --

12 Q. No. Did you --

13 A. I did the supporting deposition that's included in
14 the case file.

15 MR. MORTATI: I think, and correct me if I'm wrong,
16 I think what he's referring to is did you prepare some
17 notes to memorialize the actual conversation you had
18 with Nick when you went to the house on the 24th?

19 THE WITNESS: No, no, no. I wrote a deposition
20 after the fact.

21 MR. MORTATI: No, not a supporting deposition or
22 something like that but actual notes.

23 THE WITNESS: Okay.

1 Q. Now, why did you not memorialize the conversation
2 you had with Mr. Hillary on 10/24/2011?

3 MR. MORTATI: At that time?

4 A. On the 24th?

5 Q. Yes.

6 A. At that point in time I had no reason to believe he
7 was a suspect. It was more of a death notification capacity
8 that we went and spoke to him at his house. I'm assuming if
9 he was a father figure to this young boy he would want to
10 know something was wrong, something had happened, and that
11 the boy had died.

12 Q. And who told you that Mr. Hillary was a father
13 figure to the boy?

14 A. I guess my own assumption was I knew they resided
15 together and that Mr. Hillary was romantically involved for
16 some period of time with Tandy Cyrus, the biological mother
17 of Garrett.

18 Q. And you knew this information prior to 10/24/2011?

19 A. Yes.

20 Q. How did you come about this information?

21 A. I guess just common knowledge. I know who Tandy
22 Cyrus is. I know who the soccer coach for Clarkson is.
23 Obviously there were prior domestic incidents, domestic

1 violence reports, between Nick's ex-girlfriend and him
2 involving their breakup and subsequent relationship with
3 Tandy that had come through the police station that I was
4 aware of.

5 Q. Did Ms. Tandy Cyrus ever make any reports against
6 Mr. Hillary prior to 10/24/2011?

7 A. Not any reports directly as complainant to suspect
8 or as a relationship like that, but I believe there were --
9 she was involved as like an associated person with reports
10 that came through our station, yes.

11 Q. Did you receive reports at your station complaining
12 about Mr. Hillary prior to 10/24/2011?

13 A. I believe Stacia Lee may have filed some sort of
14 report against Mr. Hillary. There was a period of time where
15 Mr. Hillary had -- his vehicle was keyed, he brought down an
16 estimate for the damages. And he strongly suspected I think
17 at that point in time it was either Stacia Lee or John Jones
18 that had perpetrated that.

19 Q. My question is --

20 A. I don't --

21 Q. -- was the report against Mr. Hillary?

22 MR. MORTATI: Excuse me. Mr. Tafari, will you let
23 him finish the answer? You can continue.

1 A. And there was a second report I distinctly remember
2 in which Mr. Hillary had filed a complaint upon the breakup
3 and his subsequent romantic relationship with Tandy Cyrus
4 that Stacia Lee had -- Stacia Lee had cut up his clothing and
5 destroyed some belongings. And I remember our office had
6 conferred with the district attorney as to how they wanted to
7 prosecute it. I think it was a criminal mischief charge in
8 the end.

9 Q. Prior to October 24th, 2011, did you receive or did
10 the Potsdam police receive a report of a complaint against
11 Mr. Hillary?

12 A. Against Mr. Hillary. I do not recall.

13 Q. Do you have any documentation that a report was
14 filed against Mr. Hillary prior to 10/24/2011?

15 A. I do not recall.

16 Q. You don't recall if you have documentation?

17 A. I do not recall.

18 Q. Did Ms. Tandy Cyrus report to the police before
19 October 24th, 2011, that Mr. Hillary had stalked her?

20 A. I do not recall. Not to my knowledge.

21 Q. Prior to October 24th, 2011, did Ms. Tandy Cyrus
22 report to the police that Mr. Hillary had entered her
23 apartment without authorization?

1 A. No, not to my knowledge.

2 Q. Prior to October 24th, 2011, did Ms. Tandy Cyrus
3 report to the Potsdam police that she was in fear of
4 Mr. Hillary?

5 A. Not to my knowledge, no.

6 Q. All right. Now, you said you went to Mr. Hillary's
7 apartment to notify him of Garrett's death on 10/24/11;
8 correct?

9 A. Yes.

10 Q. Did you go there to investigate him as a possible
11 suspect on 10/24/2011?

12 MR. MORTATI: Objection. Asked and answered. You
13 can answer.

14 A. No, it was not -- it was not our underlying reason
15 for making contact with Mr. Hillary.

16 Q. So did you go to his apartment as a courtesy to
17 him?

18 A. Yes. As he was unable to come to my station as a
19 courtesy to me, I in turn responded to speak with him at his
20 residence, yes.

21 Q. Now, you wanted him to drive down to the Potsdam
22 police station so you could tell him that Garrett had died?

23 A. Yes.

1 Q. Did you ask John Jones to drive down to the Potsdam
2 police station?

3 A. No, because I spoke with him at the hospital prior
4 to that, that night, when Garrett was brought to the
5 hospital.

6 Q. Did you ask Tandy Cyrus to drive down to the
7 Potsdam police station that night?

8 A. The night of the 24th?

9 Q. Yes.

10 A. No. She was at the hospital, I couldn't even talk
11 to her, she was inconsolable understandably, seeing as how
12 her 12-year-old son was dead.

13 Q. Okay. Did you ever ask Casey Collins to come down
14 to the station?

15 A. Yes.

16 Q. When did you ask him that?

17 A. He was -- I'm not sure if I directly asked him but
18 he came to our station October 25th at around 8:00 a.m. or
19 8:30 a.m.

20 Q. Now, why did you ask Mr. Hillary to come to the
21 station but not ask Mr. Collins?

22 A. Mr. Collins did come to our station.

23 Q. My question is: Why did you request on 10/24/2011

1 that Mr. Hillary come to your station and not request that
2 Mr. Collins come to the station that day?

3 A. It's easier for me to talk to someone at my
4 station. You know, a lot of people don't like the police
5 showing up at their house, more discrete.

6 Q. So my question is: Why didn't you ask Mr. Collins
7 to come down to the station that night?

8 A. Because I had already spoken to him at the hospital
9 to the best of my recollection.

10 Q. So you do recall speaking to him at the hospital?

11 A. I -- that's what I testified to, that I believe I
12 spoke to him. I don't recall the content but I believe he --
13 I know he responded. I think I spoke to him.

14 Q. Now, you also spoke to another gentleman that
15 Ms. Cyrus was intimately -- had an intimate relationship
16 with; correct?

17 A. Yes.

18 Q. Who was that?

19 A. I'm drawing a blank on his name. Chad Tessier
20 maybe.

21 Q. Okay.

22 A. And you said if you -- the question you worded was
23 that I made contact with him. I did not. Members of the

1 investigation did.

2 Q. With who?

3 A. With who?

4 Q. What -- I'm sorry, what was your --

5 A. You said something like I made contact with Chad
6 Tessier, right, that's what the implication is, what you're
7 saying. I did not depose him or take a statement or speak
8 with him.

9 Q. No, I just asked if -- okay. Do you know who Chad
10 Tessier is?

11 A. Yes.

12 Q. Did you ask Mr. Tessier to come down to the police
13 station on October 24th, 2011?

14 A. I did not make contact with Chad Tessier.

15 Q. Did anyone from your police department ask Chad
16 Tessier to come down to --

17 A. I believe members from the New York State Police
18 major crime unit made contact with Mr. Tessier.

19 Q. And what --

20 A. I'm not sure it was determined that he had any
21 relationship with Tandy or connection with Tandy until
22 subsequent days after the investigation commenced.

23 Q. All right. Now, when you went to Mr. Hillary's

1 home on 10/24/2011, first of all, what time did you arrive at
2 Mr. Hillary's home?

3 A. I don't recall the exact time. I'd estimate it was
4 somewhere around 9:00 p.m. to 9:30 p.m., immediately after
5 our second phone call.

6 Q. And was there anyone else at Mr. Hillary's home
7 when you arrived?

8 A. Yes.

9 Q. Who was that?

10 A. Myself, Investigator Gary Snell, New York State
11 Police Investigator Woodruff with the New York State Police,
12 who I later came to learn is Ian Fairlie was at the
13 apartment, and Mr. Hillary had said on the phone prior to me
14 coming that his kids were there. I did not see any children,
15 assumed -- assumedly there were children in the bedroom
16 sleeping.

17 Q. Okay. But you didn't check the bedroom; correct?

18 A. No, I didn't go through Mr. Hillary's house at that
19 point in time.

20 Q. All right. Did you see Mr. Fairlie at the
21 apartment?

22 A. Yes.

23 Q. Did you speak with Mr. Fairlie at the apartment?

1 A. Yes.

2 Q. What did you say to Mr. Fairlie?

3 A. Hello.

4 Q. And what did he say?

5 A. Hello. He then went into the porch -- there's like
6 a little porch area, smoking area, with like -- it was a
7 little awkward because there's open -- there's windows right
8 there so he was sitting there in view the whole time.

9 Q. Okay. Now, did you have a conversation with
10 Mr. Hillary on 10/24/2011 when you went to his apartment that
11 night?

12 A. Yes.

13 Q. What did you say to Mr. Hillary?

14 A. I remember something, not verbatim, but just to the
15 effect of I'm sorry to have to be the one to tell you this
16 but something has happened to Garrett, we don't know what.
17 He acted completely surprised, as though I was telling him
18 for the first time, which is, you know, obviously a difficult
19 situation to tell anybody that there's a child that's been
20 hurt. He reacted by saying oh, my God, how could this be or
21 something to that effect. And I believe I asked him where --
22 you know, where he had been or --

23 Q. All right. So your exact words to Mr. Hillary on

1 --

2 A. No.

3 Q. Yeah, yeah, my fault. You stated that you said in
4 sum and substance that something had happened to Garrett and
5 we don't know what; correct?

6 A. Correct.

7 Q. All right. And Mr. Hillary responded in sum and
8 substance, oh, my God; correct?

9 A. Oh, my God, how can this be or and put his hands to
10 his face and put his head down, acted very upset.

11 Q. Okay. Did Mr. Hillary seem sad?

12 A. I'm not sure that sad is the right word. Shocked.
13 Shocked would be better.

14 Q. Did he ask you what had happened to Garrett?

15 A. No, he didn't really -- he didn't -- I don't recall
16 him making any inquiries about anything to do with what had
17 happened.

18 Q. Did you tell him that Garrett Phillips had died?

19 A. Yes. I believe we told him that Garrett had
20 passed. Investigator Snell was also talking as well. He
21 also stated that his daughter had told him something or that
22 his daughter had said something, but I'm not sure, I don't
23 recall exactly what he said.

1 Q. Okay. Did you write down what he said?

2 A. I memorialized it later in a deposition form.

3 Q. Did you write down anywhere in your deposition that
4 Mr. Hillary stated that his daughter had told him Garrett had
5 died?

6 A. No, I didn't say that his daughter had told him
7 that Garrett had died. He said his daughter had told him
8 something. I didn't know what that meant.

9 Q. Did you write that information anywhere in your
10 deposition?

11 A. That's not the deposition I'm referring to when I
12 talk about where I memorialized that conversation. It's a
13 separate supporting deposition.

14 Q. What date did you write that supporting deposition?

15 A. Without having it here in front of me, I don't
16 recall.

17 Q. Okay. But I take it that it was not simultaneous;
18 correct?

19 A. What do you mean by simultaneous? At the same time
20 it happened, no.

21 Q. Yes.

22 A. You mean like right there as he's saying it, I'm
23 supposed to be typing it?

1 Q. No, or writing it down. You didn't write down --

2 A. No, I didn't -- my experience is that if you bring
3 out a notebook and pen and paper in front of someone when
4 you're interviewing and talking to them, it really puts them
5 in a defensive posture. I was -- I wasn't there in that
6 capacity with Mr. Hillary as a suspect, just to talk -- talk
7 with him, inform him of what happened and listen. You know,
8 my chief had asked me to make contact with him and do that
9 and I did.

10 Q. So when you write -- when you wrote down --

11 A. I probably would have recorded it had I known.

12 Q. Okay. So when you wrote down that Mr. Hillary had
13 said his daughter told him something happened, you wrote that
14 down from --

15 A. No. I just testified to that effect. I don't know
16 that it's in my deposition. Without seeing the deposition
17 here in front of me, I can't say that's what's in there.

18 Q. So you're going off memory --

19 A. Yes.

20 Q. -- saying that Mr. Hillary had said his daughter
21 mentioned something?

22 A. Yes.

23 Q. And you remember that two years after the fact?

1 A. Yes.

2 Q. Okay. But you don't remember whether or not you
3 spoke to Mr. Collins at the hospital?

4 MR. MORTATI: Objection. Asked and answered.

5 A. That's what I said.

6 Q. All right. Did Mr. Hillary mention to you what his
7 daughter had told him?

8 A. No. Once again, no.

9 Q. To your best recollection, can you tell us exactly
10 what Mr. Hillary said?

11 A. I believe I have. To go over it again, he put his
12 hands up and said, oh, my God, and how could this be or what
13 happened or -- not what happened, just acted really surprised
14 and shocked.

15 Q. And was it after that that he told you his daughter
16 had told him something?

17 A. Uh-huh, yes, kind of -- just kind of an off the
18 cuff, my daughter said something or almost as if he didn't --
19 I don't know if it was supposed to do with Garrett or if it
20 was to do with something that happened. It wasn't really
21 clear.

22 Q. So you don't know if him saying his daughter had
23 told him something had to do with Garrett Phillips?

1 A. Right.

2 Q. Okay. Now, you know John Jones had been in a
3 relationship with Garrett Phillips's mother; correct?

4 A. Tandy Cyrus, yes.

5 Q. And do you know how long that relationship had
6 lasted?

7 A. I don't know how long. I know that Tandy had
8 resided with John Jones for a period of time. I don't know
9 how long they dated or were romantically --

10 Q. Did you ever ask Tandy Cyrus how long they had
11 dated?

12 A. No. I didn't know Tandy well enough to ask her
13 about her romantic relationship with John Jones.

14 Q. Okay. After Garrett died on 10/24/2011, did you
15 ever ask Tandy Cyrus how long she had dated John Jones?

16 A. No, I did not.

17 Q. Why not?

18 A. She gave several in depth depositions and
19 interviews to Investigator Gary Snell of the state police.
20 We have video recorded interviews of Tandy on the 25th and I
21 think there was a subsequent interview in the days following
22 as well. I'm not sure if she gave two or three depositions
23 to the members of the investigating team.

1 Q. Did you ever ask Ms. Cyrus why her relationship
2 ended with John Jones?

3 MR. MORTATI: Asked and answered. You can answer
4 again.

5 A. No. That was -- that was included in the
6 deposition taken by Investigator Gary Snell or some other
7 member of the state police.

8 Q. Did you ever review those depositions?

9 A. Yes.

10 Q. Was Mrs. Tandy Cyrus ever asked why her
11 relationship ended with John Jones?

12 A. I don't recall what her -- if any -- if that
13 question was asked or if she -- how she answered it on how
14 she broke up with John Jones.

15 Q. All right. Now, how long have you known John
16 Jones?

17 A. I don't recall the exact number of years. Through
18 hockey and sports, I've known him for a little while.

19 Q. Have you ever played on the same hockey team with
20 John Jones?

21 A. Yes.

22 Q. And have you ever played on the same soccer team
23 with John Jones?

1 A. No, I don't believe he plays soccer.

2 Q. Okay. Are you friends with John Jones?

3 A. Yes.

4 Q. Did you ever interview John Jones in connection
5 with this investigation?

6 A. No. I made it a point not to -- to not compromise
7 the integrity of the investigation. That was done by other
8 members of the state police or investigating team.

9 MR. MORTATI: Mani, it's almost three o'clock. Can
10 we take a break at 3:00 for a minute to the bathroom or
11 do you want to break now, whatever you want to do?

12 MR. TAFARI: Yeah, we can break now. That's fine.

13 (A recess was taken.)

14 Q. Now, Lieutenant, you stated that you did not
15 interview Mr. Jones because you did not want to compromise
16 the investigation; correct?

17 A. Me personally, yes.

18 Q. Okay. Are you aware that John Jones -- are you
19 aware that Mr. Hillary had previously accused John Jones of
20 threatening him?

21 A. I wasn't -- I was not aware of those allegations
22 until after the commencement of this -- of the Garrett
23 Phillips homicide investigation.

1 Q. Okay. Are you aware that John Jones offered leads
2 during the course of this investigation?

3 A. Yes.

4 Q. Do you think that it was appropriate for Mr. Jones
5 to have leads in the investigation for Mr. Hillary?

6 MR. MORTATI: Objection to form. You can answer.

7 A. I think it's appropriate for us to take any
8 information from anybody and at least explore it to try to
9 get to the bottom of this investigation.

10 Q. All right. Besides Mr. Chad Tessier, Mr. Casey
11 Collins, Mr. Hillary, and Mr. John Jones, do you know whether
12 or not Ms. Tandy Cyrus had been intimate with anyone else?

13 MR. MORTATI: Ever? I mean, just you've got to put
14 some timeframe on it.

15 Q. Well, let me finish the -- let me finish the --
16 between October 2010 and October 2011?

17 A. I don't -- I don't know is the best answer. I
18 believe she was asked that and those are the persons that I
19 do know that she had had some kind of intimate relationship
20 with or encounter.

21 Q. And did the Potsdam police check the timeline of
22 all those individuals?

23 A. Yes.

1 Q. Okay. Did the Potsdam police gather DNA evidence
2 from all those individuals?

3 A. Yes, in different ways.

4 Q. Now, on 10/26/2011 did you meet with Garrett
5 Phillips's mother, Tandy Cyrus?

6 A. No, on the 25th we did.

7 Q. Okay. On the 25th of October 2011 did you meet
8 with Garrett Phillips's mother?

9 A. Yes.

10 Q. Did you have an interview with Tandy Cyrus on that
11 day?

12 A. Yes.

13 Q. Was she accompanied by anyone?

14 A. Yes.

15 Q. Who was she accompanied by?

16 A. With John Jones and Casey Collins and actually many
17 more members of her family, but those are the only people
18 that we allowed to come up to my office.

19 Q. And did you think the investigation would be
20 compromised by interviewing Tandy Cyrus for the first time
21 with both John Jones and Casey Collins with her?

22 MR. MORTATI: Objection to form. That's not what
23 the testimony was. You can answer.

1 A. No. Given that the purpose of that interaction was
2 not a suspect interview of Tandy Collins, it was more
3 logistically speaking to let her know what information we had
4 regarding the investigation; to inform her of the fact that
5 she would not be able to go into her apartment because we had
6 seized that and were in the process of getting a search
7 warrant for the FIU team to conduct a search and processing
8 of that scene; and just to get as much information from her
9 to really begin the preliminary part of the investigation
10 given the fact that we were just now having more information
11 come to us that this death was not only suspicious but
12 potentially homicidal in nature or, I don't know what the
13 word for it would be, reckless or --

14 Q. Okay. Now, on 10/25/2011, what time did you --
15 what time did Tandy Cyrus, Casey Collins and John Jones come
16 to the Potsdam place station?

17 A. It was around just after eight o'clock that they
18 showed up and I think we all came upstairs on or about
19 8:30 a.m.

20 Q. And did they all meet in your office?

21 A. Yes.

22 Q. Okay. So on 10/25/2011 at approximately 8:30 a.m.
23 had Tandy Cyrus been ruled out as a suspect in the Garrett

1 Phillips homicide?

2 A. I'm not sure -- I know I wasn't there. We weren't
3 all on board that this -- we were dealing with a homicide at
4 that point. The autopsy wasn't until that night. I think
5 around 4:30 p.m. is when we started getting preliminary
6 reports back from Sergeant Smith, who attended the autopsy,
7 and the coroner that the autopsy was ongoing and that they
8 started documenting these injuries and started getting
9 information that this was not some kind of accidental death
10 or some medical condition death or it looked to be a
11 homicide.

12 Q. Okay when did you first -- when did you, Lieutenant
13 Murray, first suspect foul play in the Garrett Phillips
14 homicide?

15 A. That's a difficult question. Obviously the whole
16 incident, you know, getting the call that there's an
17 unresponsive 12-year-old a million things go through your
18 mind. Was it boys horsing around with each other? Was it --
19 he had his father -- his biological father died of a freak
20 aneurysm so you start thinking to yourself -- all these
21 assumptions fly onto the table. Probably -- because in the
22 last -- the last conclusion any of us want to reach is that
23 there's been a homicide of a 12-year-old boy. To come to

1 that consensus for me personally wasn't something I jumped
2 on. I had to be kind of led and forced into it.

3 Q. Okay. And did you suspect foul play in the Garrett
4 Phillips homicide prior to receiving autopsy results on
5 10/25?

6 A. Certainly there were suspicious circumstantial bits
7 of information and we started having -- when we first talked
8 to Mr. Hillary at his apartment on the 24th and got that
9 information, took it at its face value. Some of those --
10 some of that information was shown to be less than factual
11 after the fact. I wouldn't say for me personally enough for
12 me to say that Nick killed Garrett but it just actually
13 wanted me to follow-up with Mr. Hillary and say we have these
14 conflicting bits of information, why is that? I mean, it
15 might be something he could explain or account for.

16 Q. Okay. And what information that Mr. Hillary gave
17 you turned out not to be factual?

18 A. The fact that he told us on the night of the 24th
19 that he had never been in Tandy's apartment since she moved
20 in there, which we know isn't true. The fact that he acted
21 as though he had been informed for the first time that
22 something had happened to Garret when in fact later we know
23 that Jeff James had phoned or communicated with him and he

1 had received other information from people, phone calls,
2 asking if he had heard what happened.

3 Q. Besides Jeff James, who did you verify called
4 Mr. Hillary to tell him what happened?

5 A. I don't recall without looking at the case file or
6 my affidavits. I know there was a Jeff James phone call or
7 text message, whatever it was.

8 Q. And you say Mr. Hillary told you on 10/24/2011 when
9 you arrived at his apartment that he had never been to
10 Ms. Cyrus's apartment?

11 A. That he had not been inside her apartment since he
12 helped her move in or since she moved in. I'm not sure if he
13 said he helped her move in or since she went -- moved in
14 there.

15 Q. But he told you he hadn't been there since she
16 moved in?

17 A. Right. And he hadn't talked to her or communicated
18 with her, but --

19 Q. Now, you stated you did not write down the
20 conversation that you had with Mr. Hillary anywhere, correct,
21 on 10/24/2011?

22 A. At that point in time, no.

23 Q. When is it you first wrote down that information?

1 A. In the supporting deposition that I refer to in the
2 subsequent days, either the day after or --

3 Q. Now, how did you come to the conclusion that
4 Mr. Hillary had lied when he stated he had not been to
5 Ms. Cyrus's apartment since he helped her move in?

6 MR. MORTATI: Objection to form. That's not what
7 his testimony was. You may answer.

8 A. So the question is how did I reach that conclusion?
9 Based on the depositions taken of Tandy Collins in which she
10 account or describes an encounter in which he let himself
11 into her apartment in the middle of the night and when he had
12 gone over to speak with her in the morning on a separate
13 occasion since then. So -- but at that point in time it
14 wasn't clear if it was just an mission on his part or if he
15 was intentionally misrepresenting it. I don't know.

16 Q. So Mr. Hillary had told you that he hadn't been to
17 the apartment since he helped Tandy move in; is that correct?

18 A. Since she moved in.

19 Q. Since she moved in. I'm sorry. And then Ms. Cyrus
20 told you that Mr. Hillary had been at the apartment since she
21 moved in; correct?

22 MR. MORTATI: Objection to form. You can answer.

23 A. Yes, correct.

1 Q. Why did you believe Ms. Cyrus and not believe
2 Mr. Hillary?

3 A. I don't know. That's a good question. Because she
4 -- you know, she is cooperating with the investigation fully
5 at this point. I don't know what reason she would have to
6 lie.

7 Q. Do you know what reason Mr. Hillary would have to
8 lie?

9 A. If he was the person responsible for the homicide
10 of Garrett Phillips, I would think he'd have a good reason to
11 lie about it.

12 Q. If Ms. Cyrus was responsible for the homicide,
13 would she have a good reason to lie about it?

14 A. Yes. Is that a hypothetical?

15 Q. Yeah.

16 A. Okay.

17 Q. Now, did Ms. -- when -- is Ms. Cyrus -- has
18 Ms. Tandy Cyrus gotten married since the death of her son?

19 A. To my knowledge, yes, I believe so.

20 Q. And what is Garrett's mother's actual name right
21 now?

22 A. Garrett's mother's name. I believe it's Tandy
23 Collins now.

1 MR. MORTATI: For purposes of the questioning, can
2 we agree Tandy Collins and Tandy Cyrus are one in the
3 same person?

4 MR. TAFARI: Yes. Let's stipulate -- let's all
5 stipulate to that.

6 THE WITNESS: There was -- and was there a previous
7 name she had also?

8 MR. MORTATI: She was Tandy Phillips, I think, or
9 Paul, but a number of times in the questioning either
10 you've referred to her as Tandy Collins and then a Tandy
11 Cyrus or he referred to her as Tandy Collins.

12 THE WITNESS: I apologize.

13 MR. MORTATI: No, it's okay. I just want to make
14 sure we're on the same page.

15 MR. TAFARI: Clarify the record.

16 THE WITNESS: It's the same Tandy consistently.

17 MR. MORTATI: There's only one Tandy involved in
18 this investigation, right, Mark?

19 THE WITNESS: Yes, yes, sir.

20 MR. MORTATI: Thank you.

21 Q. Okay. Now, did Ms. Collins ever -- when you met
22 Ms. Collins on 10/25/2011 did she request that John Jones be
23 in the room while she was interviewed?

1 A. Yes. And, actually, in reviewing the videotape she
2 -- I think John was consoling her by putting -- you know,
3 putting his hand out, either holding her hand or patting her
4 back. She was highly upset and distraught.

5 Q. Now, prior to Garrett Phillips' death on
6 10/24/2011, when was the last time Ms. Tandy Collins and John
7 Jones met?

8 A. I don't -- I don't know. I don't understand what
9 you're -- like when is the last time they dated or --

10 Q. No, no. Spoke on the phone or met in person.

11 A. I don't know.

12 Q. Did you ever ask --

13 A. My assumption was I know John had a good
14 relationship with Garrett and Aaron. They liked him and for
15 whatever reason, my understanding is that they still had
16 contact and that John still -- I might be wrong there, but
17 that was my assumption.

18 Q. Okay. Did you ever read anywhere where Garrett
19 Phillips had told his friend he thinks his mother was going
20 to get back with John Jones?

21 A. I want to agree with your statement, that I
22 remember hearing somewhere that Garrett either would prefer
23 John as his dad or made the statement like that, but I don't

1 know why. I don't have anything to base it on.

2 Q. Okay. Did -- on October 25th, 2011, at
3 approximately 8:30 a.m. did John Jones request to be in the
4 room while Tandy Cyrus was being questioned?

5 A. I don't remember him specifically requesting to
6 come in. I remember Tandy asking if she could have Casey and
7 John with her. John sat to her left and Casey sat to her
8 right. And it was myself, Chief Tischler, Special
9 Investigator Dan Manor and then somewhere in the interview
10 the DA Nicole Duve joined us.

11 Q. The DA arrived you said?

12 A. Yes.

13 Q. Okay. That was Ms. Nicole Duve; correct?

14 A. Yes, sir.

15 Q. Okay. Did Ms. Nicole Duve ask any questions during
16 this interview?

17 A. Yes.

18 Q. Do you remember the questions she asked?

19 A. I don't. It's video recorded. I don't recall what
20 her specific questions were.

21 Q. Did you ever think it was inappropriate for
22 Ms. Cyrus to be questioned while she was next to John Jones?

23 A. No. She -- it wasn't purely her being questioned

1 as much as it was -- that was the onset of the investigation.
2 That was the morning after, everything had kind of -- the
3 incident happened, we're going into the late hours of the
4 night. We come -- we agreed to come together and convene the
5 next morning and try to figure out what was going on. We
6 still don't know why he was dead necessarily.

7 Q. I'm sorry.

8 A. No, go ahead.

9 Q. Go ahead, no, I'm sorry. I didn't want to cut you
10 off.

11 A. My recollection is that that was where do we go
12 from here kind of.

13 Q. When was this meeting set up?

14 A. I believe the night prior.

15 Q. Who set up this meeting?

16 A. I don't recall if it was myself or Chief Tischler.

17 Q. And was a meeting set up with Tandy Cyrus alone or
18 was it -- was the plan to meet with Tandy Cyrus, John Jones
19 and Casey Collins together?

20 A. I don't recall if it was, you know, several members
21 of the family or if it was just exclusively Tandy.

22 Q. Is it the policy of the Potsdam police to interview
23 several people at once?

1 MR. MORTATI: Objection to form. I think he
2 testified repeatedly that it wasn't an interview, but
3 you keep using that term. You can answer over
4 objection.

5 A. I don't think there's any specific policy,
6 direction on how to conduct an interview. There's guidelines
7 and recommendations but every interview is different, every
8 situation, it's not static, it's influx I would say.

9 Q. Okay. Are you familiar -- familiar, Lieutenant,
10 with the term groupthink or the phrase groupthink?

11 A. No, I'm not.

12 Q. All right. Lieutenant, when did you first join the
13 Potsdam Police Department?

14 A. I did an internship with the Potsdam Police
15 Department back in two thousand and -- it was either 2000 or
16 2001, and I was hired on October 7th, 2003, as a police
17 officer.

18 Q. And what was your rank at the time you were hired?

19 A. I was hired as a police officer.

20 Q. Okay. And at some point you got promoted; correct?

21 A. Yes, sir.

22 Q. When did you get promoted? I'm sorry. When was
23 your first promotion?

1 A. I would like to think that there were a lot of
2 informal promotions or training opportunities and special
3 assignments in the interim, but my official rank promotion to
4 lieutenant was in 2011, I think in August or September.

5 Q. So approximately two or three months before the
6 Garrett Phillips homicide?

7 A. Yes.

8 Q. Okay. Had you ever conducted a homicide
9 investigation prior to October 24th, 2011?

10 A. I participated in homicide investigations prior to
11 that. As far as conducting, you mean as like lead?

12 Q. Yes.

13 A. No.

14 Q. How many homicide investigations did you
15 participate in prior to October 24th, 2011?

16 A. The Chung Hua homicide, I actually received an
17 award, a Grand Cordon award, for my actions in that
18 investigation. I interviewed the two suspects, got their
19 confessions, conducted several search warrants and led to a
20 conviction. They're now in prison. I've assisted the St.
21 Lawrence County Drug Task Force and Sheriff's Department with
22 the Simmons homicide. And then this is -- this was the first
23 homicide case that I conducted as lieutenant under the

1 direction of my chief.

2 Q. Okay. And did you report to your chief on this
3 homicide during the period that he was chief?

4 A. Yes.

5 Q. Did you report to anyone else?

6 A. I would say yes.

7 Q. Okay. Was -- prior to October 24th, 2011, did you
8 ever conduct a homicide investigation that involved a child?

9 A. No. We've investigate -- or I've investigated
10 suspicious deaths of -- actually attending an autopsy for a
11 young child or infant, but in the end it was not deemed to be
12 a homicide.

13 Q. Okay. And would you say it's more -- it's
14 emotionally more draining to conduct a homicide investigation
15 of a child?

16 MR. MORTATI: Objection to form. You can answer.

17 A. I'm not sure if I have, you know, sufficient
18 experience to really -- I mean, based on my own experience, I
19 would say specifically the Garrett Phillips homicide has been
20 a major case and, you know, any homicide or any major
21 investigation is draining on you, but this one, this is a
22 major investigation, yes.

23 Q. Okay. Lieutenant Murray, you stated you first

1 received confirmation that Garrett Phillips' death was a
2 homicide on 10/25/2011; is that correct?

3 A. Yes.

4 Q. Do you recall what time you received that
5 confirmation?

6 A. I believe it was late afternoon. I'd estimate
7 4:30, 5:30 p.m., at the end of the day basically. And that
8 was just notification that the autopsy was showing some
9 injuries consistent with and some evidence on the body of
10 Garrett Phillips lending itself to point towards a homicide.

11 Q. Okay. And when was the public first informed that
12 the -- that Garrett Phillips's death was a homicide?

13 A. I don't know. I know that's something we weren't
14 readily releasing, we weren't going to release immediately.

15 Q. And why not?

16 A. To preserve the integrity of the investigation, to
17 give us every advantage in speaking with everyone associated
18 with Garrett in the time immediately preceding his death, and
19 to be quite honest because we didn't have even a provisional
20 autopsy report. We had, you know, a phone call from someone
21 that attended.

22 Q. When did you first receive the provisional autopsy
23 report?

1 A. The provisional autopsy report was dated
2 October 25, but I'm not sure I received -- I received an
3 actual copy until later that week. It would have been
4 entered as a lead sheet, I believe.

5 Q. And you said to preserve the integrity of the
6 investigation you did not want to inform the public there was
7 a homicide?

8 A. Correct. I -- first of all, I wasn't -- I wasn't
9 really taking -- I wasn't responsible for the media relations
10 at that point. Even though I was lieutenant, it would be --
11 in my duties I'm, you know, a public liaison but obviously,
12 you know, defer to the chief of police for something like
13 this and the village administrator and mayor.

14 Q. And who was responsible for public relations during
15 this time?

16 A. I know that my focus was the investigation itself,
17 not dealing with the media because obviously it was a media
18 circus, constant media camped out out front wanting to, you
19 know, sensationalize or otherwise, you know, promote this. I
20 won't -- I take back the word promote, but you know what I
21 mean. It was obviously a big deal for our community, a major
22 traumatic event, and there was speculation and there were,
23 you know, outrageous --

1 Q. Did you ever hear speculation that a group of boys
2 had beat up Garrett Phillips?

3 A. Yes.

4 Q. Where did you hear that speculation?

5 A. That speculation, I first heard it on the night we
6 were at the hospital. I remember Judy Trimboli, a member of
7 the state police, we were -- you know, her and I had a
8 private conversation or a conversation that was part of
9 basically saying, you know, we had no idea what was going on.
10 You know, did -- were her boys horse playing, was this
11 something that -- was it an accident and whatever happened.
12 But the first, what you're referring to, I never heard the
13 report itself but I heard that it was on the radio the next
14 morning. Scott Dosztan had, you know, transmitted something
15 to the effect that it was a bullying incident or something
16 like that, which was completely unfounded. I don't know how
17 he got that information.

18 Q. Did you ever speak with him and ask him how he got
19 that information?

20 A. I never spoke with Scott Dosztan. I was never
21 assigned that lead. I think he redacted it though.

22 MR. MORTATI: Retracted or redacted?

23 THE WITNESS: Retract -- yeah, retracted. Thank

1 you.

2 MR. MORTATI: Yeah, because redacted is when you
3 cross it out.

4 THE WITNESS: Yeah, I know, he crossed -- he tried
5 to keep it a secret.

6 Q. Okay. Now, in your opinion did that report hinder
7 or hurt the Garrett Phillips investigation?

8 A. It certainly, in my opinion, didn't seem to help by
9 creating further rumors and untrue speculation. All I can --
10 all I can guess -- I know you don't want me to guess, but --

11 MR. MORTATI: Don't guess.

12 THE WITNESS: All right. Never mind.

13 Q. When was the first time you heard speculation that
14 Mr. Hillary was responsible for the Garrett Phillips
15 homicide?

16 MR. MORTATI: Objection to form. You can answer.

17 A. I want to say October 25, after the autopsy results
18 started to come back and the information from the autopsy
19 started to lean towards or point towards homicide. Couple
20 that with the inconsistencies with talking with Mr. Hillary
21 and then information from the depositions that we were
22 starting to get in from family members, it started to at
23 least -- at least I had -- we had some more questions we

1 wanted to clarify with Mr. Hillary.

2 Q. When you say inconsistencies, besides what we
3 previously discussed about whether or not he had been back to
4 Ms. Collins's apartment, what other inconsistencies led you
5 to believe Mr. Hillary was responsible?

6 A. There were depositions from Brian Phillips stating
7 that right around the time immediately preceding the homicide
8 that he had seen Mr. Hillary in that direct vicinity of the
9 scene; deposition from Dale Rice indicating he saw
10 Mr. Hillary in his vehicle right near the homicide scene; and
11 Ian Fairlie confirming in his deposition that Mr. Hillary
12 places himself within 200 -- approximately 200 to 250 yards
13 from the bedroom window within five to ten minutes of the
14 homicide, led me to at least question his whereabouts and his
15 involvement potentially in this.

16 Q. Okay.

17 A. But to answer your question, the high school video,
18 which was days later, that's when -- that's what -- that's
19 what really started -- had me question, you know, did
20 Mr. Hillary commit this -- this homicide.

21 Q. Okay. But you did not view that high school video
22 on 10/26/2011 --

23 A. No.

1 Q. -- when Mr. Hillary was at the station; correct?

2 A. Correct.

3 Q. When did you first view that high school video?

4 A. I don't recall the exact day. It was -- I heard
5 about it before I viewed it. In other words, there were
6 investigators that were assigned that lead, to get the high
7 school video footage, that had to view it on the system at
8 the high school. And it wasn't until days later that we were
9 able to actually get that Proprietary software downloaded to
10 view the footage so that I could see it.

11 Q. Did you first hear about -- when did -- what day
12 did you first hear about the high school video?

13 A. I don't recall the day. It was either towards the
14 end of the first week or the beginning of the next week.

15 Q. Okay. Did you hear about the high school video
16 before 10/26/2011?

17 A. No.

18 Q. Okay. All right. So you stated that depositions
19 from other witnesses saw Mr. Hillary near the homicide scene?

20 A. Yes.

21 Q. Okay. And you stated that Brian Phillips saw
22 Mr. Hillary near the homicide scene; correct?

23 A. Yes. He gave a deposition to one of the state

1 police investigators, I mean, describing the vehicle, the
2 Amherst soccer sticker on the back of it and the fact that he
3 knows Mr. -- it was a pretty good deposition.

4 Q. Where was Mr. Brian Phillips when he saw
5 Mr. Hillary near the homicide scene?

6 A. In his vehicle, personal vehicle.

7 Q. And where was Mr. Hillary when he saw Mr. --

8 A. In his personal vehicle.

9 Q. Okay. Was Mr. Brian Phillips also near the scene
10 of the homicide when he saw Mr. Hillary?

11 A. Yes.

12 Q. Did you suspect Mr. Brian Phillips of committing
13 the homicide?

14 A. No, I did not.

15 Q. You stated also that Dale Rice saw Mr. Hillary near
16 the homicide scene; correct?

17 A. Yes.

18 Q. Where was Mr. Dale Rice when he saw Mr. Hillary
19 near the homicide scene?

20 A. In his personal vehicle.

21 Q. And where was Mr. Hillary when he saw Mr. Hillary?

22 A. In his personal vehicle.

23 Q. Okay. Was Mr. Dale Rice also near to the homicide

1 scene when he saw Mr. Hillary?

2 A. Yes.

3 Q. Did you suspect Mr. Dale Rice of committing the
4 homicide?

5 A. No, I did not suspect Mr. Rice.

6 Q. Okay. And you stated also that Mr. Fairlie -- Mr.
7 Fairlie confirmed that he saw Mr. Hillary close to the
8 homicide scene; correct?

9 A. Yes.

10 Q. Where did Mr. Fairlie say he saw Mr. Hillary?

11 A. In his apartment.

12 Q. And what time did Mr. Fairlie state that he saw
13 Mr. Hillary in his apartment?

14 A. Without referring to his deposition, I'd estimate I
15 think he used the time 5:21 p.m.

16 Q. Okay. Now, I'm going to show you a document that's
17 previously been marked for Mr. Tischler and --

18 MR. MORTATI: While we're doing that, just to make
19 things clear on the record, I think you might want to
20 mark the Tischler 1 since Exhibit 1 -- both Exhibit 1s
21 of today's date have the same date on the stamp, we
22 might want to mark Exhibit 1 from Tischler, you know,
23 Tischler 1 or, you know, mark each one that you marked

1 with Ed Tischler with his name on it, and then the one
2 for Murray just put his name on it. That way there's no
3 confusion later when you're looking at exhibits, if,
4 Erica, you wouldn't mind doing that.

5 MR. TAFARI: This is Mr. Tischler's 1.

6 (Off-the-record discussion.)

7 Q. Lieutenant Murray, that was Exhibit 1 that was
8 shown to Mr. Tischler. Could you just take a minute and read
9 it. Take your time.

10 (Witness examining document.)

11 A. Okay.

12 Q. All right.

13 A. There is something in here that refreshes my memory
14 as far as it shows me at the scene at 6:49 and out at
15 6:57 p.m.. so I was-- remember before we were talking about
16 when I went to the 100 Market Street?

17 Q. Uh-huh.

18 A. So I did go there after the hospital, and that time
19 would have been -- it shows myself and Tischler at 6:49
20 checking in with Wentworth who was doing scene security and
21 then out at 6:57, so --

22 Q. So your memory was mistaken earlier?

23 A. My memory is refreshed now to show that -- I think

1 I testified that I may have been at the scene or stopped in,
2 and that is the case, 6:49 to 6:57, according to trooper or
3 Officer Wentworth's notes.

4 Q. Okay. Now, let me take your attention to -- give
5 it right back. Let me take your attention to the -- just a
6 second.

7 Now, let me take your attention to the second
8 paragraph. Do you see where Officer Wentworth states that at
9 5:16 he heard footsteps in the -- in Garrett Phillips's
10 apartment?

11 A. Knock on the door and could hear what sounded like
12 someone start to walk around. The steps were not coming from
13 close to the door. The noise was not loud and it sounded as
14 if someone was just quietly walking around. Yeah.

15 Q. And that was at 5:16; correct?

16 A. Right. There was -- it's a little bit more complex
17 with the times. There's disparity between our -- this is --
18 it says right in here that the times listed are being
19 obtained from the incident report completed by Dispatcher
20 Schneider. Now, that would have been from our SJS time, and
21 there's plus or minus anything from three to six minutes,
22 between that, our voice print time and then the actual world
23 clock time. So this is -- he puts right in there that these

1 times are being used from the incident report, which is not
2 necessarily real time. They're plus or minus a few minutes,
3 yeah.

4 Q. Okay. Do you see where he says at 5:24 he also
5 heard footsteps?

6 A. The patrol could again hear what sounded like
7 movement in the apartment. The movement was faint but it
8 sounded as if it was a single person walking around. Yes.

9 Q. And that was at 5:24 p.m.?

10 A. 5:24 p.m., yes.

11 Q. Now, you testified previously that Mr. Ian Fairlie
12 gave sworn testimony that Mr. Hillary was with him at 5:21;
13 correct?

14 A. Yes.

15 MR. MORTATI: Objection to form. You can answer.

16 A. Yes.

17 Q. Okay. And Officer Wentworth's narrative states
18 that at 5:24 he heard sounds walking around in the apartment;
19 correct?

20 A. Yes.

21 Q. Okay. Did anyone see Mr. Hillary go to 100 Market
22 Street between 5:21 and 5:24?

23 A. That would make this all a lot easier, wouldn't it?

1 No.

2 Q. Could Mr. Hillary have been at two places at once?

3 A. Given the fact that the clock is plus or minus
4 three to six minutes, yes, he could have been back at
5 Mr. Fairlie's apartment at 5:21, assuming that Mr. Fairlie's
6 5:21 time is real time and this time is off or vice versa and
7 that -- and given the fact that Mr. Fairlie is telling the
8 truth, yes.

9 Q. Okay. So your testimony is that the time on the
10 narrative is three to six minutes off from real world time?

11 A. Without referring to the actual case file because
12 there was -- I think there was a lead or some kind of point
13 made to sync all the times together so that dispatch time,
14 voice print time and, you know, how close they are to the
15 actual world clock real time are accounted for. I think that
16 was done but I don't recall the exact amount of minutes that
17 each one was off.

18 Q. Okay. So in your opinion, Mr. Hillary could have
19 left 100 Market Street at 5:24 and arrived at Mr. Fairlie's
20 at 5:21 real world time?

21 A. In my opinion, yes, and also the noises heard
22 within could have been Garrett Phillips struggling for his
23 last breath or his life. It could -- he makes -- the Officer

1 makes an assumption as to what he's -- he's hearing the noise
2 and assuming it's someone inside, yes.

3 Q. Okay. Now, when Garrett Phillips was found, he was
4 found unconscious; correct?

5 A. Yes, I believe he was unresponsive, according to
6 the reports that I read.

7 Q. But you do believe he would have been walking
8 around a couple of minutes prior?

9 MR. MORTATI: Objection to form. That is not what
10 he testified to, Mani. Don't answer that question, it's
11 just stupid.

12 MR. TAFARI: You're instructing him not to answer?

13 MR. MORTATI: Yeah, that's -- your question is
14 completely misstating what he just testified to, and
15 purposely so.

16 MR. TAFARI: I never restated anything. I said is
17 it your opinion.

18 MR. MORTATI: He didn't testify that he was walking
19 around, that's not what he said.

20 THE WITNESS: Do you want me to -- I can --

21 MR. TAFARI: Please mark it for -- that for a
22 ruling.

23 Q. Lieutenant Murray, did anyone ever tell you that

1 they saw Mr. Hillary at 100 Market Street the day Garrett
2 Phillips died?

3 A. No.

4 Q. Did anyone ever tell you that they saw Mr. Hillary
5 jump out a second floor window the day that Garrett Phillips
6 died?

7 A. No.

8 Q. Did anyone ever tell you that they saw a black guy
9 jump out a window the day Garrett Phillips died?

10 A. No.

11 Q. Did you ever hear that a black person was seen at
12 100 Market Street the day that Garrett Phillips died?

13 A. No.

14 Q. Have you ever heard from anyone that Mr. Hillary
15 had ever hit or pushed Garrett or his mother?

16 A. No. Wait, there -- yes, there was -- there was
17 testimony in the non-parties.

18 Q. And who stated that Mr. Hillary had pushed or hit
19 Garrett Phillips or his mother?

20 A. Tandy, Tandy Collins.

21 Q. When did -- what -- when did -- what did Garrett --
22 what did Tandy Cyrus --

23 A. She recounted an incident when they resided -- when

1 her and Nick Hillary resided on Spring Street in which she
2 tried to leave the -- leave the house and Mr. Hillary
3 forcibly grabbed her and set her on the bed and had grabbed
4 her or something to that effect.

5 Q. Now, you testified before that Ms. Cyrus had given
6 two or three depositions in this investigation; correct?

7 A. Yes.

8 Q. Before her deposition last week, did she ever tell
9 you or another member of the Potsdam police that Mr. Hillary
10 had grabbed her, prevented her from leaving and forcibly put
11 her in a bed?

12 MR. MORTATI: In the supporting depositions she
13 gave. You can answer.

14 A. I don't know if she's afraid of him or what the
15 situation is. It seems as though more information --

16 Q. My question is --

17 MR. MORTATI: The question is did she ever tell you
18 or a member of the Potsdam PD.

19 A. That Nick Hillary hit her, no.

20 Q. Okay. So the first time you heard any mention of
21 Mr. Hillary forcefully grabbing Tandy Cyrus was last week at
22 her deposition; correct?

23 MR. MORTATI: Objection. Can you step outside for

1 a minute, Mark.

2 (The witness was excused.)

3 MR. TAFARI: What's your objection?

4 MR. MORTATI: You're taking liberties with facts.

5 It's in the supporting deposition that we gave you and

6 he already testified that he read so you're misstating

7 the facts based on what he's testified to earlier and

8 the materials we've provided you. If you look in her

9 supporting deposition I believe given -- I believe the

10 third one to the third state police investigator, she

11 specifically recounts this incident. I then asked her

12 about that specific incident at the non-party

13 depositions last week that you chose not to attend so

14 you're --

15 MR. TAFARI: Again, I'm asking Mr. Murray what he

16 knew. So you can either tell him not to answer the

17 question or allow him to answer.

18 MR. MORTATI: But your recitation of the underlying

19 facts is totally wrong.

20 MR. TAFARI: I can ask my question, he can answer

21 or you can tell him not to answer.

22 MR. MORTATI: You're not entitled to just make up

23 facts, Mani. If you're going to question a witness, you

1 need to at least have the willingness to deal with the
2 facts as you know them.

3 MR. TAFARI: You cannot speak with him while you're
4 out there.

5 MR. MORTATI: Mani, I really am not going to take
6 any directions from you about what I can and can't do
7 about anything having to do with the law.

8 (The witness entered.)

9 Q. All right. Lieutenant Murray, when was the first
10 time you heard or read anywhere that Mr. Hillary had been
11 physical with Ms. Tandy Cyrus?

12 A. Physical in terms of hands-on would be last week at
13 the non-party deposition.

14 Q. Thank you. Had you ever heard that John Jones had
15 pushed Ms. Tandy Collins in the past?

16 A. Not -- the only place I've heard that is from your
17 questioning earlier today.

18 Q. So you've never seen that in any documentation?

19 A. Not to my recollection, no. I've never fielded a
20 report like that.

21 Q. Before October 24th, 2011, had Ms. Tandy Collins
22 ever made a written or oral complaint to the Potsdam PD about
23 being afraid of Mr. Hillary?

1 A. No.

2 Q. Before October 24th, 2011, did Ms. Cyrus ever make
3 any complaints to the Potsdam PD that Mr. Hillary had been
4 stalking her?

5 A. I think you asked me this in the beginning. No.

6 Q. Okay. Now, were pictures taken of Mr. John Jones
7 during the course of this investigation?

8 A. Yes.

9 Q. Were nude pictures taken of Mr. John Jones during
10 the course of this investigation?

11 A. Not to my knowledge.

12 Q. Okay. Were nude pictures taken of Mr. Hillary
13 during the course of this investigation?

14 A. Yes.

15 Q. Now, why did the Potsdam police take nude pictures
16 of Mr. Hillary but not take nude pictures of Mr. John Jones?

17 A. Nude pictures were taken of Mr. Hillary's person
18 pursuant to a lawful search warrant issued by Justice Pignone
19 of the Potsdam village court. Mr. Jones consented to
20 voluntarily giving us a DNA buccal swab and showing us his
21 extremities, arms, legs, hands, which were photographed by
22 someone else besides me.

23 Q. Was there a reason why you didn't take pictures of

1 just Mr. Hillary's arms, legs and hands?

2 A. Yes.

3 Q. Why?

4 A. Well, given the information from the homicide
5 investigation and the injuries sustained by our victim,
6 Garrett Phillips, it was very apparent that he was in a fear
7 struggle for his life, a violent struggle, and there was a
8 high probability, a potential, that whoever murdered Garrett
9 Phillips would have potentially sustained an injury, a
10 defensive injury, from Garrett Phillips; or from the either
11 entry or egress from the apartment, which seemed to be that
12 second floor apartment, which was not an easy jump, it was a
13 second story window high up, it's very likely the person that
14 made that jump or descent from the second floor window would
15 have either incurred some kind of injury, an abrasion, a
16 sprain, a break, something of that nature.

17 Q. Why did you take any pictures of John Jones?

18 A. Pretty much just to substantiate that we did take
19 pictures of people besides Nick Hillary and just to rule out
20 the possibility that he had injury consistent with that as
21 well. And if you look at, you know, also Mr. Jones's
22 stature, it's highly unlikely he could have had the athletic
23 ability to make the second floor jump.

1 Q. You stated you played hockey with him; correct?

2 A. Yes.

3 Q. Okay. Why didn't you photograph other parts of Mr.
4 Jones's body to see whether or not he sustained injuries on
5 any other parts --

6 A. I didn't photograph any parts of John Jones's body.

7 Q. Why was -- why were photographs not taken of other
8 areas of Mr. John Jones's body?

9 A. I didn't conduct that lead. Had I done it, perhaps
10 I would have taken further -- asked him to take his shirt off
11 or pants off. I did not do that.

12 Q. And who did that?

13 A. I don't know who took the photographs.

14 Q. Do you know who ordered the photographs taken?

15 A. No, I do not.

16 Q. Since 2003, during your time at the Potsdam PD,
17 have you ever seen another person photographed naked?

18 A. Yes, all the time.

19 Q. When was this?

20 A. Throughout my career. Any sexual assault case I've
21 worked, any rape case, any child pornography case, any -- a
22 felony assault with injuries that are not readily visible
23 with your clothes on. I've seen all sorts of autopsy photos.

1 It's not uncommon.

2 Q. So you've seen the Potsdam PD photograph people
3 naked before?

4 A. Yes.

5 Q. Okay. Have you ever seen the Potsdam PD photograph
6 people who are not arrested?

7 A. Yes, even in this case.

8 Q. Besides Mr. Hillary, who else was photographed
9 naked in this case?

10 A. There are numerous naked pictures of Garrett
11 Phillips, his internal organs displayed on a scale, his brain
12 material photographed, his penis, his catheter, all medical
13 equipment going in and out of his body, injuries to his body.

14 Q. Besides Garrett Phillips, was anyone else
15 photographed naked in this case?

16 A. No, not to my knowledge.

17 Q. So in your opinion, it is appropriate to photograph
18 someone naked who has not been charged?

19 A. Absolutely.

20 MR. MORTATI: Objection to form. You've answered.

21 A. That's why I wrote the search warrant.

22 Q. Did you request -- in your request for the search
23 warrant, did you request to have Mr. Hillary photographed

1 naked?

2 A. In my search warrant, it specifically asked to
3 photograph his person for the injuries I described in my
4 testimony. And I could read the search warrant itself, but
5 the actual search warrant was conducted by New York State
6 Forensic Unit Ricky Adragna, Trooper McCarthy, and Sergeant
7 Smith from the Potsdam PD, I think he took the photographs.

8 Q. Who wrote the affidavit for the search warrant?

9 A. I did.

10 Q. Okay. Was Mr. Casey Collins ever photographed
11 naked in this case?

12 A. No.

13 Q. Was Chad Tessier ever photographed naked?

14 A. Not to my knowledge.

15 Q. Okay. Were you curious to check whether or not
16 Mr. Tessier or Mr. Collins had injuries?

17 A. No.

18 Q. Why didn't that possibility cross your mind?

19 A. Well, Mr. Collins had a -- I don't want to describe
20 it as air-tight but a solid alibi for his whereabouts at the
21 time of the homicide. Mr. Tessier, I don't think he ever
22 entered into the realm of being a suspect. I didn't take his
23 deposition or speak to him, but my understanding is that he

1 was cleared. However, they did both give us buccal swab DNA
2 samples.

3 Q. Did you ever request that Mr. Hillary give you a
4 sample?

5 A. It's pretty hard to get that once he invoked his
6 Sixth Amendment rights, but I would like and this -- the
7 offer is still on the table. If he would like to give me a
8 DNA sample, I'd be more than happy to take that.

9 Q. Now, the Potsdam police did get Mr. Hillary's DNA
10 sample; correct?

11 A. Yes, or I should say we were able to submit items
12 that gave us a strong profile of Mr. Hillary DNA wise, yes.

13 Q. Was there ever an arrest warrant for Mr. Hillary?

14 A. No.

15 Q. Was Mr. Hillary ever arrested?

16 A. No.

17 Q. Was Mr. Hillary ever charged?

18 A. With this crime?

19 Q. With any crime.

20 A. With any crime ever?

21 Q. Did Potsdam police ever charge Mr. Hillary with a
22 crime?

23 A. You're talking about specifically during this

1 timeframe, October to --

2 Q. Did the Potsdam Police Department ever charge Mr.
3 Hillary with any crime?

4 A. To my knowledge, no.

5 Q. Did Mr. Hillary attempt to leave the Potsdam Police
6 Department on the morning of October 26th, 2011?

7 A. Yes.

8 Q. And what time did he attempt to leave?

9 A. I believe he arrived at our station or he came --
10 the camera started recording us entering my office at
11 approximately 8:22 a.m., spoke for approximately an hour and
12 a half, not two hours, and I believe at which point he,
13 Mr. Hillary, made some phone calls and asked -- he said he
14 wanted to leave and at which point we -- I say we, I wasn't
15 the one but he was informed he was going to be detained.

16 Q. Who informed him of that?

17 A. I don't recall offhand. I believe it's on the
18 video. You can hear him being told, you know, you're going
19 to be -- I think Ray -- Ray Planty from the state police
20 tells him, "You're going to be detained."

21 Q. Was there an arrest warrant for Mr. Hillary at the
22 time he was detained?

23 A. No.

1 Q. Was there a search warrant for Mr. Hillary at the
2 time he was detained?

3 A. No.

4 Q. On what authority was Mr. Hillary detained at the
5 Potsdam Police Department?

6 MR. MORTATI: Objection to form. You can answer.

7 A. Preservation of evidence, any potential trace DNA,
8 physical evidence on his person, on his clothing, in his
9 vehicle. His cell phone, there was a high concern that he
10 may be deleting material off his phone or in some way
11 altering material on his phone so that was -- he had already
12 made contact with his lawyer. He called Laurel Kane, his
13 boss. He was talking to Steve Yianoukos, his boss. He
14 talked to -- at one point he says your name like he's talking
15 to you on the phone. Once he ended those phone calls, the
16 decision was made by the New York State Police investigators
17 and I believe Chief Tischler was in on the dialog, it was
18 determined that we needed to take his phone and secure it and
19 preserve it as evidence until such time as we can get a
20 lawful search warrant.

21 Q. Now, his phone was in Potsdam Police Department
22 custody; correct?

23 A. At what point in time?

1 Q. On the morning of October 26, 2011.

2 MR. MORTATI: Objection to form. You can answer.

3 A. There was a point in time when he came into our
4 station, he had a cell phone, he had full use of it, and
5 somewhere approximately two, maybe three hours, into Mr.
6 Hillary being at our station, it was determined that we were
7 going to write the search warrant, we were going to detain
8 him and confiscate his cell phone until which time we could
9 write a lawful search warrant for it to preserve all the
10 evidence.

11 Q. Okay. When you said we could write a lawful search
12 warrant, you're not a judge, are you?

13 A. No, I'm not a judge.

14 Q. Okay. Is it the policy of the Potsdam police to
15 detain someone without a warrant?

16 MR. MORTATI: Objection to form. You can answer.

17 A. Yes.

18 Q. During the course of this investigation --

19 A. I don't know if it's so much a policy as it would
20 be a common practice to detain somebody when there's exigent
21 circumstances or evidence preservation issues at hand, yes.

22 Q. And what were the exigent circumstances with
23 relation to Mr. Hillary?

1 A. It was believed that on his person were either
2 injuries to be documented, like explained in the search
3 warrant, potential DNA trace evidence on his person, and his
4 phone -- his phone call, text messages content, maybe photos,
5 any geolocation data that might be on his phone at the time.
6 It wasn't -- we weren't sure if it was a Smartphone, you
7 know, with maybe GPS or location services in it. Anything of
8 that nature.

9 Q. Since 2003, since you've been a Potsdam police
10 officer, have you taken property from individuals without a
11 search warrant?

12 A. Yes.

13 Q. Was Mr. Hillary read his Miranda Rights on
14 October 26, 2011?

15 A. Yes.

16 Q. And what are Miranda Rights?

17 A. I have my card, if you want me to read it. I
18 didn't read the Miranda Rights to him.

19 Q. I understand but just as a question to you: What
20 are -- as an officer, what are Miranda Rights?

21 A. Miranda Rights, when there's a custodial
22 interrogation and the person is not feel free to leave or
23 like the legal requirements when you are required to

1 Mirandize somebody, as I'm sure you're well aware of more
2 than I probably. For my purposes, I usually like to read
3 Miranda Rights to anyone that's about to give a sworn
4 statement just to let them know what their rights are. I
5 would say, if anything, we err on the side of reading Miranda
6 even when not necessary just to have that obstacle overcome
7 so it can't be argued later that we didn't at least recognize
8 or advise the person of those Miranda Rights.

9 Q. Okay. Do you have -- do you know what the Miranda
10 Rights actually say?

11 MR. MORTATI: Objection to form.

12 A. Yes.

13 MR. MORTATI: You can answer.

14 Q. Can you tell us what the Miranda Rights say?

15 A. Is it like a test?

16 Q. No, just a question.

17 A. I can read from my card? You want them verbatim?

18 Q. Please, yeah, I don't -- I don't mind.

19 A. You have the right to remain silent. You have the
20 right to refuse to answer any questions. You have --
21 anything you do say can and will be used against you in a
22 court of law. As we discuss this matter, you have a right to
23 stop answering my questions at any time that you desire. You

1 have a right to a lawyer before speaking to me, to remain
2 silent until you can talk to a lawyer and to have that lawyer
3 present with you when you're being questioned. If you do
4 desire a lawyer but you cannot afford one, one will be
5 provided to you before questioning without cost to you. Do
6 you understand each of these rights I have explained to you?
7 Now that I have advised you of your rights, are you willing
8 to answer my questions?

9 Q. Okay. Now, since you've been a police officer,
10 have you ever read anyone their Miranda Rights?

11 A. Yes.

12 Q. When you went to Mr. Hillary's apartment on October
13 24th, 2011 -- October 24th, 2011, that night, did you notice
14 anything out of ordinary with Mr. Hillary?

15 A. I don't know him ordinarily per se, but at that
16 point in time everything seemed -- I mean, it was -- it's an
17 awkward situation to have to go to someone's house and talk
18 about the death of a child that was in this person's life,
19 and that's not ordinary for me. But he was wearing black
20 socks, sandals, like athletic pants, a sweatshirt, like he
21 just showered or something.

22 Q. Besides that, anything else unusual about him?

23 A. Nothing more than I've already testified about.

1 Q. Okay. Now, you filled out search warrants -- you
2 filled out an affidavit for the search warrant for
3 Mr. Hillary; correct?

4 A. I've written several search warrants. Which one
5 are you specifically referring to?

6 Q. An affidavit for the search warrant that's marked
7 Tischler 2?

8 A. Is this the one I've already reviewed?

9 Q. I believe so, yes. You can read it again though if
10 you want.

11 MR. MORTATI: That's the one you reviewed earlier.

12 A. Okay. This is one from the vehicle search. Okay.

13 Q. Do you need to review it again or --

14 A. No, I believe I'm somewhat familiar with it, yes.

15 Q. Okay. Now, in that search warrant that you filled
16 out you say that it is for evidence of crimes in violation of
17 Penal Law 120, 125 and 140; correct?

18 A. Correct.

19 Q. And what is Penal Law 140?

20 A. Well, 120 is the assault, 125 homicide; right? Am
21 I wrong?

22 Q. Well, I don't know, I'm asking the question.

23 A. 140 I'm going to have to refresh myself with the

1 penal law. I believe it's burglary or --

2 Q. Okay. Now, in -- what evidence did you have --
3 okay, withdrawn. Okay. Now, you say that -- no, you didn't
4 say that.

5 Did you speak with the coroner, Ms. June Wood, at
6 any time after Garrett Phillips died?

7 A. About this case or other cases?

8 Q. This case.

9 A. I don't recall any specific one-on-one
10 conversations with June Wood. I mean, she would have been
11 communicating directly with the chief or with major crimes,
12 other persons involved in that.

13 Q. Okay. Now, you suspected Mr. Hillary of burglary
14 as well; correct?

15 A. Yes.

16 Q. Even though no one told you they saw him at the
17 scene?

18 A. Yes.

19 Q. Did you ever speak with the neighbors of Garrett
20 Phillips at any point?

21 A. No, I didn't depose them or conduct that interview.

22 Q. Did you ever read their depositions or read what
23 they stated in their interviews?

1 A. Yes.

2 Q. Now, the neighbors had stated that they heard
3 sounds that sounded like little boys or a woman screaming;
4 correct?

5 MR. MORTATI: Objection. Mani, if you want to
6 refer to their statements as opposed to you paraphrasing
7 it. I think it's improper for you to -- because you
8 keep paraphrasing people's testimony. You can answer
9 over objection.

10 A. My recollection of the depositions taken from
11 Marissa Vogel and her boyfriend or partner -- and I also upon
12 reviewing their 911 call or their call to the police, my
13 recollection of her version of it is such that they basically
14 called in a noise complaint. They heard some noises, didn't
15 think much about it while they were watching their show
16 Dexter on TV, but then they heard -- they thought they heard
17 -- she thought she heard somebody say "help" or "no" or
18 something. They went to the door, knocked on it to just --
19 to investigate further, thought they heard the door lock
20 latch shut, found that highly suspicious, and that's at that
21 point when they called the police. And a several minute
22 conversation with the dispatcher ensues and then a patrol is
23 dispatched to investigate further.

1 Q. Okay. Did anyone ever tell you that -- did you
2 ever read where the neighbor said the sounds coming out of
3 the apartment sounded like Mr. Hillary?

4 MR. MORTATI: Objection to form. You can answer.

5 A. I'm not sure how what -- Mr. Hillary would sound
6 like as opposed to any other person or how that would be
7 articulated. I don't remember reading that, no.

8 Q. Okay. Do you ever remember reading that sounds
9 coming out of the apartment sounded like an adult male?

10 A. No, I don't remember reading that specifically.

11 Q. Okay. Are there any connections between the sounds
12 in the apartment and Mr. Hillary?

13 MR. MORTATI: Objection to form. You can answer if
14 you can.

15 A. No.

16 Q. You state in your affidavit that there was evidence
17 of forced entry and exit from the second story window;
18 correct?

19 A. Yes.

20 Q. And you stated before no one told you that they saw
21 Mr. Hillary jump out a window?

22 A. No, no one saw anyone jump out the window.

23 Q. Okay. And you also stated that you had reports

1 placing Mr. Hillary -- in your affidavit you state that you
2 had reports placing Mr. Hillary in the immediate area;
3 correct?

4 A. Yes, yes.

5 Q. In your affidavit did you specify where that
6 immediate area was?

7 A. No. I referred in my affidavit to the attached
8 depositions of those parties I indicated before; Mr. Rice,
9 Mr. Phillips and Mr. Fairlie. They spell out the exact
10 location that they articulate.

11 Q. But none of those areas was 100 Market Street;
12 correct?

13 A. No.

14 Q. And where exactly did they place Mr. Hillary as
15 being?

16 A. Without -- I can -- if you have those depositions,
17 I can read them off.

18 Q. If you remember.

19 A. I believe Mr. Rice was over in the area of Cottage
20 and LeRoy. Mr. Phillips over on Market just north of 100
21 Market Street. Mr. Fairlie resides just to the southwest,
22 about 250 yards, approximately, or 200 yards.

23 Q. Okay. And --

1 A. Which is like a circle around 100 Market Street.

2 Q. And what was it -- and you state in your affidavit
3 for the search warrant that Mr. Hillary was seen during the
4 timeframe?

5 MR. MORTATI: Objection to form. You can answer.

6 A. In this affidavit?

7 Q. Yes.

8 A. During that timeframe?

9 Q. Well, that's --

10 A. The timeframe of the homicide?

11 Q. Correct.

12 A. There are reports of persons identifying Oral
13 Hillary as being in the immediate area of 100 Market Street
14 during the timeframe of the incident driving his light blue
15 colored Honda CRV motor vehicle. Yes.

16 Q. And what timeframe were you referring to?

17 A. The timeframe -- the initial call to us is at
18 5:10 p.m., and according to Marissa Vogel's deposition or my
19 recollection of her deposition is in the timeframe preceding
20 that, 4:45 to five o'clock is when -- somewhere in there is
21 when they heard the noises and started to investigate or, you
22 know, amp up their concern and then eventually report it.
23 And then there was a time that elapsed between our patrol's

1 response and the response of a key holder, Mr. Rick Dumas, to
2 eventually open the apartment and find the victim, Garrett
3 Phillips, in the apartment.

4 Q. So can you specify any clearer what timeframe you
5 are referring to in your affidavit?

6 A. In the timeframe of 4:45 to 5:45, and that would be
7 the most general. And then my specific time of the homicide,
8 if the report is at 5:10, then that's -- you know, I'm
9 assuming that's when the struggle would be going on or
10 there's something going on in there to make a noise. So
11 between 4:59 and 5:30, 5:25.

12 Q. Okay. And all of the people you cite or all of the
13 individuals' affidavits that you cite, they were also in the
14 vicinity during the timeframe of the homicide; correct?

15 A. Correct.

16 Q. Was Mr. John Jones in the vicinity during the
17 timeframe of the homicide?

18 A. Yes.

19 Q. You also say in your affidavit that Mr. Hillary
20 stated to you that he had a meeting with an injured soccer
21 player before practice on 10/24/11; correct?

22 A. Yes.

23 Q. When did Mr. Hillary tell you that?

1 A. At his residence.

2 Q. And did he say that in response to a question you
3 asked him?

4 A. Either myself or Investigator Snell asked him. I
5 think Investigator Snell asked him where had he been or
6 something to the effect of what were his -- where was he
7 during that timeframe or what was going on that afternoon.

8 Q. Okay. Now, you stated that your reason for going
9 over to Mr. Hillary's home on 10/24 was to inform him of the
10 death; correct?

11 A. Yeah, one of -- yes one of the reasons, yes.

12 Q. And why would you ask about his timeline if you
13 were going over to give notice of death?

14 A. Because potentially if he was in the immediate
15 area, maybe he would have seen something suspicious and been
16 in a position to report information that would aid our
17 investigation.

18 Q. So your reason for going to Mr. Hillary was not
19 just to inform him of the death; correct?

20 MR. MORTATI: Objection to form. You can answer.

21 A. No. My initial reason was just for that,
22 obviously, you know, ask his -- ask any questions that you
23 can get -- to get any information that we could get.

1 Q. So you also went --

2 A. At that point in time we had little or no
3 information about Garrett's after school activity or events
4 of that day or anything.

5 Q. And do you think Mr. Hillary could provide that
6 better than Garrett's mother?

7 A. My interactions with Garrett's mother was that she
8 was inconsolable and inaudible, so distraught she couldn't
9 put two words together that I saw, so I didn't have the
10 opportunity to ask Garrett's mother any of those questions.
11 I don't know if any other officers were able to speak with
12 her at the hospital.

13 Q. Okay. So your intention was to inform Mr. Hillary
14 of the death and also gather more information on the
15 homicide; correct?

16 A. Sure.

17 MR. MORTATI: Objection. It wasn't ruled a
18 homicide at that time, Mani. Will you stop making up --
19 you can answer over objection.

20 A. From the onset, the purpose of me contacting
21 Mr. Hillary was to establish -- to inform him of the death of
22 Garrett Phillips and ask him if he had any information that
23 would help us. I never would have thought it would have been

1 a big problem for him to help us with the death of a kid that
2 he used to live with.

3 Q. Did you have knowledge that Mr. Hillary could help
4 you with that information?

5 A. I didn't have any information to lead me to believe
6 that Mr. Hillary did not have any information. And we were
7 seeking any possibilities we could seek. Pretty much the
8 only person that we hadn't spoke to that had any interaction
9 with the kid in the last week to year that wasn't at the
10 hospital was Mr. Hillary and, of course, you know, his
11 children.

12 Q. Did you already speak to all of Garrett Phillips's
13 teachers at that point?

14 A. No.

15 Q. Did Garrett's teachers have interactions with him?

16 A. Are you talking about the night of the 24th?

17 Q. Yes.

18 A. No, we didn't call his teachers on the night of his
19 death. I know that state police investigators did respond to
20 the residences of the last two peers or student friends of
21 his that saw him and took depositions from them at their
22 house with their parents present, that was Mr. Rice, Teddy
23 Rice, and Carson Regan, while we were still operating under

1 the assumption that perhaps this was some kind of accident or
2 horrific tragedy.

3 Q. Okay. I might have asked you this, but you stated
4 that -- in your affidavit that Mr. Hillary had a meeting with
5 an injured soccer player before practice on October 24th,
6 2011; correct?

7 A. I stated that he said that he had a meeting with an
8 injured soccer player, yes.

9 Q. Okay. When did Mr. Hillary tell you that?

10 A. He stated that to myself and Investigator Snell, I
11 think.

12 Q. When did Mr. Hillary tell you that?

13 A. On the night of the 24th, mentioned that he had a
14 meeting with a soccer -- a new player and he went to practice
15 or something.

16 Q. Did you write that down or memorialize that
17 conversation?

18 A. In a deposition later, yes.

19 Q. When did you write that?

20 A. After we had began to think that this was
21 potentially a homicide and not some accident and that
22 Mr. Hillary had more to do with it than we initially thought,
23 and especially after the fact that we talked to Jacob Duff

1 and realized there was never any meeting.

2 Q. Okay. What time did Mr. Hillary tell you the
3 meeting was to take place?

4 A. I don't think he gave us a time. He just had said
5 he had a meeting and he was very general. I think Ian
6 Fairlie was the source of, you know, articulating, you know,
7 when the meeting was supposed to be and the times.

8 Q. Did you ask Mr. Fairlie whether or not Mr. Hillary
9 had a meeting with a soccer player?

10 A. I didn't, no.

11 Q. Did Mr. Fairlie ever confirm that Mr. Hillary had a
12 meeting with a soccer player?

13 A. Mr. Fairlie gave several depositions and interviews
14 to members of the New York State Police regarding that, yes.

15 Q. Did Mr. Fairlie ever confirm that Mr. Hillary had a
16 meeting -- did in fact have a meeting with a soccer player?

17 MR. MORTATI: Objection to form. You can answer.

18 A. I'm not really sure he did. He -- I mean, without
19 his deposition right here, his video recorded deposition, I
20 believe his testimony was that Mr. Hillary told him there was
21 a meeting, not really confirming that there actually was a
22 meeting.

23 Q. And you don't know what time this meeting was to

1 have taken place?

2 A. I don't believe there ever was supposed to be a
3 meeting to take place.

4 Q. Okay. Now, what's the connection between the
5 meeting Mr. Hillary had with the player and the death of
6 Garrett Phillips?

7 A. I mean, because that's -- that's the specific
8 reason that Mr. Hillary is using to place himself within 200
9 or 250 yards of the homicide scene of Garrett Phillips, is
10 that he shows up unannounced without any prior communication
11 or notification to his assistant coach Ian Fairlie that he's
12 going to show up there and just has this -- has a meeting
13 lined up with Jacob Duff. He had to come up with something,
14 I guess.

15 Q. And how did you confirm that Mr. Hillary never had
16 a meeting with Jacob Duff?

17 A. By talking to Jacob Duff or having -- by having New
18 York State Police talk to Jacob Duff and depose him and take
19 his statement.

20 Q. Okay. And could Jacob --

21 A. And going through the phone records of Jacob Duff
22 and Mr. Hillary, I think.

23 Q. How did you confirm through phone records that

1 Mr. Hillary did not have a meeting with Jacob Duff?

2 A. It just confirmed the -- substantiated what
3 Mr. Duff gave in his deposition as far as the -- you know,
4 the call records, phone calls back and forth or phone
5 conversations that he stated happened between he and
6 Mr. Hillary.

7 Q. So from phone calls -- from the time in the phone
8 calls between Mr. Duff and Mr. Hillary you confirmed that
9 there was never a meeting scheduled?

10 A. No. Based solely on the deposition of Jacob Duff.

11 Q. Okay. Do you think it's possible that Mr. Duff
12 could have been mistaken about the meeting?

13 A. Me personally, no, I don't.

14 Q. Why don't you think Mr. Duff could have been
15 mistaken?

16 A. I sat through his non-party deposition and seemed
17 pretty convincing to me that he was not mistaken.

18 Q. Okay. Now, the non-party deposition was last week;
19 correct?

20 A. Yes.

21 Q. Okay. At the time on 10/26/2011 when you wrote
22 your affidavit for the search warrant, how did you confirm
23 that Mr. Duff was not mistaken about the meeting with

1 Mr. Hillary?

2 A. I just -- I can't bring myself to fathom why a
3 collegiate person playing on a division three soccer team
4 with his entire future ahead of him would lie and perjure
5 himself on a sworn written statement for no reason, for no
6 benefit to him.

7 Q. You don't think he could have been mistaken?

8 MR. MORTATI: Objection to form. You may answer.

9 A. You've asked me that a few, three or four times.
10 Every time I answered the same way. I don't think he could
11 have been mistaken, I think something like that would stick
12 out in his mind. If you were at the non-party, you would see
13 how clear he seemed to recall it. And the fact if he would
14 have missed a meeting there would have been some consequences
15 for him.

16 Q. How do you know that?

17 A. Based on the player's testimony, you know, I'm
18 assuming Mr. Hillary runs a tight ship as coach. If he
19 schedules a meeting for somebody and they just don't show, I
20 don't think that would show very good discipline of the team.

21 Q. That's your assumption?

22 A. That's my assumption, yes.

23 Q. Okay. When was Mr. Jacob Duff first deposed?

1 A. I don't recall without looking at his deposition.

2 I believe it was the 25th, but I'm just guessing.

3 Q. Did you speak with any of Mr. Hillary's -- did you
4 speak with players on Mr. Hillary's team on or about October
5 25th, 2011?

6 A. I did not. Members of the state police were
7 assigned those leads, I believe, deposed the players and
8 athletic staff.

9 Q. Now, in your affidavit for the search warrant you
10 also state as a reason to get the search warrant that the
11 demeanor of Mr. Hillary had changed after Garrett's homicide;
12 is that correct?

13 A. Yeah. That was predicated on the depositions taken
14 from the players and their perception.

15 Q. Do you think it's unusual for a person's demeanor
16 to change after a child that they've known had died?

17 MR. MORTATI: Objection to form. You can answer.

18 A. I have no basis there. I have no basis to answer
19 that question. You're asking my personal opinion if it's
20 unusual for --

21 Q. Is it normal for someone's demeanor to change when
22 a child that they've know has died?

23 MR. MORTATI: Objection to form. You may answer.

1 A. I don't really understand the question. Can you
2 rephrase it or ask it to me clearer? Please clarify it.

3 Q. Okay. Would your demeanor change if a child that
4 you know has died?

5 A. If a child that I know has died? I don't know. It
6 would be subjective. I mean, how did the child die? Was he
7 murdered?

8 Q. Just died, just a young child dying, would that
9 change your demeanor?

10 A. It would be -- it would be sad. I don't know how
11 I'd react. I don't know.

12 Q. But you would be sad?

13 A. If a child that I know died, yes, I think so.

14 Q. Okay. So you would not be as happy as you normally
15 would be after hearing that a child you know has died?

16 A. Exactly. Exactly my point. And they described his
17 demeanor as elated and happier than normal at the practice so
18 that's part of the reason that there was --

19 Q. Who described Mr. Hillary as happier than normal at
20 practice?

21 A. Mr. Jacob Duff. The fact that he ended practice
22 early, seemed to be happy-go-lucky and jovial. I think there
23 were some other players too. I can't recall without going

1 through the depositions. I think one of them cited in the
2 affidavit maybe.

3 Q. So you're testifying that you had information that
4 Mr. Hillary was happier after Garrett Phillips died?

5 A. No. I'm testifying that in my deposition I stated
6 that his demeanor was changed. And then at the non-party
7 Jacob Duff testified that that change was in an elated
8 manner, happier than usual. And I believe the other
9 depositions point to it being highly un -- highly unorthodox
10 or unusual that he would cancel practice, you know, or cut
11 practice short that day and for any reason.

12 Q. Okay. Can I see that, please. Okay. In your
13 affidavit, did you specify whether or not Mr. Hillary's
14 demeanor had changed in a happy way or in a sad way?

15 A. Okay. Hillary gave her back a copy of the key a
16 few days later. Changes in Oral Hillary's demeanor
17 immediately after the homicide of Garrett Phillips as
18 observed by his Clarkson University men's soccer players at
19 practice on 10/24/2011, including the deposition of Michael
20 A. McConnell, described Hillary's behavior as significantly
21 out of character from his norm. This applicant observed --
22 it doesn't -- but, yeah, I --

23 Q. You don't specify what it is?

1 A. I don't specify. It's predicated on the
2 depositions of Michael McDonnell and Jacob Duff, not my
3 direct observations. I don't know what his normal demeanor
4 is at practice or what it would be -- how it would be
5 changed.

6 Q. And did Mr. McDonald or --

7 A. McDonnell. It's Mc -- M-C-D-O-N-N-E-L-L, I think.

8 Q. Thank you. Did Mr. McDonnell or Mr. Duff say that
9 Mr. Hillary's demeanor had changed for the positive?

10 A. Without having their depositions that would be attached to
11 this, I don't know. I don't know how they specifically
12 articulated the change in demeanor.

13 Q. Okay. But you --

14 A. I know that Mr. Jacob Duff testified last week as
15 he clarified that he described it as happier than normal.

16 Q. Now, at the time when you wrote this deposition on
17 October 26th -- at the time when you wrote this affidavit on
18 October 26, 2011 --

19 A. It would have been based on those depositions.

20 Q. Okay. Just let me finish the question.

21 A. Sorry.

22 Q. At the time you wrote the affidavit on 10/26/11,
23 you had not heard Jacob Duff testify last week; correct?

1 A. Correct.

2 Q. Okay. So on 10/26/2011, do you know whether or not
3 Jacob Duff and Mr. McDonnell had stated that Mr. Hillary's
4 disposition had changed for the positive or for the negative?

5 MR. MORTATI: Asked and answered already, Mani,
6 like three times. You can answer.

7 A. I don't know without referring specifically to
8 those depositions. I don't want to speculate.

9 Q. Okay. But you just answered stating that his --
10 that Mr. Hillary's mood had changed for the better; correct?

11 MR. MORTATI: Which question are you talking about,
12 Mani, because now you've mixed and mingled seven
13 different questions. You've got to be more clear.

14 Q. Did you just testify, Lieutenant Murray, that
15 Mr. Hillary appeared happier after the homicide?

16 MR. MORTATI: Objection to form. You may answer
17 over objection.

18 THE WITNESS: Could I -- can I have it read back
19 or --

20 MR. MORTATI: Whatever you want.

21 A. What part are we going about here?

22 Q. Okay. Before you wrote your affidavit on October
23 26, 2011, did you read the depositions of Mr. McDonnell and

1 Mr. Jacob Duff?

2 A. Yes.

3 Q. Okay. Did those depositions state that

4 Mr. Hillary's demeanor had changed for the better or for the
5 worse?

6 A. My recollection --

7 MR. MORTATI: Objection. Asked and answered. Go
8 ahead.

9 A. My recollection -- and of course I could go get the
10 dep right now and clear this all up. My recollection is
11 that, yes, they -- one of the two, if not both, had
12 stipulated that he seemed to be more happy-go-lucky or more
13 elated than usual.

14 Q. Okay. You also stated in your testimony that
15 Mr. Hillary had cut practice short the day after the
16 homicide?

17 A. Yes.

18 MR. MORTATI: I believe it was the day of the
19 homicide.

20 MR. TAFARI: The day after I said.

21 MR. MORTATI: He testified it was the day of the
22 homicide. You changed his testimony.

23 Q. Okay.

1 A. On the 24th.

2 Q. Did Mr. Will Hillary cut practice short on the
3 night of the 24th?

4 A. Yes.

5 Q. What time did Mr. Hillary end practice on the night
6 of the 24th?

7 A. I don't recall without looking at the case file.

8 Q. Okay. Now, you played college soccer, correct,
9 Lieutenant Murray?

10 A. Yes, sir.

11 Q. And the day before a game, was practice ever cut
12 short at Potsdam?

13 A. Going back to 1999, I don't recall. I mean, I --
14 normal practices before a game I'm willing to stipulate were
15 lighter than normal practices like the day after a game for
16 sure.

17 Q. Okay. And on October 24th, 2011, that was the day
18 before a game for Mr. Hillary; correct?

19 A. He played SUNY Potsdam on the 25th? Yes?

20 Q. Okay.

21 A. Did he?

22 Q. Yes.

23 A. Okay. Yeah. Right.

1 Q. Would it be unusual then for practice to be lighter
2 on the day before a game?

3 MR. MORTATI: Objection to form. You can answer.
4 Unusual for practice for Mr. Hillary or just in the
5 soccer world in general, Mani? You need to clarify that
6 because your question is so overbroad it cannot be
7 answered.

8 MR. TAFARI: I asked the question. Are you telling
9 him not to answer?

10 MR. MORTATI: No, he can answer over objection.

11 A. I don't know Mr. Hillary's specific soccer rituals,
12 practices, protocols, procedures, other than what I've read
13 about in depositions and heard about from various
14 testimonies. I do not think it would be highly suspicious if
15 it's the day before a game and it's -- the weather is really
16 inclement and he's got some injuries and he's got some
17 concerns to cut practice short, no, but I'm not a player on
18 the team and these players are saying it's out of the
19 ordinary, I would give them credence over my opinion.

20 Q. Were you at the game on October 25th, 2011?

21 A. Yes.

22 Q. And you state in your affidavit that you personally
23 observed Mr. Hillary with a significant limp on October 25th,

1 2011; correct?

2 A. Yes.

3 Q. Now, you don't say here that you observed
4 Mr. Hillary to have a limp on October 24th, do you?

5 A. That was written on the 26th, wasn't it? Can I
6 look at it?

7 Q. Sure.

8 A. Yeah, this was written on the 26th. I do say it in
9 there, significant limp right there (indicating).

10 Q. You state in your affidavit that you observed
11 Mr. Hillary to have a significant limp on October 25th, 2011;
12 correct?

13 A. Yes.

14 Q. But you don't state there that you saw any
15 significant limp on October 24th, did you?

16 A. I don't understand the question. You're confusing
17 me with the times. I wrote this on the 26th.

18 Q. Correct. In that affidavit, do you state that you
19 saw Mr. Hillary with a significant limp on October 24th,
20 2011?

21 A. This applicant observed Oral Hillary on the night
22 of 10/25/2011 during the course of the Clarkson versus SUNY
23 Potsdam men's soccer game, of which Hillary was on the

1 sideline as a coach, to have a significant limp in his right
2 leg when he walked. Hillary was described as usually running
3 up and down the sideline of his games very actively by
4 players and referees. Gavin Regan's deposition comes to
5 mind. And your applicant observed Hillary statuesque,
6 standing with his left leg planted and flexed, occasionally
7 lifting his right leg, bending it at the knee as if to
8 stretch it or favoring it. When Hillary walked off the turf
9 field to go inside for half time, he displayed a significant
10 limp on his right leg. This information directly correlates
11 with the evidence and information collected at the scene at
12 100 Market Street.

13 Q. Okay. My question is: Do you state anywhere in
14 this document that you observed Mr. Hillary limping on the
15 24th of October 2011?

16 A. I didn't see Mr. Hillary be ambulatory on the 24th.
17 He was sitting -- seated on his couch and I didn't observe
18 him get up and walk around or at least enough to gauge an
19 injury on his right leg.

20 Q. So you didn't see Mr. Hillary walk around?

21 A. I'm trying -- you know, I'm trying to think. We
22 obviously knocked on the door, somebody let us in. Was it
23 Ian Fairlie that let us in or -- I don't remember.

1 Q. Okay.

2 A. And it would have been like maybe four steps, five
3 steps, for him to go to his couch and sit down.

4 Q. Did you notice a limp on October 24th?

5 A. I don't recall. I don't even know if he answered
6 the door or Ian Hillary -- or Ian Fairlie did.

7 Q. Did you notice Mr. Hillary limp on October 24th?

8 A. No.

9 MR. MORTATI: Asked and answered.

10 Q. You state in your affidavit that the evidence that
11 was collected includes latent prints from the windows, hairs
12 and tissue sample deposited as a result of the drop; correct?

13 A. Correct.

14 Q. Now, you tested Mr. Hillary's latent fingerprints
15 you stated; correct?

16 A. I didn't, no.

17 Q. Did the Potsdam Police Department test
18 Mr. Hillary's latent fingerprints?

19 A. No, no, we did not.

20 MR. TAFARI: Can I have this marked?

21 (Murray Exhibit No. 2 was marked for
22 identification.)

23 (A recess was taken.)

1 Q. All right. Lieutenant Murray.

2 A. Yes, sir.

3 Q. I'm going to ask you to look at what's been marked
4 as Exhibit Number 2, and then I'll ask you a couple of
5 questions when you're done.

6 (Witness examining document.)

7 A. Okay.

8 Q. All right. Now, according to your affidavit you
9 stated that evidence collected at the scene includes latent
10 fingerprints from the windows --

11 A. Uh-huh.

12 Q. -- that the person went down from?

13 MR. MORTATI: You have to answer verbally.

14 A. Yes.

15 Q. That the person --

16 A. Yes.

17 Q. Okay.

18 A. Those are all items collected by the state police
19 forensic unit.

20 Q. Okay. But in your affidavit, you cite that you
21 recovered latent -- that latent fingerprints were recovered
22 from the window; correct?

23 A. Unidentified latent fingerprints, yes.

1 Q. Okay. You also state in the affidavit that hairs
2 and tissue sample that was deposited as a result of the drop
3 were also recovered?

4 A. Yes.

5 Q. Okay. Was Mr. Hillary's fingerprints ever tested
6 by the Potsdam police?

7 A. Specifically the Potsdam police, no. His latent
8 fingerprints were collected pursuant to the lawful search
9 warrant and they were turned over to the FIU, this Ray Brook
10 Troop B FIU unit for comparison with these latent prints.

11 Q. Did the Potsdam police ever send out Mr. Hillary's
12 fingerprints to be tested?

13 A. Yes.

14 Q. All right. Were Mr. Hillary's fingerprints tested?

15 A. To my knowledge, yes, they were compared -- by
16 tested, my understanding is they were compared with the
17 latent prints collected at the scene that we're referring to
18 in the report here.

19 Q. Okay. And that you refer to in your affidavit;
20 correct?

21 A. Yes.

22 Q. Did Mr. Hillary's fingerprints match the
23 fingerprints that were recovered at the scene?

1 A. Not to my knowledge, no.

2 Q. Do you have any information that Mr. Hillary's
3 fingerprints matched had the prints that were recovered?

4 A. Not. The consensus, especially with the victim's
5 DNA transfer on the window sill, the blinds and the point of
6 egress, is that the perpetrator was most likely wearing
7 gloves. The latent prints didn't seem to match with anyone
8 that we've tested so far.

9 Q. Okay. But you have no knowledge that the person
10 who did this was wearing gloves; correct?

11 A. I don't have no knowledge. That's my -- my
12 conclusion.

13 Q. Okay. Do you have any knowledge that the person
14 who did this was wearing gloves?

15 A. I think I answered that. My -- the information
16 that I just laid out for you would be my -- the reason why I
17 surmised that it's a high probability that the person was
18 wearing some kind of protective gear on their hands.

19 Q. How many individuals -- how many people's
20 fingerprints did the Potsdam Police Department send out to be
21 tested?

22 A. Numerous persons. Everyone we could -- anyone with
23 any access to either be in that apartment as a resident,

1 tenant, guest, family member, anyone we could think of.

2 Q. And it's your opinion that because none of the
3 fingerprints you sent out matched --

4 A. Maintenance -- maintenance staff, people that
5 cleaned the apartment, and there's -- there has not been a
6 match specifically for those latents on the -- that the FIU
7 collected.

8 Q. And because there has not been a match, it is your
9 opinion that the person must have worn gloves?

10 MR. MORTATI: Objection to form. You can answer.

11 A. No, that's not what I said.

12 Q. Okay. Now, Mr. Hillary's prints did not match any
13 prints recovered from the scene; correct?

14 A. Correct.

15 Q. Okay. Now, did the Potsdam police observe any
16 fingerprints at the scene?

17 A. No.

18 Q. Okay.

19 A. We didn't process the scene.

20 Q. Do you have information that there were any
21 fingerprints at the scene?

22 A. I have this lab report right in front of me
23 indicating that there are items L-3A, L-3B, L-4A, L-4B,

1 digital image of latent fingerprint, so yes.

2 Q. Does Mr. Hillary's fingerprints connect him to the
3 Garrett Phillips murder?

4 A. No, not at this point.

5 Q. Okay. At any point has Mr. Hillary's fingerprints
6 connected him --

7 A. No.

8 Q. -- to the Garrett Phillips murder?

9 A. No.

10 Q. Now, you also state in your affidavit for the
11 search warrant that hairs were collected at the scene;
12 correct?

13 A. Yes.

14 Q. Okay. Do you know if those hairs that were
15 collected belonged to a black person?

16 A. I don't know who they belong to, no. I don't know
17 what hair you're specific -- what hair you're to.

18 Q. Okay. What hair were you referring to in your
19 affidavit?

20 A. Which affidavit? The one right here (indicating)?

21 Q. Yes.

22 A. This is a supplemental, but this is the main -- the
23 state police forensic unit upon processing the crime scene at

1 100 Market Street, Apartment 4, excuse me, collected items
2 including these listed in the affidavit. There was a hair
3 from the crack on the ceiling or the roof tile, whatever it
4 was, and other hairs from within the apartment, I believe.

5 Q. And did the hair from the crack or the hairs in the
6 apartment match Mr. Hillary's?

7 A. Not to my knowledge, no, not at this point.

8 Q. Okay. At any point did the hairs collected match
9 Mr. Hillary's?

10 A. Not to this point, no.

11 Q. At any point?

12 A. Not to this point, no. I can't predict the future.

13 Q. Okay. So it's your belief that sometime in the
14 future the hairs could match Mr. Hillary's that was already
15 collected?

16 A. Yes.

17 MR. MORTATI: That's not what he testified to. You
18 can answer.

19 Q. Okay. You also stated a tissue sample was
20 deposited as a result of the drop; correct?

21 A. Correct, initially I reported that, yes.

22 Q. Okay. And were these tissue samples ever tested?

23 A. Yes, there was a test conducted of that sample. I

1 believe you have the reports in the packet we turned over,
2 but --

3 Q. Okay. And did that sample match Mr. Hillary's DNA?

4 A. No, because it turned out it was not a tissue
5 sample deposited in the crack of the roof tile. I actually
6 spoke with the lab technician that tested it. And his
7 professional scientific opinion is that it is an athletic
8 material, like a spandex or a Lycra, consistent with a high
9 end athletic jersey or warm-up pant or something of that
10 nature, that it was not a tissue sample.

11 Q. So the information contained in your affidavit was
12 incorrect?

13 A. At that time, yes. At the time I wrote the
14 affidavit, that's what was reported to me as evidence was
15 that it appeared to be a tissue sample, and it was tested as
16 a tissue sample and later determined not to be, and it turned
17 out to be what I just told you.

18 Q. Now, in your affidavit you wrote that a tissue
19 sample was collected?

20 A. You are correct, yes.

21 Q. Okay. Was that inaccurate?

22 A. Yes, at this point in time as I speak to you, that
23 was inaccurate. It was reported to me as a tissue sample at

1 the time I wrote the affidavit.

2 Q. Okay. So that information was not your first-hand
3 knowledge that you wrote in the affidavit, was it?

4 A. I guess we're going to split hairs over first-hand
5 knowledge. I was not on the roof collecting that sample, no.
6 It was reported to me by the person that did collect it that
7 it was their belief that it was a tissue sample. And it was
8 logged into evidence as a potential tissue sample or it's
9 actually reported in there as material deposited in the roof
10 tile.

11 Q. You had stated before, Lieutenant, that Mr. Hillary
12 made several phone calls while he was at the Potsdam Police
13 Department; is that correct?

14 A. Yes.

15 Q. And you stated that you heard my name mentioned
16 while he was on the phone; is that correct?

17 A. Yes.

18 Q. Okay. Did you hear the conversation that
19 Mr. Hillary had with me?

20 A. No.

21 Q. Okay. Did you hear the conversation that
22 Mr. Hillary had with Attorney Jane Garland?

23 A. Which conversation?

1 MR. MORTATI: I believe he's referring to phone
2 conversation.

3 A. No. The only -- this is on the video recorded from
4 October 26th from 8:22 approximately a.m. approximately 5:30
5 or 6:00 p.m. when Mr. Hillary is at the station. There's a
6 video recording of that entire occurrence or incident.

7 Q. Okay. Were --

8 A. Some of it's -- you can hear it. Some of it's
9 audible off camera. You can hear Mr. Hillary talking to
10 Steve Yianoukos, telling him the police have detained me, I
11 won't be in to work today. Basically he's broadcasting it
12 these people at work that he's being held at the police
13 station and he won't be in for a little bit or whatever. And
14 he calls Jane Garland and asks her to come be with him at the
15 station.

16 Q. Did you hear the conversation that Mr. Hillary had
17 with Jane Garland?

18 A. No.

19 Q. Did you hear what Jane Garland said to Mr. Hillary?

20 A. Just enough to know that he was talking to Jane
21 Garland, and that's just in the videotape. I don't know that
22 -- I wasn't even present with him outside the room when he
23 was making that call.

1 Q. Were you in the room when he was making the call
2 with Jane Garland?

3 A. I don't recall. I believe I was.

4 Q. Okay. Did you hear what he said to Jane Garland?

5 A. No.

6 Q. Did you hear what Jane Garland said to him?

7 A. No.

8 Q. Did you overhear any other conversations that
9 Mr. Hillary had that day?

10 A. With who?

11 Q. With anyone.

12 A. No. Other than with Mike Ames, members of the New
13 York State Police.

14 Q. Okay.

15 A. On camera, you know.

16 Q. All right. Now, let me take your attention --
17 actually, let's stay on 10/26. Did you meet with Justice
18 Pignone at any point on 10/26/2011?

19 A. Yes.

20 Q. What time did you meet with Justice Pignone?

21 A. I don't recall the times that the search warrant
22 applications were submitted without looking at them. I know
23 there were some that were as late as 9:44 at night, some that

1 were obviously sometime before four -- I believe 4:00 p.m.
2 was the time that we did the search warrant of Mr. Hillary's
3 person, so sometime before that Mr. Pignone met and reviewed
4 my search warrant application affidavit and issued a search
5 warrant.

6 Q. Where did you meet Mr. Pignone on 10/26/2011?

7 A. I don't recall where we met, either in his chambers
8 or at my station. I'm not sure.

9 Q. Where is the station -- where is his chambers?

10 A. It's right upstairs in this building.

11 Q. Okay. How many times did you meet with Mr. Pignone
12 on 10/26/2011?

13 A. I don't recall. At least two times at a minimum.

14 Q. Has Mr. Hillary ever filed a complaint with the
15 Potsdam police stating that he's been called a murderer?

16 A. Yes, I recall -- I do recall an incident that he
17 reported of that nature, yes.

18 Q. Okay. Do you recall when Mr. Hillary made this
19 report?

20 A. No, I do not.

21 Q. Do you recall the individual who called Mr. Hillary
22 a murderer?

23 A. I'm not sure who. I'm not going to guess. I think

1 I do but -- as reported by Mr. Hillary, I think it was -- I'm
2 not going to say who.

3 Q. Did the Potsdam police ever question this person?

4 A. I don't know.

5 Q. Okay. Was the individual ever arrested for calling
6 Mr. Hillary a murderer?

7 A. What would the --

8 MR. MORTATI: It's not a crime.

9 A. What would the charge be?

10 Q. I'm just asking a question.

11 A. I do not recall.

12 Q. Okay. Was the individual ever spoken to by the
13 Potsdam police for calling Mr. Hillary a murderer?

14 A. I'm not the officer that fielded the complaint,
15 handled the complaint or would have made that call. I don't
16 know. I don't have a recollection of what the actions were
17 of the officer that handled it.

18 Q. Do you know who the officer was who handled that?

19 A. No.

20 Q. What's that?

21 A. No.

22 Q. Okay. Have you ever told the family of Garrett
23 Phillips that Mr. Hillary is a suspect in his murder?

1 A. No.

2 Q. Have you ever told the family of Garrett Phillips
3 that Mr. Hillary was a person of interest in Garrett's
4 murder?

5 A. My conversations with the family of Garrett
6 Phillips don't -- that's not how they go. I would say -- I
7 would say preemptively they came to that conclusion. And
8 many of my interactions would be to console them and to keep
9 them satisfied knowing that we're doing everything we can to
10 seek legal justice for this case and for their loved one
11 that's lost and to keep them from doing anything that would
12 compromise the investigation, such as speaking to the press
13 or, you know, having public problems or something like that.

14 Q. Okay. Has anyone in Garrett Phillips's family told
15 you that they believe that Mr. Hillary is a suspect in this
16 murder?

17 A. I think that's a unanimous consensus at this point,
18 yes.

19 Q. Okay. Who in the family has told you that?

20 A. Everyone. It would be a lot shorter for me to tell
21 you who doesn't.

22 Q. You can --

23 A. I can't think of anyone that doesn't. If you would

1 have been at the non-parties, it was pretty straight forward.
2 All the depositions indicate that they at least suspect, if
3 not believe, that he is the person responsible for this based
4 on his negative relationship with Garrett, based on their
5 interactions with him. There are a number of reasons.

6 Q. Okay. And who would these people be?

7 A. Tandy Cyrus, her parents Joe and Janet, the
8 Phillipses, all of the grandparents, Brian. I think as -- I
9 can't speak for Casey Collins but I get the impression that
10 he thinks Oral had something to do with it. I haven't talked
11 to Aaron. He's aged a little bit, maybe he's formed an
12 opinion as to who killed his brother. Am I leaving anybody
13 out?

14 Q. Okay. All right. Now, to your knowledge, has
15 Chief Tischler ever told family members of Garrett Phillips
16 that Mr. Hillary was responsible for his murder?

17 A. No.

18 Q. To your knowledge, has Chief Tischler ever told the
19 family of Garrett Phillips that Mr. Hillary was a suspect in
20 this murder?

21 A. I would -- I remember we -- when meeting with the
22 entire family when Nicole Duve was still our DA, just meeting
23 with them as a group to keep them apprised, this is kind of

1 before we -- to let them know that they wouldn't be hearing
2 anything from us unless there was a break in the case or
3 unless there was something they needed to know about it
4 because it seemed unfair for them to ride this roller coaster
5 of hope, you know, and then it dropped out, but just saying
6 that we're looking at every lead. And I think Oral was a
7 person of interest in their minds and they wanted to know
8 what was being done with the case and just having that
9 discussion with them, but I don't remember Chief Tischler
10 specifically saying to the family anything to what the effect
11 that you're saying, that he's a suspect or anything more than
12 a person of interest, that we're looking into everything we
13 can.

14 Q. Okay. Now, you were present earlier today when
15 Chief Tischler was giving his deposition; correct?

16 A. Yes.

17 Q. Did you hear Chief Tischler say he told Tandy Cyrus
18 that Mr. Hillary was a person of interest in Garrett's
19 murder?

20 A. I don't recall Chief Tischler's testimony.

21 Q. But it's your testimony that you've never heard
22 Chief Tischler tell anyone in the family that Mr. Hillary was
23 a person of interest in Garrett's murder?

1 MR. MORTATI: Don't answer that. Do you want to
2 read back that very long answer he gave where he used
3 the phrase person of interest in reference to Tischler
4 talking about Mr. Hillary, that would probably suffice.
5 At the end -- the last like three sentences, it's a very
6 long answer Mr. Murray gave, he just talked about how in
7 the meeting Chief Tischler talked about Mr. Hillary
8 being a person of interest and we're looking at every
9 lead, but you can answer it over objection.

10 It's almost 25 after 5:00, Mani. How much longer
11 do you have?

12 MR. TAFARI: Most of it's done.

13 MR. MORTATI: If you're not finished soon, we're
14 going to break for the day so --

15 MR. TAFARI: I mean, these two guys are the people
16 I'm talking. Yesterday the mayor was --

17 MR. MORTATI: I don't really care about that
18 because I offered them up for full day depositions so --
19 you don't have to go back to that unless you want to?

20 MR. TAFARI: No, we don't have to go back. And
21 just off the record.

22 (Off-the-record discussion.)

23 Q. Mr. Murray, you stated that Chief Tischler did

1 state that Mr. Hillary was a person of interest; correct?

2 MR. MORTATI: Objection to form. Refer to his
3 prior answer. You can answer over objection.

4 A. Yes, I stated that my recollection is that he may
5 have eluded to Mr. Hillary as a person of interest in the
6 investigation, yes.

7 Q. And who did he say that to?

8 A. I don't recall everyone that was at that meeting,
9 if it was just Tandy or if it was to her and her parents.

10 Q. All right. Let me take you to November 30th, 2011.

11 A. Okay.

12 Q. Did you see Mr. Hillary that day?

13 A. Yes.

14 Q. Okay. What time did you see Mr. Hillary?

15 A. November 30th, 2011, was the day of the second
16 round of the search warrants, was it? Yes?

17 Q. Okay.

18 A. We went to his residence at Meadow East on Leroy
19 Street, and by we, myself, Investigator Snell, Investigator
20 Planty, Officer Daniels and other members of the state
21 police.

22 Q. Okay. And who was at Mr. Hillary's home that day?

23 A. He and his young son, I think two years old.

1 Q. Okay. And did you instruct -- who did you go with?

2 I'm sorry. You stated you went with Officer Daniels?

3 A. He was one of the persons there. Myself and
4 Investigator Snell knocked on the door to Mr. Hillary's
5 apartment.

6 Q. Okay. Did you instruct Officer Daniels to take
7 Mr. Hillary's phone?

8 A. No.

9 Q. Did Officer Daniels take Mr. Hillary's phone?

10 A. No. I did.

11 Q. Did you have a warrant for Mr. Hillary's phone when
12 you took it?

13 A. I had a lawful warrant for his residence and all
14 items included at his residence, yes.

15 Q. So the warrant stated that all items at his
16 residence could be taken?

17 A. I can look at the warrant to read specifically what
18 it says, but I specifically remember giving a copy of the
19 warrant to Mr. Hillary and reading it and saying to him you
20 have to vacate your residence, we have a lawful warrant,
21 we'll execute it and be out of here as quickly as possible.
22 Gather the items you need to get out here and be on your way.
23 And, yes, the phone was plugged in to a charger and sitting

1 on the couch, as you walk into the apartment, on the couch,
2 and I specifically said you have to leave that here for us,
3 it's included in the warrant lawfully, leave it on the couch.

4 Q. Did you grab Mr. Hillary's child that day?

5 A. Negative.

6 Q. Did you touch Mr. Hillary's child that day?

7 A. Negative.

8 Q. Did Officer Daniels touch Mr. Hillary's child that
9 day?

10 A. Yes. He reached out for his child. I don't know
11 if he actually touched his child or not, but it --

12 Q. Why did Officer Daniels reach out for Mr. Hillary's
13 child?

14 A. After I instructed Mr. Hillary or after I explained
15 to Mr. Hillary the reason for us being there, provided him
16 with a copy of the search warrant and informed him that we
17 were going to need to have him, you know, get properly
18 dressed, get his son dressed and vacate the residence or get
19 him somewhere warm and safe for the duration of the search
20 warrant, I specifically told him you need to leave the phone
21 and all the items that were as they were until we executed
22 the warrant. He ignored my lawful order to leave the phone
23 where it was, he took it off the charger and put it in his

1 left hand.

2 Well, he had his son in his right hand, and I put
3 my arm out and said please hand over the phone, it's part of
4 the warrant, we need to put it back where it was and leave
5 it. He refused. I continued to say please give me the
6 phone, put your child down or give me the phone, whatever, or
7 not put your child down, just give me the phone. He turned
8 the child towards me as if to use his child as a shield. I
9 put my hand on the phone. I kept asking him to give me the
10 phone, give me the phone. He refused. He kept trying to
11 explain to us why we couldn't take the phone or whatever
12 reasons he had.

13 And he clenched the phone in his left hand with his
14 son in his right arm, and then I had a hold of the phone, and
15 I said please release the phone, it's part of the search
16 warrant. And still with no compliance coming over and over
17 again, Charlie Daniels or Officer Daniels was right there. I
18 said, Charlie, you need to help me get the phone. Charlie
19 went to grab the child like this or put his arms around the
20 torso of the child (indicating), at which time Mr. Hillary
21 released and gave me the phone and that was that.

22 Q. Okay. Now --

23 A. And I put the phone back on the charger, back on

1 the couch where it was.

2 Q. Now, how much did this child weigh?

3 A. I've got three kids. I'd estimate the child is
4 about 30 pounds, 35.

5 Q. Okay. You said he was about two years old to your
6 knowledge?

7 A. That's my estimation.

8 Q. Okay. Do you think it was appropriate for Charlie
9 Daniels to attempt to grab Mr. Hillary's child?

10 MR. MORTATI: Objection to form. You can answer.

11 A. I think we disagree on that, the verbiage on that.
12 I think it was very appropriate. Mr. Hillary is obstructing
13 the governmental administration and disobeying a lawful order
14 to, you know, leave property as it is for a search warrant
15 and --

16 Q. Was Mr. Hillary ever charged with obstruction of
17 governmental administration?

18 A. No, no.

19 Q. All right. Almost done here. Lieutenant Murray,
20 do you know Sergeant Ames?

21 A. Yes.

22 Q. How long have you known Sergeant Ames?

23 A. Since he began work at the Potsdam police station,

1 department.

2 Q. Okay. Are you aware of an incident involving
3 Sergeant Ames that happened on or about October 30th, 2010?

4 A. Yes.

5 Q. When did you become aware of that incident?

6 A. Almost a year and a half after the fact.

7 Q. Okay. How did you become aware of that incident?

8 A. I received a text message, like a screen -- a
9 Facebook screen shot of J.J. Jenks Junior's Facebook page.
10 There was some rant about a Potsdam police officer involved
11 in a -- alleging he was involved in a property damage
12 accident, an off duty party or something alleging a hit and
13 run, and some vulgarity in there. I documented the Facebook
14 message or I documented the text message that was a Facebook
15 screen shot of his Facebook page. I'm not friends with that
16 person so I don't see their feed or anything.

17 Q. Understood. Did you ever speak with Chief Tischler
18 about this matter?

19 A. Yes.

20 Q. When did you speak with Chief Tischler about this?

21 A. I think I received the text message like early
22 Sunday morning and first thing Monday morning when I came
23 into work morning I immediately notified my supervisors. At

1 that time we had -- Chief Bates had just been chosen, he was
2 becoming probationary chief and that Chief Tischler had two
3 -- less than two weeks left or was on his way out.

4 Q. Okay. Did you ever notify the mayor about this
5 incident?

6 A. No.

7 Q. Okay. Have you ever been to J.J. Jenks Junior's
8 apartment?

9 A. No.

10 Q. Okay.

11 A. I think it's a house.

12 Q. Okay. You've never been to his house?

13 A. No.

14 Q. Okay. Officer Murray, who is Richard O'Hanlon?

15 A. He's a very -- he's a gentleman that lives on
16 Sisson Street.

17 Q. Okay. And have you had any interaction with
18 Mr. O'Hanlon in the last two months?

19 A. Yes.

20 Q. And could you describe that interaction for us to
21 make this a little quicker?

22 A. I'll be as quick as I can. He -- long story short,
23 investigation into two e-mails that we received pursuant to

1 the homicide investigation led us to come into knowledge that
2 he was the author and person that had sent those e-mails to
3 Chief Tischler or Chief Bates and myself and Sergeant Smith,
4 I think.

5 Q. Okay. And one of those e-mails were sent -- was
6 sent a couple of months after the Garrett Phillips homicide;
7 correct?

8 A. Yes.

9 Q. Okay. And the other e-mail was sent on or about
10 August of last year?

11 A. Yes.

12 Q. 2013; correct?

13 A. Yes.

14 Q. Okay. Did you ask him why he sent those e-mails?

15 A. Yes.

16 Q. And why did he say he sent them?

17 A. We did video record an interview with him. He was
18 -- this is going to sound bizarre, but it is bizarre. He was
19 mad at a friend of his ex-girlfriend for what he perceived as
20 them giving him dirty looks and treating him badly in public
21 so he wanted to get back at them by implicating them in the
22 Garrett Phillips homicide.

23 Q. And did he implicate people in the Garrett Phillips

1 homicide?

2 A. Yes, he did.

3 Q. And who did he mention as being responsible for the
4 Garrett Phillips homicide?

5 A. Going by my memory, I believe a Craig Foley, a Bill
6 Beebe, James Gardner. Just random acquaintances of his.

7 Q. Okay. Did he describe how -- in the letters how
8 Garrett Phillips had died?

9 A. Yeah. It was a twisted fictional account of --
10 involving sexual molestation and satanic rituals and --

11 Q. Was Garrett Phillips sexually molested?

12 A. No.

13 Q. During the Garrett Phillips investigation, the
14 Potsdam police looked at sex offenders; correct?

15 A. Yes.

16 Q. Okay. Is there a reason why you did that?

17 A. We wanted to look at every possibility of any
18 violent offender or any potential suspicious person or anyone
19 with a motive to harm Garrett Phillips.

20 Q. Was Mr. O'Hanlon ever charged with a crime?

21 A. Yes.

22 Q. Has that case been tried?

23 A. Not to my knowledge, no.

1 Q. Okay. Lieutenant Murray, did you ever apply for an
2 arrest warrant for Mr. Hillary?

3 A. No.

4 Q. Okay. Did you ever speak to former DA Nicole Duve
5 about the -- about the Garrett Phillips case?

6 A. We've discussed the Garrett Phillips case several
7 times, yes.

8 Q. Did you ever discuss inch Mr. Hillary with -- with
9 former DA Nicole Duve?

10 A. Yes.

11 Q. And did you ever ask her whether or not Mr. Hillary
12 would be arrested?

13 A. I don't think I specifically asked her that
14 question. We talked about the pitfalls of potential
15 prosecution of the case and obviously discussed our physical
16 evidence, DNA evidence, circumstantial evidence, all the
17 merits of the case and how it -- how it would go in a
18 prosecution.

19 Q. Did you discuss the prosecution of Mr. Hillary with
20 former DA Nicole Duve?

21 A. I don't -- I'm not sure I understand. Specifically
22 Oral Hillary?

23 Q. Correct.

1 A. The case itself, he was discussed as a high, high
2 person of interest or potential suspect, yes.

3 Q. Okay. Now, just to be clear, there were never any
4 witnesses that saw Mr. Hillary harm Garrett Phillips?

5 A. Depending on your definition of harm. I mean,
6 there's different kinds of, you know, psychological harm or
7 physical harm. There are depositions that articulate what
8 people perceive as Mr. Hillary treated Garrett as less than
9 ideal.

10 Q. Okay.

11 A. People's perceptions of their relationship was
12 different than Mr. Hillary describes it I guess is how I'd
13 say.

14 Q. All right. Has anyone -- is there any physical
15 evidence that connects Mr. Hillary to the Garrett Phillips
16 homicide?

17 A. Yes.

18 Q. What would that be?

19 A. I would offer his ankle injury as highly suspicious
20 given its nature and method of discovery and how it seems to
21 be very congruent with the method of egress from the homicide
22 scene window.

23 Q. So in your opinion, Mr. Hillary's ankle injury

1 connects him to the Garrett Phillips homicide?

2 A. Yes.

3 Q. Any other physical injury that connects -- any
4 other physical connection between Mr. Hillary and the Garrett
5 Phillips homicide?

6 MR. MORTATI: Objection to form. You can answer.

7 A. Any other physical evidence that links Mr. Hillary
8 to the homicide of Garrett Phillips? Depending on your
9 definition of physical evidence, I mean, obviously there's a
10 lot of circumstantial factual basis for my feeling that he's
11 linked to the case. The DNA reports, if you really read into
12 them, for instance, the DNA profile, it's neither inclusive
13 nor exclusive. He can neither be included nor excluded from
14 the crime scene in certain spots so, you know, there's
15 potential that maybe down the road there's better DNA
16 processes that would be able to, you know, definitively
17 exclude him or include him. I mean, I'm hopeful for that.

18 Q. You're hopeful for the inclusion or the exclusion?

19 A. I just want justice. I don't -- if he's included
20 or excluded, I just want him to be either cleared if he
21 didn't do this or charged if he did do this.

22 Q. Okay. So at this point to you Mr. Hillary is not
23 cleared?

1 A. Absolutely. To my point, at this point in time as
2 everything sits, I don't think he is excluded from the
3 investigation, no.

4 Q. Okay. So you do not believe Mr. Hillary to be
5 innocent of killing Garrett Phillips?

6 MR. MORTATI: Objection to form. You can answer.

7 A. I do believe that Nick Hillary killed Garrett
8 Phillips, yes.

9 Q. Is that what your gut tells you?

10 MR. MORTATI: Objection to form. You can answer.

11 A. That's what the facts of this -- that's what the
12 facts of this case speak to me and say, yes.

13 Q. Okay. If you were the DA, would you prosecute
14 Mr. Hillary for this murder?

15 MR. MORTATI: Objection. Don't answer. Mani, he's
16 not the DA and he can't make that determination. You're
17 asking him to answer a hypothetical for a position he
18 can't hold nor could he possibly hold because he doesn't
19 have a law degree, first of all. Don't answer that
20 question, it's ridiculous.

21 MR. TAFARI: Mark it for a ruling, please.

22 MR. MORTATI: Please do.

23 Q. What's the biggest reason you think -- let me put

1 it this way: What's the biggest factor connecting
2 Mr. Hillary to this homicide?

3 MR. MORTATI: Objection to form. You can answer.

4 A. His disdain for Garrett Phillips. The fact that
5 that was the only thing standing in the way between -- in Mr.
6 Hillary's opinion that I perceived standing in the way from
7 him having a relationship with Tandy Cyrus, now Tandy
8 Collins. And just I think he perceived that he was
9 disrespected by having the kids be the reason that their
10 relationship ended. I think there was a lot of animosity
11 held up that of everything this was the reason -- and maybe
12 it was just the only Tandy used as an excuse, but for
13 whatever reason I think that that really hurt him.

14 Q. Do you believe everything Ms. Tandy Cyrus has told
15 you during the course of this investigation?

16 A. No. And I also forgot to include in the physical
17 evidence part, the most compelling part that really, you
18 know, seals it for me was the videotape of Mr. Hillary
19 stalking Garrett, you know, literally 10 minutes before his
20 death. That's pretty compelling physical evidence to me.

21 Q. Okay. You say the physical evidence. Did you see
22 Mr. Hillary stalking Garrett Phillips?

23 A. On videotape, yes.

1 Q. Okay. Where was Mr. Hillary while he was stalking
2 Garrett Phillips on videotape?

3 A. In his personal vehicle in the Potsdam high school
4 gym parking lot.

5 Q. Okay. Did you see Mr. Hillary sitting in this
6 vehicle?

7 MR. MORTATI: Mr. Tafari, your client has admitted
8 to being in his car in that parking lot so this isn't a
9 hypothetical, this is fact.

10 A. I heard Mr. Hillary testify that he was in his
11 vehicle.

12 Q. Did you see Mr. Hillary sit in his vehicle in the
13 Potsdam parking lot?

14 A. The Potsdam high school gym parking lot?

15 Q. Correct.

16 A. No.

17 Q. Okay. So you just testified that Mr. Hillary --
18 you saw Mr. Hillary stalk Garrett Phillips 10 minutes before
19 he died; correct?

20 A. Yes.

21 Q. Where did you see Mr. Hillary 10 minutes before
22 Garrett died?

23 A. On videotape in his personal vehicle in the Potsdam

1 high school gym parking lot, and I saw him turn left onto
2 Leroy Street.

3 Q. And you saw Mr. Hillary sitting in that vehicle on
4 videotape?

5 A. No, he -- I heard him testify under penalty of
6 perjury that he was in his personal vehicle at the high
7 school gym parking lot at that date, time and location.

8 Q. Did you see a tape of Mr. Hillary sitting in that
9 vehicle in the Potsdam high school parking lot?

10 A. What do you mean by tape?

11 Q. You said you saw a video.

12 A. A video, yeah, the Potsdam high school security
13 footage of that.

14 Q. Okay. Did you see Mr. Hillary in that video?

15 A. I saw Mr. Hillary's vehicle and then heard his
16 testimony that he was the operator of that vehicle.

17 Q. Did you see Mr. Hillary in the video at the Potsdam
18 high school parking lot?

19 MR. MORTATI: Objection. Asked and answered.

20 A. Yeah. I could probably go back four questions,
21 and, no, I did not see Mr. Hillary specifically.

22 Q. Okay. But you knew that that was Mr. Hillary's
23 car?

1 A. Yes.

2 Q. Did you see the license plate on that car?

3 A. No. He testified under oath that it was his car.

4 Q. My -- my question is: Did you see the license
5 plate on the car in the video?

6 A. No. You can't see the license plate in the video
7 of the car.

8 Q. So how do you know it was Mr. Hillary's car?

9 A. Because Mr. Hillary testified under oath. Unless
10 Mr. Hillary is lying about it, I don't --

11 Q. When did Mr. Hillary testify -- when did you see
12 Mr. Hillary testify under oath?

13 A. When we had a 50-h hearing two years ago; right? I
14 mean, I'm guessing. I shouldn't guess. Approximately two
15 years ago.

16 Q. No. When did you see Mr. Hillary testify under
17 oath?

18 A. In person. Last week.

19 Q. Okay. And was Mr. Hillary shown any videos while
20 he was testifying?

21 A. Not to my knowledge, no.

22 Q. Okay. So when you say Mr. Hillary testified to
23 being in the vehicle that you saw --

1 A. Yes.

2 Q. -- what are you basing that on?

3 A. I mean, we can pull the transcript, but Mr. Hillary
4 says I am in my personal vehicle, a light blue Honda CRV, was
5 it EGC3433 or whatever it is, and he goes to the gym. I
6 mean, I'm testifying to what he testified to? I mean, I'm
7 confused.

8 Q. No.

9 A. I mean, I know what I heard last week but --

10 Q. Did you ever play that video for Mr. Hillary?

11 A. No, I didn't. He wouldn't -- I offered it up if he
12 wanted -- and if he wants to see it, I'll show it to him
13 tomorrow.

14 Q. Okay. Now, the video that you're stating
15 Mr. Hillary -- you saw Mr. Hillary in --

16 A. Uh-huh.

17 Q. -- you never actually saw Mr. Hillary?

18 MR. MORTATI: Objection. Asked and answered.

19 Don't answer that. Mani, you've asked this question I
20 don't know how many times now. We walked your client
21 through the testimony. I did it twice under oath with
22 your client where he admitted being in his car in that
23 parking lot doing what that car does, and there's only

1 one light blue late model Honda CRV that ever comes in
2 that parking lot in the video, which is the one your
3 client admitted to driving under oath twice.

4 MR. TAFARI: You're not allowed to testify,
5 Mr. Mortati.

6 MR. MORTATI: I don't care at this point because
7 what you're doing is improper. You can mark it for a
8 ruling, Erica, if you would like to. He's not answering
9 this question for the umpteenth time that you've asked
10 it. Move on to something else or finish. It's almost
11 10 of 6:00.

12 Q. When did you first get the video of a blue CRV in
13 the Potsdam high school parking lot?

14 A. I do not recall.

15 Q. Okay. Do you recall who provided you with that
16 video?

17 A. It was either the Potsdam high school IT department
18 or the New York State Police forensic team.

19 Q. Okay. Do you have any documentation or any
20 deposition of anyone identifying Mr. Hillary as sitting in
21 the video you saw?

22 MR. MORTATI: Besides Mr. Hillary?

23 A. Yeah, Mr. Hillary himself.

1 Q. But you never showed Mr. Hillary the video;
2 correct?

3 A. I don't know how I articulate that I can link, you
4 know, known facts to come to a really logical conclusion,
5 but, yes, that's what -- that's how I'm arriving there.
6 Mr. Hillary testified that he's in his vehicle at that
7 parking lot that date, time and location. He's the only
8 Honda CRV that color, model, make, whatever, at that time
9 period so I'm leaping forward to the conclusion that that was
10 Mr. Hillary in his vehicle, like he said.

11 Q. So you're making an assumption that that was?

12 A. No, I'm making a conclusion based on two facts.

13 Q. Okay. But the first fact that you're making the
14 conclusion based on, you didn't see the license plate of the
15 vehicle; correct?

16 A. Correct.

17 Q. And you didn't see Mr. Hillary sitting in that
18 vehicle; correct?

19 A. Correct.

20 MR. TAFARI: All right. I think that's it unless,
21 if Mr. Mortati has questions, I might have a few more.

22 EXAMINATION

23 BY MR. MORTATI:

1 Q. Sure I have a question. Mr. Murray, how do you
2 think Mr. Hillary might worm his way out of admitting under
3 oath twice that he was in that vehicle in that parking lot at
4 that time?

5 A. I don't know.

6 Q. The only other question I wanted --

7 MR. TAFARI: Did you just say worm his way out?

8 MR. MORTATI: That's exactly what I said.

9 Q. Let me ask you another question. You mentioned
10 earlier in response to a question by Mr. Tafari that I
11 believe the first time you heard information that Tandy Cyrus
12 indicated that Mr. Hillary had physically touched her, I
13 believe, carried her or picked her from one point in the
14 house and carried her somewhere else was at her non-party
15 deposition last week. Do you recall, first of all, that
16 testimony from earlier?

17 A. I do recall that testimony from earlier before.

18 Q. Did Ms. Cyrus supply I believe three supporting
19 depositions to the state police?

20 A. Yes, at least two, potentially three, depositions.
21 I think two handwritten and one typed.

22 Q. And the typed supporting deposition, did she
23 recount that incident to the state police investigators?

1 A. Yes.

2 Q. So is that actually the first time that you would
3 have heard --

4 A. Yes, back when her deposition was entered.

5 MR. MORTATI: Thank you. Nothing further.

6 EXAMINATION

7 BY MR. TAFARI:

8 Q. Do you remember the date that's on that deposition,
9 Lieutenant Murray?

10 A. I don't recall.

11 Q. Mr. Murray, did anyone -- did any police officer
12 work on this investigation who's related to either Ms. Tandy
13 Cyrus or to the Phillips?

14 A. I don't recall. I don't believe so.

15 Q. Okay. Is Officer Snell related to Ms. Cyrus?

16 A. Not to my knowledge.

17 Q. Okay. Is anyone in the Potsdam Police Department
18 related to Ms. Tandy Cyrus?

19 A. Not to my knowledge, no.

20 MR. TAFARI: Nothing further, Mr. Murray.

21 (The deposition concluded at 5:55 p.m.)

22

03-28-14

23 Dated


Mark R. Murray

1 STATE OF)

2 COUNTY OF)

3 I, Maureen E Gaffney, a Notary Public in and for
4 the state of New York, do hereby certify that the
5 foregoing deposition of MARK R. MURRAY was subscribed in my
6 presence on the 28th day of March 2014.

7 IN WITNESS WHEREOF, I have hereunto subscribed my name
8 and affixed my seal, the date hereinabove mentioned.

9

10

Maureen E Gaffney

11

Notary Public

12

State of New York

13

County of St Lawrence

14

My commission expires 7/11/15

15

16

MAUREEN E. GAFFNEY
Notary Public, State of New York
No. 01GA6244518
Qualified in St. Lawrence County
My Commission Expires 7/11/15

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STATE OF NEW YORK)
COUNTY OF ST. LAWRENCE)

I, Erica Bedford, a Notary Public in the state of New York, do hereby certify that the foregoing deposition of MARK R. MURRAY was taken before me, in the cause, at the time and place, and in the presence of counsel, as stated in the caption hereto, at Page 1 hereof; that before giving his deposition said witness was duly sworn by me to testify the truth, the whole truth and nothing but the truth; that the foregoing typewritten transcription of testimony, consisting of pages number 5 to 147, inclusive, was produced to the best of my ability of said witness and of all proceedings had at the session at which said deposition was taken.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this the 18th day of February 2014.


Erica Bedford, Notary Public

State of New York

County of St. Lawrence

My commission expires: 5/11/14