

First Day. Monday August 9th, 2021

Before Judge Patrick Murphy

People's exhibit images: <https://imgur.com/a/hgvIBUt> - Defense exhibit images: <https://imgur.com/a/VC3ZfUZ>

THE PEOPLE OF THE STATE OF COLORADO, Plaintiff,

v

BARRY LEE MORPHEW, Defendant.

The above-entitled matter came on for hearing on Monday, August 9, 2021 at 8:16 am before the HONORABLE PATRICK W. MURPHY, District Judge.

APPEARANCES:

FOR THE PLAINTIFF:

JEFFERY LINDSEY, LINDA STANLEY, MARK HURLBERT, AARON F. PEMBLETON

FOR THE DEFENDANT:

IRIS EYTAN, DRU NIELSEN

ALSO PRESENT:

BARRY LEE MORPHEW, ALEXANDER WALKER, KENNERTH HARRIS, RACHEL ROBERTS

Starting at page 121 of court transcripts.

BY Mr. LINDSEY:

Q Lindsey: Now in November of 2020 Agent Harris were you alerted to a potential spy pen?

A Harris: Yes.

Q Lindsey: And what was – what was the – the part of the spy pen that became – not what's on the spy pen but what part of it became relevant to the victimology aspect of your investigation?

A Harris: So the various recording files, anything where Suzanne was on there or anybody else that was communicating. So we were looking at – through the recordings just to see what was captured.

Q Lindsey: And did you listen to the files or at least try to listen to the files that were contained on the spy pen?

A Harris: Yes

Q Lindsey: Before we get too in depth about Suzanne was there some recordings on there of some blogs or different kind of stations that you heard

A Harris: So there were - there were a couple of different recordings. One appears to be the pen inside of Barry Morphew's truck as he's driving as far as we can tell. In that context you can mostly hear what we presume to be the truck radio, and the truck radio is playing episodes of – there's some news clips and then there's portions of Forensic Files talking about various criminal cases and the forensic details about those criminal cases as he's driving.

Q Lindsey: Without going into really huge details of those recordings could you tell roundabout when those were recorded?

A Harris: The files themselves don't have dates but sometimes what's captured on the recording would have dates. I believe there's something in one of the news reports that puts them in -- I don't remember this for sure – March -- or sorry, February or March maybe.

Q Lindsey: 2020.

A Harris: 2020, yes.

Q Lindsey: Was there a recording about somebody going missing while bike riding?

A Harris: Yes.

Q Lindsey: Now let's jump back to the other part of the recordings that became relevant to the victimology. Can you tell the court about those recordings and how that became relevant to your investigation?

A Harris: Yes. So there were a couple of recordings. there was a recording that starts in the truck and then A Harris: at some point Suzanne gets in the truck. Most of these recordings – it doesn't appear from what we can tell that Suzanne attempted on purpose to record some of these. Some of them she did. But the truck noise makes it very difficult to hear who is talking and what is being said. But you can hear a little bit of their conversation as well as them beginning to argue about some things related to money. Suzanne was asking about being paid back. At some point she talks about -- it sounds like she's accusing Barry of telling her what she can do, and what she can wear, and what she's allowed to do and she's trying to say that that's not legitimate. That's in one recording. There's another recording that appears to be Suzanne and her best friend, Sheila. In February you can hear the -- it would be the Super Bowl I think it was February 4th – but you can hear the Super Bowl in the background and two females. And it appears to be the trip where Suzanne and Sheila visited each other in Florida in February. Then there's also another recording that's five hours in length

and about -- I forget where it is, about 30 minutes in the conversation is captured in which Suzanne is speaking to somebody that she calls Jeff and appears to be in a romantic relationship with.

Q Lindsey: Part of the victimology -- and I'm going to jump back here to the middle part of that -- the recordings about the money. As a victimology aspect did you try to determine if Suzanne was gainfully employed?

A Harris: I mean it would be part of the victimology questionnaire just to ask, you know what's the state of her relationship, her marriage, where does the money come from is it -- is it something that's an issue, is it not? So there are many questions in victimology, yes.

Q Lindsey: What was the source of her income?

A Harris: She had not been employed full time since she been a school teacher I believe in Indiana. So she was raising her daughters

Q Lindsey: And as far as getting paid back did you sort of -- through the course of the investigation and looking through the victimology -- come to understand what she was referring to?

A Harris: We think so yes. She had money that was an inheritance from her mother, Adrian, and her grandmother, Helen, that she had received and that was -- it was used in some way in the purchase of the house as well as possibly in Barry's investment in silver.

Q Lindsey: You mentioned the house Agent Harris you're talking about the house there on Puma Path?

A Harris: Yes. Sorry, the house on Puma Path.

Q Lindsey: Okay. Now let's jump in, you said that there was a recording where Suzanne inadvertently recorded herself speaking to another individual.

A Harris: Yes.

Q Lindsey: And were you given any information in that recording as to who that individual was?

A Harris: There was a couple of different details. The person seemed to talk about Michigan. These are from my recollection. Talking about driving I think on highway 75. There were some names that were given, talking about what sounded like both the Morphew's kids and possibly this Jeff's kids. So she used the name Jeff twice, and he was talking about being on a business trip in again, Michigan. Several other details like that but not a lot that gave anything specific to identify him.

Q Lindsey: Was this an important part of the investigation that you're starting to realize that hey, there's somebody out there we don't know about?

A Harris: Yes.

Q Lindsey: Did you make efforts to try and determine who this Jeff person is?

A Harris: Correct.

Q Lindsey: And did you eventually do so

A Harris: Yes.

Q Lindsey: And who do you determine him to be?

A Harris: Jeff Libler

Q Lindsey: Where does he reside?

A Harris: He lives in Michigan.

Q Lindsey: I want to go now into relationships. We'll get to Mr. Libler later down the road. But as far as Suzanne and the victimology aspect did you try to determine like who was her best friend or who was her closest circle of friends and maybe she would have communicated about potentially leaving or doing something that caused her to go missing?

A Harris: Yeah. In the course of the investigation what was clear was Suzanne had several friends that were close but it seems her closest friend is Sheila Oliver who lives in Indiana.

Q Lindsey: You said she's from Indiana?

A Harris: Yeah.

Q Lindsey: And how long – as part of your investigation – had Sheila and Suzanne been friends?

A Harris: Approximately 30 years.

Q Lindsey: When you're looking for the victimology part of this investigation what specifically as it pertains to Sheila do you start really trying to hone in on?

A Harris: Well in some ways with Sheila it's anything that she can tell us about Suzanne but part of what we ended up honing in on was just what was the state of the marriage between her and Barry in 2018 to 2020.

Q Lindsey: Why is that important to you? To try to determine the state of the marriage?

A Harris: Well again, when someone goes missing we're just looking at whatever the potential situations are in that person's life that could be areas of conflict, or areas of difficulty between them, or areas of motivation in terms of what would motivate their actions. So just trying to determine, you know, what was going on in Suzanne's life Barry's life.

Q Lindsey: And you heard Investigator Walker testify several minutes ago and he said Mr. Morphew came up and said that it was a great marriage and they loved each other to death or something.

A Harris: Yes.

Q Lindsey: Okay. And your conversations and investigation into the friendship between Sheila and Suzanne, did it in fact reveal that type of relationship?

A Harris: What Sheila said is when she was contacted by Mallory within the first couple of days after Suzanne was reported missing. Mallory mentioned to her that Barry had said they had a perfect night on the night before he left for Broomfield.

Q Lindsey: That would be may 9th.

A Harris: Yes. And what Sheila said is from her conversations with Suzanne they hadn't had a perfect night in at least a year and a half and so that made her concerned immediately.

Q Lindsey: How does that equate to Morphew's moving to the Salida area from Indiana?

A Harris: Yeah, they moved in 2018. I believe they left around June 1st, 2018. to move to Colorado. So roughly a year and a half of the time is what Sheila originally said in that.

Q Lindsey: So almost the entire time they've been in the Salida area?

A Harris: Yes.

Q Lindsey: Fair to say? And so I want to talk to you a little bit about some of the information that Sheila shared with you. Are you aware that Suzanne and Sheila texted quite a bit –

A Harris: Yes

Q Lindsey: – text messaging from their phones?

A Harris: Yes.

Q Lindsey: And let me draw your attention to People's Exhibit 3 through 17.

MR LINDSEY: All of these have been provided on a thumb drive, Your Honor, so if I may approach the witness?

THE COURT: What were the numbers? I'm sorry.

MR. LINDSEY: 3 through 17.

THE COURT: Okay. Yes you may.

BY Mr. LINDSEY:

Q Lindsey: If you'll just review those quickly, Agent Harris, and see if you recognize those please.

A Harris: Yes I do.

Q Lindsey: What are Exhibits 3-17, sir?

A Harris: These are the screenshots of text messages between Suzanne and Sheila Oliver dated in September of 2019 and then some also, I think, in March of 2020. Or sorry, these are just September of 2019.

Q Lindsey: It could just be the September series.

A Harris: Yes.

Q Lindsey: Where did you get these text messages?

A Harris: Sheila had provided me some screenshots originally and then Sheila also recently provided screen recordings of all her text messages with – between her and Suzanne from 2018 through 2020.

Q Lindsey: And do these Exhibits 3 through 17 fairly and accurately depict – certainly not all of the text messages, but the ones that are important as far as determining the victimology aspect of the investigation?

A Harris: Some of them, yes.

MR. LINDSEY: Move to admit 3 through 17.

MS. EYTAN: Your Honor, I object. These are not the best evidence. The prosecution has actually a download of Ms. Oliver's phone that they just produced as of 10 days ago. And these don't indicate on the top of each screenshot the dates, the times, so we don't know if they're actually in sequence and what came before or after. But certainly the spreadsheet that they provided us a week and a half ago would actually be able to do that.

THE COURT: Okay, I'm going to overrule the objection. The rules of evidence are relaxed in a preliminary hearing. You'll certainly have the opportunity to cross-examine Agent Harris with regard to dates and if there are other text messages that are relevant. Go ahead, Mr. Lindsey.

MR. LINDSEY: Can we publish these and review them? One moment, we're having technical difficulties, Judge. Let me ask a few more questions of your involvement with Ms. Oliver.

BY Mr. LINDSEY:

Q Lindsey: Did you actually interview her beyond – above and beyond just obtaining the text messages from September and even in 2018 and then forward into 2019 and 2020 as of even April of 2020? I think the last ones are.

A Harris: Yes, we've interviewed her a couple of times.

Q Lindsey: Okay. And did that happen here or in – or did it happen in Indiana?

A Harris: It happened in both places.

Q Lindsey: And did she describe – well tell us how she – it's probably hard just to encapsulate in one answer, but can you give us some of the things that she described Suzanne as a person?

MS. EYTAN: Objection, Your Honor. That calls for character evidence. The question asks for –

THE COURT: Ask the question – what's the question?

MR. LINDSEY: Did she tell you what kind of person she was.

THE COURT: How is that improper? It's her friend testifying about what she thinks of her friend.

MS. EYTAN: Well, it's 404B Your Honor it's character evidence.

THE COURT: Could you ask it a different way? I don't even know why the question needs to be asked, but --

MR. LINDSEY: I think it's just laying the foundation as to what some of these text messages actually mean as far as Sheila's understanding. Sheila Oliver's understanding.

THE COURT: Why do I need to hear what Sheila Oliver thinks about the characteristics of her friend?

MR. LINDSEY: Well because there's a lot of information in there that's pertinent to this Court's decision that is interpreted, and definitely if she were to testify she'd be able to say this information.

THE COURT: Right. Well, we know that they're best friends. We know that they're close. So obviously she has a high opinion of her friend otherwise, she wouldn't be friends with her. So I'm not sure how that – how she is as a person connects to what's in these text messages.

MR. LINDSEY: I can focus in on the question a little bit more, Judge. I'll just ask him a bigger, broader question.

THE COURT: I understand. If you could.

MR. LINDSEY: Thank you.

BY Mr. LINDSEY:

Q Lindsey: Did Sheila know if Suzanne was employed?

A Harris: Yes.

Q Lindsey: And what was her knowledge of that?

A Harris: Sheila knew that she had been a schoolteacher but then had stopped working full-time as a school teacher and was taking care of raising Mallory and Macy.

Q Lindsey: Was there any indication that Ms. Morphew had done any work for Mr. Morphew?

A Harris: She helped him with his billing, doing the books.

Q Lindsey: Okay. Was there ever an indication from Sheila Oliver that Mr. Morphew was concerned about a relationship that Ms. Morphew had with Sheila Oliver?

A Harris: Yes, there were a couple of different times where Suzanne expressed to Sheila that Barry was asking her fairly pointedly 'are you talking to anybody else about our marriage'. And then there were other times when Suzanne was visiting Sheila – so I think Sheila came out for her first visit after the Morphews moved to Colorado in September of 2018 and then that Thanksgiving Sheila went back and visited sorry, Suzanne went back and visited Indiana and saw Sheila during that time. And Sheila recounted that Suzanne stepped away to go to the restroom and Barry multiple times tried to get a hold of Suzanne's phone. She wasn't answering. Then called Sheila, then called Darrin and Suzanne said it was just confusing. He seemed very suspicious of not being able to get a hold of Suzanne at this particular moment and called three people on a very fairly short succession.

MS. EYTAN: Your Honor, can we have some foundation about when that occurred, the date and where –

THE COURT: I got a little lost in there, too.

BY MR. LINDSEY:

Q Lindsey: So, let's narrow that down.

A Harris: Sure.

Q Lindsey: Talking about September 2018 Sheila comes to visit the Morphew after they've moved to the Salida area

A Harris: Yes.

Q Lindsey: Is that what you're referring to?

A Harris: No, sorry. September 2018 Sheila comes and visits Suzanne in Colorado. The next time they see each other is back in Indiana, Suzanne went back out for Thanksgiving and saw Sheila at her house and that's when those events occurred.

MS. EYTAN: Your Honor, I want to object to the question regarding what's occurring in September 2018. I don't know what the relevance is to Suzanne Morphew being missing in May 2020.

THE COURT: Well we're not talking about September '18 we're talking about November of '18. Thanksgiving?

A Harris: Yes.

MS. EYTAN: Same objection.

THE COURT: Right.

MR. LINDSEY: The People intend to offer 404B evidence and right now everything is in our favor, inferences, all evidence basically comes in. The Court as a matter of law is only allowed to exclude evidence if it finds it basically completely unbelievable. Right now we're offering evidence that's going to lay a pattern of the relationship between Mr. Morphew and Ms. Morphew that's absolutely contrary to anything that Mr. Morphew tells investigators. It's definitely believable.

THE COURT: The Court will overrule the objection I can -- I'm the trier of fact, I can figure out what's relevant to me in making the probable cause and proof evident determinations.

BY MR. LINDSEY:

Q Lindsey: Agent Harris, I want to go back to that September 2018. You said that she's here visiting Ms. Morphew. Was there something that happened that Sheila described to you that was just kind of bizarre and weird involving Mr. Morphew?

A Harris: Yeah. Barry was away hunting in New Mexico or Arizona, and Sheila and Suzanne and Macy I believe -- I don't know if Mallory was there -- were at the house they saw headlights come up -- their neighborhood is fairly secluded. So they saw headlights coming up to the house. They turned off short of the Morphew's driveway and then they thought they saw somebody walking in and coming through the driveway and up into the woods like they were looking into the house. So they were trying to determine what was going on they called Pete Cushman, one of the neighbors. He went out and looked around, didn't find anything. Then they still thought they saw something so they ended up calling 9-1-1. And Suzanne spoke with the 9-1-1 dispatcher and during the course of the 9-1-1 call they figured out that it was -- the headlights come back on and it comes into the driveway, and it was Barry in his truck coming into the neighborhood.

MR. LINDSEY: If I could ask you to bring up 18 -- I'm sorry 3 through 17 up.

Q Lindsey: So this is People's Exhibit 3 and it starts at the top, Sunday, September 1st and it says "Need your prayer for peace today." Do you see that, Agent Harris?

A Harris: I do.

Q Lindsey: As far as you understand the text box in white belongs to who?

A Harris: That belongs to Suzanne.

Q Lindsey: The text box in blue who does that belong to, Agent?

A Harris: Sheila Oliver.

Q Lindsey: So we're just gonna get the highlights here. So if you go to that middle text box, Agent Harris, there's a text from Suzanne to Ms. Oliver saying, "He pulled Macy in again and left. My heart hurts for her." Have you looked into that type of text message, either beyond this or talk to Sheila? What's that context? What does it mean?

A Harris: Yeah. Suzanne had expressed frustration to Sheila that during arguments between Barry and Suzanne that Barry would pull the girls in and try to get them on her side. I'm assuming they mean his side and turn them against Suzanne. Then also afterwards the left part, he would just leave the house and sometimes be gone for the day or for days.

Q Lindsey: Okay. In the bottom one there it kind of goes over and then down into the third part of that slide and then we have more information from Suzanne. She writes, "He's not stable." Who is she referring to when she mentioned he's not stable?

MS. EYTAN: Objection, Your Honor. Is this information that this witness can testify about? I don't know if he's talked to the witness about these text messages?

THE COURT: Your objection? So it's foundation?

MR. LINDSEY: All right.

BY MR. LINDSEY:

Q Lindsey: Are you familiar with the subject of the conversation when she mentioned he --

A Harris: Yes.

MS. EYTAN: I'm referring to all -- I'm referring to the text messages that he's interpreting.

THE COURT: Right. So the objection, Agent Harris, is it says he and you're testifying that that's Barry Morphew from your understanding. So to lay a foundation I need to know how you believe that the he referred to those in these texts is Barry Morphew.

A Harris: I spoke with Sheila Oliver about these texts and so that's her understanding of this context and that she and Suzanne are talking specifically about Barry and their marriage. so Sheila Oliver said so.

THE COURT: All right, so that's sufficient foundation.

BY MR. LINDSEY:

Q Lindsey: If we can go to 14, please. I'm sorry 4. Here we've got some more he stuff, right? We've got what he did in the bottom text message box. We've got 'he came in and wrecked it'. Then the next one, he blows up. Again, those are text messages from who? Who is typing those on her phone?

A Harris: Yeah, the lighter ones are Suzanne.

Q Lindsey: If you go to that far right one, Agent Harris, the third one in the series, Ms. Morphew refers to declining health. Do you understand what that means from the course of your investigation?

A Harris: Yeah. Suzanne had her cancer come back. I believe maybe initially in May of 2018. She was battling cancer again.

Q Lindsey: So she's expressing a concern about just her basic health.

A Harris: Yes.

Q Lindsey: And in the course of the investigation agents determined that this -- potentially this relationship was causing throughout this period.

MS. EYTAN: Objection, Your Honor. Leading and foundation.

THE COURT: Yeah. How do you have a foundation for that through this witness?

BY MR. LINDSEY:

Q Lindsey: Let me just ask you during the text messages is there a concern from Suzanne to Sheila about this relationship harming her health?

A Harris: Yes, and Sheila said specifically that was a -- that was a theme of their conversations during these years is that the toll that the fighting between Barry and Suzanne was taking on her health was one of the things that she was very concerned about.

Q Lindsey: Okay, if we can go to 5, please. I want to focus on the -- Agent Harris there's a discussion that says "He kept telling me his phone is off -- is going to be off because he didn't have enough battery." Is that also a concern expressed by Ms. Morpew during the course of the text messages about the phone -- Mr. Morpew's phone?

MS. EYTAN: Objection, Your Honor. I'm having a hard time trying to understand the relevance of this to an accusation of murder in the first degree. I object to relevance.

THE COURT: All right. I think I already covered that about 10 minutes ago so I'm going to overrule the objection. Mr. Lindsey, it is noon though, so probably a good time to break.

MR. LINDSEY: Okay, Judge.

THE COURT: So Agent Harris, you can step down.

MS. EYTAN: Your Honor, before we convene may council approach?

THE COURT: Certainly.

MS. EYTAN: Your Honor this witnesses testimony about victimology packets and there's some identification of those packets and some of the reports but we don't have those packets. So I'm asking that the Prosecution identify to us where those are in the discovery.

THE COURT: Did he say packet or questionnaire?

MS. EYTAN: Questionnaire but they're also referred to as packets in the discovery and we can't find them.

MR. LINDSEY: They're in there. I don't know (inaudible) they've been in there since early on.

THE COURT: Okay.

MS. EYTAN: Just --

THE COURT: (inaudible) what we talked about on Friday I would hope that the prosecution could lead them to where those are. (inaudible)

MR. LINDSEY: They were in the initial packets, it's a questionnaire that the individual asked -- I believe they were in there. (inaudible)

THE COURT: (inaudible) (Proceedings return to open court.)

THE COURT: Okay then, we will be on break. We will reconvene at 1:30 sharp. Court will be in recess.

(Pause in the proceedings from 12:01 pm to 1:31 pm.)

THE COURT: Thank you all. Please be seated. Okay, we're back on the record 21CR78. Mr. Morpew is present with his attorneys we've got four attorneys from the District Attorney's office. We left off with Agent Harris testifying. Agent Harris, if you'll come up and take the stand. obviously that oath that I gave you this morning is still in effect.

THE WITNESS: Yes.

THE COURT: Okay, Mr. Lindsey.

BY MR. LINDSEY:

Q Lindsey: So Agent Harris, I think you still have those Exhibits in front of you they should be 3 through I believe 17

A Harris: I do.

Q Lindsey: And we finished up with Exhibit 5, or we had just barely got in to -- we started talking about the phone being off. And just so we're all clear, the context of these messages, you're not reading them completely blind.

A Harris: Correct.

Q Lindsey: And can you explain more of the context of the messages and why it's important to you as a case agent for the FBI looking at victimology and just factually?

A Harris: Yes.

Q Lindsey: After Sheila Oliver's initial interview one of the things that she told us, again based on the comment that she had early on from Mallory about Barry saying that their last night was a perfect night, she said that's not the characterization of the marriage that she had in her close conversations with Suzanne from text messages as well as times that they got together for the entirety of the time that they were in Colorado. Sheila even talked about knowing the state of their marriage in some of the struggles going back to 2016 --

MS. EYTAN: Your Honor I'm going to object to foundation. I ask that there be some specificity to when -- what he's testifying to about what this witness is saying instead of generalizing the conversation. I don't understand when this witness said these things and what this witness said. I'd ask for that specificity.

THE COURT: All right I'll sustain the objection in one piece. If you can recall when you were told this by Ms. Oliver.

A Harris: So the initial interview, which was not with me. I don't remember the date of that. Ms. Oliver talked about the state of their marriage. And then in the interviews that we had -- there was one in October in Indiana, and then there were several follow-up conversations. I don't have those dates in front of me from my report, but there were several dates where we talked about various things related to what Sheila remembers about the state of their marriage as well as other events.

Q Lindsey: So generally speaking -- not talking about any specifics, but there were some themes that run throughout the texts between Suzanne and Sheila.

A Harris: Yes.

Q Lindsey: So we're on 5. One of the questions or the question I'd asked before we broke was this comment by Suzanne about the phone being off.

A Harris: Yes.

Q Lindsey: In the context of your understanding of this relationship from Ms. Oliver what does that mean?

A Harris: Suzanne had talked about suspicions that when Barry's phone was off he was not where he said he was and she was convinced that he was possibly meeting up with somebody or having an affair.

Q Lindsey: If you could go to 6 please just so we're clear again the white is -- the white text box

A Harris: The lighter text boxes are Suzanne.

Q Lindsey: A fairly long text going on and on about what's going on in her life. When she says, "I can't handle the unstableness," Agent Harris, what is she talking about from your understanding from Sheila Oliver?

A Harris: Sheila Oliver talked about the fact that -- I think later in the texts it refers to Barry as being --

MS. EYTAN: Your Honor. I'm sorry to object again but I have to. I want to know when he had this conversation about this text message that he's interpreting with Sheila Oliver. I need to know the date that he had the conversation so I could find it in the record.

THE COURT: All right do you recall.

THE WITNESS: I do not recall the date.

THE COURT: Do you have a report or something that could help you.

THE WITNESS: Yeah, I believe so I don't know whether you have that I do not have that report in front of me.

MR. LINDSEY: If I can approach

THE COURT: Yes, please do.

MR. LINDSEY: Is that the report

THE WITNESS: Yeah.

THE COURT: Take as much time as you need to read that through

THE WITNESS: Yeah so this report-- there's not a date in the report but the notes were dated from we had a conversation on July 8th and then we had another conversation on August 5th of 2021.

THE COURT: Of 2020.

THE WITNESS: I'm sorry the -- no, of 2021.

THE COURT: This year?

THE WITNESS: Uh-huh.

THE COURT: Okay I'm sorry you said July and --

THE WITNESS: July 8th and August 5th.

BY MR. LINDSEY:

Q Lindsey: So then going back to the question, "I can't handle the unstableness," Ms. Oliver, what does she say about that?

A Harris: Oh sorry, so she talked about Barry being unstable in the sense of like something would set him off and he'd be very angry, and then there were times where he would just leave and then be fine. Suzanne didn't know what was going to set him off so he would --

Q Lindsey: Then move to the right there. You're right, Agent Harris.

A Harris: Yes.

Q Lindsey: And that last sentence of her text to Sheila Oliver.

A Harris: Yes.

Q Lindsey: it said, "I lost all respect for him that day." What is the reference according to Ms. Oliver?

A Harris: The reference is to a time previous to this text when they were arguing and Barry brought the girls in again and tried to talk about Suzanne being the person to blame and brought them in and Suzanne was really

unhappy with that pattern because she felt like that's not what a parent should do. You shouldn't put your children between the arguments. And she -- in this particular incident she had lost respect for Barry when that happened. When he did that.

Q Lindsey: Go to seven please. Now here in September there's a text on the left hand side that mentions divorce and it says "Macy mentioned us separating or divorcing." Does Sheila Oliver have familiarity with that particular line of this text?

A Harris: Yeah, Sheila and Suzanne had talked about the fact that it was difficult yeah Sheila and Suzanne had talked about the fact that it was difficult because she didn't want to have the same kind of conversations that she felt like Barry had had but she knew that Macy saw them fighting and there were times where they ended up talking about what was happening and Sheila had said Suzanne had mentioned that Macy had even mentioned them potentially divorcing as a solution to the problems.

Q Lindsey: And there's a lot more information there but I want to move over to the right hand side in that text -- that top quarter there where she's saying " -- loves me, can't handle the pain." In the context of your conversations with Sheila Oliver, what does that mean to you, Agent Harris?

MS. EYTAN: Your Honor, that calls for speculation. That question what does that mean to you or what did Ms. Oliver explain to you.

THE COURT: Could you rephrase the question

MR. LINDSEY: I can.

THE COURT: Thanks.

BY MR. LINDSEY:

Q Lindsey: I'll be a little more artful with my questions. Within the context of your conversation with Ms. Oliver, what did she understand that to mean? And then you also understand from her.

A Harris: Yeah, she talked about the fact that Barry was frustrated because he felt like Suzanne was not in the place where she was earlier in their marriage and so this was often a theme, I can't deal with this if you're not giving me the love like you used to.

Q Lindsey: Then it goes down a little bit further and it talks about physically and mentally and it's rough, getting back to the damage -- again, going back to what Ms. Oliver told you what does that mean to her?

A Harris: Yeah, the -- so physically and mentally she was concerned about her mental health just in terms of that was just the toll of the arguments. Her physical health was two things, both while she was going through cancer treatments. It was also some incidents that she had relayed to Sheila Oliver about potential physical abuse. She had told Sheila about a time where -- this was in Colorado in 2018 -- about Barry at some point in an argument pushing her into a closet putting a gun to his head and saying, "Is this what you want?" Suzanne had also talked about times where Barry would pin her on the bed and wouldn't let her up when they were

arguing, and talked about times where she would threaten to either call the police or involve law enforcement to stop what was going on.

Q Lindsey: Let's move to number 9, please.

A Harris: Sorry did you say nine? Or eight?

Q Lindsey: I'm sorry, eight. Would you go to the far right -- I mean obviously there's a lot of information and the court can look at this information, but if you go to the far right and it mentions do anything to come out looking good. With the context of your conversation with Ms. Oliver what does that mean to her?

A Harris: That Suzanne had talked about the fact that Barry was really worried about the image of their marriage on the outside and so as long as he looked good, even if they were fighting or there were problems that were not acknowledged, he was just worried about making sure he came out looking good.

Q Lindsey: Nine, please. There's a discussion on the far left that goes into the second top corner and it talks about more discussions about Macy where she then is talking about Macy in the context of your conversations with Ms. Oliver, Agent Harris, what does this mean?

A Harris: Yeah, Suzanne talked about the fact that she-- by the time they were into 2020 for sure, but obviously already in 2019 she's talking about Macy. that she wants to be out of the marriage but she wants to wait until Macy is out of the house, so she's trying to hang on until Macy has graduated before she would make a decision to leave the marriage.

Q Lindsey: Then if you go further down that last text box in the middle and it says "i told him and he said okay well let's just tell the girls I'm leaving. How do you feel, and you don't want me." What does that mean in the context of your conversations with Ms. Oliver, Agent Harris?

A Harris: Yeah, so that's more similar of a type of control mechanism of pulling the girls in and trying to use the girls --

MS. EYTAN: Objection, Your Honor. Is that what Ms. Oliver said or is that just information this witness is giving us?

THE COURT: Could you clarify that?

A Harris: Yes, so do you mean -- I'll drop the term control mechanism. Sheila said -- is that okay? Sheila said that he would use the girls to try and keep Suzanne back in the marriage by saying I'm going to tell them -- I'm going to tell them that you don't love me. And further up in that middle text after the thing about Macy is something she talked about quite a bit with Sheila as well starting in 2019, which is I wouldn't feel safe alone with him, meaning she wouldn't feel safe alone with Barry.

Q Lindsey: Look at number 10, please. it's kind of a hodgepodge here. Sort of the far right one contains the two combinations. It also has the continuation of that last Suzanne text box in the middle of Exhibit 10. You see how that works?

A Harris: I do, yeah. Yes.

Q Lindsey: In the reference to Macy again is -- what did Sheila tell you about there?

A Harris: Sheila talked about the fact that Macy being in the house, Mallory being at school in Gunnison, that she saw and experienced more of the fights that they were having and the sort of state of their that their marriage was in.

Q Lindsey: And Mal, who is that?

A Harris: That relates to Mallory Morphew.

Q Lindsey: If we could go to number 11, please. Agent Harris, if you can focus on the center text, and these are all attempted to be as streaming as possible but that center text --

A Harris: Yes.

Q Lindsey: Again, a reference to divorce. And then it continues down and says, "Not sure B could take the high road though." First off, Sheila who does she know B to be?

A Harris: That's referring to Barry

Q Lindsey: I'm sorry.

A Harris: Referring to Barry.

Q Lindsey: Barry Morphew?

A Harris: Yes.

Q Lindsey: And then the text from Sheila, I mean it kind of stands for itself, don't believe Barry can take the high road.

A Harris: Yeah, she says, "It will eventually be shown to all when he doesn't take the high road."

Q Lindsey: 12 please. Talk about that top part of it, "Went from sad yesterday to mad today." What is she talking about there, according to her best friend, Sheila Oliver.

A Harris: So I don't know whether we -- I don't know that we talked specifically about the context of this one about what -- she's using the first person so it sounds like she's talking about herself but I don't know that Sheila and I talked about that specific one.

Q Lindsey: Okay. Then if you could turn over to the last text box on the far right and reading that full text box into that other one and then moving into 13. Can you look at that, Agent Harris?

A Harris: Yes.

Q Lindsey: What is Sheila's understanding of Suzanne's text regarding those text boxes?

A Harris: Yeah, so Suzanne was referring here to her mom, Adrian who had divorced from her father, Gene. And just comparing herself saying, "I'm kind of like my mom she has -- " and it looks like a mistype for an A, " -- a long fuse but once she's made her decision it was firm." And so Suzanne had communicated to Sheila that she was done, it was just a matter of timing as to when she was going to be able to get out of the marriage.

Q Lindsey: So on 13, Agent Harris, and the focus here I wanted to go to the blue box in the middle. The context of that is some type of job. What is Sheila saying to Suzanne there according to Sheila?

A Harris: Yeah, so the middle top text is talking about you know, thinking about a job you would enjoy and how you can live a happy and healthy life and make some what if plans. Sheila began to ask Suzanne to consider like what are you gonna do if you do need to separate and you need to live on your own. So are there jobs you can enjoy? Is there a way that you can have some money on your own How are you going to support yourself?

Q Lindsey: And that very last text box down on the far right, Agent Harris.

A Harris: Yes.

Q Lindsey: The white one. What is the context there from Ms. Oliver, just sort of wishing he'd just get fed up with me and leave.

A Harris: And so Suzanne got to the point where when they were going back and forth she just wished that Barry would find somebody else and move on and be able to let her get out of the marriage.

Q Lindsey: Go to 14, please. It looks like we have the two in the middle there. I want to talk to you about whichever one you want, the one on the left or the one on the right, the text box about he wants me to be the bad guy. Again, going back to Sheila Oliver, what is she telling you -- what does that mean to her?

A Harris: Well, it's what she states right above in the text box there, "No, but you know he wants to look good." So it's that similar theme we talked about previously where Suzanne had communicated to Sheila that Barry would want to look good. If they were going to get out of the marriage it had to be Suzanne's fault.

Q Lindsey: Go to 15, please. The left hand corner by the first slide there -- the first screen shot, "Can't do anything until we get our full payment for the house, so maybe January." So this -- these text screens are all in September of 2019. She's now moving forward and looking towards January 2020 according to this text. What does Sheila understand that to mean?

MS. EYTAN: Your Honor can the Court -- can we have the witness identify what time these texts were? There's no time stamp on the top.

THE COURT: I don't know if there's a way to do that I'm not -- and I'm also not certain why that's important.

MS. EYTAN: I want to be able to track this. The text messages.

THE COURT: Is there a way for you to tell what time these texts were sent?

THE WITNESS: Not with these screenshots, no.

THE COURT: Okay. Well I don't think we're going to be able to do that

BY MR. LINDSEY:

Q Lindsey: So Agent Harris, the question was in the context of Sheila's understanding of what Suzanne is discussing there, the full payment for the house, may be January. Is she talking about that Puma Path residence?

A Harris: No, Suzanne and Sheila had talked about -- again, whether she could have some money on her own and the house in Indiana had not -- the Morpew house in Indiana had not sold and so Suzanne is referring to the fact that she can't do anything until they get the full payment for that house and that it's possibly going to happen in January of 2020.

Q Lindsey: And does that line or that thought process continue into the next slide over?

A Harris: Yes. So on the top she talks about I'd like to talk to my sister about it. She's referring to Melinda who had divorced from her husband John -- Melinda Baumunk. And then she -- Melinda -- had been able to make it on the inheritance money from mom and Helen. That's what we referenced earlier, that's money that Suzanne had that was tied up in the Puma Path house.

Q Lindsey: And Agent, spending more time on this one a little bit, going over -- going down to the -- the last white text box and to the next slide, is there more discussions about money? And what did Sheila understand that to mean?

A Harris: Yeah, it says B -- meaning Barry -- said he would pay all that back to me. And yeah, this was part of the conversation Suzanne was repeatedly asking, wanting that money back and there were arguments about whether or not and when Barry was going to pay that back to her.

Q Lindsey: And she's referring to what money?

A Harris: The inheritance that she got from her mom and from Helen.

Q Lindsey: And we talked a little bit about the spy pen and some of the discussions in the spy pen. Is this also potentially referenced in one of the recordings from the spy pen?

A Harris: They are arguing about money in one of the recordings on the spy pen. I don't know for sure which money it is but it's talking about paying back money from Barry to Suzanne.

Q Lindsey: Okay. 16, please. Start with Suzanne's, "I stood my ground he left again." What does that mean to you, Agent Harris in the context of what Sheila had told you about this relationship between Suzanne Morpew and the defendant?

A Harris: During 2019 and then in 2020 Suzanne started to become a little bit more independent and so in these conversations and arguments she would stand her ground and set boundaries. It was something that she hadn't really done before so it was something new.

Q Lindsey: As you go down to that next text box from her said, "Told him I'm done." Had Sheila told you that she had either had discussions about divorce or ending the marriage with Suzanne.

A Harris: Yeah, Suzanne through 2019 and into 2020 was talking about the fact that she was talking to Barry about that she couldn't keep doing this again that she wanted to leave she was going to try to wait until Macy was out of the house. And this phrase in here that I need peace was something that Sheila was very aware of Suzanne saying to her and also having reported that she said it to Barry quite often.

Q Lindsey: So that third column there says -- talks about the girls and then it goes into need money and has two girls. What does Sheila understand that to mean, Agent Harris?

A Harris: Yeah, so this is again the pattern of using either -- holding money over her head or the girls in some way to keep her from getting out of the marriage.

Q Lindsey: So 17, please. A lot of information in this slide, Agent Harris. Hold on a second maybe we don't have that one displayed but you have it in front of you, Agent Harris?

A Harris: Yes.

Q Lindsey: And there's a text box in there that says, "He said so you want to be on your own. You want me to stop paying all your medical bills?" That's a text from Suzanne Sheila.

A Harris: Yes.

Q Lindsey: What does that mean to you from the context of Sheila's understanding of the relationship?

A Harris: It was a point of contention that when Suzanne would talk about possibly leaving Barry would talk about how are you going to pay for various things, including all your medical bills for cancer.

Q Lindsey: And then the next box over there -- excuse me -- to your right, "I told him if he got angry and all I would file a restraining order on him." Agent Harris, what did Sheila Oliver tell you about that text?

A Harris: Yeah, so this is the sort of thing that Suzanne said she would use to stop an argument. Possibly call the police or 911 or say she was going to file a restraining order against Barry.

Q Lindsey: And you said stop an argument?

A Harris: Yes.

MR. LINDSEY: If I could approach the witness, Judge.

THE COURT: Sure.

BY MR. LINDSEY:

Q Lindsey: I'm handing you what's being marked as peoples 18 through 26. If you could take those please. Agent Harris, can you look over those please.

A Harris: Okay, I've looked them over.

Q Lindsey: What are Exhibits 18 through 26, Agent Harris?

A Harris: They are text message screenshots between Suzanne and Sheila Oliver from March of 2020.

Q Lindsey: Okay. Same thing. As you look at those People's Exhibit 18 through 25, are those fair and accurate copies of the screenshots that Chaffee County and the rest of us, law enforcement folks were provided via Sheila Oliver?

A Harris: Yes.

THE COURT: Mr. Lindsey, can I -- I don't know if you asked to have 13 through 17 introduced as evidence. If you did, I missed it. Is that your request?

MR. LINDSEY: I thought I did ask to admit those.

THE COURT: If you did I missed it. So are you asking that those --

MR. LINDSEY: I would ask to admit those, Judge. Please.

THE COURT: Any objection?

MS. EYTAN: The same foundational objection as before.

THE COURT: If I missed it, I apologize. 3 through 17 are admitted.

BY MR. LINDSEY:

Q Lindsey: I'm sorry, did you answer whether or not those were fair and accurate copies of the texts that you received from Ms. Oliver?

A Harris: Yes, they are.

Q Lindsey: And not all of them. We know this is a selection for the purpose of this hearing.

MR. LINDSEY: So I'm moving to admit -- I'm not sure if I did this or not, but I'm going to do it twice, Judge. 18 through 25.

THE COURT: Any objection to the admission of 18 through 25?

MS. EYTAN: Same, relevance and foundational objections.

THE COURT: Okay. 18 through 25 are admitted.

MR. LINDSEY: This goes through 26 just -- if that's what you meant. I'm sorry, 26.

THE COURT: All right through 26.

BY MR. LINDSEY:

Q Lindsey: Agent Harris, the first series of texts were September 2019. Anything change between September 2019 and March of 2020 as it relates to Suzanne and the relationship she's having with Sheila?

A Harris: I don't know if this is what you mean. They had met in February of 2020 in Florida, which was the context in which Sheila brought the spy pen and the context in which they were talking more about some what if plans for Suzanne, what is she going to do if she needs to get out of the marriage. So that was, I think, around February 4th of 2020.

Q Lindsey: And she -- did she say that the spy pen was one of those things to use to try and get out of the marriage or as a tool?

A Harris: Yes. Primarily just to be able to see whether or not Barry was having an affair or what he was doing.

MR. LINDSEY: Judge, can we publish 18 through 26, please?

THE COURT: Yes, that's fine.

BY MR. LINDSEY:

Q Lindsey: So Agent Harris just to take a quick tour of this again a reference to Macy. "Macy and I had a very tough talk yesterday." See that?

A Harris: I do.

Q Lindsey: That box of Suzanne's?

A Harris: Yes.

Q Lindsey: Sheila Oliver tell you what about that conversation that she's having with Suzanne Mophew?

A Harris: Suzanne talked about the fact that, you know, she and Macy had had specific conversations again about Macy having a friend who had been -- had divorced parents and things were fine so they were talking about that as a possibility for Barry and Suzanne to separate and still be happy.

Q Lindsey: And it seems to me like Macy is getting a little bit more information than Mallory is that consistent with what Sheila Oliver is telling you?

A Harris: Yeah, just because Macy is still at home with Barry and Suzanne and Mallory is in college in Gunnison.

MS. EYTAN: Objection, foundation. How does Sheila know the information that this agent has?

THE COURT: Okay, when you talked to Sheila did she give you -- did she talk to you about how she knew these things?

THE WITNESS: Yeah, Sheila talked about their continued conversations about their relationship and they saw each other several times between 2019 and 2020 in addition to all their text, phone, Snapchat conversations. I can detail -- I can try to detail from when those trips were when they saw each other as well.

THE COURT: How often did they talk either by phone or text?

THE WITNESS: Sheila said it was pretty much -- it was pretty much every day. There may have been gaps but it's something where they were talking almost every day in one context or another.

THE COURT: Okay, so I think that's a sufficient foundation.

MS. EYTAN: Thank you. I just thought that he was kind of talking (inaudible) information about her understanding of Sheila and Suzanne, not Sheila and the girls.

THE COURT: That's the way I understand it.

BY MR. LINDSEY:

Q Lindsey: Exhibit 19, please. I'm going to focus in, "My heart aches for them both in different ways." Agent Harris, the context of that from Sheila Oliver? What is she telling her? What is Suzanne telling Sheila Oliver? Who are them?

A Harris: So she's talked with Suzanne at different times about the different challenges for Macy and Mallory, and that her -- she struggles, her heart aches for them in different ways. Macy because she's in the house, Mallory because she feels like -- and there's a text that states this -- that Mallory sort of feels like she's responsible for Barry's happiness. and so there's different shapes to their struggles and Suzanne feels that.

Q Lindsey: People's 20, please. So the first text box is a blue text box and Sheila talks about, "Have you looked to next steps if you move toward getting out?" And Suzanne's response is --

A Harris: She says not really I --

Q Lindsey: -- laid out there but what is Sheila's understanding of that response? What's the -- what's holding Suzanne back according to Sheila?

A Harris: When she says, "Not really. I feel unequipped," the two primary things were just figuring out where she would live, how she would support herself, what it would actually look like logistically for her to separate.

Q Lindsey: And then there's a reference with dealing with a narcissist. Who is she talking about there, according to Sheila?

A Harris: They had talked about Barry having narcissistic tendencies.

Q Lindsey: 21, please. First text box as you get down to the second paragraph, "Probably -- he probably thinks I'm not strong enough to deal with." Who is he according to Sheila? The one at the far left.

A Harris: Oh sorry. That's referring to Barry.

Q Lindsey: And then reference finances. What is she talking about there according to Sheila?

A Harris: Yeah. Suzanne was aware that in part Barry thought that she couldn't go out on her own, you know, whether it's paying for where she's going to live, or how she's going to work, or the health insurance for her cancer like we talked about previously.

Q Lindsey: Are you aware -- did Sheila tell you during this time frame, Agent Harris, whether Suzanne was undergoing cancer treatment? during this time frame

A Harris: Yes we talked about -- in their text conversations there's quite a few photos of Suzanne when she's in the middle of her chemo treatments that she's sending to Sheila, and we were both looking at that and she was saying, "This is all going on while she's also battling cancer."

Q Lindsey: And to some extent, looking at that middle text box, Agent Harris, Suzanne's text seems to indicate that Macy is actually becoming an advocate for her. Does Sheila talk to you about that part of this relationship?

A Harris: Just the fact that Susanne talked to her in text and conversations about the fact that Macy was encouraging her to think about going out on her own and separating.

Q Lindsey: Go to 22, please. First text box there on the left, Agent Harris.

A Harris: Yeah.

Q Lindsey: When we have a restraining order and then we have like a sad face emoji. It says, "I'm sick i had a conversation like that with my 16 year old." Agent Harris, did Sheila Oliver talk to you about this line of text during your conversations with her?

A Harris: Yeah and later on she refers to Macy -- specifically Sheila does -- and that this is talking about the fact that Macy mentioned to Suzanne possibly getting a restraining order and that Suzanne was -- didn't feel great about having those conversations with her 16 year old daughter.

Q Lindsey: Go to 23. Talk about the left there, that first screenshot. You see that?

A Harris: I do.

Q Lindsey: It goes a little bit further, "Pretty much totally can't be healthy seeing this." What is this according to Sheila Oliver?

A Harris: It's their marriage.

Q Lindsey: Does she ever talk about this Jekyll and Hyde piece that Suzanne puts in her text message?

A Harris: Yeah --

Q Lindsey: What does Sheila tell you about that?

A Harris: Yes, Sheila talked about the fact that Suzanne refers to Barry that way, meaning again he could just sometimes be just in a rage and really angry and there were times where he was calm --

MS. EYTAN: Objection. I don't know where -- I'd ask the witness to describe where Ms. Oliver says that he gets in a rage.

THE COURT: Is that something that Ms. Oliver told you?

THE WITNESS: I don't know if that that was -- I don't remember if that was her word or not. So --

MR. LINDSEY: Well maybe just the context is some --

MS. EYTAN: I'd move to strike unless the witness can point to us where his witness said that.

THE COURT: Well again, we're not in front of a jury so I don't think we need to strike anything. Can you ask the question maybe a slightly different way?

BY MR. LINDSEY:

Q Lindsey: Did Suzanne talk about the sort of split personality -- I mean Jekyll and Hyde is like the -- what everybody thinks of as a split personality.

A Harris: Right.

Q Lindsey: Did Suzanne talk to that -- to Sheila about that and Sheila understand what that is?

A Harris: Yes Suzanne talked about the, Jekyll and Hyde being, you know, this responsive angry side and then sometimes calm.

Q Lindsey: And, again we're still in March. I believe that middle box, pretty much told him it can't be healthy seeing this -- again, talking about the relationship. What about the healthy part? What does Sheila know about Suzanne's health?

A Harris: Again this goes back to her struggling both mentally and physically primarily with the effects of cancer and feeling like the relational stress was just continuing to take a toll on that.

Q Lindsey: And Agent Harris, if we move off to the right there there's a text message from Suzanne that says, "He will make a scene and use the players." Who does Sheila know to be -- what are the players?

A Harris: The players, again, this is where he's pulling the girls in.

Q Lindsey: Mallory and Macy?

A Harris: Mallory and Macy, yes.

Q Lindsey: 24. Interesting. Middle part here says, "Talking to anyone about our marriage like friends." Go back it says, "He also asked me if I'm talking to anyone about our marriage, like friends." What does Sheila Oliver know that is or understands that to mean?

A Harris: Yeah. Suzanne said that Barry had pressed her as to whether she was talking to anybody about what was going on in their marriage, friends, you know, telling any details about what was happening.

Q Lindsey: And going down that next text message she says to Sheila, "He won't speak of divorce. I'm torn in my heart I know who he is." Unpack that a little bit for us according to what Sheila tells you, Agent Harris.

A Harris: Yeah, so Sheila knew that they had -- Suzanne had had conversations with Barry about wanting to leave. She said she didn't know whether or how often she'd used the word divorce, but pointed to this text saying that Suzanne had at least referenced the fact that Barry wouldn't talk about divorce with her.

Q Lindsey: And then we move down a little bit further, the bottom right, it says, "He threw the 70 times 7 at me." Independent of your conversation with Ms. Oliver, Agent Harris, do you know what 70 times 7 actually is?

A Harris: So I believe this is a reference to the instruction in the new testament about how many times somebody should forgive someone else.

Q Lindsey: And does Sheila understand that also to be a scriptural reference according to her conversations with you?

A Harris: Yes. I don't know whether we talked about the 70 times 7 specifically. She did talk about the fact that Suzanne would often say Barry would use scripture where she was supposed to forgive but, you know, didn't seem to look at the places where he needed to ask for forgiveness.

Q Lindsey: If we can go to 25, please. So, when we're looking at 25 it speaks for itself. We can move to 26 please. In the context of this text message between Sheila and Suzanne if you could start at the last text box on the far left and work your way to the middle one ending with, "Makes me wonder what the young me was thinking." What does Sheila Oliver understand that to mean, Agent Harris?

A Harris: That Sheila and Suzanne had just talked at this point about in the struggle of their marriage, you know, Suzanne would often look back and just was trying to wonder exactly what she says, what was the young me thinking in terms of getting into the marriage in the first place.

Q Lindsey: Then if you follow over to that middle text message, "I have regrets but Mal and Macy are the sweetest parts of this."

A Harris: Yeah.

Q Lindsey: What did Sheila understand her relationship with those two girls was?

A Harris: Sheila understood that the girls were in many ways the center of Suzanne's world and so you know she remembers getting this text and just the fact that, you know, after all the struggles Mallory and Macy were something that she had, of course, no regrets for and that her life was focused around.

Q Lindsey: So Agent Harris, if we can now kind of change topics here and talk about the Agent's interactions with Jeff Libler. You said you came to know Jeff Libler first off through the spy pen and did some research and eventually caught up with him in Michigan and interviewed him.

A Harris: Yes.

Q Lindsey: And when you interviewed him did he tell you the first time that Suzanne and him had actually sort of come together?

A Harris: Yes. Do you mean with -- so he talked about when they first met each other -- they knew each other in high school and that, I believe, it was --

Q Lindsey: High school in Indiana?

A Harris: Yes, high school in Indiana.

Q Lindsey: Okay.

A Harris: And I believe it was the -- I'm not positive of this but I think it was the summer of 1989, which was the year after Jeff Libler's first year in college. He was back in Indiana for a party which was at Suzanne's house. Barry was not there, but Barry and Suzanne were dating at that point and he and Suzanne sort of hooked up at the party.

Q Lindsey: And there was another contact about 20 years later.

A Harris: Yes. so in -- some time -- he didn't remember when it was exactly and he did not have the records for it, but believed it was around -- he said fall of 2018. I think he thinks around September that he got a message that just from Suzanne that said, "Howdy stranger."

Q Lindsey: When he received that text did he remember who she was?

A Harris: Yes.

Q Lindsey: Then what did he do in response to that?

A Harris: So, they eventually exchanged messages and then started talking on the phone primarily.

Q Lindsey: Okay. The phone, the actual dial-up phone --

A Harris: Yeah, audio calls.

Q Lindsey: Okay. What are some of the things that they initially start talking about according to Mr. Libler?

A Harris: So they reconnected and they talked about various shared interests, whether it was, you know, books that they liked or music that they both enjoyed. So it was sort of -- the beginning was just a reconnecting of people that hadn't seen each other since high school.

Q Lindsey: She actually talked to him about her cancer the cancer treatment she was undergoing?

A Harris: Eventually, yes. He said about three weeks after they started talking that she sent him some lab reports because she knew that he worked in the pharmaceutical industry, and their conversation had gotten to the point where she sent lab reports and asked his opinion about what she could do.

Q Lindsey: And then does it become more than platonic at some point or another

A Harris: Yes.

Do you recall roughly when that happened?

A Harris: The first trip where they were together physically was in New Orleans in February of 2019. According to Mr. Libler they did not have sex on that trip but fooled around in the hotel room.

Q Lindsey: And did they continue into Florida, Indiana, Michigan, and Dallas?

A Harris: Yes, they've got several trips in the course of 2019 where they meet up in different places.

Q Lindsey: Then do they change their means of communication in December of 2019?

A Harris: Yes.

Q Lindsey: And why did they do that?

A Harris: Suzanne mentions that Barry is very curious -- curious is not the word, but he's looking at her communications and so they go to communicating on primarily LinkedIn, and then also by WhatsApp.

Q Lindsey: As we move into 2020, is there another get-together there in 2020 the early part.

A Harris: Yes, in Florida in February.

Q Lindsey: Was there also another reason for Ms. Morphew to be in Florida in February 2020?

A Harris: Yeah, she was visiting her father Gene.

Q Lindsey: They start talking about mutual interest at some point or another.

A Harris: Yes.

Q Lindsey: And what are those mutual interests, separate and apart from what you've already said just a few questions ago.

A Harris: Yeah, again they primarily talk about books they like to read, music that they have an interest, and then because they're in -- she's in Colorado Jeff suggests taking up mountain biking to her.

Q Lindsey: So in March of 2020, that's when they talked about that?

A Harris: I don't remember the first time that they -- if it was in March the first time they talk about mountain biking.

Q Lindsey: But you are aware the investigation revealed that Ms. Morphew bought a mountain bike around that time.

A Harris: Yes.

Q Lindsey: If you could move to May 6th, Agent Harris. And just so we can all understand, the week of May 5th into May 6th all the way to May 10th, how are you guys looking at that week as part of your investigation when you're looking at the victimology of this case?

A Harris: So when -- the week of May 6th, so I don't know what the Monday is. May 6th I believe is the Tuesday. We know that May 5th is the day that Suzanne drops Macy off in Gunnison at Mallory's place to begin their road trip. And so when she returns, from that point until May 10th it's just Barry and Suzanne in the house. So it becomes an important context just because they're -- the girls are not there, they're by themselves.

Q Lindsey: And is there also discussion with Jeanne Ritter about that week and information that Suzanne had given her about the week of May 6

A Harris: Yes. Specifically a comment that -- so Jeanne and Suzanne would sometimes have coffee and on the morning of May 6th they had coffee and Suzanne told her don't plan on coming by this week because I'm going to be busy with Barry's books for work.

Q Lindsey: So let's focus on May 6th. Anything between Ms. Morphew and Mr. Libler about that week sort of looking forward?

A Harris: Yes, there is a message -- I don't have it in front of me -- on the LinkedIn messages between Suzanne and Mr. Libler in which Suzanne tells him on May 6th something about could you stay with me longer. It's okay if you can't. It's going to be a rough week.

Q Lindsey: Just know that these next few days will be rough?

A Harris: Yes. Sorry.

Q Lindsey: Was Ms. Morphews sending photos to Mr. Libler?

A Harris: She was.

Q Lindsey: Let's now move to May 9th. You recall a series of messages made back and forth between Ms. Morphew and Mr. Libler on May 9?

A Harris: I do.

Q Lindsey: Let's talk about the message at 2:04:41, 14:04:41.

A Harris: Yes. So at 2:04 -- I don't have the seconds on the version I have, but at 2:04 Jeff sends something to Suzanne saying, "How did you get alone?"

THE COURT: I'm sorry, said what?

THE WITNESS: "How did you get alone?"

THE COURT: Alone?

THE WITNESS: Uh-huh.

BY MR. LINDSEY:

Q Lindsey: What is the context of that, according to Mr. Libler?

A Harris: That Barry had left.

Q Lindsey: And does Suzanne respond.

A Harris: Yes, at 2:04 as well. Again, I don't have the seconds in front of me, Suzanne responds to Jeff, "He's always gone somewhere. It never stops."

MS. EYTAN: Judge, I just don't know if there -- the LinkedIn messages that he's -- that the witness is describing, did he talk to the witness about the LinkedIn messages? I missed that part.

THE COURT: So the answer he just gave I assume is straight from the message.

THE WITNESS: It is.

THE COURT: And the second question was you were asked earlier what did Mr. Libler mean when he said how did you get a loan and you answered, did you discuss these messages with Mr. Libler?

THE WITNESS: We did.

THE COURT: Okay.

BY MR. LINDSEY:

Q Lindsey: Does she continue on into 2:05 all the way to the end of 2:05, Agent Harris?

A Harris: Yeah she responds --

Q Lindsey: And again, just so we're clear you're reading the messages that law enforcement obtained through your LinkedIn search warrant.

A Harris: Yes.

Q Lindsey: Okay.

A Harris: Yeah, at 2:05 after he's always gone somewhere she says, "Fine with me."

Q Lindsey: Keep going please.

A Harris: I'm sorry. Then at 2:11 Suzanne --

Q Lindsey: Wait a minute, do you have a message of 2:05?

A Harris: I do not. Not in the list that I have. I have, "Fine with me," at 2:05. I don't have all of the LinkedIn messages in front of me.

Q Lindsey: Do you recall whether she texted or LinkedIn messaged him "Thank you, babe," at 2:05. 2:05:13?

A Harris: Off the top of my head, I do not.

MR. LINDSEY: May I approach the witness.

THE COURT: Yes.

Q Lindsey: The question was the string of LinkedIn messages at 2:05, 2:04 into 2:05.

A Harris: Yes. Yeah, there's a couple more, "Fine with me," at 14:05:01, "Thank you, babe," at 14:05:13. "I'm just in love with you," at 14:05:20.

THE COURT: Can you -- I don't know who these texts are coming from and going to.

THE WITNESS: These are all from Suzanne to Jeff.

THE COURT: Okay, you said there was one that said, "Thank you, babe," and then the next one --

THE WITNESS: Yes, sorry. "I'm just in love with you." That one is at 14:05:20. Then one last one that's in the 14:05:46 is "Whatcha up to?"

BY MR. LINDSEY:

Q Lindsey: I'm sorry, you talked a little bit down into the --

A Harris: Sorry.

Q Lindsey: I didn't hear what you said that last one was.

A Harris: "Whatcha up to?" is at 14:05:46. Whatcha is spelled w-h-a-t-c-h-a.

Q Lindsey: Okay. Is there more messages in between Suzanne and Mr. Libler in that afternoon?

A Harris: Yes, Jeff responds at 14:06:03.

Q Lindsey: Okay, what's his response?

A Harris: That he was -- I don't know if this is a quote -- that he was cleaning up outside and that his wife just went to Costco and his daughter went running. He -- that's supposed to be a summary. He then asked, "Want to strip down and get naked? LOL??"

Q Lindsey: And that's a message from Mr. Libler --

A Harris: From Jeff to Suzanne --

Q Lindsey: -- to Suzanne --

A Harris: -- at 14:06:03.

Q Lindsey: Communication continue on?

A Harris: It does Suzanne responds, "Oh man!!", with two exclamation points at 14:07:30. And then Suzanne responds again "Can you talk??", with two question marks at 14:07:38. Then Suzanne has two more responses "Or video?", at 14:07:44. Then she says "I can load up WA!", at 14:08:02.

Q Lindsey: And what do you understand WA to mean from your investigation in this case?

A Harris: The application WhatsApp.

Q Lindsey: What time was that message on LinkedIn?

A Harris: 14:08:02.

Q Lindsey: Okay. Are there any more messages from Suzanne --

A Harris: Yes.

Q Lindsey: -- to Mr. Libler, or vice versa?

A Harris: Yes. Jeff responds -- I don't have the specific time for this but he's got to check on his kids and see whether he's able to. Then Suzanne responds with just the word written out, "Okay!", o-k-a-y at 14:11:21. Then Suzanne also responds, "I'm on WA," at 14:11:25.

Q Lindsey: 14:11:25, so that means 2:11, 25 seconds p.m., Mountain Standard Time.

A Harris: Yes.

Q Lindsey: Any more responses from Suzanne to Mr. Libler?

A Harris: No, that's her last communication on LinkedIn.

Q Lindsey: Any more responses you're aware of to anyone? Ms. Oliver, Melinda, her sister, her friend, Polly, her children, Jeanne Ritter, Mr. Morpew? Any more electronic responses sent from Ms. Morpew's phone, email, to anyone out there on the planet Earth?

A Harris: Not that I'm aware of.

Q Lindsey: (Inaudible)

A Harris: Yes.

Q Lindsey: Let's sort of make a little deeper dive into Mr. Libler's information. Did you ask Mr. Libler about what kind of marriage she had with Mr. Morpew?

A Harris: Yes, we did.

Q Lindsey: And what did he tell you?

A Harris: He said that it was something that Suzanne said was not good. Again I don't have my -- the write-ups of my interviews with Mr. Libler in front of me --

Q Lindsey: Well that's fine.

A Harris: -- so I would be summarizing

Q Lindsey: Just generally speaking

A Harris: Yeah, generally that it was not good, that there were lots of arguments. And that, you know, she was interested in getting out of that marriage and she said quite often to Mr. Libler that they should be husband and wife.

Q Lindsey: Did she speak of potentially getting some sort of involvement with Mr. Libler about what was currently happening?

A Harris: Yeah, she said that she would eventually like to be married to him to be husband and wife with Mr. Libler.

Q Lindsey: There was some information about Mr. Libler and what happened to his phone and his accounts. Did you talk to him about that? When did he tell you he heard about Suzanne going missing?

A Harris: It was on -- I believe it was May 12th and he was sent a link from his brother.

Q Lindsey: Did he do anything with his electronic media or his phone or anything?

A Harris: Yeah he got rid of his accounts.

Q Lindsey: His LinkedIn account?

A Harris: Uh-huh.

Q Lindsey: He say anything about the WhatsApp account?

A Harris: I think he said he got rid of his accounts?

Q Lindsey: Did he say why he did that?

A Harris: Yeah, he originally saw that the news reports said that she was on a bike ride and abducted and he thought if she was really abducted that he didn't want the news of the affair to be something that was negative for his -- for her daughters

Q Lindsey: Did you talk to him at all about -- did you talk to Libler about what Suzanne told him about Macy and Mallory?

A Harris: We asked him about -- there were some references to their children in the text messages as well as we can hear their names on the pen recording, and so Libler said they often talked about each other's kids and cared for what was going on with their families in conversation.

Q Lindsey: Did you ask Mr. Libler if anybody else in the family or circle of friends of Suzanne had knew about him?

A Harris: We did.

Q Lindsey: What did he tell you about that?

A Harris: He said no, that nobody knew and that he knew that Suzanne had told him that even Sheila, her best friend, did not know.

Q Lindsey: Did you ask him to contrast himself against Barry? Did you say what kind of person you are?

A Harris: Yeah he essentially said that he's the -- just the very opposite person to Barry.

Q Lindsey: Did you ever ask Mr. Libler about the relationship and her health?

A Harris: Yes, he talked about the fact that their relationship was something that was affecting her health and she was concerned about it.

Q Lindsey: Did you ever ask Mr. Libler about Suzanne ever presenting a divorce or splitting up their relationship?

A Harris: Yes, we did. Mr. Libler said that they had sort of an unwritten rule that they tried not to talk about like exactly where things were in each other's marriages.

Q Lindsey: You recall Mr. Libler telling you that Barry told Suzanne she could not get a divorce because of biblical reasons?

A Harris: Yes.

Q Lindsey: From Mr. Morphew.

A Harris: Yes.

Q Lindsey: I'm going to ask you a few questions about what he knew about Suzanne's biking. You said earlier that they talked about mountain biking and he suggested getting a mountain bike and exploring the trails around Chaffee County.

A Harris: Yes.

Q Lindsey: Did he tell you when Suzanne, from his knowledge, would drive -- would ride her bike most frequently?

A Harris: Yeah, he said his recollection I think was that she mostly rode in the afternoons. Yes.

Q Lindsey: And would he -- did he do anything to help her with picking out trails?

A Harris: Yes, he would sometimes look at mountain biking apps to see what were trails that were sort of her level as a beginner and then they would maybe talk about it by phone so he could explain what trails she should try.

Q Lindsey: At some point there's a discussion with Mr. Libler about Fred.

A Harris: Yes

Q Lindsey: Suzanne talks to Mr. Libler about Fred. What did Mr. Libler tell you this discussion -- this Fred discussion -- was all about?

A Harris: Yeah. Mr. Libler said that in arguments between Barry and Suzanne that Barry would sometimes tell Suzanne something to the effect of don't worry someday you'll find your Fred.

Q Lindsey: And in your investigation what does it reveal, this Fred. What does that mean?

A Harris: Fred was the -- her -- was Suzanne's step-father. So was the man who married Adrian after she had divorced from Gene Moorman, Suzanne's father. So Suzanne was saying Barry was telling her don't worry, someday you'll find your Fred, the person that will be for you the same way that Fred was for Adrian after she divorced Gene.

Q Lindsey: There was some information about Suzanne talking to Sheila about finding another person and moving on. Did she also tell Mr. Libler about this.

A Harris: Yes. I don't remember the exact words, but Suzanne had told Mr. Libler she was hoping that Barry would find somebody else and move on.

Q Lindsey: Was there a point when Mr. Libler heard something that kind of cemented in his mind what happened was there a statement that was made?

A Harris: So --

MS. EYTAN: Objection, Your Honor. Speculation. He's asking a witness to speculate about what happened.

THE COURT: Well I'm assuming this is based upon something you discussed with Mr. Libler, correct?

THE WITNESS: Yes.

THE COURT: So --

MR. LINDSEY: Yeah, it's information that Mr. Libler heard and then commented on.

THE COURT: Okay then that's a proper foundation for a preliminary hearing. Where hearsay is admissible.

BY MR. LINDSEY:

Q Lindsey: You need me to repeat the question?

A Harris: No. Yes, so Mr. Libler -- originally when we asked him what he thought happened said he was sort of on -- I don't remember if this is the phrase, but on the fence about whether Barry did it or not. Then he said he heard Barry say something to the effect --

MS. EYTAN: Objection, Your Honor. May we approach?

THE COURT: Yes.

MS. EYTAN: Your Honor, I'm going to object to relevance. If anything this is especially (inaudible). I don't know how it's relevant what the individual believes happened to Ms. Morphew.

THE COURT: Well it's not speculative because it's coming from the source to the agent. And again, unless there's zero relevance and I don't find that there's zero relevance. I don't know how relevant this is.

MR. LINDSEY: Let me clear that up.

(Proceedings return to open court)

BY MR. LINDSEY:

Q Lindsey: Do you need me to repeat the question, Agent Harris?

A Harris: Yeah, so Mr. Libler said originally he didn't know what to think about whether or not Barry was involved or not in Suzanne's disappearance. And he said when he heard Barry say -- or it was reported that Barry said if one person was saved through this she would think it's okay, that changed his mind.

Q Lindsey: She being who?

A Harris: Suzanne.

Q Lindsey: Now Agent Harris, did you actually go over -- well let me back up and lay a foundation here. Were you aware there was a list of grievances, or a list of things that Ms. Morphew -- issues she had with Mr. Morphew?

A Harris: I'm aware that there was a list that was saved to her iCloud account that looks like a list of grievances. Yes.

Q Lindsey: Did you show that to Mr. Libler.

A Harris: Yes, we did.

Q Lindsey: What was his response?

A Harris: He primarily -- we asked him some specifics about them. I don't remember. But he -- I remember him saying that he didn't -- once he looked at the list he didn't realize it was as bad as it was.

MR. LINDSEY: Those are my questions of this witness at this time. I'm going to make him subject to recall, Judge.

THE COURT: Okay. Ms. Eytan?

MS. EYTAN: Thank you.

CROSS-EXAMINATION (Agent Kenneth Harris, FBI)

BY MS. EYTAN:

Q Eytan: Good Afternoon, Agent Harris.

A Harris: Good afternoon.

Q Eytan: I want to start with some of the summarized statements you were making regarding Sheila Oliver. Okay? You described that Sheila -- you spoke with Sheila numerous times.

A Harris: Yes.

Q Eytan: I won't talk about that but Sheila seemed to be describing to you things that she had talked to Suzanne about more than what was in the text messages.

A Harris: Yes.

Q Eytan: So when you were testifying about what the text messages meant as Sheila received them --

A Harris: Yes

Q Eytan: -- it was because Suzanne and Sheila actually talked about the text messages, not just texting each other. Is that right?

A Harris: Now I don't know that Suzanne and Sheila talked about the text message content.

Q Eytan: Okay so that's where I want to make sure that we're clear. You were doing a lot of interpretation of the text messages that were brought in as exhibits. Correct? You were being asked what things meant, right?

A Harris: Yeah. According to what Sheila Oliver had said they meant, yes.

Q Eytan: And if what you were interpreting was more than was just on the text the -- actual text message. You were interpreting about maybe things that Sheila and Suzanne had talked about regarding the text messages.

A Harris: If we mean regarding what the text messages refer to?

Q Eytan: Yeah.

A Harris: Yes.

Q Eytan: Exactly. So these text messages are being sent back and forth and we looked at text messages in September 2019, right?

A Harris: Yes.

Q Eytan: And we looked at text messages in March of 2020?

A Harris: Yes.

Q Eytan: Right. And in looking at those text messages, like you said, you know, you needed to interpret them and Sheila was giving her interpretation based on conversations she had subsequent to those text messages with Suzanne, right?

A Harris: Yes.

Q Eytan: Right. but you know that Sheila Oliver doesn't have -- well first of all, the phone records for Sheila Oliver were collected in this case pursuant to search warrant, right?

A Harris: I believe I know that Sheila's phone was downloaded. I don't actually know whether her phone records were collected separately from that.

Q Eytan: Okay, so you didn't go back and verify that there's no connected phone call between Sheila Oliver and Suzanne Murphy after May 2019?

A Harris: No.

Q Eytan: You don't know? Okay. Then -- and the substance of your testimony about what Sheila Oliver has told you about Mr. Morphew and Suzanne's marriage was in this interview you just had with her a month ago, right?

A Harris: No, some of that content is in other reports as well in terms of some of the things she's saying about their marriage, yes

Q Eytan: Uh-huh. But you had a pretty lengthy and involved interview with her in July of 2021, and your report is there in front of you, is that right? Or maybe the DA showed it to you.

A Harris: Yeah. Sheila was talking about her text messages with me and then provided the screen recordings for them.

Q Eytan: Uh-huh. And that was a year after Mr. Morphew was arrested for murdering her best friend, right?

A Harris: Yes.

Q Eytan: Okay, so now let's talk about some of the things you talked about with Jeff Libler. You said that you were talking about the LinkedIn messages that were exchanged between Suzanne Morphew and Jeff Libler, right?

A Harris: Yes.

Q Eytan: And you were -- you provided the court with interpretation of what some of those LinkedIn messages were based on your conversation with Jeff Libler, right?

A Harris: I think I provided places where we asked Jeff specifically about some of them, yes?

Q Eytan: Right. And so you talked to Jeff Libler on November 4th by phone, right?

A Harris: Yes.

Q Eytan: And you talked to Jeff Libler in person in Michigan near his home --

A Harris: Yes.

Q Eytan: -- on November 13 2020, right?

A Harris: Yes.

Q Eytan: Now the search warrant for the LinkedIn messages were on November 25th 2020, right?

A Harris: Yes.

Q Eytan: And the return was on December 17, 2020. Correct?

A Harris: Yes.

Q Eytan: So Mr. Libler had destroyed and deleted his LinkedIn account so he couldn't show it to you on November 13th, right?

A Harris: Correct.

Q Eytan: So when did you talk to Mr. Libler after December 17, 2020.

A Harris: So we had a phone call or two afterwards once we received the records and we sent him some of the messages particularly from May 9th.

Q Eytan: Okay. And did you write a report about those conversations?

A Harris: We did.

Q Eytan: Is it recorded.

A Harris: I don't think that one is recorded.

Q Eytan: Okay. And how long was that conversation?

A Harris: Actually, I think that conversation was one where we talked to him, asked him if we could send it to him and then talk afterwards. It was a fairly brief conversation.

Q Eytan: How brief was that conversation?

A Harris: I don't remember off the top of my head. I don't remember, 10 or 15 minutes.

Q Eytan: Do you have a record of that in front of you?

A Harris: I do not.

Q Eytan: Do you know approximately the date?

A Harris: I do not.

Q Eytan: Was it in 2020 after you received the return on the December 17th or was it in 2021?

A Harris: I don't recall whether it was in 2020 or 2021, but it would have been fairly soon after receiving the records.

Q Eytan: So you sent him the LinkedIn messages.

A Harris: We sent him just some lines on May 9th to ask him about them.

Q Eytan: Okay. So it's evident from your investigation -- and what you do is you're trying to understand who people are, their backgrounds, and what they're about in terms of your job to put the pieces together from I guess a victimology standpoint, is that right?

A Harris: Yes.

Q Eytan: And so what you discovered was that Suzanne kept a lot of secrets. Can you explain what you mean by a lot?

A Harris: Yeah.

Q Eytan: She kept the biggest secret of an affair that she had from every single person she knew, right?

A Harris: Yes.

Q Eytan: And her sister Melinda Baumunk also said that Suzanne was very good at keeping secrets, right?

A Harris: I don't recall.

Q Eytan: You don't recall seeing that -- I mean in doing your review of talking to the people and reading reports of people, especially her sister, I'm sure you reviewed a report where Detective Burgess did an interview of Ms. Baumunk. Did you review that?

A Harris: Yes, I did. It sounds like something that Melinda said, I just don't recall it specifically.

Q Eytan: Okay. So you would recall that Suzanne -- that her sister -- her own sister -- said that she was good at keeping secrets, right?

A Harris: Like I said, I know I reviewed it. It sounds like something that Melinda may have said. I don't remember specifically that she said that, but --

Q Eytan: Sure.

A Harris: -- it doesn't sound out of the realm of something that she would have said about Suzanne.

Q Eytan: Okay. Now this affair, as we've heard, was not a one-night stand or even a two-month fling, right?

A Harris: Correct.

Q Eytan: The affair was with Jeff Libler, who lives in an entirely different state, in Michigan, right?

A Harris: Correct.

Q Eytan: And it was two years long.

A Harris: Yes.

Q Eytan: And it was still --

A Harris: Well --

Q Eytan: -- fully active and involved on the day that Suzanne went missing.

A Harris: Sorry, on the two years it was -- it started around -- he reached out in September of 2018 through to the last communication on May 9th. So a year and a half, not two years.

Q Eytan: Okay. And I guess for clarification, you're basing that on what Mr. Libler said, right?

A Harris: Yes.

Q Eytan: All right. So this affair was fully active and involved until the day Suzanne went missing, right?

A Harris: Yes.

Q Eytan: And as we talked about you interviewed not only people like Sheila Oliver, her best friend, but also Holly Wilson, who also was another good friend of Suzanne's, correct?

A Harris: Yes.

Q Eytan: And as we talked about her sister Ms. Baumunk was also interviewed, right?

A Harris: Yes.

Q Eytan: And Ms. Oliver and Ms. Wilson are both purportedly people that Suzanne told everything to, right?

A Harris: Well they were -- Sheila was somebody that she was very close to and told a lot, but not everything.

Q Eytan: Right, she didn't tell everything to. Ms. Oliver was a college roommate of Suzanne Morphew, right?

A Harris: Correct.

Q Eytan: And said that we were the best of friends and we talked, right?

A Harris: Yes.

Q Eytan: But it was clear from your interviews of Holly Wilson, Melinda Baumunk, and Sheila Oliver that Suzanne did not tell them the truth about her two-year affair with Mr. Libler, right?

A Harris: Yeah, I don't know that any of them ever asked her whether she was having an affair, but she never disclosed it to them.

Q Eytan: Right. She never mentioned a male friend to anybody.

A Harris: Not anybody that we interviewed, no.

Q Eytan: In fact, it would have been hard for them to believe that Suzanne would have an affair.

A Harris: Correct.

Q Eytan: Sheila was even asked if while there was some overlap between Suzanne's secret flame with Mr. Libler in Florida in February 2020 and her visit with Sheila in Florida in 2020 if Sheila had any idea that something else was going on, and she said no. Is that right?

A Harris: Correct.

Q Eytan: And you didn't find out about Mr. Libler and the extent of their relationship until November 2020, right?

A Harris: Yes. We -- I don't remember what the date of finding the recording on the recording pen so we knew it sounded like there was somebody with the first name Jeff but we didn't know who that was until November. Correct.

Q Eytan: And prior to that both Ms. Oliver and Ms. Wilson had been interviewed multiple times by law enforcement.

A Harris: Yes, I believe so.

Q Eytan: And in fact after you discover the depth of this relationship with Mr. Libler you didn't just interview Ms. Oliver or Ms. Wilson you actually worked with them to record secret conversations -- well, not secret, but conversations that they were having with Mr. Morphew, is that right?

A Harris: With Ms. Wilson, she was recording those conversations on her own at first for some time and then yes, she eventually recorded on our behalf. And then with Ms. Oliver it was -- they were coming out for the visit on their own and offered if we wanted to be able to record the conversation and there was just that one conversation that they recorded.

Q Eytan: Uh-huh.

A Harris: So yes.

Q Eytan: So they work with you, and what do you call those people? Do you call them confidential informants or what do you call them in the FBI?

A Harris: So in the case of Ms. Oliver, she was not a confidential human source. But Ms. Wilson was.

Q Eytan: And when they -- when they were conducting these secret recordings of Mr. Morphew you did not advise them of the secret love affair that Suzanne had with Jeff Libler?

A Harris: No, we had played a portion of audio for each of them to see whether they knew who it was, but we didn't disclose anything about what we thought about the nature of that particular person, just that it was somebody that she was talking to, and I think both of them at that point possibly felt like it was -- that there was something there but we did not disclose anything further. But we know about the pen recording content.

Q Eytan: So, they had heard the voice of Jeff Libler but they didn't understand the depth of the relationship that Ms. Morphew had with Jeff Libler, is that right?

A Harris: Correct.

Q Eytan: And you didn't tell them that for the prior year and a half, two years, that Ms. Morphew was having this affair --

MR. LINDSEY: Object, Judge. Asked and answered.

THE COURT: I think he's answered the question, but go ahead.

A Harris: Yeah, correct.

BY MS. EYTAN:

Q Eytan: Okay. So is it fair to say that you actually used Sheila Oliver to help you in this homicide investigation?

A Harris: Well Sheila Oliver contacted us to say that she wanted to finally come out and asked if there was a way she could help and we took her up on that offer. Yes.

Q Eytan: Okay. So she had she wanted to help in trying to -- in your investigation, which was a homicide investigation of Mr. Morphew?

A Harris: Yes, Sheila specifically wanted to help in whatever way that she could. I don't -- in Sheila's mind that was without making up her mind to say exactly what happened but she wanted to help in the investigation, yes.

Q Eytan: Well and something that you were doing in your investigation was that if you believed that Mr. Morphew had knowledge of this affair or of Mr. Libler that he would have motive to kill her, right?

A Harris: Yes.

Q Eytan: And Sheila had no inkling of an affair or of Jeff Libler, correct?

A Harris: Correct.

Q Eytan: Holly Wilson didn't have any inkling or information about an affair with Jeff Libler, is that right?

A Harris: Correct.

Q Eytan: And you don't have any information that Barry Morphew had any inkling about an affair with Jeff Libler.

A Harris: Mr. Morphew has told us that he did not know about it. He did say at some point that he was suspicious of potentially an emotional affair but not a physical affair. And there are some things -- I think there are some questions about that, so he has told us he did not know.

Q Eytan: And you didn't -- you don't have any documentation, any kind of text messages between -- we'll get to that. Hold on a minute. Let me get to the spy pen that you referred to before. So law enforcement learned about this affair -- not the depths of it but the fact that here was some kind of loving relationship that Ms. Morphew was having outside of her marriage after finding a spy pen at the Morphew home. Is that right?

A Harris: Yes. It took some time to be able to listen to the audio and capture the content that gave us that but, yes.

Q Eytan: Okay. Well let's get back to the -- like the creation or how this spy pen came into play. In January -- late January 2020, early February 2020, Suzanne told Sheila that she wanted a spy pen to record Barry, correct?

A Harris: Correct.

Q Eytan: But Suzanne did not tell Sheila why or what she hoped to record, correct?

A Harris: I don't recall whether she didn't tell her at all what she wanted to record.

Q Eytan: Well she was -- when Ms. Oliver was interviewed by Detective Burgess on May 12th Sheila Oliver said, "I think she was hoping to catch some conversation or just like to have some witness of something I don't know if she really went into a lot of detail in what she was wanting, but she was hoping to put it in his truck." That sound correct?

A Harris: Yes.

Q Eytan: And she told agent Graham that she thought she could hear him on a phone talking to someone, is that right?

A Harris: I don't recall the content of agent Graham's interview.

Q Eytan: Okay so Agent Graham interviewed her on July 28, 2020.

A Harris: Okay.

Q Eytan: Did you review that interview?

A Harris: Yes, at some point yes.

Q Eytan: Okay. So would you like to see -- see that statement?

A Harris: Please.

MS. EYTAN: Your honor it's three o'clock may we have an afternoon break and I'll find this is that all right for the court is this an appropriate time for a break

THE COURT: It doesn't matter I was going to take one about 3:15 but if that -- it would save us some time so you can --

MS. EYTAN: Yeah.

THE COURT: -- find that while we're on break.

MS. EYTAN: That would be great

THE COURT: Okay so we will be in recess until ten after.

(Pause in proceedings from 3:01 pm to 3:15 pm)

THE COURT CLERK: All rise.

THE COURT: Thank you. Please be seated.

MS. EYTAN: Your Honor, may we approach real briefly.

THE COURT: Yeah.

MS. EYTAN: It appears -- we could be wrong but we've checked with our discovery people. Everyone has been looking on our drives and we can't find the report that Agent Harris referred to, talking to Mr. Libler after (inaudible.). I asked the prosecution if they could please point us to it and they provided us a copy so we're copying it right now, Your Honor and I would ask for the prosecution to tell us where it was produced so that we can confirm whether we did receive or we didn't. That's all I'm asking.

THE COURT: Are you able to do that?

MR. LINDSEY: My understanding from what Agent Harris said is the initial batch of discovery that was produced early on. You can shake your head all you want but it was in there. In that batch of discovery.

THE COURT: And I don't have any way of confirming.

MS. EYTAN: Okay, that's fine. That's fine. I just (inaudible).

(Proceedings return to open court.)

THE COURT: Okay, the record should reflect all parties and council are back in the courtroom. Agent Harris is on the witness stand go ahead, Ms. Eytan

MS. EYTAN: Thank you, Your Honor.

Q Eytan: Agent Harris, on the break I inquired about this -- an interview with Mr. Libler that occurred after the search warrant LinkedIn return came in. Is that right?

A Harris: Yes.

Q Eytan: And you provided me with a two page -- one and a half page summary of that call that you had with Mr. Libler on December 18, 2020, right?

A Harris: Yes

Q Eytan: And then three pages extracted LinkedIn messages from the LinkedIn return. Is that right?

A Harris: Correct.

Q Eytan: And it looks like you spoke with Mr. Libler about a few of the messages in the LinkedIn return. You didn't send him all of them you just sent him a selected few, is that right?

A Harris: Correct.

Q Eytan: So I want to get back to the spy pen. Sheila never indicated that Suzanne wanted the spy pen to catch Mr. Morphew because he was abusive or because she wanted to catch him in some argument or in some type of volatile state, is that right?

A Harris: I don't remember Sheila saying that.

Q Eytan: And Sheila -- Suzanne asked Sheila to have it mailed to her at her house so that she could keep it a secret from Mr. Morphew, right?

A Harris: Yes. Suzanne told Sheila that she was concerned as to what Barry's reaction would be if he saw it come to the house.

Q Eytan: So then Sheila received the spy pen in Indiana and she brought it with her to Florida, right?

A Harris: That's what she told us, yes.

Q Eytan: And then she told you that she gave the spy pen to Ms. Morphew down in Florida, right?

A Harris: Correct.

Q Eytan: And Suzanne never told Sheila if she used it.

A Harris: I don't recall Sheila ever saying that she knew that Suzanne used it.

Q Eytan: Okay. So as you described a little bit there were multiple files on the spy pen, right?

A Harris: Correct.

Q Eytan: And files meaning audio files.

A Harris: Yes.

Q Eytan: And what happens with a spy pen is -- like my colleague said, Ms. Nielsen said it looked like a regular black pen but you can plug it into a port and you can download the content of what has been recorded on the pen, right?

A Harris: Yeah I've seen a photograph of the pen that's what it looks like. Yes.

Q Eytan: And the pen also appears to -- for purposes of being secretive -- it activates upon hearing voices, is that right?

A Harris: That's the way it's been described. It appears from the files that it activates by something because it doesn't seem like there's Suzanne or somebody else manipulating it to turn it on when it comes on. So yes.

Q Eytan: Okay. So when you review these files there were 11 deleted files and there were 11 saved files, right?

A Harris: I don't remember the numbers. That sounds about right, yes.

Q Eytan: Okay. And two of the files -- and this was before -- this wasn't -- this wasn't law enforcement deleting the files. This had to have been whoever was in possession of the spy pen who was Suzanne, right?

A Harris: That's my understanding, yes.

Q Eytan: And it appears that there were two files that were able to be recovered that were deleted by purportedly Ms. Morphew's that were recovered on the spy pen, is that right?

A Harris: Yes. Again I don't remember the numbers specifically but I remember seeing just a couple that were in the deleted category that were -- that we could hear the audio, yes.

Q Eytan: Do you recall which two those were?

A Harris: I believe one of them was the one with Mr. Libler on it. I do not remember what the second one was.

Q Eytan: Okay. Now the law enforcement found the spy pen because miss Oliver let law enforcement know that she had worked with miss Morphew to get her a spy pen, right?

A Harris: I don't actually know how that came about.

Q Eytan: Okay. So prior to -- there was actually a search for the spy pen because of Ms.. Oliver's information? You don't recall that?

A Harris: I do not.

Q Eytan: Okay so the spy pen is found in the master closet of Ms. Morphew's house, right?

A Harris: I did hear that it was found -- yes, in her closet.

Q Eytan: Okay. And on June 2nd, 2020 that's when CBI Agent Graham learned from Chaffee County Detective -- I can't say her name -- Hysjulien?

A Harris: Hysjulien?

Q Eytan: Hysjulien, thank you. Hysjulien discovered a conversation on that spy pen dating back to February 2020, right?

A Harris: If this is from a report I'm just not recollecting it.

Q Eytan: Okay. So does it sound from your conversation that the detective heard this conversation between Suzanne and a person named Jeff who had two children named (REDACTED) and (REDACTED)?

A Harris: Yes, if I remember -- I don't know that Sergeant Hysjulien -- when she first heard it I think she did not yet know that there was a name Jeff on there. I don't remember whether that was the case or not in terms of when -- whether she -- so I just don't recall whether she was the one that already had heard Jeff before we started listening more in depth with several of us.

Q Eytan: Okay. Let me see if I can refresh your recollection.

MS. EYTAN: May I approach the witness, Your Honor?

THE COURT: You may.

MS. EYTAN: Thank you.

Q Eytan: Maybe this will refresh your recollection in looking at the June 1st, 2020.

A Harris: Okay. Okay, yes.

Q Eytan: Yes. So without asking the question again does that refresh --

A Harris: Yes.

Q Eytan: -- your recollection? So on June 2nd it becomes apparent that there is recording with someone that seems like it's a more intimate nature from the conversation, is that right?

A Harris: Correct.

Q Eytan: And what could also be heard in the recording that you described was you could hear recording happening while a truck -- well it was in a car, perhaps a truck, is that right?

A Harris: Correct.

Q Eytan: Okay. So the recording with Jeff that was found on the spy pen --

A Harris: Sorry, can I ask just for a clarification?

Q Eytan: Yes.

A Harris: The truck/car noise, are you talking about the same recording or a separate one?

Q Eytan: A separate recording.

A Harris: Okay, yes.

Q Eytan: Okay. So let's go back to the Jeff recording, okay? The Jeff recording was on February 2nd, 2020.

A Harris: Yes, I believe that's what we were able to figure out it was recorded on.

Q Eytan: Okay. And it was on while Suzanne was away from Colorado on a trip when she was with Sheila Oliver on a girls trip and they were watching the Super Bowl. This recording was created around that time.

A Harris: There's a separate recording that has the Super Bowl on it around the same time, yes.

Q Eytan: Okay. And in this conversation with Mr. Libler -- that we know now is Mr. Libler of the recording you hear Suzanne say "Maybe we are in the clear for Valentine's Day. Barry won't be around," is that right?

A Harris: Yes, I remember.

Q Eytan: And Suzanne's saying, "You were not a homewrecker. You're my lover and my sweet friend, and the man I love dearly. Okay? And I'm your woman." You recall that?

A Harris: Yes I will say the quality of the audio is very hard to hear so with the -- but I listened to it many times, that's what I remember hearing.

Q Eytan: Okay. And Suzanne also said in the same recording "I'm looking at the man who makes me happy. Jeff, baby, I love you so much. I'll message you in a little bit." Is that right?

A Harris: Again, yes. It's very -- I don't know if you've listened to it but the audio is very difficult to hear so presuming that's what we are able to get out of it.

Q Eytan: And that's what you were able to transcribe from the recording into a report --

A Harris: Yes

Q Eytan: -- is that right?

A Harris: That's right.

Q Eytan: Okay. So part of this secret recording on February 2nd was also Suzanne Morphew leaving and playing messages -- leaving messages for Jeff Libler and playing messages that Jeff Libler was leaving her on some social media app, right?

A Harris: Yes, that's what it appears to be. You can hear her recording a message. That's a little bit harder to hear. But then she plays the message back it seems to come over the car -- obviously there's no video so we can't tell but that appears to be what's happening, yes. It's messages she's sending and then receiving and listening to from and it sounds like the same voice as Mr. Libler.

Q Eytan: And one of the messages that Ms. Morphew is leaving for Mr. Libler -- and you can hear her leaving this message -- is, "While you were gone he was asking me what I was using. A lot of things that were off. It's not stressful. Difficulty with his sisters. Talking about not being a big deal. Not being with Barry for Valentine's Day two years in a row. Love you." That sound right?

A Harris: Yes

Q Eytan: And then she listens to a message that Jeff Libler leaves her numerous times. The message is, "You are the sweetest thing I've ever known." Do you recall that? You can look at the transcript if that --

A Harris: Yeah, I think -- do you have a time stamp roughly?

Q Eytan: Yes I think it's -- look at page 23 of your report.

A Harris: Sorry, mine does not have page numbers on it but it has the time stamps.

Q Eytan: Okay. Timestamp 3:11 – 3:14.

A Harris: I see it.

Q Eytan: Okay. And Suzanne leaves a voice memo back for Mr. Libler saying “Baby, I've known from the beginning that we are perfect for each other. You are perfect for me.” Is that right?

A Harris: Yes.

Q Eytan: And then another message “Cannot live my life without you in it.” Right?

A Harris: Yeah, I think mine has to not my life without you in it but it sounds like what she was trying to say there, yes.

Q Eytan: And she leaves him another message “This is what I want coming into the end of our lives. This is what I want. I want those things that are lasting. Your heart, who you are. that's what I crave. Just this person I love. I love how you love me. I love how you think. I love we can get through.” I think there's a typo in there in the transcription but, “I'm sure of it.” Is that right?

A Harris: Yeah mine says, “I'm sure of that.”

Q Eytan: And Mr. Libler responded to the message and he says, “You have no idea what you're getting yourself into with me. I'm emotional. I'm more emotional than I should be,” right?

A Harris: Yes, I see it.

Q Eytan: And Suzanne – and he says -- another message to Suzanne, “Suzanne, I love you. I love the way you do not change. You're not more emotional or anything than you should be. I love you.” Right?

A Harris: “You're not more emotional or anything than you should be.” And then mine goes on, “I know you've heard that from somebody else but I don't -- It doesn't then go to I love you in mine.

Q Eytan: Okay.

A Harris: But the first part that you read, yes.

Q Eytan: And just as there's another message, “Baby, you are a sweetheart and oh, this boy craves you. Just about everything about you. Love you and hope to see you.”

A Harris: Yes.

Q Eytan: It was evident from this spy pen recording that was recovered that Suzanne was having a romantic relationship with this person named Jeff, right?

A Harris: That's the inference we drew, yes.

Q Eytan: And CBI, the DA's office, the FBI, issued 50 search warrants before November of 2020 and hadn't figured out who this Jeff was, right?

A Harris: Yes, I don't know -- I'll take your word on the number of search warrants. But yes.

Q Eytan: This is because Suzanne created accounts -- secret accounts, right?

A Harris: Yes.

Q Eytan: And all the resources that the CBI, FBI, and the DA's office had weren't able to identify who this person was, right?

A Harris: Yeah, up to the point of finding the spy pen recording, yes. We didn't have any record of it.

Q Eytan: Without the spy pen recording there was -- there's no other investigation that has been conducted to this point, a year -- almost a year and two months later -- that would have revealed this affair, is that correct?

A Harris: Yes. I think there was maybe Mr. Libler's number showed up in one of the social media accounts on something that had no name or label that was searched later but otherwise, no.

Q Eytan: So Suzanne's secret spy pen led you to Suzanne's secret affair?

A Harris: Correct.

Q Eytan: So law enforcement -- you and I think Agent Grusing -- called Mr. Libler on November 2nd, 2020, right?

A Harris: Yes.

Q Eytan: Where Mr. Libler admitted that he was the Jeff that knew Suzanne Morpew.

A Harris: Yes.

Q Eytan: And Mr. Libler agreed to interview with both of you on November 13, 2020.

A Harris: Yes.

Q Eytan: And both you and Agent Grusing flew to Michigan to interview him?

A Harris: Correct.

Q Eytan: And at that point you had the secret pin recording but you did not know the extent of the relationship.

A Harris: Correct.

Q Eytan: Jeff Libler did not come forward and tell anybody he had been communicating with Suzanne Morpew.

A Harris: Correct.

Q Eytan: Jeff Libler claimed his phone got destroyed immediately after Suzanne went missing and lost all his communications he had with her, correct?

A Harris: I don't know if he said it was immediately after she went missing but his -- yeah, the work phone that he had was destroyed after he -- after she went missing, yes.

Q Eytan: He claimed that to be true, right?

A Harris: Yes.

Q Eytan: You never verified that, correct?

A Harris: I think we asked him whether he still had it, when it was destroyed if he -- what he got in replacement if there was any way that he had access to them and he said no.

Q Eytan: Sure. And he deleted all of his secret accounts and proof of communication he had with Ms. Morphew's after Ms. Morphew went missing, correct?

A Harris: Yes. Suzanne and Jeff both were in the practice of deleting their WhatsApp messages every time they were done communicating so there wouldn't be a trace on their phone. So they were both doing that throughout. And then they would reload it when they were going to talk again, but it would erase all the communications. But he did erase his LinkedIn account, afterwards.

Q Eytan: And you didn't go to Mr. Jeff Libler's work who was in -- I guess paid for this phone or replaced the phone to confirm Mr. Libler's version to you.

A Harris: We did not.

Q Eytan: He told you that the phone that he had on May 9th and 10th didn't exist anymore, right?

A Harris: Right.

Q Eytan: That he deleted his account.

A Harris: Correct.

Q Eytan: And he claimed that he did this because he didn't want Suzanne Morphew's legacy to be that she had an affair with this guy, right?

A Harris: Correct.

Q Eytan: But he also said that he was protecting himself, too.

A Harris: Correct.

Q Eytan: He said he couldn't even try to sign back into his accounts because they're gone, right.

A Harris: That sounds familiar. But if I could just look at where he says that in the report.

Q Eytan: This was on 11/13 and the time of the interview was 2 hours and 22 minutes in Indiana or no 2 minutes and 22 seconds. Sorry.

A Harris: I'm sorry I'm just not seeing a 2 minute 22 seconds.

Q Eytan: Okay, why don't we listen to the words of Mr. Libler.

(Audio played.)

MR. LINDSEY: I'm not sure what is the question about this a lot of this has already been testified to by the witness.

MS. EYTAN: It's true. It's true, we're having technical problems.

(Audio played)

BY MS. EYTAN:

Q Eytan: So it was very hard to hear, almost impossible actually.

A Harris: Not as impossible as the pen recording probably.

Q Eytan: But would you dispute that the texting from the recording says -- you asked if he'd be able to sign back into the account and see if it's still there. He said he tried. You asked if he tried it and it's gone. He said it gives me an error the account is gone.

A Harris: Yes, I saw that text. I don't remember the context, which account we were talking to him about. Were we asking him about LinkedIn?

Q Eytan: Yes.

A Harris: Okay, yes.

Q Eytan: So also something that you wanted to obtain was his phone records, right?

A Harris: Yes.

Q Eytan: And you wanted to obtain his phone records to see -- you know, verify if what he was telling you was true, right?

A Harris: Yes.

Q Eytan: And to see the extent of the relationship from what you could gather from a phone record, right?

A Harris: Yes.

Q Eytan: But you only got the phone records to December 2019, is that correct?

A Harris: I don't believe that's correct. I believe we got phone records all the way through to the present day of the search warrant.

Q Eytan: Okay. The search warrant only has until December of 2019. Was there a reason for that?

A Harris: I don't recall the search warrant only going to 2019. Because we have records -- I believe that we asked our CAST person to say where was Mr. Libler's phone hitting off of and he gave us Michigan towers on May 10.

MS. EYTAN: May I have a moment, Your Honor?

BY MS. EYTAN:

Q Eytan: The only people that knew about -- that there was some kind of affair between Jeff Libler and somebody else was Jeff Libler's brother and his daughter, right?

A Harris: No, I believe in -- I forget the time frame of this -- I think in -- around Thanksgiving of 2018 -- so when they were talking but had not yet traveled to see each other -- Mr. Libler's daughter took his phone when he was -- she was trying to order pizza, and she saw communications and he told us that she told -- I believe it was his two older sons and her Uncle. So yes one of his brothers.

Q Eytan: And to date you have not interviewed his brother or the daughter, correct?

A Harris: Correct.

Q Eytan: And you didn't obtain Mr. Libler's computer to search for any information that you could obtain from there, is that correct?

A Harris: Correct.

Q Eytan: And at the time of the interview on November -- in November 2020 he had not told his wife yet about the secret affair.

A Harris: Correct.

Q Eytan: So the beginning of this affair as you said started with getting a message from Suzanne out of the blue on Facebook saying, "Hey stranger," right?

A Harris: Yes I don't remember if Mr. Libler remembered for sure which platform it was but he thought it was Facebook, yes.

Q Eytan: And they started to talk and Suzanne actually suggested using a secret app called Voxer to secretly communicate, right?

A Harris: She suggested Voxer to communicate. I don't know that Voxer is particularly secret but she did suggest it to him.

Q Eytan: And Mr. Libler claimed to use it once or twice then they switched to using cell phones to talk, correct?

A Harris: Correct.

Q Eytan: And this is all coming from Mr. Libler's version, correct?

A Harris: Correct.

Q Eytan: Mr. Libler told you that he'd always carried a torch for Suzanne since college.

A Harris: Correct.

Q Eytan: And not only did Suzanne Morphey not tell anybody about this affair, she didn't even write about it in a journal or anything that was tangible. You didn't find any clues toward an affair with Jeff Libler in writing.

A Harris: Yes, there's a journal that we understand someone described her having that we did not find, but in the journals that we did find there's no references.

Q Eytan: So Mr. Libler claimed that after his daughter discovered something going on between Mr. Libler and a woman that they stopped communicating completely, right?

A Harris: Yes, for a time.

Q Eytan: And that he actually said that he deleted all his apps including Facebook and Instagram and text with her to eliminate any ability for anyone to find anything out about them, right?

A Harris: Correct.

Q Eytan: And you said that soon after that, around December 2018 early 2019 Suzanne reached out to him finding him on a LinkedIn account, right?

A Harris: Yes, I believe he said it was around Christmas.

Q Eytan: And then Mr. Libler said that at that point they started it up again, right?

A Harris: Correct.

Q Eytan: But, actually, because you have Mr. Libler's phone records during that time period, you know that they were talking consistently, almost daily, between November 15 and the end of December. Is that right?

A Harris: The phone records show that they were talking by phone. Yes.

Q Eytan: So it's not true that they stopped communicating because his daughter found out about them, right?

A Harris: I don't know that it's not true that they --

MR. LINSDEY: Objection on that not true part.

THE COURT: I'm sorry, there were two people talking.

MR. LINDSEY: I object to defense counsel's characterization of the not true part.

THE COURT: It's the same objection one of you two made earlier.

MS. EYTAN: Why is that (inaudible). So I mean what he stated earlier was not true to what the evidence has shown.

THE COURT: I think what we're trying to do -- since I have to -- I'm the trier of fact I have to figure out what's true and not true just use a different word than true.

MS. EYTAN: Okay. Truth will not be used in the courtroom.

MS. EYTAN: I will use 'the evidence shows.'

THE COURT: There you go.

BY MS. EYTAN:

Q Eytan: -- that the phone records -- that there was a lot of communication going on between them between November 2018 and December 2019, right?

A Harris: By phone, yes.

Q Eytan: By phone.

A Harris: Yeah.

Q Eytan: And one of the ways that they were communicating in 2018 is through LinkedIn, right?

A Harris: So Jeff remembers her reaching back out by LinkedIn but I don't know that they were communicating by LinkedIn all the way from 2018 to 2020.

Q Eytan: Okay so one of the things that you did was you tried to grab Suzanne's LinkedIn messages from a search warrant, right?

A Harris: Yes.

Q Eytan: And you were able to get some information from LinkedIn, right?

A Harris: Correct.

Q Eytan: You couldn't get it from his LinkedIn account because he had deleted it, right?

A Harris: Yes, the one that was labeled Jeffrey SL, yes.

Q Eytan: Right. But hers came back with LinkedIn messages that you spoke with Mr. Libler about that date back to approximately April 2020, right?

A Harris: Yes.

Q Eytan: But it also shows how many times and when Ms. Morphew created the LinkedIn account and how often she logged into the account, right?

A Harris: Yes.

Q Eytan: And Ms. Morphew logged into this LinkedIn account that she created in August 2018 multiple times from August 2018 up until she goes missing, is that right?

A Harris: I don't have that date in front of me but it sounds right. Yes.

Q Eytan: Okay. So that's another thing that Mr. Libler may not have been so accurate about when he was telling you his version of events, right?

A Harris: Which, that they were talking on LinkedIn?

Q Eytan: Right.

A Harris: I don't know that they were talking by LinkedIn.

Q Eytan: You just know that she was logging in a lot and started her account in August 2018, right?

A Harris: Yes.

Q Eytan: So Mr. Libler claims that as a result of his daughter finding out about -- I don't think the daughter defines it as an affair, but something going on between Mr. Libler and another woman -- that Suzanne reaches out to him after a period of time where they are not talking, correct?

A Harris: That's what Mr. Libler claims. Yes.

Q Eytan: And that when Ms. Morphew reaches out to him that's when they really start a full-on affair, right?

A Harris: So the -- once they started talking at some point Suzanne is talking about her trip to New Orleans that she's planning for February. She says something about liking surprises and asks Jeff if he wants to meet her there. And that's when they meet and that's when the physical affair begins in earnest.

Q Eytan: Okay. And this is what Mr. Libler is telling you, right?

A Harris: Yes.

Q Eytan: Okay. So at the time when Ms. Morphew pursues Mr. Libler again they decide to create secret WhatsApp accounts so they can speak to each other without their spouses or anybody else knowing, correct?

A Harris: I'm sorry, I just don't remember whether that's the time frame. They do eventually create WhatsApp accounts. I don't remember if it was right at that point in 2018.

Q Eytan: That's what Mr. Libler claimed to you, that once Ms. Morpew reached out to him their way to conceal this affair was to use the secret WhatsApp accounts, right?

A Harris: Yes.

Q Eytan: And at that time is when Mr. Libler claimed to you that he created this secret LinkedIn account., the Jeff SL account, so that they could also communicate in that format too.

A Harris: Sorry I'm just not remembering whether he says that at 2018 or 2019 because what he talks about is they are talking on the phone and at some point at the end of 2019 Suzanne says to him that Barry is basically looking at the communications and we need to switch, so it seems like that's the point at which they are exclusively -- or they moved towards not talking on the phone anymore and they're using LinkedIn and WhatsApp I don't remember whether they're using LinkedIn and WhatsApp all the way through up to that point.

Q Eytan: Okay. Can you point me to where Ms. Morpews says Mr. Morpew is looking at her communications?

A Harris: I think I can -- what I can point to is Mr. Libler tells us that.

Q Eytan: Right. Can you point me to that?

A Harris: Yes, I think so. Sorry, I don't have the -- I have where Mr. Libler tells us they stopped talking on the phone in December of 2019 and that's when he created the Jeffrey SL -- deleted his second LinkedIn -- oh, sorry that's when he deleted the account after Suzanne disappeared.

Q Eytan: Agent Harris I don't -- I didn't hear it in the recording so I never heard where Mr. Libler said Mr. Morpew was checking her phone and checking her accounts. So that's why I'm asking you to point me --

A Harris: Okay.

Q Eytan: I can maybe read you maybe what you're thinking you believe the statement, "She was worried like what if Barry looked up records. He had no idea that we talked to each other." Is that maybe what you're thinking --

A Harris: Yes, I --

Q Eytan: -- when you --

A Harris: -- believe so. Yes.

Q Eytan: Okay. So not that Barry was looking or had looked but what if Barry looked up the records. And also Mr. Libler said he had no idea that we talked to each other.

A Harris: Yes.

Q Eytan: So they are communicating on WhatsApp on LinkedIn -- but all you -- the evidence that you received back were limited phone records from Mr. Libler and none of Mr. Libler's other accounts that he had when he was communicating with Ms. Morphew, right?

A Harris: Correct.

Q Eytan: Okay. And you also don't have a download or information from Suzanne's actual phone because her phone was not seized at the scene, is that right?

A Harris: At the house her phone was never found.

Q Eytan: Her phone wasn't found. The other thing that wasn't found was the charger that she leaves plugged into her phone next to her bed, right?

A Harris: I don't I have heard that I don't know it first hand.

Q Eytan: Okay. So all we have from Ms. Morphew is what's saved on her iCloud.

A Harris: Can you clarify what you mean by all we have?

Q Eytan: Well from Suzanne's actual communications originating from her. I know that we have text messages between Sheila Oliver and herself, but originating from Ms. Morphew, the only evidence we have is from her iCloud. We don't have her phone her download et cetera?

A Harris: Yes, and we have her phone records from the phone company.

Q Eytan: That's right. And we have her phone records. And you're right, we have her LinkedIn messages going back about a month prior to her missing.

A Harris: Yes.

Q Eytan: Okay. So do you know what a SIM card is?

A Harris: Generally, yes.

Q Eytan: And you take it out with like a safety pin or a paper clip, right?

A Harris: Yes.

Q Eytan: And when you take a SIM card out of a phone what happens?

A Harris: Again, I'm not a phone expert but your phone is not going to work.

Q Eytan: Right. And if you put a different SIM card into the phone it actually then behaves like a different phone it can't be detected as the original phone, is that right?

A Harris: Again, I don't feel qualified to answer that.

Q Eytan: Okay. So do you know whether or not Ms. Morphew had a SIM card.

A Harris: I do not.

Q Eytan: Do you know whether or not an electronic device that she used was missing from the house when the searches were conducted?

A Harris: I do not.

Q Eytan: Okay. So let's talk about November 2018. There were -- on November 26, 2018 there were ten calls on that day between Mr. Libler and Ms. Morphew totaling more than four hours. You recall that?

A Harris: I don't recall the specifics of the numbers. I -- you said November.

Q Eytan: November 26, 2018, yeah.

A Harris: I don't have all the data but I have some in front of me. I see a number of calls on the 26th 33 minutes, 6 minutes, 77 minutes, 12, 153 minutes.

Q Eytan: That's right. You see the one that's 153 minutes?

A Harris: Yes.

Q Eytan: Okay.

A Harris: Although it says call wait. I don't know what that means versus the other entries.

Q Eytan: Okay, but you see a bunch of calls, like ten calls. Is that approximately ten phone calls on November 26, 2018.

A Harris: I see -- yeah, I've got seven on here.

Q Eytan: Okay. And Suzanne didn't tell Sheila Oliver, her best friend, about these communications she was having with Mr. Libler. We've established that, right?

A Harris: Correct.

Q Eytan: But she does tell Sheila Oliver on the next day November 27, 2018, saying, "I had a rough talk with B. Not exactly how I wanted it to go but made me some. And talking about breaking the co-dependency is big. Told him I will give him total freedom to go and do without question and not checking where his phone is." You recall that?

A Harris: I do.

Q Eytan: The next day after this bulk of -- hours of communications with Mr. Libler, right?

A Harris: Yes.

Q Eytan: But she didn't mention the new relationship she was building with Mr. Libler while she was complaining about Mr. Morphew, right?

A Harris: Correct.

MR. LINDSEY: I'm going to object. That's been asked and answered at least twice.

THE COURT: Yeah, I think we've thoroughly established that Ms. Oliver was completely unaware of the relationship.

BY MS. EYTAN:

Q Eytan: Now Ms. Morphew and Mr. Libler are talking on the phone again in the beginning of January 2019. Between January 4th and January 11th they talked 26 times.

A Harris: I don't have all those calls in front of me.

Q Eytan: Okay. Would you like to look at them?

A Harris: Sure.

MS. EYTAN: May I approach?

BY MS. EYTAN:

Q Eytan: Between January 4th and January 11th there are 26 phone calls between Ms. Morphew and Mr. Libler.

THE COURT: Is that of '19?

MS. EYTAN: Sorry, yes.

THE COURT: Okay.

MS. EYTAN: 2019.

A Harris: I think I counted 19 but that may just be because I need readers.

BY MS. EYTAN:

Q Eytan: And this includes six calls on January 11th totaling an hour.

A Harris: Sorry, I don't have January 11th. I have one -- I have January 2nd through January 10th.

MS. EYTAN: May I approach the witness, Your Honor?

THE COURT: Yes.

BY MS. EYTAN:

Q Eytan: Maybe that's why your count was off. There were six calls on January 11th totaling an hour of talk time.

A Harris: Yes. I'll trust your math.

Q Eytan: Okay. Well on January 12th Suzanne is texting Sheila and she's saying, "I'm learning to detach with the love thing and it's a hard balance to detach and still seem loving," right?

A Harris: Yes. I remember that text.

Q Eytan: And she said, "I think he's scared of my pull away," right?

A Harris: Yes. Without having it in front of me that sounds -- yes.

Q Eytan: Okay. So the phone calls that we have from Mr. Libler's phone records up until the mid-December of 2019 are replete with daily phone calls, multiple phone calls, even when Mr. Libler is on vacation in the Cayman Islands, multiple phone calls between himself and Ms. Morphew. That right? I'm talking -- I'm talking throughout the duration of 2019?

A Harris: Yes, I think my -- I'm not sure whether Mr. Libler was on vacation or whether the Morphews were at that point but, yes.

Q Eytan: Okay.

A Harris: Yes.

Q Eytan: So let's talk about their actual trips that Mr. Libler told you about. So Ms. Morphew would go to Florida and she would tell Mr. Morphew that she was there to visit her dad. And when she would be there she'd tag on a trip to Mr. Libler. She did that a few times, right?

A Harris: So that -- the Florida -- the February 2020 yes, and then there was also I think -- I'm trying to remember when the other Florida one was. I think it was April of 2019. Yes.

Q Eytan: Right. Oh actually no, that was February 2019.

A Harris: February --

Q Eytan: Valentine's Day.

A Harris: February 2019 was New Orleans.

Q Eytan: Yes, and then right after that she went to Valentine's Day on February 2019, so back to back.

A Harris: I'm sorry I'm misunderstanding your question.

Q Eytan: Okay. So let's start here. Ms. Morphew used her -- seeing her dad so that she could see Mr. Libler on one occasion that we're talking about in at least in -- one trip to Florida that you'll recall.

A Harris: Yes. the February 2020 trip she was going to see both Sheila and her father. Yes.

Q Eytan: Okay. Now she would also use Sheila as an excuse. She would tell Mr. Morphew, her husband, I'm going to hang out and have a girls trip with Sheila, but then she'd be tagging on a trip to see her lover, Mr. Libler, right?

A Harris: Yes. She went back to Indiana to see -- I think she was taking care of some house documents is what Mr. Libler believes in Indiana and saw Sheila. And then she also saw Mr. Libler. Yes.

Q Eytan: Okay. So let's start at the beginning of their trips. New Orleans 2019 February 11th through February 14, 2019 is the first time that Mr. Libler claims that they saw each other, right?

A Harris: Yes.

Q Eytan: And --

A Harris: First time after 1989, yes.

Q Eytan: And Mr. Libler reports to you that he told Ms. Morphew that he'd be in New Orleans for a work trip and she just showed up out of the blue, right?

A Harris: Yes.

Q Eytan: And Ms. Morphew told her friend, Sheila, about this trip she took on her own. She was taking a solo trip, right?

A Harris: Yes.

Q Eytan: And that's what Ms. morphew told her husband, Mr. Morphew, right?

A Harris: I don't know that. I know in that context what she told Mr. Morphew

Q Eytan: Okay. Well Mr. Morphew when he was interviewed by you told you that he thought she was going on her own to --

A Harris: Yes, sorry.

Q Eytan: That's okay. And you know, she actually -- Ms. Morphew actually gave a little bit more of, you know, information to her best friend, Sheila Oliver, and told her that oh, this is the trip where she met a woman who was there at a convention and they hit it off, right?

A Harris: Yes.

Q Eytan: And Ms. Oliver reports that her best friend tells her it was really nice to talk to somebody, right?

A Harris: Yes.

Q Eytan: Then in February 2019 they saw each other again in Florida for Valentine's Day.

A Harris: So February 2019 they were in – you said they were in New Orleans for Valentine's Day. You said the end of the trip was February 14th?

Q Eytan: And then they saw each other – let's -- then they saw each other in Marco Island.

A Harris: I'm sorry, I'm just not remembering that that's when that is.

Q Eytan: Sure. Let's --

A Harris: Yes, so after New Orleans it was a couple of weeks later, so it would be later in February, right? I think he says a couple of weeks later we meet up in Florida?

Q Eytan: – it was Valentine's Day.

A Harris: Didn't you say Valentine's Day was –

Q Eytan: Both years. They saw each other both years --

A Harris: I'm sorry. Okay, this is where I'm confused. I thought you were talking about successively in 2019 New Orleans and then right afterwards --

Q Eytan: That's right, right afterwards again. So they see each other in New Orleans in February 2019 -- let me give you the dates. Then they see each other in Florida. Sorry, they were in New Orleans Valentine's Day.

A Harris: Yes

Q Eytan: Sorry and then they see each other in Florida a couple of weeks later in 2019.

A Harris: Yes.

Q Eytan: Okay.

A Harris: That's why I was confused. you were saying Florida for Valentine's Day –

Q Eytan: Sorry. I apologize

A Harris: No, no worries.

Q Eytan: I apologize. Okay, so let's talk about Suzanne Morpew's alibi when she went on this trip to see -- and saw Mr. Libler in Florida in 2019. So you interviewed her dad, Gene Moorman on May 9, 2020, right?

A Harris: I did not but somebody did.

Q Eytan: Oh, sorry. Law enforcement did?

A Harris: Yes.

Q Eytan: And this was after his daughter went missing?

A Harris: Yes.

Q Eytan: And Mr. Moorman told you the last time he saw Suzanne was two years prior, right?

A Harris: Yes

Q Eytan: Not you but law enforcement.

A Harris: Yes. I'm sorry, I just don't remember the content of that interview so if you could refresh my memory.

Q Eytan: Sure. Let me ask you this question. Do you recall Mr. Moorman saying that he was upset with his daughter because she was supposed to stay with him for four days but abruptly left after three days to meet her husband on the West Coast?

A Harris: I do remember saying that he was upset because she left early, yes.

Q Eytan: Uh-huh. But you know from your investigation, at least from what Mr. Libler claimed, that she was in Florida in 2019. Right?

A Harris: Yes.

Q Eytan: You don't know of any trip that Mr. and Ms. Morphew were on in February of 2019 where she left Florida to go meet Barry on the west coast, correct?

A Harris: Just so I'm understanding, anywhere Suzanne left -- no I'm not aware.

Q Eytan: And on this trip when she is with Mr. Libler in Florida in 2019 she tells Sheila that she's enjoying time with her dad and she's going back to the beach for a few nights to have a beach day. And this is after -- this is while she's about to see Mr. Libler, correct?

A Harris: Correct.

Q Eytan: And Ms. Oliver is so happy for her best friend that she is spending time with her dad and says Suzanne says "We are both enjoying it," right?

A Harris: I don't recall that text specifically but it sounds right, yes.

Q Eytan: And then Suzanne text her best friend and says, "I'm here solo now." Correct?

A Harris: Do you happen to have that --

Q Eytan: Yes.

A Harris: -- text just to be able to see it? I see it.

Q Eytan: And then Suzanne says, "I just made it to a little spot in Naples for the next few nights." Right.

A Harris: Yes.

Q Eytan: And Ms. Oliver responds saying she was surprised she was staying an extra few nights and Suzanne Morphew says "B said stay. He wants me to have more beach time." Correct?

A Harris: Yes.

Q Eytan: And Ms. Morphew is with Mr. Libler, correct?

A Harris: Yes.

Q Eytan: And then she talks about having a great time on Marco Island, right?

A Harris: Yes.

Q Eytan: And this is actually a trip that Mr. Libler, when you interviewed him, talked about having a secret rendezvous with Ms. Morphew on.

A Harris: Yeah.

Q Eytan: So in 2019 so far she sees Mr. Libler twice and then Ms. Oliver comes to see Ms. Morphew in Colorado. She comes with her family. Correct?

A Harris: Yes.

Q Eytan: There's no text messages after she leaves about any kind of disruptive bad marital situation going on between Mr. Morphew and her best friend Suzanne. Correct? Right after she leaves?

A Harris: Not that I recall.

Q Eytan: But then Ms. Morphew takes another trip to see -- and sees -- goes to Indiana and she sees Mr. Libler there, correct?

A Harris: Yes.

Q Eytan: And actually that was the trip that you talked about where she used Sheila as an excuse because she saw Sheila on that trip but right after she also tagged on a trip to hang out with Mr. Libler. Correct?

A Harris: Was this the -- I believe like June or July of 2019?

Q Eytan: April 2019.

A Harris: April, okay. Yes

Q Eytan: And so after Ms. Oliver and Ms. Morphews see each other you remember Ms. Oliver checked in with Ms. Morphew and says "I hope the rest of your Indiana trip went well and that your transition was good and you're feeling well," right?

A Harris: Yes.

Q Eytan: And then Ms. Morphew writes back "Thank you. Got stuck there for a few more days because of weather. Got back Friday." correct?

A Harris: Yes.

Q Eytan: She was hanging out with Mr. Libler, correct?

A Harris: Yes.

Q Eytan: Then there's July 2019 in Michigan, right? We're not going to get into it?

A Harris: Yes.

Q Eytan: They see each other again after that October 2019 in Dallas, Texas, right?

A Harris: Yes.

Q Eytan: And so by this point in 2019 they have spent multiple nights together, a lot of time together traveling all over the country.

A Harris: Yes

Q Eytan: And then we get to February 2020 in Florida around Valentine's Day.

A Harris: Yes.

Q Eytan: And this is the trip where the secret pen was given to -- from Sheila to Suzanne, right?

A Harris: Correct.

Q Eytan: Okay. And this actually is the trip where Ms. Morphew planned this. So she's going to see Ms. Oliver, then Mr. Libler, and then her husband Mr. Morphew back to back to back, correct?

A Harris: So I don't think she was planning on seeing Barry from my recollection. She was going to be down to see her father and Sheila and Mr. Libler and then Barry said he wanted to come because he didn't want to spend a second Valentine's Day apart.

Q Eytan: Right. With his wife.

A Harris: Right.

Q Eytan: And you can hear on the pen recording from then that Suzanne was with Sheila and they're watching the Super Bowl and they talk about making mojitos and they're a little tipsy, correct?

A Harris: I remember them talking about making mojitos and sounding like they were having a good time. Yes.

Q Eytan: And then Ms. Oliver goes home after their girl trip and Ms. Morphew tells Sheila that she's going to visit her dad, right?

A Harris: Yes.

Q Eytan: But instead Ms. Morphew has a multi-day trip with Mr. Libler on Marco Island before Mr. Morphew comes.

A Harris: Yes.

Q Eytan: And this is important for law enforcement to find out because Ms. Morphew was -- in February 2020 was having this crossover with her best friend and Mr. Libler again and asked -- you asked Ms. Oliver, "Are you aware of Ms. Morphew being involved in any other type of relationship?" And she said no. And you meant male relationship, correct?

A Harris: Correct.

Q Eytan: Then Mr. Libler and Ms. Morphew made a plan for him to come to Colorado in March 2020 but then COVID hit, correct?

A Harris: Actually I don't remember their -- them making the plans for the Colorado trip.

Q Eytan: Mr. Libler claimed that he was going to come see Ms. Morphew in Colorado in 2020. That's what he claimed.

A Harris: Yeah,

Q Eytan: So the first time you talk to Mr. Libler he said -- when you first talked to him it was over the phone on November 4th, 2020, right?

A Harris: Yes.

Q Eytan: And he initially -- when you talked to him he initially said the last time he talked to Suzanne Morphew was in December 2019, right?

A Harris: Yes.

Q Eytan: But that wasn't true. Right?

A Harris: Correct.

Q Eytan: And by April 2020 they were talking about love, right?

A Harris: Yes.

Q Eytan: They were calling each other their soul mates, right?

A Harris: Correct.

Q Eytan: That they were meant for each other.

A Harris: Correct.

Q Eytan: And by April 14, 2020 they're exchanging love -- I love you with all I have. You are the love of my life. I knew it when I walked through your door and touched you for the first time in 30 years.

A Harris: Correct.

Q Eytan: And they were best friends. That's how Mr. Libler described it, right?

A Harris: I don't know if he used the phrase best friends. They seem to be talking as if they were lovers.

Q Eytan: And Ms. Morphew started biking because of him, right? Mountain biking?

A Harris: Correct.

Q Eytan: And she was actually drinking alcohol with him, something that she didn't do before.

A Harris: I don't think Jeff was the one that introduced alcohol for Ms. Morphew. He had introduced a particular kind, IPA, and she was drinking them because he liked them.

Q Eytan: And they were sending nudes to each other, right? They weren't just sending photographs, they were sending nude photographs back and forth to each other.

A Harris: Yes. There's a few of those in the LinkedIn records. Yes.

Q Eytan: They were also by April 2020 telling each other that they wanted to get married to each other, right?

A Harris: Yeah. They would say to each other let's be husband and wife, or we need to get married. Mr. Libler told us that he didn't know whether in some ways Suzanne was kidding because they had started this mostly so that she could recoup and eventually get out of the marriage and he had younger kids and he didn't know if it was really going to be possible for them to get married. So his understanding of that was more playful, but they do say it quite often.

Q Eytan: So it's playful to say, "I'd love to be your husband. You have made me the happiest I've ever been. Only you. Baby, I love you. I need you always and forever. Marry me."

A Harris: Yes.

Q Eytan: That sounds pretty –

A Harris: Yes.

Q Eytan: Okay. Even up until May 8th, 2020 they are talking about how much they love each other and they want to be with each other, correct?

A Harris: Correct.

Q Eytan: And they're again saying why don't you marry me, right?

A Harris: Yes. I mean if it matters I don't know if they say that specific phrase. I think on the morning of May 9th, she says "We need to be husband and wife."

Q Eytan: And on May 8th, he says "You look good in biking gear, babe. You need to be my wife."

A Harris: Correct.

Q Eytan: Okay so now we're at May 9th, and it's COVID, right?

A Harris: Yes.

Q Eytan: People aren't permitted -- people are being told after quarantine right?

A Harris: Yes.

Q Eytan: There's a limit on travel.

A Harris: Yes.

Q Eytan: And at this time on May 9th the girls, their daughters, are gone for the weekend including on Mother's Day, right?

A Harris: Yes.

Q Eytan: So they were traveling during COVID?

A Harris: Yes.

Q Eytan: Let's talk about May 9th, specifically.

A Harris: Oh yes.

Q Eytan: Right? And then Mr. Morpew was working on a lot of the day May 9th.

A Harris: He was working in the morning I believe but not the afternoon.

Q Eytan: Okay. And before Mr. Morpew got home Mr. Libler and Mr. Morpew were going back and forth and texting each other through LinkedIn, right?

A Harris: Sorry, you said Mr. Libler and Mr. Morphew.

Q Eytan: You're right, Ms. Morphew.

A Harris: Yes.

Q Eytan: And actually the texting between them stopped on May 9th, when Mr. Libler told Ms. Morphew "My gang is home." Is that correct?

A Harris: Correct.

Q Eytan: And his gang -- he has six children and a wife, right?

A Harris: Correct.

Q Eytan: So it is unknown because what they would do is they would text on LinkedIn and then tell each other on LinkedIn -- it appeared to be -- that they could get on WA, or WhatsApp, so that they -- so that they could actually have a face to face -- like a Facetime kind of conversation, right?

A Harris: Correct.

Q Eytan: And so that's why they use this secret WhatsApp account.

A Harris: Correct.

Q Eytan: And so we don't have the return from the WhatsApp, right? From Mr. Libler. It's been deleted. There's no evidence of anything, right?

A Harris: Correct.

Q Eytan: And Ms. Morphew's phone has not been found, correct?

A Harris: Correct.

Q Eytan: So nobody knows whether or not the two of them communicated on WhatsApp after -- at some point after he said, "My gang is home," right?

A Harris: We asked Mr. Libler if he remembered talking to her and he said he was not clear but he does not remember getting on WhatsApp that afternoon.

Q Eytan: Right. But you couldn't corroborate that with any sort of evidence, right?

A Harris: Correct.

Q Eytan: And this is a loving relationship, what it appears to be, right?

A Harris: Yes.

Q Eytan: But Mr. Libler doesn't remember their last conversation they had, correct?

A Harris: Correct.

Q Eytan: Now --

A Harris: Actually I can clarify. He doesn't remember that they had a conversation so if they didn't there isn't content for him to remember. He made that clear he wasn't sure whether they had a conversation at that point. So if they did have it he does not remember it, but he does not remember for sure whether they actually had one at that point.

Q Eytan: Okay. I'm going to -- you asked, "What was your last communication with her," right?

A Harris: Yes.

Q Eytan: You remember asking him that?

A Harris: Yes.

Q Eytan: And he said I don't know. Right?

A Harris: Yes.

Q Eytan: And he said -- you said, "When was the last time you spoke?" And he said, "I racked my brain on this one. Anytime in the --" "I racked my brain on this one in the last six months and I forget." And you said, "So you don't remember anything about the conversation?" He said, "No." Correct?

A Harris: Correct.

Q Eytan: So Sheila, as we've seen from the text messages, is hearing from Suzanne that Ms. -- basically Ms. Morphew feels stifled in this relationship, right?

A Harris: Yes.

Q Eytan: And Ms. Oliver reports that Ms. Morphew is feeling alone and isolated and even says that Ms. Morphew was so unhappy that she would give it all up in a heartbeat, right?

A Harris: Yes.

Q Eytan: Her words.

A Harris: Yes.

Q Eytan: And that Ms. Morphew would gladly live in a shack, correct?

A Harris: Yes.

Q Eytan: And some of this comes from Mr. Libler who told you that Suzanne called Barry simple and not stimulating intellectually, right?

A Harris: Correct.

Q Eytan: Now Ms. Morphew and Mr. Libler talked about being together one day, right?

A Harris: Yes. Again, they talked about. There was probably a long road ahead in Mr. Libler's mind as to when that could happen. And he said repeatedly he wanted to support Suzanne getting out on her own, and it was for her whether he was able to be with her or not but he had hoped that he could be. Yes.

Q Eytan: But they also specifically talked about the low cost of living and the climate in Ecuador, right?

A Harris: Yes.

Q Eytan: And Suzanne made it clear -- well Mr. Libler told you that Suzanne made it clear that when she would leave they would go without contact for a little while, right?

A Harris: Yes.

Q Eytan: She would say things like, "I'll wait on you," right?

A Harris: Yes.

Q Eytan: I'll wait for you, right?

A Harris: Yes.

Q Eytan: And they talked about Ecuador because it's a place where you don't -- if you don't have a lot of money it's a good place to retire and there's good health care systems, correct? That's what Mr. Libler told you?

A Harris: Yes.

Q Eytan: And on December 29, 2019 Suzanne's iCloud came up with a return that she was researching language schools in Ecuador, correct?

A Harris: I'm sorry, I'm not familiar with that entry.

Q Eytan: I'm showing you what I've marked as Defense Exhibit AAA and BBB. Now you thoroughly have reviewed -- law enforcement has -- Ms. Morphew's iCloud account, correct?

A Harris: Yes. I have not but others have, yes.

Q Eytan: And you've been made aware as part of the investigation about as far as your job and your role here in terms of who Ms. Morphew is what was happening with her that there were some communications going on between Mr. Libler and Ms. Morphew about moving to Ecuador, correct?

A Harris: Yes.

Q Eytan: And what I'm showing you is Defense Exhibit BBB. Is the file path where that document was located off of her iCloud account on December 27, 2019.

A Harris: I see it.

Q Eytan: Does that seem accurate to you?

A Harris: Yes.

Q Eytan: And then AAA is the actual web page that was pulled up on December 27, 2019 with that file path.

A Harris: Okay.

Q Eytan: Okay?

MS. EYTAN: So Your Honor, I'd move to admit AAA and BBB.

THE COURT: Mr. Lindsey?

MR. LINDSEY: Can I voir dire?

THE COURT: Sure.

BY MR. LINDSEY: Is there any information on either AAA or BBB that indicates when this was accessed?

A Harris: I see a created and modified and then an accessed date, I guess.

Q Lindsey: The created date says July 13. '21.

A Harris: Yes.

Q Lindsey: Accessed says August 5th, 2021.

A Harris: Correct.

Q Lindsey: Then it says modified December 27, 2019. so do you have any independent information or recollection that this was actually accessed in December of 2019?

A Harris: I do not.

Q Lindsey: Just reading off the document. That a fair statement?

A Harris: Yeah, I do not.

MR. LINDSEY: Object to lack of foundation. I also object to the relevance of this.

THE COURT: Agent Harris, is there a way to determine when this was accessed?

THE WITNESS: Well that would -- you -- I would be asking my computer science guy --

THE COURT: Right. Do you know -- do you have the ability to answer that question.

THE WITNESS: I do not.

MS. EYTAN: Your Honor, this document was produced in discovery.

THE COURT: Oh, I understand that.

MS. EYTAN: Okay,, and it goes to wait not admissibility. i'd ask the court to accept it as an exhibit on that basis.

MR. LINDSEY: We have a foundation objection, Judge.

THE COURT: Well I think we can all agree that if we don't know the when we do know the what, that this document -- that this webpage was accessed by Suzanne Morpew's iPhone. Do we all agree on that?

MR. LINDSEY: I mean, I guess we can, Judge. I don't think the agent knows that but --

THE COURT: I can tell that from the BBB, so the date -- Ms. Eytan is correct, the date goes more to wait rather than adMs.ibility.

MS. EYTAN: Your Honor, they have -- I mean they haven't located Ms. Morpew's phone so if they want to claim that it was created on July 13, 2020 on her phone then we're fine with that.

THE COURT: I don't think they're going that far. I think I'm accepting that this webpage regarding language course in Ecuador was accessed at some point by Ms. Morpew's iPhone.

MR. LINDSEY: If I can make one other record, Judge. There's no tie to AAA to BBB. All we have in BBB is an image 4573 but there's no indication of image here matches the image reference in BBB.

THE COURT: I suppose to an extent I'm relying on Counsel for that

MS. EYTAN: It's in discovery. I can -- we can show it to the Court.

MR. LINDSEY: I don't think that matters whether it's in discovery or not this is a foundational objection, Judge.

MS. EYTAN: From her iCloud account. I mean we're happy to show the Court.

THE COURT: I'll take your word for it.

MS. EYTAN: Okay.

THE COURT: So if I wasn't clear, AAA and BBB are admitted.

BY MS. EYTAN:

Q Eytan: Agent Harris, as Mr. Libler told you his relationship and communications with Ms. Morphew indicated that she wouldn't mind a simple life, right?

A Harris: Yes.

Q Eytan: Now Mr. Libler also indicated that he didn't believe that Mr. Morphew knew about him. Is that correct?

A Harris: That's right.

Q Eytan: Mr. Libler said that if he had an idea that we talked to each other he would have come after me to talk to me, right?

A Harris: That's what he said, yes.

Q Eytan: And he said, "I thought about this quite a bit and I just don't think Barry knew that Suzanne and I were together. Right?"

A Harris: That's what he said, yes.

Q Eytan: And you've confirmed with Mr. Libler that it sounds like nobody else really does know about you besides you and Suzanne, correct?

MR. LINDSEY: Object, asked, answered many times.

THE COURT: Yeah, it has been. It has been so well established. I don't know why you keep asking the question.

MS. EYTAN: Okay.

BY MS. EYTAN:

Q Eytan: And with the immense amount of closeness that Suzanne Morphew and Mr. Libler had what Mr. Libler knew about Mr. Morphew didn't make him feel like Ms. Morphew was being physically abused by Mr. Morphew in any way, correct?

A Harris: I'm sorry, can you repeat the question?

Q Eytan: Yes. How about this way, Mr. Libler didn't indicate to you that he believed, from what Suzanne had told him, that Ms. Morphew was being physically abused by Mr. Morphew.

A Harris: Yes, I think we asked him whether he had -- Suzanne had expressed not feeling safe and he said as far as he knew not physically, but he didn't -- but emotionally yes, but not physically.

Q Eytan: And you asked him point blank did she ever tell you that she felt uncomfortable being alone with Barry or concerned for her safety in regards to Barry, and he said no?

A Harris: Correct.

Q Eytan: And even Mr. Libler said there's a lot of things I'm afraid of and not necessarily him, meaning Mr. Morphew, correct?

A Harris: Yes. At the time of the interview we talked about -- hold on. Not only was Mr. Libler claiming that he deleted everything because he didn't want Mr. Morphew's daughters to know, but it's also because he didn't want his own family to know, right?

A Harris: Correct.

MR. LINDSEY: Objection, asked and answered.

THE COURT: Sort of. The answer has been Mr. Libler didn't want the morphew children to know and didn't want Suzanne Morphew's legacy to be having an affair with that guy. But there -- I don't recall a part of it regarding his --

MR. LINDSEY: I'll withdraw the objection if the court doesn't recall it. There was testimony to that already.

A Harris: Correct.

BY MS. EYTAN:

Q Eytan: And multiple times throughout your interview with Mr. Libler he repeated that, that he was -- he didn't want to lose his job. He didn't want to lose his family. He was nervous about anybody finding out about it, correct?

A Harris: Correct.

Q Eytan: Now Sheila Oliver and you worked together in February 2020. We talked about that a little bit to record Mr. Morphew, right?

A Harris: Not in February of 2020.

Q Eytan: November 2020.

A Harris: Yes.

Q Eytan: And there was -- and in February 2020 she was -- she provided some taped conversations after you found out about the affair. You had Ms. Oliver try and see if Mr. Morphew would reveal anything, is that right?

A Harris: I'm sorry, I'm not remembering what you're referring to.

Q Eytan: Okay so --

MR. LINDSEY: The date of the offense is May 2020 so I don't think that could have happened.

MS. EYTAN: February 2020. February 2021.

THE COURT: Could you --

MS. EYTAN: February 2021

THE COURT: Start maybe the question over again.

BY MS. EYTAN:

Q Eytan: Do you recall that in February 2021 after you found out and had more information about the affair that you worked with Ms. Oliver in February 2021 to tape recorder conversation between herself and Mr. Morphew?

A Harris: So, yes. Sheila was willing -- I don't believe she ever did record a conversation but, yes.

Q Eytan: And what you learned was that Ms. Oliver was trying to inform Mr. Morphew look, your wife was going to leave you. Did you know your wife was going to leave you? That's what the intent of this interview was between Ms. Oliver and Mr. Morphew. Or this conversation right?

A Harris: For some reason I'm not remembering what you're referring to.

Q Eytan: Okay. Let me go back.

MS. EYTAN: I want to introduce CC and DD -- CCC and DDD. May I approach?

THE COURT: Yes.

MS. EYTAN: This is a follow up to AAA and BBB and it's CCC and DDD. Other search also that was located on Ms. Morphews iCloud that was produced as part of discovery. I'm looking at -- I've shown you CCC and DDD

A Harris: Yes, I see them.

Q Eytan: And does CCC -- actually look at DDD first, which would be the file path. Does it also appear to be modified on Friday December 27, 2019, the same as AAA and BBB?

A Harris: Yes.

Q Eytan: And CCC is a search on Spanish dictionary on how to say I love you so much in Spanish.

A Harris: That's what it looks like, yes.

MS. EYTAN: Thank you. Your Honor I'd move to introduce Exhibit CCC and DDD under the same provisions as before.

THE COURT: I assume the same objection?

MR. LINDSEY: May I voir dear?

THE COURT: Sure.

BY MR LINDSEY:

Q Lindsey: Agent Harris, any idea where this comes from besides potentially Ms. Morphews iCloud?

A Harris: No.

Q Lindsey: Same questions about when it's created, modified, accessed --

A Harris: Yeah the --

Q Lindsey: You're just reading a document.

A Harris: Yeah, I'm reading the document that says created and accessed in addition to the modified, created is July 13th, 2021.

Q Lindsey: Any indication that anyone Ms. Morphew or Mr. Libler communicated in Spanish?

A Harris: No.

MR. LINDSEY: Judge, again I object to foundation and relevance. There is absolutely no tie to this to anything other than what's on her iCloud account. Now if we want to put her entire iCloud account in I can get a portable drive and provide it to the Court for the Court to review. But this is not relevant to probable cause, Judge. Period. It's not relevant.

THE COURT: The foundation question I've already answered. There is a relevance objection for this particular exhibit, Ms. Eytan.

MS. EYTAN: The relevance -- the response to that, Your Honor is it's highly relevant because Ms. Morphew is missing and there's communications with herself and her lover that they wanted to go to Ecuador. There are searches that -- about schools in Ecuador at the same time, and also communications -- loving communications in another language that happens to be the Ecuadorial language, Spanish. So we believe this is relevant if we're talking about Mr. Morphew murdering somebody right now when there's no body. We believe it's just as relevant as all the other evidence being put in today.

THE COURT: Okay. I'll reiterate. I sound like a broken record but I'm the trier of fact. I can determine in my head what's relevant for me making the decisions that I'm obligated to make and what isn't.

So as long as there's some argument of relevance I'll generally allow exhibits to be introduced at a preliminary hearing. So I will allow the introduction of DDD and CCC.

Now that gets us to 5:00, so I think we're going to have to wind things down. So you can step down, Agent Harris.

So I need to talk about three things before we close up shop. First of all, tomorrow we have treatment court. It starts at 7:30. It usually lasts until 9:30. I'll push to get it done by 9:00. So you can be here by 9:00 but if the door is closed don't enter. Those are confidential proceedings. We'll let you in as soon as we're finished.

Second, just so everyone is aware of time by my calculations the Prosecution has used up 2 hours 50 minutes, Defense 3 hours 45 minutes.

And then lastly, I'd ask the attorneys maybe to consult after we're done here today to maybe resolve this issue with regard to Agent Harris' report so that we don't have to waste time talking about that tomorrow. Hopefully the answer is there and we won't have to address it on the record.

MR. LINDSEY: Judge, we can discuss it right now. It was produced at our initial discovery --

THE COURT: I'm asking you to do it after we close up shop. I've got other things I need to do in here after everybody leaves. And my folks don't get overtime so -- Okay, unless there's anything else from the parties, Ms. Eytan?

MS. EYTAN: No, thank you.

THE COURT: Mr. Lindsey?

MR. LINDSEY: No, Judge.

THE COURT: Okay, Court will be in recess until tomorrow. We'll follow the same protocols. Thank you.

(Hearing adjourned 4:56 pm)