

United States Court of Appeals  
For the Seventh Circuit  
Chicago, Illinois 60604

August 6, 2024

Before

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 23-1755

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee*,

v.

HAILEY GIST-HOLDEN,  
*Defendant-Appellant*.

Appeal from the United States District Court for the Northern District of Indiana, Hammond Division.

No. 2:21-cr-00071-PPS-APR-2

Philip P. Simon,  
*Judge*.

O R D E R

Defendant-Appellant filed a petition for rehearing and rehearing en banc on July 22, 2024. No judge in regular active service has requested a vote on the petition for rehearing en banc, and all the judges on the panel have voted to deny rehearing. The petition for rehearing is therefore DENIED.

---

\*Circuit Judges Kolar and Maldonado did not participate in the consideration of this petition.

**NONPRECEDENTIAL DISPOSITION**  
To be cited only in accordance with FED. R. APP. P. 32.1

**United States Court of Appeals**  
For the Seventh Circuit  
Chicago, Illinois 60604

Submitted June 14, 2024\*  
Decided July 11, 2024

**Before**

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 23-1755

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

*v.*

HAILEY GIST-HOLDEN,  
*Defendant-Appellant.*

Appeal from the United States District  
Court for the Northern District of  
Indiana, Hammond Division.

No. 2:21CR71-002

Philip P. Simon,  
*Judge.*

**O R D E R**

A jury found Hailey Gist-Holden guilty of armed robbery and murder in violation of 18 U.S.C. §§ 2113(a), (d), (e), 924(c)(1)(A), (j). He was sentenced to two

---

\* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

Gist-Holden as a co-conspirator in the robbery, King's photo showing an armed Gist-Holden sitting inside his house before the robbery, and agents' contact with Gist-Holden's landlord, who stated that he was significantly behind on rent. Agents obtained the warrant the night of June 15 and executed it the next day. During the search, agents recovered a bag of ammunition, empty rifle cartridge casings, and empty handgun cartridge casings. (In September 2022, a ballistics expert testified that the rifle casings from the robbery scene and from Gist-Holden's home had been "cycled through the same weapon.") In the basement of the house, agents also found marijuana growing; combined with the packaging and jars, it weighed over 15,000 grams.

A federal criminal complaint drafted the day of the search charged Gist-Holden with possession of marijuana with intent to distribute. 21 U.S.C. § 841(a). The same agent who supported the federal complaint also filed a probable cause affidavit relating to state robbery and murder charges against Gist-Holden, leading to an arrest warrant.

Eventually, Gist-Holden was pulled over and arrested by Georgia police on June 17, after engaging in a nine-mile high-speed chase with officers. After he was taken into custody, a nurse conducted a medical screening and confirmed that Gist-Holden did not suffer any injury or distress and looked alert and responsive. FBI agents in Georgia later explained to Gist-Holden that he had been arrested for the high-speed chase and for federal marijuana charges, but he would not be questioned until agents from Indiana arrived. He was brought into an interview room that had a video camera, four chairs, and a table, to await the agents' arrival. Gist-Holden asked one of the local agents, "Is there anybody who could counsel me right now by the time [Indiana authorities] arrive?" The agent responded that an attorney would be difficult to obtain at that hour, but that he had the right to not speak with the agents and could go back to his cell. Gist-Holden stayed in the interrogation room.

When agents arrived from Indiana later that night, Gist-Holden was read his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966). He reviewed the written admonitions himself, and agents verbally confirmed that he understood that, by signing the waiver, he was agreeing to speak without counsel. Gist-Holden then signed. During the interrogation, he denied taking part in the robbery, but admitted that the morning of the robbery he was at his house with King and Hawkins and later drove Hawkins to Georgia. He also wrote down that the rifle was "gone." He again referred to obtaining counsel, including by saying, "I want a lawyer to assist with some kind of deal." But he continued to answer questions until agents asked him to clarify his intent to obtain

## Analysis

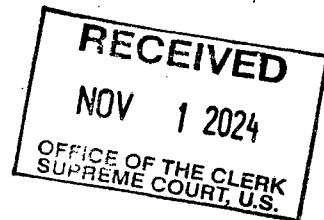
On appeal, Gist-Holden argues that the district court committed multiple reversible errors before, during, and after trial. We address each argument in turn.

### I. Request for a *Franks* Hearing

Gist-Holden challenges the denial of his motion for a *Franks* hearing to establish that the search and arrest warrants were invalid because law enforcement officers obtained them “by deliberately or recklessly providing false, material information or deceptive omissions to the issuing judge.” *United States v. Vines*, 9 F.4th 500, 510–11 (7th Cir. 2021). A defendant is entitled to an evidentiary hearing on this question if he makes “a substantial preliminary showing of specific intentional or reckless misrepresentations or omissions” and shows that “if the deliberately or recklessly false statements were omitted, or if the . . . misleading omissions included, probable cause would have been absent.” *Id.* (quotations and citations omitted). We review the denial of a *Franks* hearing for clear error and any underlying legal conclusions *de novo*. *See id.*

#### a. Validity of Search Warrants for Cell Phone Data and House

First, Gist-Holden asserts that a *Franks* hearing should have been held to determine whether FBI agents knowingly relied on false statements by King to obtain search warrants for his cell phone call records and his house. Gist-Holden asserts that King was not a reliable informant because he “lied” about Gist-Holden’s height and haircut, told agents that he committed the robbery with his “teammates” rather than his coach, and was not truthful about his own whereabouts. But even if these details in the affidavit are inaccurate, they are not material to whether there was probable cause to believe that Gist-Holden’s home and cell phone records would contain evidence of a bank robbery and murder. Immaterial information in a probable-cause affidavit, even if intentionally misleading, does not trigger the need for a *Franks* hearing. *See United States v. Swanson*, 210 F.3d 788, 790 (7th Cir. 2000); *Vines*, 9 F.4th at 511. Moreover, Gist-Holden failed to point to any evidence that the affiant used King’s statements with the intent to deceive or with reckless disregard of the truth. *See United States v. Spears*, 673 F.3d 598, 605 (7th Cir. 2012). Gist-Holden’s speculation that agents knew King made false statements is not enough to obtain a *Franks* hearing. *See United States v. Johnson*, 580 F.3d 666, 671 (7th Cir. 2009).



2021). Thus, a warrant was unnecessary, and a subpoena sufficed, to obtain this information. *See United States v. Caira*, 833 F.3d 803, 809 (7th Cir. 2016).

The tracking and historical location data gleaned from Gist-Holden’s cell phones, however, raises an expectation of privacy under the Fourth Amendment, and a warrant is required for that information. *See Carpenter v. United States*, 585 U.S. 296, 316–17 (2018). Here, law enforcement obtained warrants before obtaining the tracking and historical location data from Gist-Holden’s cell phones. Gist-Holden does not challenge the validity of these warrants; he ignores them in simply alleging “hacking.” And even if the warrants were invalid, the exigent circumstances exception to the warrant requirement would apply because Gist-Holden had not yet been located after fleeing from Indiana, and law enforcement needed to locate him quickly. *See id.* at 319–20.

### **III. Fifth Amendment Right Against Self-Incrimination**

Next, Gist-Holden argues that the district court erred when it denied his motion to suppress inculpatory statements made to law enforcement. We review the denial of the motion de novo. *See United States v. Hunter*, 708 F.3d 938, 942 (7th Cir. 2013).

Gist-Holden first argues that he did not waive his *Miranda* rights knowingly and intelligently because agents coerced him into speaking. *See Moran v. Burbine*, 475 U.S. 412, 421 (1986). We reviewed the video and audio footage of Gist-Holden’s waiver, and there is more than enough evidence to conclude that Gist-Holden understood his *Miranda* rights; received a written copy of the warnings and took time to read them; heard an explanation of his rights; and knew he had the option to remain silent throughout questioning. Moreover, there is no evidence that his statements were coerced. The agents did not threaten or injure him; he did not express any fear; and the interrogation occurred in a standard-sized room in unremarkable conditions.

Second, Gist-Holden argues that his statements should have been suppressed because questioning should have stopped when he said, “Is there anybody who could counsel me right now by the time [Indiana authorities] arrive?” and “I want a lawyer to assist with some kind of deal.” During a custodial interrogation, when a suspect clearly asserts his right to counsel, all questioning must stop, and any admissions after that point must be suppressed. *See Edwards v. Arizona*, 451 U.S. 477, 484–85, 487 (1981). A statement is sufficient to invoke the right to counsel if it shows “a certain and present desire to consult with counsel.” *Hunter*, 708 F.3d at 942. But if the suspect makes an “ambiguous or equivocal” reference to an attorney, and a reasonable officer would

Holden been “let’s just say, near O’Hare Airport” at the time of the robbery (though no evidence supported Gist-Holden’s theory that he was not at the bank during the robbery), it would have been impossible for him to commit the robbery; (3) that none of his DNA or fingerprints were found at the crime scene; and (4) that none of the bank employees or eyewitnesses identified Gist-Holden’s proper height.

Gist-Holden did not raise a sufficiency argument at the close of the government’s case or after the verdict in a motion under Rule 29 of the Federal Rules of Criminal Procedure. Accordingly, we review his challenge for plain error. *See United States v. Lundberg*, 990 F.3d 1087, 1095 (7th Cir. 2021). For unpreserved sufficiency challenges, we can overturn a jury verdict “only if no rational trier of fact could have agreed with the jury.” *Id.* We view the evidence in the light most favorable to the government and do not reweigh evidence or reassess credibility of witnesses. *See United States v. Wallace*, 991 F.3d 810, 812 (7th Cir. 2021). Ultimately, Gist-Holden must show that the record is “devoid of evidence pointing to guilt” or that the evidence on a key element is so “tenuous” that a conviction is “shocking.” *Lundberg*, 990 F.3d at 1095.

The evidence against Gist-Holden is overwhelming. It includes a video recording of him shooting the security guard, real-time text messages placing Gist-Holden at his home with the co-defendants just before the robbery, shell casings in his home connected to the same weapon used for the murder, testimony from co-defendants about his role in the robbery, cell phone records and location data, and evidence of his consciousness of guilt (fleeing the jurisdiction and engaging in a high-speed chase). The holes that Gist-Holden points to are trivialities when weighed against the evidence of his guilt and did not require the jurors to reject the ample evidence against him.

## VI. Motion for New Trial

Finally, Gist-Holden argues that the district court should have granted his motion for a new trial. In his motion five months after the jury verdict, Gist-Holden asserted that, in its closing argument, the government improperly relied on a statement from King that Gist-Holden had impeached. (King falsely denied ever saying that “he would say or do anything to get out of jail.”) The district court denied the motion as untimely, and Gist-Holden now asserts that his motion should have been granted.

The court did not err. Gist-Holden’s motion was not filed within 14 days of the verdict, as required by Rule 33(b)(1) of the Federal Rules of Criminal Procedure. Even if timely, the weight of the evidence of Gist-Holden’s guilt was so overwhelming that the jury would have convicted him with or without the government referring to King’s

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen  
United States Courthouse  
Room 2722 - 219 S. Dearborn Street  
Chicago, Illinois 60604



Office of the Clerk  
Phone: (312) 435-5850  
[www.ca7.uscourts.gov](http://www.ca7.uscourts.gov)

**FINAL JUDGMENT**

July 11, 2024

Before

MICHAEL B. BRENNAN, *Circuit Judge*  
MICHAEL Y. SCUDDER, *Circuit Judge*  
AMY J. ST. EVE, *Circuit Judge*

No. 23-1755	UNITED STATES OF AMERICA, Plaintiff - Appellee  v.  HAILEY GIST-HOLDEN, Defendant - Appellant
<b>Originating Case Information:</b>	
District Court No: 2:21-cr-00071-PPS-APR-2 Northern District of Indiana, Hammond Division District Judge Philip P. Simon	

The judgment of the District Court is **AFFIRMED** in accordance with the decision of this court entered on this date.

Clerk of Court

UNITED STATES OF AMERICA, Plaintiff, v. HAILEY GIST-HOLDEN, Defendant.  
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA, HAMMOND  
DIVISION  
2023 U.S. Dist. LEXIS 62273  
Cause No. 2:21-cr-71  
April 10, 2023, Decided  
April 10, 2023, Filed

**Editorial Information: Subsequent History**

Appeal filed, 04/13/2023

**Editorial Information: Prior History**

United States v. Gist-Holden, 2021 U.S. Dist. LEXIS 213490 (N.D. Ind., Nov. 4, 2021)

**Counsel** {2023 U.S. Dist. LEXIS 1}Hailey Gist-Holden, Defendant (2), Pro se, Crown Point, IN.

For Hailey Gist-Holden, Defendant (2): Russell W Brown , Jr, LEAD ATTORNEY, The Region Lawyers Inc, Merrillville, IN.

For Kenyon Hawkins, Defendant (3): John Maksimovich, LEAD ATTORNEY, Crown Point, IN.

For Briana White, Defendant (4): Andrea E Gambino, LEAD ATTORNEY, Law Office of Andrea E Gambino, Chicago, IL.

For United States of America, Plaintiff: Caitlin M Padula, LEAD ATTORNEY, David J Nozick, US Attorney's Office - Ham/IN, Hammond, IN; Kimberly L Schultz, US Attorney's Office - SB/IN, M01 Federal Building, South Bend, IN.

**Judges:** PHILIP P. SIMON, UNITED STATES DISTRICT JUDGE.

**Opinion**

**Opinion by:** PHILIP P. SIMON

**Opinion**

**OPINION AND ORDER**

After being convicted of murdering a security guard during the commission of a bank robbery, defendant, Hailey Gist-Holden, moved for a new trial under Federal Rule of Criminal Procedure 33. [DE 389.] The motion fails for two reasons: It's both untimely and meritless.

**Background**

The superseding indictment alleges that Gist-Holden and his co-defendant, James King, killed the security guard at the First Midwest Bank in Gary during an armed robbery on June 11, 2021. [DE 20.] After robbing the bank, the men fled. King was apprehended in the nearby woods, but Gist-Holden{2023 U.S. Dist. LEXIS 2} led authorities on a multi-day and multi-state pursuit across the country. Gist-Holden was ultimately arrested six days later, on June 17, 2021, in Georgia.

Co-defendant James King pleaded guilty to Counts 1 and 2 of the superseding indictment. [DE 132,

138.] The government then filed a second superseding indictment against defendants **Gist-Holden**, Kenyon Hawkins (who ultimately admitted to being the getaway driver), and Briana White (Gist-Holden's fiancé and the mother of his children, who allegedly listened to the police scanner during the robbery to give **Gist-Holden** and King real time notice when the authorities were approaching). [DE 152.] Briana White moved to sever her trial from the other three, and I granted her request due to mutually antagonistic defenses; she is awaiting trial. [DE 207, 230.] Then, defendant Kenyon Hawkins pleaded guilty. [DE 243, 249.] Both King and Hawkins cooperated with the government and testified against **Gist-Holden** at his trial that began on October 17, 2022.

Despite repeated warnings of the peril of representing oneself, **Gist-Holden** still insisted on doing just that, and the court appointed him standby counsel who assisted him with pretrial matters{2023 U.S. Dist. LEXIS 3} like subpoenaing documents and witnesses for trial and was present and assisted during trial. [DE 39, 60, 136, 284.] Following a 9-day jury trial, **Gist-Holden** was found guilty on both counts: armed bank robbery causing a death (Count 1) and use of a firearm during a crime of violence resulting in murder (Count 3). [DE 316.]

The government put on evidence that **Gist-Holden** was a part-owner and coach of a minor league football team, the Illini Panthers, and he needed money for the team (to pay for team members' hotel rooms and other incidentals). The day of the robbery, **Gist-Holden** went to the hotel where the football team was staying, and brought back players Hawkins and King to the home he shared with White and their children. Then, **Gist-Holden** led the group in planning the bank robbery. During the planning meeting, King sent a photograph that he took with his phone (which was a "LivePhoto" and included a few seconds of video) to a teammate. When the LivePhoto was admitted during trial, **Gist-Holden** did not object. [DE 356 at 146-47.] The live video portion of the photograph captures Kenyon Hawkins saying, "Come on, James." *Id.* Hawkins testified at trial that it was his voice on the clip,{2023 U.S. Dist. LEXIS 4} and he was encouraging his co-defendant (James King) to participate in the robbery. [DE 369 at 37.] **Gist-Holden** appears pictured in the photograph holding a firearm. [Id. at 36.]

Through the compelling testimony of Hawkins and King, the government established at trial that the three men left Gist-Holden's home with two firearms (a Glock handgun and an AR style rifle), and they rode to the nearby First Midwest Bank in a U-Haul van that **Gist-Holden** had rented. After being dropped off in the area of the bank by Hawkins, King and **Gist-Holden** walked through a wooded area towards the bank. The bank security footage shows **Gist-Holden** shooting the security guard, Richard Castellana, on the sidewalk outside the bank. Mr. Castellana died on the scene. King then ran into the bank and took about \$9,000 while **Gist-Holden** fired more shots into the bank, shattering glass windows. The handgun and money were found in a backpack in the woods nearby where King was apprehended. However, the rifle used in the robbery was never recovered. According to Hawkins (the getaway driver), he and **Gist-Holden** dismantled the weapon and discarded it piece by piece on their flight away from the area. However, shell casings{2023 U.S. Dist. LEXIS 5} found at the scene of the robbery and those found at Gist-Holden's apartment were, according to the government's ballistics expert, cycled through the same weapon.

Although **Gist-Holden** was convicted last October, he filed the present motion for a new trial under Rule 33 on March 28, 2023. [DE 389.] The motion contains a slew of reasons **Gist-Holden** believes his trial was unfair, including perjured testimony from his co-defendants King and Hawkins, what he claims is a doctored photograph, prosecutorial misconduct, evidence which should have been barred from trial, flawed jury selection, and his claim that he was prevented from presenting all the testimony that he wanted to at trial. **Gist-Holden** claims that all of these issues are based on "newly discovered evidence."

## Discussion

Federal Rule of Criminal Procedure 33 provides that "the court may vacate any judgment and grant a new trial if the interest of justice so requires." Fed. R. Crim. P. 33(a). "A jury verdict in a criminal case is not to be overturned lightly, and therefore a Rule 33 motion is not to be granted lightly." *United States v. Santos*, 20 F.3d 280, 285 (7th Cir. 1994) (quotation omitted). In other words, "the exercise of power conferred by Rule 33 is reserved for only the most extreme cases." *United States v. Conley*, 875 F.3d 391, 399 (7th Cir. 2017) (quotation omitted). A district court may "weigh evidence, evaluate{2023 U.S. Dist. LEXIS 6} credibility, and grant the motion if the substantial rights of the defendant have been jeopardized." *United States v. Eberhart*, 388 F.3d 1043, 1052 (7th Cir. 2004) (citation omitted), vacated on other grounds, 546 U.S. 12, 126 S. Ct. 403, 163 L. Ed. 2d 14 (2005). A new trial is appropriate only "where the evidence preponderates so heavily against the defendant that it would be a manifest injustice to let the guilty verdict stand." *United States v. Conley*, 875 F.3d 391, 399 (7th Cir. 2017) (quotations and citation omitted). In other words, the court may only order a new trial if "the verdict is against the manifest weight of the evidence" and would result in a "miscarriage of justice." *United States v. Washington*, 184 F.3d 653, 657-58 (7th Cir. 1999).

In looking at the timeliness of Gist-Holden's motion, Rule 33(b)(1) provides that "[a]ny motion for a new trial grounded on newly discovered evidence must be filed within 3 years after the verdict or finding of guilty . . . ." Additionally, Rule 33(b)(2) provides that "[a]ny motion for a new trial grounded on any reason other than newly discovered evidence must be filed within 14 days after the verdict or finding of guilty." In this case, the jury verdict was returned on October 27, 2022. [DE 323.] Gist-Holden's motion was not filed until around 5 months later, on March 28, 2023. Therefore, unless **Gist-Holden** can show that his motion is based on newly discovered evidence, it is untimely.

A defendant{2023 U.S. Dist. LEXIS 7} moving for a new trial based on newly discovered evidence must show the new evidence: "(1) was discovered after trial, (2) could not have been discovered sooner through the exercise of due diligence, (3) is material and not merely impeaching or cumulative, and (4) probably would have led to acquittal." *United States v. Coscia*, 4 F.4th 454, 465 (7th Cir. 2021) (citation omitted). "The recantation of an important witness fits this description; new DNA analysis or other scientific evidence also would come within Rule 33." *United States v. Rollins*, 607 F.3d 500, 504 (7th Cir. 2010). **Gist-Holden** has not set forth any new evidence at all. See *United States v. Fuller*, 421 F. App'x 642, 644-45 (7th Cir. 2011) (upholding district court finding that a pro se motion for a new trial was untimely because the evidence presented was not new, and thus the shorter time period applied); *United States v. Cavender*, 228 F.3d 792, 802 (7th Cir. 2000) (affirming district court's denial of new trial because defendant filed his motion outside the Rule 33 time limits).

### I. The Motion is Untimely

Gist-Holden's 62-paragraph motion for a new trial lists a slew of reasons he believes his trial was unfair, but he does not articulate any "new evidence" that he discovered after trial, much less any new evidence that is also material and probably would have led to acquittal. Let's look at the categories of arguments he sets forth in his motion.

#### A. False or Perjured Testimony{2023 U.S. Dist. LEXIS 8}

First, **Gist-Holden** argues the government used false or perjured testimony. He gives many examples of such fraudulent testimony in his motion, including, but not limited to: Kenyon Hawkins and James King presented perjured testimony because Hawkins was not really a get-away driver using Gist-Holden's U-Haul van; Hawkins did not dismantle the firearm; King falsely testified when he said he never told police he left his phone at the hotel; and King lied about hotel bills and rental

payments. [DE 389 at 2-5.]

There are two tests for granting a new trial based on newly discovered evidence of false testimony. When the government did not knowingly present false testimony, the defendant must show that "the existence of the perjured testimony (1) came to [the defendant's] knowledge only after trial; (2) could not have been discovered sooner with due diligence; (3) was material; and (4) would probably have led to an acquittal had it not been heard by the jury." *United States v. Ogle*, 425 F.3d 471, 476 (7th Cir. 2005) (citation omitted). That said, where a defendant alleges that the government knowingly presented false testimony, "we remain bound by the standard enunciated by the Supreme Court in *United States v. Agurs*" which holds a new trial is warranted{2023 U.S. Dist. LEXIS 9} when: "(1) the State presented perjured testimony; (2) the State knew or should have known of the perjury; and (3) there is some likelihood that the testimony could have affected the verdict." *Id.* (citing *United States v. Agurs*, 427 U.S. 97, 103, 96 S. Ct. 2392, 49 L. Ed. 2d 342 (1976)). Plus, "alleged perjured testimony must bear a direct relationship to the defendant's guilt or innocence" or "it must relate to a material fact as opposed to some collateral issue." *United States v. Adcox*, 19 F.3d 290, 295, 296 (7th Cir. 1994). Finally, whether a defendant "claims the government knowingly or unknowingly presented perjurious testimony, [he] must present sufficient 'newly discovered evidence' to establish [his] claim," otherwise, the motion must be lodged within the 14-day time limit contained in Rule 33. *Ogle*, 425 F.3d at 476.

Because **Gist-Holden** repeatedly contends the government knowingly used false testimony and had King and Hawkins lie, the analysis falls under the *Agurs* test. [DE 389 at 1-6, 12.] "Regardless of whether we apply the 'general' test or the 'false testimony' test, mere speculation or conjecture is insufficient to warrant a new trial." *United States v. Reed*, 2 F.3d 1441, 1451 (7th Cir. 1993).

**Gist-Holden** doesn't point to any evidence, much less any newly discovered evidence, that shows King and Hawkins' testimony was false, or that the government knew of the alleged falsity, or induced King and{2023 U.S. Dist. LEXIS 10} Hawkins to lie. Instead, **Gist-Holden**'s motion teems with conclusory statements that the government had King and Hawkins "manufacture pretrial statements" and had them lie at trial, and knew they lied. [DE 389 at 1-5.] There is nothing to back up this speculation - no affidavits, and no evidence. **Gist-Holden**'s motion falls way short of showing that the government intentionally presented perjured testimony.

Moreover, none of this is "new evidence" since this was all known to **Gist-Holden** well before trial. **Gist-Holden** maintains he "was not associated with the commission of the crime" therefore, he would have known at the time of trial that Hawkins and King were, according to **Gist-Holden**, presenting false testimony. [DE 389 at 2.] **Gist-Holden** cross-examined every witness at trial and could have explored what he believed was false or fraudulent testimony at that time.

## B. Manufactured Evidence

**Gist-Holden** also claims the government presented fraudulently manufactured evidence to the jury regarding firearm shells found at the scene and shells recovered from his house, but again, this information was available to **Gist-Holden** well before trial. [DE 389 at 6-7, 18-26.] Some of these arguments were{2023 U.S. Dist. LEXIS 11} already addressed and rejected by the Court in its lengthy order denying **Gist-Holden**'s motion to suppress firearm identification (or toolmark identification) following a hearing on the issue. [DE 145, 256, 260.] The same rationale goes for **Gist-Holden**'s belief that the government edited and altered his interrogation video that the government presented at trial [DE 389 at 8] and information presented to the jury about cell tower location [DE 389 at 9]. None of this is evidence discovered after trial.

**Gist-Holden** now claims that the live portion that accompanied the LivePhoto (where Hawkins could be heard saying "come on, James") resulted from the government inducing Hawkins to record that

short audio track then fraudulently added to the LivePhoto taken at his house. [DE 389 at 1-2.] Again, this photograph was admitted at trial (in both the photograph format and the live video), and Gist-Holden knew about this evidence at trial. His claim that the government manipulated the video is mere speculation - Gist-Holden did not come into any actual evidence following trial supporting his theory that the government manipulated this photo. Plus, the live portion of the photograph that Gist-Holden{2023 U.S. Dist. LEXIS 12} so adamantly insists is fraudulently edited and altered contains Hawkins' voice trying to persuade *James King* to participate in the robbery, not Gist-Holden. In other words, there is nothing inherently prejudicial towards Gist-Holden in the recorded portion of the LivePhoto.

### **C. Strict Time Limit for Rule 33 Motions**

Gist-Holden has filed this motion pro se; still, the "deadline is rigid." *Eberhart v. United States*, 546 U.S. 13, 19, 126 S. Ct. 403, 163 L. Ed. 2d 14 (2005) (holding Federal Rule of Criminal Procedure 45(b)'s "insistent demand for a definite end to proceedings" applies to Rule 33 motions and makes the time limits inflexible except as stated in the Rule itself); *United States v. Muoghalu*, No. 07 CR 750, 2010 U.S. Dist. LEXIS 80006, 2010 WL 3184178, at \*11 (N.D. Ill. Aug. 9, 2010) (citing *Eberhart*, ruling, the court "may not grant a motion for new trial this is untimely under Rule 33 if the prosecutor objects"). Because he has not presented any newly discovered evidence, or evidence he acquired after trial, Gist-Holden's motion must be denied as untimely.

### **II. The Motion Also Fail on the Merits**

Although I am denying the motion for a new trial because it is untimely, even if I had not done so, I would still deny the motion on the merits because the evidence at trial was sufficient to support Gist-Holden's conviction. Indeed, the evidence of Gist-Holden's guilt is overwhelming. As a result, Gist-Holden has not come close to meeting his{2023 U.S. Dist. LEXIS 13} heavy burden of showing that the verdict is so contrary to the weight of evidence, that a new trial is required in the interests of justice. *United States v. Chambers*, 642 F.3d 588, 592 (7th Cir. 2011).

The government produced extremely compelling testimony at trial from Hawkins and King who detailed as first-hand witnesses the planning for the robbery, the ride to the bank in the U-Haul, the actual robbery - with King placing Gist-Holden at the bank and identifying him as the shooter, and the extensive getaway. Moreover, there was video footage from the bank's security camera, cellphone-tower testimony placing Gist-Holden near the bank at the time of the robbery, an expert testified that spent shell casings found at the bank and shells found at Gist-Holden's home were cycled through the same firearm, and compelling testimony from bank employees who were present during the robbery. All of this was more than enough to support a guilty verdict. In an abundance of caution, I will briefly address Gist-Holden's substantive arguments about his trial.

#### **A. Violation of Right to Counsel During Interrogation**

The court has already addressed the substance of Gist-Holden's objection to the Government's use of his statements made while in custody in Georgia,{2023 U.S. Dist. LEXIS 14} where he was finally apprehended, and found that Gist-Holden had not unambiguously invoked his right to counsel. [DE 389 at 14.] His latest motion simply reincorporates the arguments from his motion to suppress, which I already found unavailing. [DE 147, 252.]

#### **B. Fair Cross Section in the Jury Pool**

Gist-Holden also questions the composition of the jury pool, arguing "blacks were disproportionately represented in the jury pool and white jurors that had a family member connected to law enforcement w[ere] over-represented." [DE 389 at 29.] In essence, Gist-Holden is making a fair cross-section

argument.

Under the Sixth Amendment of the U.S. Constitution, criminal defendants have a "right to be tried by an impartial jury drawn from sources reflecting a fair cross section of the community." *Berghuis v. Smith*, 559 U.S. 314, 319, 130 S. Ct. 1382, 176 L. Ed. 2d 249 (2010) (citing *Taylor v. Louisiana*, 419 U.S. 522, 95 S. Ct. 692, 42 L. Ed. 2d 690 (1975)). That means that the group of people from which a jury venire is selected must be a fair cross-section of the community. *United States v. Barry*, 71 F.3d 1269, 1273 (7th Cir. 1995) (citing *Taylor v. Louisiana*, 419 U.S. 522, 95 S. Ct. 692, 42 L. Ed. 2d 690 (1975)). It does not mean that a criminal defendant is entitled to a jury venire or a jury that "mirror[s] the general population." *United States v. Phillips*, 239 F.3d 829, 842 (7th Cir. 2001) ("[T]he makeup of any given venire is not significant, provided all rules for selection have been observed.") (internal quotation marks and citation omitted); *United States v. Ashley*, 54 F.3d 311, 313 (7th Cir. 1995) ("[T]he Constitution{2023 U.S. Dist. LEXIS 15} does not require this to ensure representative juries, but rather impartial juries.").

**Gist-Holden** has failed to establish a *prima facie* case that his Sixth Amendment right to a venire drawn from a fair cross-section of the community was violated. As the Seventh Circuit has explained:

[S]uch a showing requires the defendant to demonstrate that the group allegedly excluded is a distinctive part of the community; that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and that this underrepresentation is due to systematic exclusion of the group in the jury selection process. *United States v. Cooke*, 110 F.3d 1288, 1301 (7th Cir. 1997) (quoting *United States v. Ashley*, 54 F.3d 311, 313 (7th Cir. 1995)). There is no question that Blacks are a distinctive part of the community, but **Gist-Holden** has not satisfied the other two elements.

**Gist-Holden** did not offer evidence showing a statistical discrepancy between the percentage of Blacks in the jury venire and in the two counties from which potential jurors for Hammond are drawn. He also did not show that any under-representation is due to systematic exclusion of Blacks in the jury selection process.

Finally, the jury venire here was selected under the Northern District{2023 U.S. Dist. LEXIS 16} of Indiana's Jury Selection Plan for Grand and Petit Jurors, which was approved by the court on February 4, 2022 (available at: [www.innd.uscourts.gov/sites/innd/files/JurySelectionPlan.pdf](http://www.innd.uscourts.gov/sites/innd/files/JurySelectionPlan.pdf).) The plan provides for the random selection of potential jurors for cases in Hammond from general election voter registration lists in Porter County and Lake County. Before adopting the plan, the judges in this district found that general election voter registration lists "represent a fair cross section of the community in this District." (*Id.* at 4.) And the Seventh Circuit has upheld "the use of voter registration lists as the source of names for jury venires in this Circuit." *Ashley*, 54 F.3d at 314 (collecting cases). The Jury Selection Plan itself expressly prohibits the exclusion of citizens on the basis of race. (Plan at 4.) The Seventh Circuit has upheld the use of voter rolls to select a venire - the same process used here. *United States v. Smith*, 223 F.3d 554, 569 (7th Cir. 2000) (citing *Cooke*, 110 F.3d at 1302).

### C. Presentation of Witnesses

**Gist-Holden** also argues the court erred in not allowing him to call certain witnesses in his defense. [DE 389 at 31.] Specifically, **Gist-Holden** claims he requested Anthony Sanders, Katherine Marshall, Jurius Shade, Prem Pajwai, and Ventrel McMillan testify.{2023 U.S. Dist. LEXIS 17} [*Id.* at 31-33.]

**Gist-Holden** moved to compel witnesses for trial under Federal Rule of Criminal Procedure 17, and this court held a lengthy hearing on September 22, 2022, to determine whether the testimony of each proposed witness was both relevant and material to his defense, and appropriate for the court to issue subpoenas and cover the costs and witness fees. [DE 258, 265, 284.] The motion was granted

as to nine witnesses, including Anthony Sanders and Jurius Shade. [DE 263, 290.] The court found good cause to issue subpoenas to Sanders and Shade, and because Gist-Holden was indigent, the United States Marshal for the Northern District of Indiana would serve the witnesses. [DE 263, 290.] So Gist-Holden was in no way hampered from calling either Sanders or Shade. As to the other three witnesses, according to Gist-Holden, Ventrel McMillian was an out of state recruiting coordinator for the Illini Panthers and could have testified to his dealings with out of state players and "the hate out-of-state players had toward Defendant"; Katherine Marshall would have testified to the rental payments Jack Mitchell, owner of the Buchanan Street home, received from them; and Prem Pajwai would have testified that the hotel rooms were{2023 U.S. Dist. LEXIS 18} paid in full and King was rarely at the hotel. [DE 389 at 31-32.] As I explained in the Rule 17 hearing, I decided to allow Gist-Holden to subpoena a few character witnesses, and other witnesses with pertinent testimony, but would not allow cumulative testimony on unrelated topics. Gist-Holden has not claimed that any of these witnesses had direct knowledge of his whereabouts on the day of the bank robbery or any pertinent knowledge about the planning and commission of the robbery or the killing of the security guard. Plus, Gist-Holden did call four witnesses in his case in chief: Autumn Burnett, Kelvin Chambers, Andrew Chonowski, and Justin Clark, and he took the stand himself. Given the extensive evidence against Gist-Holden at trial, nothing about the alleged testimony of Marshall, Pajwai, or McMillian would have changed the result of the trial.

#### **D. Prosecutorial Misconduct**

Finally, Gist-Holden argues that prosecutorial misconduct warrants a new trial. [DE 389 at 34.] This is really a catchall argument at the end of his motion, which encompasses all of his other allegations that the government induced perjured testimony at trial and manufactured evidence. A district court has broad discretion{2023 U.S. Dist. LEXIS 19} in deciding whether to grant a new trial based on prosecutorial misconduct. *United States v. Cheska*, 202 F.3d 947, 949-50 (7th Cir. 2000). The inquiry is two-fold: first, whether there was prosecutorial misconduct; and second, whether it prejudiced the defendant. *United States v. Serfling*, 504 F.3d 672, 677 (7th Cir. 2007). Here, Gist-Holden only speculates about how he thinks the government acted improperly. No evidence supports this mere conjecture, and he has not established there was prosecutorial misconduct.

#### **Conclusion**

For all of the reasons articulated above, Gist-Holden's Motion for New Trial under Federal Rule of Criminal Procedure 33 [DE 389] is **DENIED**.

**SO ORDERED.**

ENTERED: April 10, 2023

/s/ Philip P. Simon

PHILIP P. SIMON, JUDGE

UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA, Plaintiff, v. HAILEY GIST-HOLDEN, Defendant.  
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA, HAMMOND  
DIVISION  
2022 U.S. Dist. LEXIS 30554  
Cause No. 2:21-cr-71  
February 22, 2022, Decided  
February 22, 2022, Filed

**Editorial Information: Subsequent History**

Appeal terminated, 05/06/2022

**Editorial Information: Prior History**

United States v. Gist-Holden, 2021 U.S. Dist. LEXIS 213490 (N.D. Ind., Nov. 4, 2021)

Counsel {2022 U.S. Dist. LEXIS 1}Hailey Gist-Holden, Defendant, Pro se,  
Hammond, IN.

For Hailey Gist-Holden, Defendant: Russell W Brown, Jr, LEAD  
ATTORNEY, King Brown & Murdaugh LLC, Barrister Court, Merrillville, IN.

For United States of America, Plaintiff: Caitlin M Padula Kevin F  
Wolff, LEAD ATTORNEY, US Attorney's Office - Ham/IN, Hammond, IN; David J Nozick,  
US Attorney's Office - Ham/IN, Hammond, IN.

Judges: PHILIP P. SIMON, UNITED STATES DISTRICT JUDGE.

**Opinion**

Opinion by: PHILIP P. SIMON

**Opinion**

**OPINION AND ORDER**

Defendant Hailey Gist-Holden, pro se, filed a number of motions in this case where he is charged with armed bank robbery which led to the shooting death of a security guard. [DE 20.] This order will address and rule on the following motions: three motions for a *Franks* hearing [DE 42, 43, 47]; a motion to dismiss and amended motions to dismiss [DE 51, 68, 84]; a motion to dismiss for lack of jurisdiction [DE 67]; and a motion to suppress evidence and amendment to the motion to suppress [DE 41, 69].

Let me first say that Gist-Holden has made an abundance of arguments in the briefs associated with all of these motions. I have done my utmost to address the issues he has raised. To the extent he raises new issues in his reply briefs, specifically {2022 U.S. Dist. LEXIS 2} DE 106 and 108, these are waived. See *Harper v. Vigilant Ins. Co.*, 433 F.3d 521, 528 (7th Cir. 2005) (finding arguments raised for the first time in a reply brief are waived). For all of the reasons articulated below, Gist-Holden's multiple motions fail.

**Discussion**

**I. Requests for a *Franks* Hearing [DE 42, 43, 47]**

**Gist-Holden** has filed three motions, all arguing he is entitled to a hearing under *Franks v. Delaware*, 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978). He attacks the search warrants issued for his residence on Buchanan Street, Gary [DE 42]; search records and location information for the cell phone number ending in -1806 [DE 43]; and to get information from another cell phone number ending in -9762 [DE 47]. First, I'll cover some standards that are applicable to all three motions, and then I'll specifically address each one in turn.

"A search warrant affidavit establishes probable cause when it sets forth facts sufficient to induce a reasonably prudent person to believe that a search thereof will uncover evidence of a crime." *United States v. Gregory*, 795 F.3d 735, 741 (7th Cir. 2015) (citation omitted). Where the issuance of a search warrant is based entirely on an affidavit, "the validity of the warrant depends solely on the strength of the affidavit." *United States v. Johnson*, 867 F.3d 737, 741 (7th Cir. 2017) (citing *United States v. Carson*, 582 F.3d 827, 831-32 (7th Cir. 2009)). A reviewing court gives "great deference" to the conclusion of the issuing judge that there was{2022 U.S. Dist. LEXIS 3} probable cause to support the warrant. *United States v. Robinson*, 724 F.3d 878, 884 (7th Cir. 2013).

Under *Franks*, a defendant is entitled to an evidentiary hearing on the truthfulness of information submitted in a search warrant application if he can make a "substantial preliminary showing" that: (1) the warrant application contained a material misstatement or omission that would alter the issuing judge's probable cause determination; and (2) the affiant included or omitted the information intentionally or with a reckless disregard for the truth. *United States v. Clark*, 935 F.3d 558, 562 (7th Cir. 2019); *Franks*, 438 U.S. at 155. However, if a finding of probable cause is supported even without the false statements, "a hearing is unnecessary and the motion should be denied." *United States v. Mullins*, 803 F.3d 858, 862 (7th Cir. 2015); see also *United States v. Dessart*, 823 F.3d 395, 402 (7th Cir. 2016) (the false statement must have been "necessary to support the finding of probable cause."). *Franks* hearings are "rarely held" because "[t]hese elements are hard to prove." *United States v. Swanson*, 210 F.3d 788, 790 (7th Cir. 2000). In this case, **Gist-Holden** has not come close to meeting his burden.

In evaluating whether **Gist-Holden** is entitled to a *Franks* hearing, it is important to keep in mind the substantial preliminary showing that he must first make "is not met by mere conclusory statements" or "self-serving statements." *United States v. Taylor*, 154 F.3d 675, 679-80 (7th Cir. 1998). Rather, the defendant's "allegations must be accompanied by an offer of proof" such as{2022 U.S. Dist. LEXIS 4} affidavits or sworn statements, or some other explanation for why the defendant cannot present as much. *Franks*, 438 U.S. at 171. *Franks* "applies to omissions as well as affirmative misrepresentations." *United States v. Hancock*, 844 F.3d 702, 708 (7th Cir. 2016) (citing *Mullins*, 803 F.3d at 862). But when relying on omissions, the defendant "must offer direct evidence of the affiant's state of mind or inferential evidence that the affiant had obvious reasons for omitting facts in order to prove deliberate falsehood or reckless disregard." *United States v. McNeese*, 901 F.2d 585, 594 (7th Cir. 1990) (overruled on other grounds).

At the first step, I have to consider whether a statement is "material." A material misstatement affects the probable cause determination. In other words, if I set aside that statement and there remains sufficient facts to support probable cause, the statement is not material. *United States v. Souffront*, 338 F.3d 809, 822 (7th Cir. 2003). Probable cause exists when a judge can "make a practical, commonsense decision" that "given all the circumstances set forth in the affidavit . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place." *United States v. Rees*, 957 F.3d 761, 766 (7th Cir. 2020). Probable cause "depends on the totality of the circumstances - the whole picture - not each fact in isolation." *Id.*

At the second step, the defendant must show the misstatement or "omission was designed to{2022 U.S. Dist. LEXIS 5} mislead or was made in reckless disregard of whether it would mislead." *United States v. McMurtrey*, 704 F.3d 502, 511 n.5 (7th Cir. 2013). The focus should be on the officer who submitted the affidavit, and whether he "perjured himself or acted recklessly because he seriously doubted or had obvious reason to doubt the truth of the allegations." *United States v. Johnson*, 580 F.3d 666, 670 (7th Cir. 2009). "It is not enough to show that [the person quoted in the affidavit] lied to the government officer, who then included those lies in the complaint." *Id.*

#### **A. First Franks Motion - Search Warrant for Buchanan Street Residence**

The first motion asking for a *Franks* hearing deals with the search of Gist-Holden's residence on Buchanan Street in Gary. [DE 42.] Gist-Holden attacks the affidavit supporting the search of the house.

The affidavit is drafted by FBI Special Agent Andrew Chonowski and dated June 15, 2021. [DE 97-1 at 2.] Based upon the facts set forth in the affidavit, he concluded there was probable cause to believe the residence contained evidence of contraband, fruits, and instrumentalities used in the commission of a bank robbery on June 11, 2021. [*Id.* at 2-3.] Specifically, on June 11, 2021, the First Midwest Bank located at 1975 Ridge Road, Gary, Indiana, was robbed by two males dressed in black with hoods{2022 U.S. Dist. LEXIS 6} covering their heads. [*Id.* at 3.] The robbery was caught on surveillance camera. *Id.* One suspect carried a long gun, shot and killed the bank's security guard who was outside on the sidewalk in front of the bank, then shot rounds into the bank lobby ceiling. *Id.* The other suspect carried a handgun, ran into the bank, ordered an employee to open the door separating the teller area from the customer area, and then took \$9,899.09. [*Id.* at 4.]

Both suspects then fled. The Lake County Sheriff's office located one suspect, James King, during a perimeter search. *Id.* A backpack containing approximately \$9,000 and a .22 handgun was recovered about 25 yards from where King was apprehended. *Id.* King was transported to the Lake County Jail, read his *Miranda* rights, and agreed to an interview with law enforcement. [*Id.* at 4-5.] During the interview, he admitted to participating in the robbery, but stated his accomplice, "Coach Hailey," shot the security guard. [*Id.* at 5.] King said he knew Hailey from the semi-professional football team he played on, the Illini Panthers. *Id.* Law enforcement identified "Coach Hailey" as Hailey Gist-Holden, a wide receiver for the Panthers, and according to the roster,{2022 U.S. Dist. LEXIS 7} 6 foot tall and 195 pounds. *Id.* These measurements were consistent with the appearance of the other suspect on the bank surveillance footage. *Id.* King identified Gist-Holden in a photo line-up as the other accomplice in the robbery, and the person who shot the security guard. *Id.* King admitted to getting into the car with Gist-Holden and driving to Gary, Indiana, to commit the robbery. *Id.*

King also said that during a meeting planning the robbery, he texted a friend (Travis Mogene), saying he didn't want to participate in the robbery, and they were doing it to pay for a hotel where the football team was staying. [*Id.* at 5-6.] During that meeting, King took a photograph, which he texted to Mogene. [*Id.* at 6.] The picture shows a person sitting on the couch wearing a black hooded sweatshirt with the hood up, black shoes, and an olive drab "sling" was slung over the person's shoulder. *Id.* The sling looked similar to the one fixed to the AR-style rifle carried by the other suspect during the bank robbery (which was caught on video). *Id.* After doing some research online and looking at Gist-Holden's girlfriend's social media posts, the authorities determined that the interior of the Buchanan{2022 U.S. Dist. LEXIS 8} house matched the photo of the robbery planning meeting, and the house was only a mile and a half from the bank. *Id.*

The authorities contacted Jack Mitchell, the property manager from Strong Tower Investments LLC, which owned the residence on Buchanan Street. *Id.* Mr. Mitchell told them Gist-Holden and his

girlfriend had rented the property since September 2019, and were significantly behind on their rent. [Id. at 7.] A few days after the robbery, Gist-Holden sent an e-mail to the property management company, saying "our business is picking back up and we can have half if not all of the rent that owed paid by no later than July 15th." We should be able to start making payments again by the end of this month." *Id.* The property management company indicated the balance owed on the apartment was \$6,219.01. *Id.*

Based on Agent Chonowki's affidavit, the authorities obtained a search warrant to search the residence. Gist-Holden claims a number of facts should have been included: eyewitnesses saw two suspects running away from the scene; the officers found footprints at approximately 3:52 p.m., apprehended King at 4:04 p.m., discovered a second set of footprints, and then they found a wet t-shirt;{2022 U.S. Dist. LEXIS 9} Gist-Holden was not just a coach or player, but also the owner of the Panthers; and the affidavit states that Gist-Holden is 6 feet tall, but he is actually 5'8". [DE 42 at 2-4.]

I'm at a loss to see how any of these minor details affect whether there was probable cause to issue the warrant. First, it is clear from the face of the affidavit that the officers were searching for two suspects (the shooter, and the person who took the money) - whether or not eyewitnesses saw two people fleeing on foot does not have any bearing on anything. See *United States v. Bacon*, 991 F.3d 835, 841 (7th Cir. 2021) (finding no error in denial of *Franks* hearing because omissions were immaterial as they were "clear from the face of the affidavit."). "[A] police officer applying for a search warrant must always select, deliberately, which information about an investigation to give the judge and which information to leave out." *McMurtrey*, 704 F.3d at 511 n.5. I just don't see how the fact that witnesses saw two suspects running affects probable cause for the Buchanan residence to be searched. If anything, this detail corroborates King's account that he had an accomplice.

Similarly, the fact that Gist-Holden was the football team owner rather than just a coach is a meaningless detail. See *United States v. Norris*, 640 F.3d 295, 302 (7th Cir. 2011) ("[T]he{2022 U.S. Dist. LEXIS 10} facts withheld also must be 'material' to the probable cause determination."). Again, if anything, this crumb could potentially corroborate the government's theory that Gist-Holden allegedly participated in the bank robbery because he needed money to pay the hotel where the team was staying.

Likewise, the difference between Gist-Holden's alleged actual height of 5'8" and his height as stated in the affidavit being 6 feet tall is just a small discrepancy.<sup>1</sup> See *Johnson*, 580 F.3d at 671 ("mistakes were minor enough to have been innocent" and didn't satisfy *Franks* standard). First of all, the affidavit stated that Gist-Holden's height is listed as 6' *on his football roster*. [DE 97-1 at 5.] Gist-Holden himself concedes that his "listed height under a football profile is 6' to attract professional scouts." [DE 42 at 3.] Plus he told authorities during his interview in Georgia that he was six feet tall, and he self reported a height of six feet tall to the nurse at Lowndes County Jail. [DE 98 (manual filing), file ending in -34, at 19:322; DE 102-2 at 3.] Even if he is right that he is actually 5'8", this is not material, and there is no evidence whatsoever that the officer recklessly or deliberately misstated his height.{2022 U.S. Dist. LEXIS 11} See *United States v. Maro*, 272 F.3d 817, 822 (7th Cir. 2001) (holding that conflicting physical descriptions and weight estimates were not significant enough to require a *Franks* hearing).

Gist-Holden also argues that King lied to the authorities when he told them he left his phone in his room at the hotel, and the affiant purposely omitted the fact that King lied. [DE 42 at 4.] This seems to be the phone that King used to take the picture at the Buchanan house, that was ultimately texted to King's friend. Whether or not King had the phone (or if he lied to the authorities about the phone's whereabouts) is speculation. Gist-Holden provides no evidence whatsoever in support of his

assertion that King really had his phone. Moreover, it seems to be a distinction without a difference about where the phone was - if anything, the issue is just whether King actually took a picture with it of the alleged meeting planning the robbery.

Over and over again in his motion(s), **Gist-Holden** accuses King of being a liar. The two main problems with this argument is that: (1) **Gist-Holden** has provided no evidence in support of this assertion; and (2) there was no reason for Agent Chonowski to be aware of these purported lies, or any evidence that he was reckless in{2022 U.S. Dist. LEXIS 12} ignoring evidence that King was lying. See *Johnson*, 580 F.3d at 670. The same goes for Gist-Holden's protestations against the property manager (who he claims is lying because he was not behind on the rent) and the hotel owners (who he contends were lying because he does not owe them money) - these all fail because there is simply no "obvious reason to doubt the truth." *United States v. Woodfork*, 999 F.3d 511, 518 (7th Cir. 2021) (no hearing necessary where no suggestion in record that affiant had obvious reason to doubt the truth of his testimony before the issuing judge); *Johnson*, 580 F.3d at 671 ("If [defendant] believes that [the affiant] lied, he must support that allegation with an offer of proof, see *Franks*, 438 U.S. at 171, which he has not done.").

**Gist-Holden** additionally claims "King and his associate did not commit their crimes because of a hotel that was consistently paid for every day without issue." [DE 42 at 4.] He continues to argue in his reply that the hotel was paid in full. [DE 108 at 5; see 108-1 at 1 (a document showing a confirmation number for a reservation at the Holiday Inn Express, but no details about payment)]. While this argument (and others **Gist-Holden** makes) might certainly be relevant at trial relating to motive, this detail about the hotel has no bearing on the propriety of the{2022 U.S. Dist. LEXIS 13} search warrant at issue-it simply is not material when considering whether the affidavit contains a material misstatement, included intentionally. Indeed, the affidavit only states that "King also stated that, prior to the robbery, he had texted a friend, Travis Mogene, that he did not want to take part in the robbery and that they were doing it to pay for the hotel." [DE 97-1 at 5.] The affidavit does not include information about whether the hotel payments were actually late or not, and thus there is no obvious falsehood.

The affidavit states that the owner of the Buchanan residence was contacted on June 15, 2021, but **Gist-Holden** claims this is false, and he was contacted before that date. [DE 42 at 6.] Again, the exact date the property manager was contacted is immaterial. **Gist-Holden** also argues that his girlfriend didn't know about the robbery, and the search warrant purposefully omitted the fact that King texted another individual the picture3, and when that person asked if Ms. White knew what was going on, King responded that she did not. [DE 42 at 5.] But this has no relation to whether there was probable cause to search the Buchanan residence, because, regardless of any potential{2022 U.S. Dist. LEXIS 14} involvement of Gist-Holden's girlfriend, there was probable cause to search that premises because **Gist-Holden** lived there. That picture, taken in the Buchanan residence, depicted someone on the couch with a sling over their shoulder that matched the sling visible in the video of the robbery. Although **Gist-Holden** contends the friend, Mogene, knew the photo was not of **Gist-Holden** [DE 42 at 5], the affidavit states that the officers reviewed the photo and that the individual on the couch was "likely" **Gist-Holden**. [DE 97-1 at 6.] **Gist-Holden** has provided no evidence to support his belief that this conclusion was false, or that the agent intentionally included this information with a reckless disregard for the truth.

It is clear that **Gist-Holden** believes the agents should have put in more work investigating King and his friend, who he contends set him up. But arguing the authorities could have (or should have) done more doesn't necessitate a *Franks* hearing. See, e.g., *United States v. Slizewski*, 809 F.3d 382, 385 (7th Cir. 2016) (finding affiant's mistake in describing the type of basketball shoes, and the defendant's argument that he could have learned the difference in shoes, didn't justify a *Franks*

hearing); *United States v. Swanson*, 210 F.3d 788, 791 (7th Cir. 2000) (describing allegation that "investigators should{2022 U.S. Dist. LEXIS 15} have done more work" as insufficient to meet "high standard required for convening a *Franks* hearing."); *United States v. Jones*, 208 F.3d 603, 607 (7th Cir. 2000) ("[t]he fact that [defendant] can point out additional things which could have been done but were not does not in any way detract from what was done.").

In sum, **Gist-Holden** has not showed any material discrepancy in the affidavit for the Buchanan street residence search warrant that is relevant to the probable cause determination and that Agent Chonowski was aware of or should have known was inaccurate at the time he filed the affidavit. For all of these reasons articulated, this motion for a *Franks* hearing is denied.

#### **B. Second *Franks* Motion - Search Records and Location Information for Phone Number Ending in -1806**

The second motion filed by **Gist-Holden** requesting a *Franks* hearing relates to an affidavit drafted by FBI Task Force Officer Chris Gootee in support of a search warrant involving a cellular telephone number. [DE 43.] The purpose of the affidavit was to obtain the location of a cell phone Officer Gootee believed was being used by **Gist-Holden**. The affidavit was drafted on June 16, 2021, 5 days after the robbery, when **Gist-Holden** was still at large. [DE 97-2.] The affidavit recounts that on{2022 U.S. Dist. LEXIS 16} June 16, 2021, a criminal complaint was filed against **Gist-Holden** alleging he committed the offense of possession with intent to distribute marijuana, and that a warrant was out for his arrest. [*Id.* at 5.] Obtaining the whereabouts of Gist-Holden's cell phone was an effort to locate **Gist-Holden** to arrest him.

As with Gist-Holden's first motion, in this second one, he attempts to point out a number of inaccuracies in the affidavit, but they are all either completely immaterial and/or completely unsupported. He argues: the telephone was registered as a business so other people were associated with it; the officers lied about the quantity of marijuana they found in his home; **Gist-Holden** had rented a U-Haul on June 12, 2021; and he disputes the details about when the U-Haul broke down and from what town he tried to rent another U-Haul. [DE 43 at 2-4.]

Whether **Gist-Holden** was the sole user of the phone at issue has no bearing on the statement in the affidavit that the officer had probable cause to believe **Gist-Holden** had the phone and was using it to communicate with U-Haul. Similarly, the potential discrepancy about exactly how much marijuana was recovered from his residence is irrelevant{2022 U.S. Dist. LEXIS 17} because there was indeed an arrest warrant out for **Gist-Holden** for possession with intent to distribute marijuana. Moreover, **Gist-Holden** has provided no evidence in support that the actual number of plants, or weight of drugs recovered, was inaccurately recorded. Whether his U-Haul broke down in Gainesville, Florida, or another town in Florida, also has no bearing on the probable cause analysis. The authorities were trying to track him down-it is not surprising that they did not know his exact whereabouts at the time the affidavit was executed.

Once again, **Gist-Holden** has not made a substantial preliminary showing that the alleged erroneous statements in the affidavit were material to the probable cause determination, much less showed that any of the statements were actually incorrect. Taking the totality of the circumstances into consideration, I believe there was a fair probability that the search warrant would lead the authorities to **Gist-Holden**, who had a warrant out for his arrest.

#### **C. Third *Franks* Motion - Search Records and Location Information for Phone Number Ending in -9762**

The third motion filed by **Gist-Holden** requesting a *Franks* hearing relates to another cellular

telephone number.{2022 U.S. Dist. LEXIS 18} [DE 47.] This affidavit was drafted by FBI Special Agent Jacob McAdams on June 12, 2021 (one day after the robbery). [DE 97-3.] It differentiates from the other affidavit to search a cell phone in that this one lays out the details relating to the robbery and the apprehension of King. [Id. at 4-5.] The affidavit also states that during King's interview, he admitted to participating in the robbery, but stated he did not shoot the security guard. [Id. at 6.] King identified Hailey as his accomplice, and the person who shot the security guard. *Id.*

Presumably in an effort to locate Gist-Holden, the authorities discovered that he participated in a transaction with a pawn shop in Calumet City, and that he gave the target phone number ending in -9762 as part of that transaction. [Id. at 7.] They then checked the law enforcement databases, which "showed that the Target Telephone was attributable to Gist-Holden." *Id.*

Gist-Holden re-hashes several arguments he made in his first motion: King lied; he was not just a coach but actually the owner of the minor league football team; and the affidavit omits the information that witnesses told the officers they saw two suspects running. [DE 47 at 3-4.] {2022 U.S. Dist. LEXIS 19} These argument have already been addressed and rejected-they don't require a *Franks* hearing.

For the first time, Gist-Holden argues the affidavit should have included more detail about his history with the pawn shop because it "was to mislead the magistrate judge into falsely believing a ton of items were pawned and there was a desperate need for money." [DE 47 at 5.] But the relevant part of the affidavit is not disputed-that Gist-Holden gave this telephone number during a transaction; thus, there was probable cause for the authorities to believe that they would find Gist-Holden if they located this phone. See, e.g., *United States v. Patrick*, 842 F.3d 540, 545 (7th Cir. 2016) ("A fugitive cannot be picky about how he is run to ground."). Gist-Holden also has qualms with the agents supposedly having to look up information about him, he alleges that one of the weapons found was registered to his girlfriend, Briana White (but stolen from their residence), and it bothers him that King didn't identify him in a lineup until he was in custody for about 8-9 hours. [DE 47 at 5-6.] None of these accusations affect probable cause to conduct a location search on a phone to locate Gist-Holden, who was still at large. The timing of King's photo identification{2022 U.S. Dist. LEXIS 20} has no relevancy, as King allegedly personally knew Gist-Holden so presumably he could have picked his photograph out of a lineup whenever.

For all the reasons articulated above in relation to all three motions for a *Franks* hearing [DE 42, 43, 47], I find sufficient probable cause for all three search warrants to be issued. Gist-Holden has failed to show that the warrant applications contained material misstatements or omissions that would alter the probable cause determination, and that any such information was included or omitted intentionally or with a reckless disregard of the truth.

## II. Motion to Dismiss The Indictment

Aside from the motions for a *Franks* hearing that I've already addressed, Gist-Holden also filed a motion to dismiss all charges against him and, for good measure, two amendments to the motion to boot. [DE 51, 68, 84.] Gist-Holden first argues that his *Miranda* rights were violated when he was interrogated at the Lowndes County Jail in Georgia (where he was finally apprehended). [DE 51 at 1-3.] I will address these arguments later in this opinion, as they are also made in his motion to suppress. Gist-Holden also argues that the claims against him should be dismissed based on alleged{2022 U.S. Dist. LEXIS 21} perjury by the witnesses in front of the grand jury. He contends "not one, not two, but all witnesses provided false, coerced, or altered testimony that was presented to the Grand Jury." [DE 51 at 7.]

A prosecutor's knowing presentation of false testimony to a grand jury violates a defendant's Fifth

Amendment right to due process. *United States v. Useni*, 516 F.3d 634, 656 (7th Cir. 2008); see also *Napue v. Illinois*, 360 U.S. 264, 269, 79 S. Ct. 1173, 3 L. Ed. 2d 1217 (1959) (the government may not knowingly present false testimony). However, an indictment should only be dismissed if the defendant can show the prosecutor presented evidence it knew was inaccurate and "the violation substantially influenced the grand jury's decision to indict, or if there is grave doubt that the decision to indict was free from the substantial influence of such violations." *United States v. Vincent*, 416 F.3d 593, 600 (7th Cir. 2005) (quoting *Bank of Nova Scotia v. United States*, 487 U.S. 250, 256, 108 S. Ct. 2369, 101 L. Ed. 2d 228 (1988)). In other words, any misconduct must result in prejudice to the defendant. There must be a "concrete basis" for supporting such claims and "[a]ccusations of misconduct based on unsupported suspicion or patently frivolous contentions should not be deemed 'claims' sufficient to require further inquiry. . . ." *Matter of Special April 1977 Jury*, 587 F.2d 889, 892 (7th Cir. 1978).

Unsupported suspicion is all **Gist-Holden** has set forth. He generally thinks multiple witnesses lied, the federal agents gathered and coerced false testimony, and{2022 U.S. Dist. LEXIS 22} then presented that testimony to the grand jury. As the government points out, **Gist-Holden** has not even received the grand jury transcripts yet (as *Jencks* materials), and therefore he has not (and cannot) point to false testimony actually presented to the grand jury because he has no first-hand knowledge of that proceeding at this point in the case. Thus, he hasn't identified any alleged perjury that was actually committed, or offered any evidence establishing the false nature of any statements. See *United States v. Burton*, No. 15-CR-312, 2017 U.S. Dist. LEXIS 90809, 2017 WL 2559034, at \*4 (N.D. Ill. June 13, 2017) (finding where court did not have the grand jury transcripts before it, and defendant had not established how the grand jury's decision to indict was substantially influenced by alleged false testimony, the indictment should not be dismissed). Here, **Gist-Holden** has not identified actual false testimony at the grand jury proceeding, or provided support for why it is allegedly false, or articulated how the supposed false testimony substantially affected the grand jury's decision to indict.

To the extent **Gist-Holden** argues in his first amendment to the motion to dismiss that the indictment should be dismissed because the prosecutor failed to produce exculpatory evidence{2022 U.S. Dist. LEXIS 23} [DE 68 at 1-2], it is firmly established that the government need not provide exculpatory evidence to the grand jury. *United States v. Williams*, 504 U.S. 36, 51-52, 112 S. Ct. 1735, 118 L. Ed. 2d 352 (1992) ("the grand jury sits not to determine guilt or innocence, but to assess whether there is adequate basis for bringing a criminal charge . . . the suspect under investigation by the grand jury [has never] been thought to have a right to testify or to have exculpatory evidence presented.").

Finally, **Gist-Holden** argues in his second amendment to the motion to dismiss that the indictment should be dismissed because the video recordings of his interrogations have obviously been altered and edited. [DE 84 at 1-2.] He argues this again in his reply memorandum, contending the "interrogation videos were tampered with and altered"-he believes certain segments were removed and others re-recorded over. [DE 106 at 2, 7.] **Gist-Holden** claims the file was edited 25 times over the course of two months, and the government deleted out of the video the parts where he invoked his right to counsel. [DE 108 at 9.]

**Gist-Holden** has not provided the court with any proof as to how the video has supposedly been altered. He attaches a page as an exhibit [DE 108-1 at 2], which has columns-a file{2022 U.S. Dist. LEXIS 24} number on the left, a date modified, the type of file (JPEG image or video clip), and the size. But there is nothing on the face of this document (which I have no context for, and do not fully understand the foundation), that supports a finding that the tapes were tampered with. During a court proceeding held before me on November 5, 2021, the government stated that because the video

recording spanned approximately 9 hours, it had to be broken up into multiple files, but they represented to the court that they had produced the entirety of the video. In its response, the government states that the video initially produced to **Gist-Holden** had different metadata (to make it more easily playable) than the original interrogation recording, but "Defendant now has the complete interview in its original, native format." [DE 97 at 17.] Therefore, with the evidence I have before me right now, there seems to be no wrongdoing by the government, and because **Gist-Holden** has not presented specific evidence calling into question the government's representations, this also does not require dismissal. If, hypothetically, **Gist-Holden** uncovers specific facts during discovery that show the videos were altered, [2022 U.S. Dist. LEXIS 25] at trial, he could certainly move to exclude the evidence as inadmissible.

For all of these reasons, the motion to dismiss the indictment and the associated amendments to the motion to dismiss [DE 51, 68, 84] are all denied.

### **III. Motion to Dismiss for Lack of Jurisdiction**

**Gist-Holden** has also filed another motion to dismiss, arguing his case should be dismissed for lack of "special maritime and territorial jurisdiction." [DE 67.] **Gist-Holden**'s argument is difficult to follow, but he seems to contend I lack jurisdiction because the charges against him are all false, he didn't commit any crime, and there is no territorial jurisdiction over the place of the alleged crimes. [*Id.* at 1-3.]

This motion completely misses the mark. Title 18 U.S.C. § 3231 provides "[t]he district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States." The superseding indictment alleges **Gist-Holden** committed an armed robbery in the Northern District of Indiana in violation of 18 U.S.C. 2113(a) and (d), and 18 U.S.C. § 2, and brandished and discharged the firearm in the course of the robbery causing the death of Richard Castellana, in violation of 18 U.S.C. § 924(c)(1)(A) and (j), and 18 U.S.C. § 2. [DE {2022 U.S. Dist. LEXIS 26} 20.] These charged offenses against the laws of the United States grant this court proper jurisdiction. Whether **Gist-Holden** is actually innocent of these charges is an issue for the jury to decide, but that does not affect the jurisdiction of this court.

### **IV. Motions to Suppress**

**Gist-Holden** has also filed a motion to suppress evidence and an amendment to the motion to suppress [DE 41, 69]. But some of the suppression related arguments are also contained in his motion to dismiss. [DE 51 at 1-3; DE 84 at 2.] I note that neither **Gist-Holden** nor the government requested a hearing on the motion to suppress. So I'll decide it on the briefs. **Gist-Holden** sets forth several different arguments in these motions, which I will address in turn, but the focus is on the custodial statements he gave to the authorities while he was being held in Georgia.

Boiled to their essence, he has two arguments. First, he claims the statements he made were not voluntary. **Gist-Holden** contends the statements he made during the interrogations were involuntary because: he suffered head injuries and trauma from the car accident that followed the high speed chase, was denied being evaluated by a doctor, and eventually passed [2022 U.S. Dist. LEXIS 27] out in his cell from head injuries due to the accident; and he was subjected to abnormal treatment by being forced to go into a solitary confinement cell and strip naked. His second argument is that his repeated references to a lawyer during the interview required the questioning to cease and that anything obtained by the government after his invocation of his right to counsel must be suppressed. I'll take up each of these arguments in turn below. But first, a detailed accounting of the lengthy interview is necessary to provide context.

Recall that the robbery occurred on June 11, 2021, in Gary, Indiana. Although King was

apprehended nearby, the other suspect escaped. Records from the Lowndes County Sheriff's Office show that there was a warrant out for Gist-Holden's arrest for possession with the intent to distribute marijuana and there was a detainer out for him. [DE 102-1 at 5-7.] **Gist-Holden** was arrested in Georgia late in the evening of June 17, 2021, following a high-speed chase in which he crashed his vehicle. [DE 102-1 at 5.] He was detained at the Lowndes County jail pursuant to the detainer and the state driving and fleeing charges. [*Id.* at 1-3.]

While at the jail, a Licensed{2022 U.S. Dist. LEXIS 28} Practical Nurse initially took Gist-Holden's medical history. [DE 102-2.] The nurse noted that **Gist-Holden** reported being involved in a motor vehicle accident prior to arrest, but he "denies any injury or concerns. No visible injuries or distress." [*Id.* at 7.] She also conducted some kind of screening questions, which showed no need for urgent or emergency medical treatment-**Gist-Holden** was alert, did not appear to be under the influence of alcohol or drugs, and otherwise presented with no medical problems. [*Id.* at 3, 5, 7.] Later on that morning of June 19, 2021, a different person saw **Gist-Holden** at 6:19 a.m. and found he had no complaints, no significant physical signs were noted, he was alert, oriented and responsive. [*Id.* at 11.]

**Gist-Holden** was also screened for COVID-19 symptoms since he was arrested during the pandemic. [DE 102-2 at 1.] There is a notation in the records that at 6:26 a.m. on June 18, 2021, **Gist-Holden** was placed in a "medical cell . . . watch per security/charges." [*Id.* at 15.] He was stripped, searched by security, and given a safety smock. *Id.* **Gist-Holden** denied any medical concerns, and no visible distress was noted. *Id.* The records also indicate that later{2022 U.S. Dist. LEXIS 29} he was placed on "suicide watch, medical isolation." [*Id.* at 9.]

After **Gist-Holden** was apprehended in Georgia, the law enforcement officers who were investigating the Indiana robbery and murder made their way down to Georgia to interview him. On June 18, 2021, at approximately 4:45 p.m., Georgia FBI Agent Matt Wagner brought **Gist-Holden** into an interview room that had a video camera, four chairs, and a table. [-34.] A second agent joined them shortly. In response to Gist-Holden's question if "[t]hey're here now," the agent said, "no, they're on their way." [-34 at :08.] The agent offered **Gist-Holden** water and a sandwich, which he accepted. The agent reiterated that he was law enforcement, and more were coming from Indiana. [-34 at :30.] He also explained that **Gist-Holden** had a criminal complaint filed against him, told him the nature of the marijuana drug charge, and explained the process of the government getting an arrest warrant. [-34 at 1:30.] He also explained Gist-Holden's right to be brought before a magistrate judge to be arraigned. [-34 at 3:30.] Agent Wagner explained that the judge would have needed probable cause to issue the warrant. Then, he covered the Rule 5 written waiver{2022 U.S. Dist. LEXIS 30} concerning the initial appearance.

At that point, before he signed anything, **Gist-Holden** asked, "Is there an attorney that you can appoint me now?" [-34 at 6:18.] **Gist-Holden** then said that he was willing to talk to them, but was there anyone who could counsel him right now, by the time they got there? [-34 at 6:19.] The Agent sought to clarify by explaining that he didn't think they could get an attorney there right now, but that part of Gist-Holden's rights was that he did not have to speak unless he had an attorney present, and that **Gist-Holden** could go back to his jail cell right then, and he had the right not to talk to them. [-34 at 6:30.] **Gist-Holden** then asked, "Can y'all help me, or this is just to like, like screw me over with all that's already going on?" [-34 at 7:00.] The Agent responded, "I don't know all that's going on because, again, I'm from here, you're not from here, I don't know all the circumstances" but he said **Gist-Holden** would have to determine if he wanted to sign this form, and after that, they would read him his *Miranda* rights, and then he would have to decide if he wanted to speak with them or not. [-34 at 7:05.]

Gist-Holden then continued to talk to the{2022 U.S. Dist. LEXIS 31} agent. Agent Wagner then read the waiver form in its entirety and asked Gist-Holden if he had any questions. Gist-Holden then said something to the effect if he agrees to talk, and there are questions he prefers not to answer without a lawyer, he didn't have to answer those questions? [-34 at 10:41.] And the agent responded, "absolutely." [-34 at 10:51.] After further discussion, Gist-Holden signed the waiver. [-34 at 15:27.]

Then, the agents and Gist-Holden sat around small-talking awaiting the arrival of the agents from Indiana-they covered football formations, family life, his football injuries, the Olympics, and other day to day chit chat. Gist-Holden then left the interrogation room to use the bathroom. [-32 at 50.] When Gist-Holden returned, he was joined by FBI Agent Chonowski and FBI Task Force Office Chris Gootee, the agents from Indiana. [-32 at 53:53.] Agent Wagner then said he was going to read Gist-Holden his *Miranda* rights, and he was welcome to answer as many questions as he wanted or as few as he wanted. [-32 at 54:40.] Agent Wagner then read the *Miranda* document/rights. [-32 at 55:00.] Gist-Holden reviewed the document himself, again made a comment about if it was too{2022 U.S. Dist. LEXIS 32} late to get an attorney, Agent Wagner said at this point he didn't think they could get an attorney that night (it was approximately 6 pm), but he could not answer any questions, or if he was going to answer questions tonight, this would be the format, and at some point if Gist-Holden decided to get counsel, he could do that later. [-32 at 56:20.] Agent Chonowski then asked Gist-Holden whether he was sure he understood that this document meant that he was agreeing to talk to them without counsel. [-32 at 56:58.] Gist-Holden then signed the *Miranda* document.

For a long time during the interrogation, Gist-Holden denied any involvement with the robbery. Then, Gist-Holden seemed to say that he had information for the officers, and asked how long he "would have to do this for, that I work this off" [-02 at 59:40], an obvious reference to trying to cooperate and get some reduced sentence or charges dropped altogether as a result.

The three agents proceeded to question Gist-Holden that night until approximately 11:30 p.m., when he was returned to his cell. At one point earlier in the night, Gist-Holden asked to speak to an agent in the hallway, and his request was allowed. As I mentioned before,{2022 U.S. Dist. LEXIS 33} there is a recording of some conversations in the hallway as well. Gist-Holden indicated a willingness to cooperate with the government, and asked if they could help him "work it off." [Hall, 2:10-38.] At one point, it is difficult to hear, but it sounds like Gist-Holden says, "I want a lawyer to assist." [Hall, 5:14.] The agent asked "with what?" and Gist-Holden indicates he wants a lawyer for the government to help *him* (presumably, he is referring to some kind of assistance in working out a deal). [Hall, 5:20.] The agent then reminded Gist-Holden that they read him his rights before. [Hall, 5:29.]

Gist-Holden was brought back into a different interview room at about 10:45 a.m. the next morning, June 19th. [-54.] The theme of Gist-Holden wanting to cooperate, or give the agents some information in return for something, continued. Gist-Holden asked to have an unrecorded conversation with the agents (and turn the audio off), but the agents said they couldn't do that for his own protection, and theirs. [-21 at 18:10.] At one point, Gist-Holden stated, "what would an attorney say?" and the agents responded they didn't know, but handed Gist-Holden his *Miranda* rights that he signed the day{2022 U.S. Dist. LEXIS 34} before. [-58 at 3:59.] Gist-Holden asked to call his mother, and an agent gave him his cell phone and allowed him to talk to his mom. [-58 at 14:39.] Gist-Holden also called Briana White from the interrogation room, and their conversation was recorded as well. [-58 at 25:13.]

Around noon on June 19th, Agent Gootee asked **Gist-Holden** if he wanted to start working towards a deal, or an adversarial process. [-39 at 21:05.] **Gist-Holden** responded, "I don't want to do the adversarial process, I like, I need to be getting a lawyer. Somebody that will know for sure like, that, you know, that, that XYZ." [-39 at 21:20.] Agent Gootee said, "you haven't asked for one," and Agent Chonowski referred **Gist-Holden** to his written *Miranda* waiver and said, "that still applies," and those are your rights. [-39 at 21:30.] Then, **Gist-Holden** asked whether they would be here "when I have a lawyer." [-39 at 21:58.] **Gist-Holden** later asked, "would an attorney be able to get me the deal?" and Gootee answered, "I can't give you any legal advice" and "we could get you an attorney." [-39 at 23:30.]

Around 12:30 p.m. that day (June 19), **Gist-Holden** brought up the possibility of getting counsel, and Agent Gootee told{2022 U.S. Dist. LEXIS 35} him that he needed to be clear. [-18 11:7.] Agent Chonowski told him, "you just ask for it and we get it, we stop talking to you." [-18 at 11:10.] Agent Gootee, obviously aware that **Gist-Holden** had made a number of elliptical references to a lawyer, decided to seek clarification on the issue once and for all. Agent Gootee asked, "are you saying you want a lawyer, yes or no?" and then, "do you want a lawyer right now, yes or no?" and **Gist-Holden** answered "yes." [-18 at 11:20, 12:17.] **Gist-Holden** then expressed that he thought there was no possibility of getting a lawyer earlier since it was a holiday yesterday, and Agent Chonowski assured him they would have stopped talking to him if he had asked for a lawyer then, and referred to similar language in the *Miranda* waiver. [-18 at 12:00.] The Indiana agents then immediately stopped asking questions, packed up their belongings, and left.

**Gist-Holden**'s medical records indicate that around 5:23 p.m. on June 19, 2021, an officer was advised that **Gist-Holden** was on the floor, unresponsive in his cell. [DE 102-2 at 17.] A member of the medical staff witnessed him "on floor in supine, green smock intact, respirations even and unlabored, no distress{2022 U.S. Dist. LEXIS 36} noted, writer advised inmate to [get] up, inmate's closed his eyes tighter and ignored nurse, writer attempted to lift inmate's right arm up and inmate guided his arm down to prevent it from hitting him, writer then advised inmate to get up. Inmate advised writer that he wanted to lay down." *Id.* He was then moved to a different cell for observation, told to call for help if he needed anything, and was subject to additional monitoring. *Id.* Three hours later, at 8:50 p.m., **Gist-Holden** was responsive, had no medical complaints, and no obvious distress, although he refused to have his vitals taken. *Id.* **Gist-Holden** did not have any medical complaints or signs of distress during any wellness checks over the next two days. *Id.*

The next video recordings were taken on June 21, 2021, and deal with the Georgia agent asking for **Gist-Holden**'s authority to search a vehicle for some keys, and explaining his initial appearance. [-50, -38.] **Gist-Holden** was not asked questions on June 21, 2022 relating to the robbery, and the government states it does not intend to introduce any statements **Gist-Holden** made that day. [DE 100 at 6.]

#### A. Voluntariness

A confession<sup>5</sup> is voluntary if, considering the totality{2022 U.S. Dist. LEXIS 37} of the circumstances, it is the "product of a rational intellect and free will and not the result of physical abuse, psychological intimidation, or deceptive interrogation tactics that have overcome the defendant's free will." *United States v. Huerta*, 239 F.3d 865, 871 (7th Cir. 2001) (quoting *United States v. Dillon*, 150 F.3d 754, 757 (7th Cir. 1998)). In deciding whether a confession was voluntary, courts assess "the totality of all the surrounding circumstances - both the characteristics of the accused and the details of the interrogation." *Dassey v. Dittmann*, 877 F.3d 297, 303 (7th Cir. 2017)(quotation omitted). "Coercive police activity is a 'necessary predicate to the finding that a

confession is not 'voluntary' within the meaning of the Due Process Clause of the Fourteenth Amendment." *Dillon*, 150 F.3d at 757 (quoting *Colorado v. Connelly*, 479 U.S. 157, 167, 107 S. Ct. 515, 93 L. Ed. 2d 473 (1986)). In other words, a defendant arguing his confession was involuntary "must show that the police engaged in coercive practices." *Dassey*, 877 F.3d at 303.

Ultimately, the government must prove by a preponderance of evidence that a defendant's confession was voluntary. *United States v. Ambrose*, 668 F.3d 943, 955 (7th Cir. 2012). But, it is important to note that **Gist-Holden** must present "definite, specific, detailed and nonconjectural facts" to establish "a disputed issue of material fact as to the voluntariness of his confession." *United States v. Toro*, 359 F.3d 879, 885 (7th Cir. 2004).

In determining voluntariness, and determining whether **Gist-Holden**'s "will was in fact overborne," *Miller v. Fenton*, 474 U.S. 104, 116, 106 S. Ct. 445, 88 L. Ed. 2d 405 (1985), I should look at the characteristics of **Gist-Holden**, {2022 U.S. Dist. LEXIS 38} the details of the interrogation (including the setting and whether any tactics were used), any vulnerabilities of **Gist-Holden**, his age, intelligence, education, and familiarity with the criminal justice system. *Dassey*, 877 F.3d at 303-05.

Here, **Gist-Holden** has not showed that the agents engaged in coercive practices. I have watched all of the lengthy video clips. The agents spoke in respectful tones (they did not yell or raise their voices, or threaten **Gist-Holden**), they brought him food and water, they gave **Gist-Holden** restroom breaks, and they allowed him to call his mother and girlfriend from one of their cell phones. At one point, Agent Gootee, while remaining seated, was sort of leaning towards **Gist-Holden**, trying to get information out of him, and when **Gist-Holden** said something like "I feel like you are trying to back me in the corner," Gootee said that was not his intent, and immediately scooted his chair backwards. [-31 at 23:35.] Nothing about the agents' actions gives me any pause.

In considering the characteristics of **Gist-Holden**, he is a 25 year old man who during the proceeding held before me to go pro se, told me he had a masters degree in criminal justice and studied one year of law school. [Hrg., {2022 U.S. Dist. LEXIS 39} Nov. 5, 2021.] **Gist-Holden** is clearly very intelligent. He was articulate, coherent, asked intelligent questions, and answered them in a very cogent manner. Overall, he seemed calm during the questioning. There is nothing in his personal characteristics to show that he was vulnerable, or his will might have been overcome. To the contrary, he seemed entirely able to conduct himself in an intelligent fashion during the interviews.

**Gist-Holden** argues that he suffered from a head injury from the car accident, and that rendered his statements involuntary. There are several problems with this argument. First, there are medical records from the jail showing that **Gist-Holden** made no medical complaints, he denied injury, he was in no visible distress, and he appeared alert and responsive. [DE 102-2 at 3, 5, 7, 11.]

**Gist-Holden** disputes this, insisting he told the nurse his head was hurting from the accident [DE 106 at 4], but he has nothing to corroborate this. He points to something crossed out on the jail form. *Id.* Originally, it looks like the nurse wrote "MVA - o distress" but then that is crossed out, and above it written "error" and the initials JS. [DE 102-2 at 7.] Then, it states "I/M{2022 U.S. Dist. LEXIS 40} reports involved in MVA prior to arrest. Denies any injuries or concerns. No visible injuries or distress. Cleared by EMS & SGMC per [the last few letters I cannot read]." *Id.* Despite the fact that the portion stating "MVA - o distress" (which could be interpreted as stating no distress) is crossed out, the entry nonetheless continues to state that **Gist-Holden** denied any injuries or concerns. Moreover, my impression from watching the video is the same as those recorded by the jail staff - **Gist-Holden** appeared to be healthy, in no medical distress, he made no complaints about his health during the interviews, and at no time during the recordings did he ask for medical attention.

Second, and maybe more importantly, **Gist-Holden** does not explain why his alleged injuries affected the voluntariness of his statements. He has presented no evidence that he suffered injury,

but even if he did, a head injury in and of itself does not mean that his statements were involuntary. See *United States v. Harper*, 466 F.3d 634, 643-44 (8th Cir. 2006) (voluntary confession even after car accident rendered the defendant unconscious).

To the extent Gist-Holden is relying on the incident where he was found lying on the floor of his cell (but soon thereafter found responsive),{2022 U.S. Dist. LEXIS 41} this event occurred later on June 19, 2021, after Gist-Holden already was interrogated and answered questions. Thus I don't know how this could be relevant to the voluntariness of his statements made earlier that day.

Gist-Holden also asserts that putting him in isolation at the jail constituted a coercive tactic. He was arrested during the COVID-19 pandemic and the jail records indicate he was put in isolation in a medical cell "per security/charges." [DE 102-2 at 15.] The records also indicate that later he was placed on "suicide watch, medical isolation." [Id. at 9.] But none of this strikes me as coercive. It makes sense that the jail would want to isolate him due to the concern of a new prisoner potentially spreading COVID-19, and that he be placed on suicide watch after the nature of the charges came to light. The fact that he was in isolation does not render his confession involuntary. See *United States v. Giles*, 935 F.3d 553, 557 (7th Cir. 2019). Moreover, Gist-Holden provides no evidence of (and at no point did I hear) any agent use his isolation as a bargaining chip for a confession.

Gist-Holden also mentions the length of the interviews, implying his statements were involuntary due to the length of the interrogation. While it is{2022 U.S. Dist. LEXIS 42} true the two days of interviews spanned a total time of approximately 9 hours, Gist-Holden did receive meals and breaks, and during some of that time he was calling his mother and girlfriend. See *Janusiak v. Cooper*, 937 F.3d 880, 884, 894 (7th Cir. 2019) (finding interview session of approximately seven hours including breaks voluntary under the totality of the circumstances); *United States v. Smith*, 831 F.3d 793, 800 (7th Cir. 2016) ("It's true that the interrogation was lengthy, but she received meals and had regular breaks, so she cannot and does not argue that the conditions of the interrogation were coercive."). Moreover, Gist-Holden did not seem excessively over tired during the interviews, he displayed no signs of physical or mental exhaustion, but rather appeared alert the entire time and understood what was happening. Any time he requested a break, he was given one.

Gist-Holden argues the number of officers present for his interviews indicates coercion. While I agree I need to take this factor into account when looking at the totality of the circumstances, there is nothing amiss here. Sometimes Gist-Holden was in the room with one agent, sometimes two, and at the most three other people were present (FBI Agent Gootee and Agent Chonowski from Indiana, and FBI Agent Wagner from Georgia). There{2022 U.S. Dist. LEXIS 43} was enough space for everyone to remain seated the entire time, and no one stood over Gist-Holden or hovered over him, or physically intimidated him whatsoever during the interviews.

Finally, Gist-Holden asserts that he "was told I could not use a phone to contact an attorney" when he first arrived in jail and there "wasn't a doctor to evaluate me." [DE 51 at 1.] Gist-Holden's unsupported statement about no doctor being available is contradicted by the jail records that show he was evaluated by a licensed nurse and determined to have no injuries plus, additionally, he denied injury. [DE 102-2 at 3, 5, 7.] It is difficult for me to fully evaluate Gist-Holden's claim that he was told he could not use a phone to contact an attorney since he has given me no context - who did he ask to call an attorney, and when? In *United States v. Toro*, 359 F.3d 879, 885 (7th Cir. 2004), the Seventh Circuit affirmed the denial of a motion to suppress where the defendant "provided no details about how he was tricked and confused, who may have tricked and confused him, or why this trickery and confusion rises to the level of coercion."). The same goes here with Gist-Holden's vague accusation that someone wouldn't let him use a phone. Moreover, it is evident{2022 U.S. Dist. LEXIS 44} from the video recordings that Gist-Holden was not completely isolated because he can

be seen making calls to his mother and girlfriend from the interrogation room. To the extent **Gist-Holden** claims he was denied an attorney, that will be addressed in the next section.

To sum up this section, Gist-Holden's statements made to the authorities in Georgia were made voluntarily. There is no evidence of coercive police tactics and I cannot say that Gist-Holden's free will was overborne by any of the circumstances surrounding his statements.

### **B. The Fifth Amendment and the Right to Counsel**

**Gist-Holden** next contends his statements made during the interrogations should be suppressed because he asked for a lawyer. [DE 41 at 2.] It is well settled that the Fifth Amendment guarantees that no person "shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law." U.S. CONST. AMEND. V. The Supreme Court created a protective rule that requires officers to advise a suspect in custody of his rights to remain silent and to counsel before they start an interrogation. *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). This was the impetus of the now infamous "Miranda warning." This *Miranda* warning isn't required for all interactions{2022 U.S. Dist. LEXIS 45} between suspects and officers-only when the suspect is "in custody" and subject to "interrogation." *United States v. Yusuff*, 96 F.3d 982, 987 (7th Cir. 1996); *United States v. Patterson*, 826 F.3d 450, 454 (7th Cir. 2016).

Here, no one disputes that **Gist-Holden** was in custody and subject to interrogation (at least he was subject to interrogation after the Indiana agents arrived and began questioning him about the robbery). The only real issue is if **Gist-Holden** actually invoked his right to counsel. An interrogation may continue until the defendant "unambiguously," "unequivocal[y]" and "clearly requests an attorney." *Davis v. United States*, 512 U.S. 452, 460-62, 114 S. Ct. 2350, 129 L. Ed. 2d 362 (1994). The court must decide whether the request was "sufficiently clear [] that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney." *Id.* at 459. This is an "objective inquiry." *United States v. Shabaz*, 579 F.3d 815, 818 (7th Cir. 2009).

It is not enough to just make a reference to an attorney. For example, the following statements have been found to *not* be sufficient enough to be an unequivocal request for an attorney: "Do I need a lawyer?" "Do you think I need an attorney here?" "Do you think I need an attorney?" *United States v. Wysinger*, 683 F.3d 784, 795 (7th Cir. 2012) (collecting cases). Nor is a "potential desire to consult with legal counsel" a proper invocation of right to counsel. *United States v. Lee*, 413 F.3d 622, 626 (7th Cir. 2005); see also *United States v. Hunter*, 708 F.3d 938, 944 (7th Cir. 2013) (not a clear invocation to say "[i]f that's the case, then{2022 U.S. Dist. LEXIS 46} - then I might want to talk to an attorney" but "Can you call my attorney?" was sufficient); *United States v. Shabaz*, 579 F.3d 815, 818-19 (7th Cir. 2009) ("Am I going to be able to get an attorney?" did not constitute a "present desire to consult with counsel").

Similarly, if the defendant is just asking about "the process of obtaining an attorney rather than asking for counsel to be present during the interview," that is not a clear invocation. *Subdiaz-Osorio v. Humphreys*, 947 F.3d 434, 442 (7th Cir. 2020). This is especially true when the defendant "continued to answer questions and remain cooperative for the rest of the interview." *Id.* Thus, questions asking for "clarification of his right to counsel" are not invocations. *Lord v. Duckworth*, 29 F.3d 1216, 1221 (7th Cir. 1994). In a case where the defendant made a fairly similar statement as those uttered by **Gist-Holden**, the Seventh Circuit found that "am I going to be able to get an attorney?" was not a clear request to alert a reasonable police officer that the defendant was requesting an attorney at that moment. *Shabaz*, 579 F.3d at 818-19.

The "police are under no obligation to clarify an ambiguous statement by the accused." *Lee*, 413

F.3d at 625. The Seventh Circuit has emphasized that officers are encouraged (but not required) to ask clarifying questions in response to ambiguous references to an attorney. *United States v. Lee*, No. 21-2216, 2022 U.S. App. LEXIS 1843, 2022 WL 193571, at \*2 (7th Cir. Jan. 21, 2022) (referring to *Davis*, 512 U.S. at 461-62, finding "Do I need a lawyer?"{2022 U.S. Dist. LEXIS 47} and "I feel like I should have a lawyer" were not an unambiguous request for an attorney).

There are no magic words that a defendant must use to invoke counsel. Rather, the court is supposed to look at the defendant's words "as ordinary people would understand" them. *Hunter*, 708 F.3d at 942. The Seventh Circuit has recognized that usual, clear invocations of counsel "request an action (or permission to act); they are more than observations." *United States v. Hampton*, 885 F.3d 1016, 1020 (7th Cir. 2018). Moreover, the court considers the statement itself and the surrounding context in determining whether a suspect clearly invoked the right to counsel. *Wysinger*, 683 F.3d at 793-94.

The interview must stop when a defendant clearly and unambiguously invokes a present desire to consult with counsel; however, officers can talk to the defendant if "the accused himself initiates further communications, exchanges, or conversations with the police." *United States v. Jackson*, 189 F.3d 502, 511 (7th Cir. 1999) (quoting *Edwards v. Arizona*, 451 U.S. 477, 484-85, 101 S. Ct. 1880, 68 L. Ed. 2d 378 (1981)). In other words, "before a suspect in custody can be subjected to further interrogation after he requests an attorney there must be a showing that the 'suspect himself initiates dialogue with the authorities.'" *Oregon v. Bradshaw*, 462 U.S. 1039, 1044, 103 S. Ct. 2830, 77 L. Ed. 2d 405 (1983) (quoting *Wyrick v. Fields*, 459 U.S. 42, 45-46, 103 S. Ct. 394, 74 L. Ed. 2d 214 (1982)).

Let's go through Gist-Holden's statements one by one and apply these legal foundations to them.

1. **"Is there an attorney that{2022 U.S. Dist. LEXIS 48} you can appoint me now? I mean, I'm willing to talk with these guys, but is there anybody that could counsel me right now by the time they get here?"**

Prior to being read his *Miranda* rights, and prior to the Indiana FBI agents arriving in Georgia, Agent Matt Wagner read **Gist-Holden** the Rule 5 waiver, explaining what would happen during an initial appearance. As the agent was going through the waiver, **Gist-Holden** interrupted and asked, "Is there an attorney that you can appoint me now? I mean, I'm willing to talk with these guys, but is there anybody that could counsel me right now by the time they get here?" [-34 at 6:18.]

Agent Wagner answered: "part of [defendant's] rights would be to not be questioned or not speak unless you have an attorney present. Again, we - we don't think there's an opportunity to get an attorney here now, but in terms of your rights, you have the right to, to go back to your jail cell right now and, and not talk to me, or - or Bob, or - or the folks from Indiana. That's certainly your right, and that's kind of what - kind of what, uh - what we're going through right here." [-34 at 6:20.] After a pause, **Gist-Holden** asked, "Can y'all help me, or this is just to like, like screw{2022 U.S. Dist. LEXIS 49} me over with all that's already going on?" The agent responded that "I don't know all that's going on because, again, I'm from here . . . I don't know all the circumstances." [-34 at 7:05.]

Gist-Holden's first statement about if there is an attorney they could appoint him now before the Indiana agents arrive was not a clear and unambiguous request for present counsel. First, in looking at the timing, the agents from Georgia were just covering the Rule 5 waiver and waiting for the Indiana agents to arrive. The way **Gist-Holden** phrased his question seems like a question about the procedure of appointing a lawyer, or wanting to talk to a lawyer before the interviews (not a clear desire for a lawyer to be present *during* the questioning). See *United States v. Thousand*, No. 13-2599, 558 F. App'x 666, 671-72 (7th Cir. 2014) ("I think I need a lawyer, I don't know, but I want to

cooperate and talk" failed to express a clear, present desire to consult with counsel) *Subdiaz-Osorio*, 947 F.3d at 444 (finding question "how can I do to get an attorney here because I don't have enough to afford for one?" was asking about the process of obtaining an attorney rather than asking for counsel to be present during the interview and therefore the officers could continue to question him); *Shabaz*, 579 F.3d at 818 ("am I going to be able to get{2022 U.S. Dist. LEXIS 50} an attorney?" was not a clear invocation); *Soffar v. Cockrell*, 300 F.3d 588, 595 (5th Cir. 2002) ("[A] suspect's question about how to obtain an attorney does not constitute an unambiguous assertion of his right," collecting cases). This might seem like splitting hairs, but **Gist-Holden** seems to indicate he would like an attorney to counsel him before the interrogation (not to be present during the questioning).

And then, because **Gist-Holden** immediately says that he was willing to talk to the authorities, that makes his previous statement even more ambiguous and equivocal. See, e.g., *Davis*, 512 U.S. at 459 (emphasis in original) ("[I]f a suspect makes a reference to an attorney that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect *might* be invoking the right to counsel, our precedents do not require the cessation of questioning."); *United States v. Hampton*, 675 F.3d 720, 727 (7th Cir. 2012) (emphasis in original) ("[b]ased on this pattern of equivocation and because [defendant's] reference to a lawyer used the hedge word 'but,' we agree with the government that a reasonable officer would have understood only that [defendant] *might* want an attorney present, not that he was clearly invoking his right to deal with the officers only through{2022 U.S. Dist. LEXIS 51} counsel.") While I think this is a close call, in looking at the totality of the circumstances, I don't think a reasonable officer would have thought **Gist-Holden** made a clear and present request for a lawyer, rather, it seems more like he just *might* have been asking for an attorney, which is not enough.

Even if *Gist-Holden*'s statement was definite enough to constitute an unambiguous request for counsel (and I think it probably was not), **Gist-Holden** does not take Agent Wagner's offer (that he could go back to his jail cell right then and not talk to anyone), but instead **Gist-Holden** continues to engage with Agent Wagner by asking if the officers could help him. This re-initiation of the discussion allows the officers to continue to talk to **Gist-Holden**. See *Hampton*, 675 F.3d at 728 (following "a long moment of silence" after the officers told the defendant they could not talk to him if he was asking for a lawyer, the defendant reengaged the officers by asking them a question and "[o]nce he did this, the officers were permitted to resume questioning."); *Hampton v. Schwochert*, 557 F. App'x 554, 556-57 (7th Cir. 2014) (finding suspect re-initiated the discussion after requesting an attorney, when he said "I really do want to talk to you guys right now.").

## 2. "Me getting any{2022 U.S. Dist. LEXIS 52} type of counsel this late, it'd be too late right?"

The next statement I need to examine happened after the Indiana agents arrived, at about 6 p.m. Agent Wagner said he was going to read **Gist-Holden** his *Miranda* rights, and he was welcome to answer as many questions as he wanted or as few as he wanted. [-32 at 54:35.] Agent Wagner then read the *Miranda* form. [-32 at 55:00.] Before he signed the document, **Gist-Holden** asked, "me getting any type of counsel this late, it'd be too late right?" to which Agent Wagner responded, "you can not answer any questions and then . . . you can get counsel at another point. At this point I don't think there'd be an opportunity to get counsel in here tonight . . . If you decided not to [answer questions] then at some point, you would get counsel and you could answer questions that way." [-32 at 56:00.] Agent Chonowski then clarified that he wanted to be that sure **Gist-Holden** understood that this document meant he was agreeing to talk to them without counsel. [-32 at 56:58.] **Gist-Holden** then signed the *Miranda* waiver.

As with the earlier statement, asking about whether it was too late to get counsel is not a present, unambiguous request for counsel. Rather, it is a question{2022 U.S. Dist. LEXIS 53} about the

process of getting a lawyer. See, e.g., *Subdiaz-Osorio*, 947 F.3d at 442 (finding no clear invocation of counsel where "[a]n ordinary, reasonable person would understand [defendant] to be asking how to get an attorney at that place and time."). Moreover, there was nothing deceptive about the agents stating they didn't think they could get an attorney there that night (it was a Friday night, June 18, 2021, when some federal agencies were observing Juneteenth, and it was approximately 6:00 p.m.). After the agent made sure **Gist-Holden** understood that if he signed the document, he was agreeing to talk to them without counsel, **Gist-Holden** signed the document, and when Agent Gootee asked if he had any questions for them, **Gist-Holden** proceeded to talk and continue with the interview. [-32 at 57:50.]

### 3. "I want a lawyer to assist."

The next statement that **Gist-Holden** made, referring to an attorney, is one he made in the hallway, caught only on the audio recording. **Gist-Holden** had already brought up the topic that he might be able to give some information to the government if they could help him, and at one point in the hall, it is difficult to hear, but it sounds like **Gist-Holden** says, "I want a lawyer to assist." {2022 U.S. Dist. LEXIS 54} [Hall, 5:14.] The agent asked "with what?" and **Gist-Holden** indicates he wants a lawyer for the government to help *him* (presumably, he is referring to some kind of a deal). [Hall, 5:20.] The agent reminded **Gist-Holden** that they read him his rights before. [Hall, 5:30.]

Again, given the totality of the circumstances and the fact that **Gist-Holden** had already signed the *Miranda* waiver and was talking about trying to work out some kind of deal with the government, this statement does not seem like an unequivocal request for a lawyer to be present during the interrogation. See, e.g., *United States v. Carrillo*, 660 F.3d 914, 923-24 (5th Cir. 2011) (no clear invocation of right to counsel when defendant said, "I wish I had a lawyer right here" and "I wanted to see if we could push this to where I could get my lawyer" and "I wanted to see if you could work with me and push this deal to where I can get a lawyer and just sit down and talk about it"). The agent did try to clarify the request, and when asked why he wanted an attorney, **Gist-Holden** stated he wanted an attorney to assist with the government helping him.

### 4. "What would an attorney say?"

Later during the interviews, **Gist-Holden** stated, "what would an attorney say?" and the agents responded they didn't know, {2022 U.S. Dist. LEXIS 55} but handed **Gist-Holden** his *Miranda* rights that he signed the day before. [-58 at 4:00.] This is definitely not an unambiguous request for counsel.

### 5. "I need to be getting a lawyer." And "would an attorney be able to get me the deal?"

Around noon on June 19th, Agent Gootee asked **Gist-Holden** if he wanted to start working towards a deal, or an adversarial process. [-39 at 21:07.] **Gist-Holden** responded, "I don't want to do the adversarial process, I like, I need to be getting a lawyer. Somebody that will know for sure like, that, you know, that, that, XYZ." [-39 at 21:20.] Agent Gootee said, "you haven't asked for one," and Agent Chonowski referred **Gist-Holden** to his written *Miranda* waiver and said, "that still applies," and those are your rights. [-39 at 21:30.] **Gist-Holden** then asked whether they would be here "when I have a lawyer." [-39 at 21:58.] A few minutes later, **Gist-Holden** asked, "would an attorney be able to get me the deal?" and Gootee answered, "I can't give you any legal advice" and "we could get you an attorney." [-39 at 23:35.]

None of these statements are a clear invocation of counsel. The first statement about how he "need[s] to be getting a lawyer" was not a present request to have {2022 U.S. Dist. LEXIS 56} counsel. Instead, it seems to be discussing the future retention of an attorney. *Shabaz*, 579 F.3d at

819. That doesn't show that Gist-Holden wanted to consult with an attorney "presently." *Hunter*, 708 F.3d at 944-45. This seems to be confirmed by Gist-Holden himself, when he then said that he was wondering if the Indiana agents would still be around "when I have a lawyer." These statements about how a future attorney could affect his negotiations are not a clear and unambiguous request for present counsel.

In sum, even though I have broken down each statement and looked at it separately, I am convinced that overall, based upon the totality of the circumstances, Gist-Holden knowingly and intelligently waived his *Miranda* rights and voluntarily chose to make statements to the officers. He never made a clear and unambiguous statement that he wanted an attorney, right then, to be present for the interrogations. See *Davis*, 512 U.S. at 459-60 ("[W]hen the officers conducting the questioning reasonably do not know whether or not the suspect wants a lawyer," there is no Fifth Amendment violation.). In fact, to the contrary, Gist-Holden made several ambiguous and vague repeated references about an attorney, but then immediately continued talking to the agents. This was after several attempts{2022 U.S. Dist. LEXIS 57} that the agents made to clear up his statements, and make sure that he still wanted to talk to them. Under these circumstances, I don't think a reasonable agent would have known that he was invoking his right to an attorney.

#### 6. "Do you want a lawyer right now, yes or no? Yes."

The first time Gist-Holden clearly and unambiguously asked for present counsel was not until around 12:30 p.m. on June 19th, when Gist-Holden brought up the possibility of getting counsel, and Agent Gootee asked him, "are you saying you want a lawyer, yes or no?" and then, "do you want a lawyer right now, yes or no?" and Gist-Holden answered "yes." [-18 at 11:20, 12:17.] This is a clear invocation. And the Indiana agents then properly ceased questioning at that time and left.

#### C. Other Miscellaneous Suppression Issues

Gist-Holden "challeng[es] the validity of two documents that were alleged to be signed by myself." [DE 41 at 4.] Although he does not identify these documents, he presumably is referring to the waiver of his initial appearance and the *Miranda* waiver. The video shows Gist-Holden signing these documents. To the extent Gist-Holden is trying to keep these documents from being admitted into evidence, and is arguing{2022 U.S. Dist. LEXIS 58} that they have been tampered with (he contends one document clearly contains a forged signature and the other document has a signature that was photo shopped) [DE 41 at 4], this would be an argument for trial regarding the admissibility of the documents. See, e.g., *United States v. Bridges*, 499 F.2d 179, 185 (7th Cir. 1974) (court can exclude evidence if it finds a "reasonable probability the article has . . . been changed in important respects.").

Gist-Holden also seeks to suppress the photograph that King took of himself, Briana White (Gist-Holden's girlfriend), and other people inside the Buchanan house. [DE 41 at 4-5.] He contends that "White did not consent to pictures being taken of her in her private residence, thus violating her privacy rights." [DE 41 at 4.] This argument, which seems to implicate the Fourth Amendment, fails for numerous reasons.

First, the picture was taken by King, not a governmental person or someone working for the government at that time. The Fourth Amendment is only implicated by governmental action. See, e.g., *United States v. Crowley*, 285 F.3d 553, 558 (7th Cir. 2002) (superseded on other grounds).

In addition, if King was an invitee who took a picture of something that he simply witnessed, one can't say that the photograph was evidence of/or constituted a search. *United States v. Thompson*, 811 F.3d 944, 950 (7th Cir. 2016). While Gist-Holden argues that King{2022 U.S. Dist. LEXIS 59}

was not an invitee because "King asked to come to the home to help clean. Once King was told to leave, he was no longer lawfully entitled to the property," [DE 108 at 11] he provides no corroboration for this speculation. Even if **Gist-Holden** could somehow show that King was a governmental actor, he can't show that he had a reasonable expectation of privacy inside the Buchanan house if he invited King inside. *Id.* at 948-49 (no invasion of privacy when defendant "invited the informant into the apartment" and he then "discovers information from where he is lawfully entitled to be.").

It also seems that **Gist-Holden** is arguing about White's privacy rights, and not his own. He does not have a reasonable expectation of privacy (or standing) to challenge the rights of others. *United States v. Patrick*, 842 F.3d 540, 545 (7th Cir. 2016). For all of these reasons, it wouldn't be appropriate to "suppress" the photograph taken in the Buchanan residence.

**Gist-Holden** also reiterates his argument in his reply memorandum that the video tapes have been tampered with, and the government has edited out his requests for counsel, and re-recorded certain statements. [DE 106 at 6.] He asks me to look at the first recording, 6/18/21 at 17:21:23 (military time on the{2022 U.S. Dist. LEXIS 60} top of the frame), and says there is a blur effect on the video, the content of the papers are whited out, and this supports his argument of tampering. [i.d. at 7.] I have stared at this portion of the video, and I do not see anything unusual. Yes, the writing on the paper isn't really visible from the angle of the camera, but there doesn't seem to be anything untoward going on, and overall, the speech seems fluid and continuous, there are no noticeable cuts/edits of any footage, and despite what **Gist-Holden** claims, it all seems fluid when Agent Wagner places his phones on top of the papers (and his phone is readily visible), and then moves them later. At this point, there is no evidence of tampering with the recordings before me.

Finally, in his amendment to the motion to suppress [DE 69], **Gist-Holden** argues he was detained unlawfully and arrested unlawfully because Agent Gootee committed perjury when obtaining the arrest warrant, and "the fruits of the unlawful arrest must be quashed." [DE 69 at 1.] I have already denied a *Franks* hearing because **Gist-Holden** has not showed that the warrant application was infirm; therefore, this argument also fails.

### Conclusion

For all of the reasons detailed{2022 U.S. Dist. LEXIS 61} above, the three motions for a *Franks* hearing [DE 42, 43, 47]; motion to dismiss and amended motions to dismiss [DE 51, 68, 84]; motion to dismiss for lack of jurisdiction [DE 67]; and motion to suppress evidence and amendment to the motion to suppress [DE 41, 69], ARE ALL DENIED.

SO ORDERED.

ENTERED: February 22, 2022.

/s/ Philip P. Simon

PHILIP P. SIMON, JUDGE

UNITED STATES DISTRICT COURT

# Exhibit #7(a)



ISP Laboratory Case: 21L-01263 Request: 0001  
 S. Owens PE7330  
 Agency: FBI – GRIT Agency Case Number: 91A-IP-3453329



INDIANA STATE POLICE  
 REQUEST FOR LABORATORY EXAMINATION  
 State Form 38930 (R4/2-16) v2021

Page 1 of 1

This form will expire 07/01/2022. For an updated version, go to [www.in.gov/isp/flo](http://www.in.gov/isp/flo).

--- Lowell Laboratory ---  
 Lab #: 21L-01263 ACN: 91A-IP-3453329  
 Federal Bureau of Investigation - GRIT



New Case  Additional Case  Lab Use Only Received Date:  Assigned to:  Lab Case #: 21L-01263

Lab Notes

Investigating Officer(s)	Michael Jones	E-mail Address	mjones@isp.in.gov
Telephone Number	219-246-0921	County of Occurrence	Lake
Type of Investigation	Homicide / Bank Robbery	Contributing Agency	<input checked="" type="radio"/> Indiana State Police <input type="radio"/> Other
Agency	Federal Bureau of Investigation / GRIT	Agency Case #	91A-IP-3453329
Court Date		Related Case #	

Individuals Associated with Case

Individual 1	Richard Castellana	Individual 2	Hailey Gist-Holden
--------------	--------------------	--------------	--------------------

The submitting agency agrees to all terms noted in the Indiana State Police Laboratory Division's Information for Customers document. To affirm acceptance of an agreement with this statement and terms, click accept to proceed.

Accept  Decline

RECEIVED

Lab Use Only	Lab Item No.	Agency Item No.	Description of Item(s) Submitted	Received	Drug	DNA	Latent Prints	Firearms	Microanalysis	Documents
001	2		Sealed plastic bag containing a plastic bag containing a box containing a cartridge case.	JUN 17 2021	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
002	4		Sealed plastic bag containing a plastic bag containing a box containing a cartridge case.		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
003	6		Sealed plastic bag containing a plastic bag containing a box containing a cartridge case.		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
004	21		Sealed envelope containing a box containing five cartridge cases.		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
005	46		Sealed plastic bag containing a plastic bag containing a box containing a cartridge case.		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Depending on the requests you have chosen above, further information is required below.

## Additional Information for Firearms Examination

LIMS Request # 0001

Date of Occurrence/Seizure

Firearm(s)

Ammunition  NIBIN/IBIS Entry  Comparison  Characterization  IBIS Hit Confirmation

SR Distance

Toolmark

Lab Use Only: Items for IBIS Entry



# Exhibit #1 (6)

ISP Laboratory Case: **21L-01263** Request: **0001**

S. Owens PE7330

Agency: FBI - GRIT Agency Case Number: 91A-JP-3453329

06/18/2021

## Item Description

Item 001 (Agency item 2): Sealed plastic bag marked "91A-IP-3453329 1B RECEIVED: 6/14/21 @ 6:40 PM ... -CASING HEAD STAMPED "GFL 5.56" (COUNTY ITEM #2-SEALED By CSI" containing a sealed plastic bag containing a cardboard box marked "2.")" containing a cartridge case.

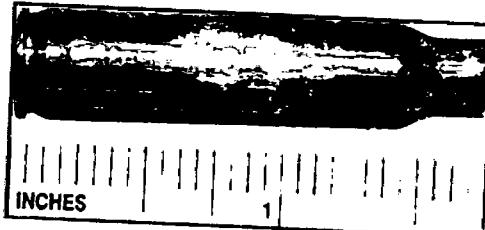


Item 001, as received



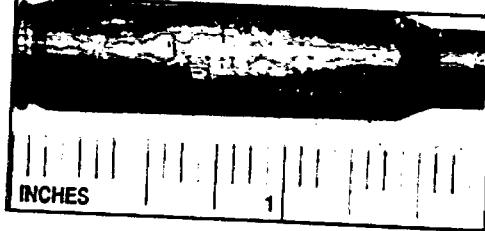
Item 001

Item 002 (Agency item 4): Sealed plastic bag marked "91A-IP-3453329 1B RECEIVED: 6/14/21 @ 6:40 PM ... -CASING HEAD STAMPED "GFL 5.56" (COUNTY ITEM #4-SEALED By CSI" containing a sealed plastic bag containing a cardboard box marked "4" containing a cartridge case. Packaging similar to the packaging of item 001.



Item 002

Item 003 (Agency item 6): Sealed plastic bag marked "91A-IP-3453329 1B RECEIVED: 6/14/21 @ 6:40 PM ... -CASING HEAD STAMPED "GFL 5.56" (COUNTY ITEM #6-SEALED By CSI" containing a sealed plastic bag containing a cardboard box marked "6" containing a cartridge case. Packaging similar to the packaging of item 001.



Item 003

Item 004 (Agency item 21): Sealed manila envelope marked "FBI/GRIT 91A-IP-3453329 ITEM #21 BOX CONTAINING FIVE (5) ●CASINGS: TWO (2) .40 (CALIBER) TWO (2) .223 (CALIBER) ONE (1) 9MM (CALIBER) ... ON: JUNE 16, 2021" containing a sealed cardboard box marked "21 5 Casings 2 - Rifle 3- handgun" containing five cartridge cases (004A through 004E).

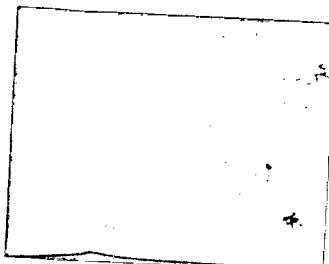
# Exhibit # 1(c)



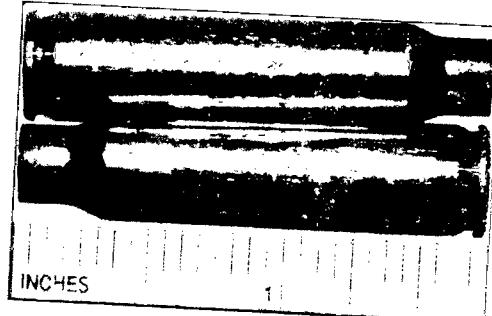
ISP Laboratory Case: 21L-01263 Request: 0001

S. Owens PE7330

Agency: FBI - GRIT Agency Case Number: 91A-IP-3453329

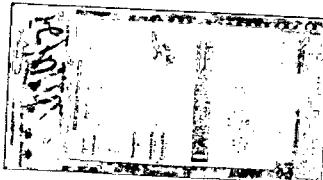


Item 004, as received

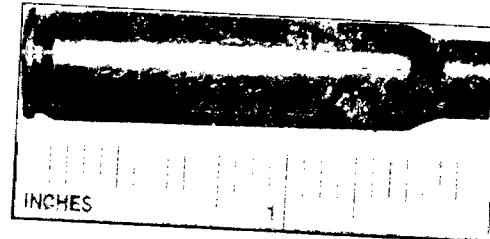


Item 004A (top), Item 004B (bottom)

Item 005 (Agency item 46): Sealed plastic bag marked "FBI Evidence/Property Tag Item #: 46  
Case/Event Number: 91A-IP-3453329 Date: 06/16/21 ... Description: One cartridge case ..."  
containing a cartridge case.



Item 005, as received

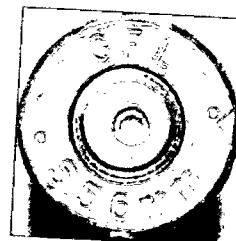


Item 005

## Examination

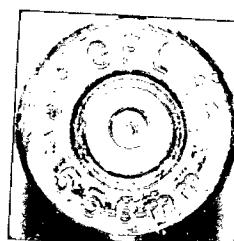
The cartridge cases in items 004C, 004D, and 004E were not examined.

Item 001: 5.56x45mm caliber. Headstamp "•○GFL○• 5.56mm" (Giulio Fiocchi, Lecco/Fiocchi). Brass case and primer. No sealant. Centerfire, tapered bottleneck, rimless case. No cannelures. Hemispherical firing pin impression. Smooth, miscellaneous breech face marks on primer. Extractor mark under rim and in groove. No ejector mark observed. No trace material observed. Miscellaneous impressed and straited marks present. Previously marked for identification "I-21-2527-02 97". Marked for identification.



Item 001

Item 002: Similar class characteristics, features, and marks as the cartridge case in item 001. Headstamp "○•GFL○• 5.56mm" (Giulio Fiocchi, Lecco/Fiocchi). Not previously marked for identification. Marked for identification.



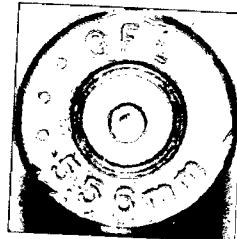
Item 002

# Exhibit # 2(d)



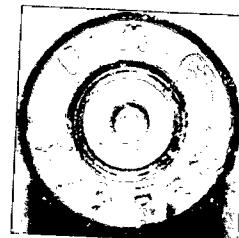
ISP Laboratory Case: 21L-01263 Request: 0001  
Agency: FBI - GRIT S. Owens PE7330  
Agency Case Number: 91A-IP-3453329

Item 003: Similar class characteristics, features, and marks as the cartridge case in item 001. Headstamp "•••GFL 5.56mm" (Giulio Fiocchi, Lecco/Fiocchi). Not previously marked for identification. Marked for identification.



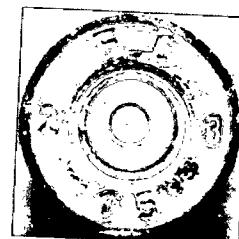
Item 003

Item 004A: 223 Remington caliber. Headstamp "P M C 223 REM" (PMC Ammunition). Brass case and primer. No sealant. Centerfire, tapered bottleneck, rimless case. No cannelures. Hemispherical firing pin impression. Smooth, miscellaneous breech face marks on primer. Extractor mark under rim and in groove. No ejector mark observed. No trace material observed. Miscellaneous impressed and straited marks present. Previously marked for identification "I21-0542-21-1 61". Marked for identification.



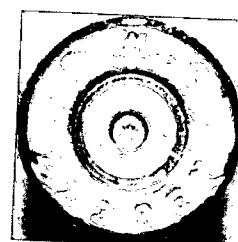
Item 004A

Item 004B: 223 Remington/5.56x45mm caliber. Headstamp "F C 2 3 1 5" (Federal). Brass case and primer. No sealant. Centerfire, tapered bottleneck, rimless case. No cannelures. Hemispherical firing pin impression. Smooth, miscellaneous breech face marks on primer. Extractor mark under rim and in groove. No ejector mark observed. No trace material observed. Miscellaneous impressed and straited marks present. Not previously marked for identification. Marked for identification.



Item 004B

Item 005: Similar class characteristics, features, and marks as the cartridge case in item 004A. Previously marked for identification "I-21-0542-46 61". Marked for identification.



Item 005

## Performance Check

Leica FS C comparison microscope (Serial No. 283083)  
Laboratory test fires PI1133 at 4, 6, 10, 15, 20, 30, 40, and 60X magnifications.  
Correspondence of individual characteristics observed at each magnification level.  
Check - OK

# Exhibit # 7 (e)



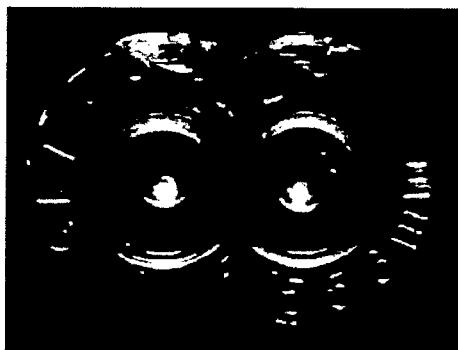
ISP Laboratory Case: **21L-01263** Request: **0001**

S. Owens PE7330

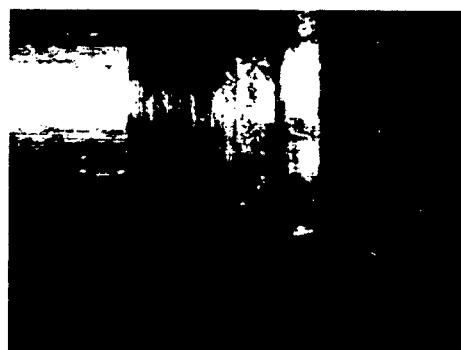
Agency: FBI – GRIT Agency Case Number: 91A-IP-3453329

## Comparison

Agreement of class characteristics (caliber, firing pin impression shape) and sufficient agreement of individual characteristics (extractor marks on rim and in groove, tool marks on head) were observed when comparing the cartridge cases in items 001, 002, 003, 004A, 004B, and 005. The cartridge cases in items 001, 002, 003, 004A, 004B, and 005 were **identified** as having been cycled in the same firearm.



Item 001 (left), Item 002 (right)  
tool marks on head, 10X



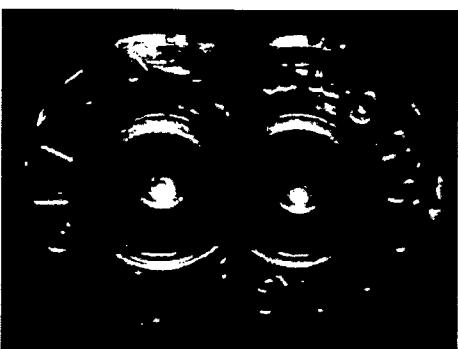
Item 001 (left), Item 002 (right)  
extractor marks in groove, 20X



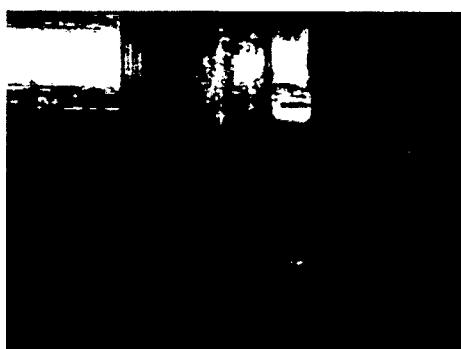
Item 001 (left), Item 002 (right)  
extractor marks on rim, 40X



Item 001 (left), Item 002 (right)  
extractor marks on rim, 40X



Item 001 (left), Item 003 (right)  
tool marks on head, 10X



Item 001 (left), Item 003 (right)  
extractor marks in groove, 20X

# Exhibit #1(f)



ISP Laboratory Case: **21L-01263** Request: **0001**

S. Owens PE7330

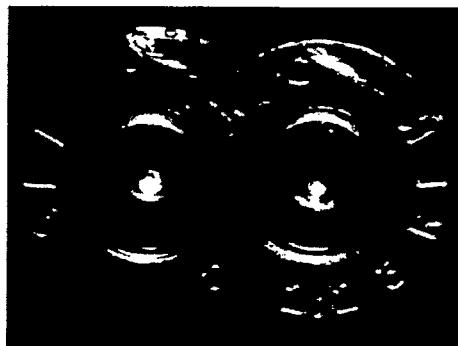
Agency: FBI – GRIT Agency Case Number: 91A-IP-3453329



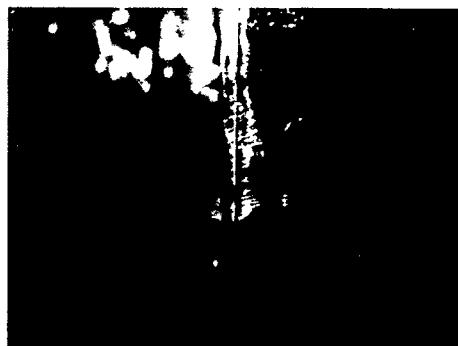
Item 001 (left), Item 003 (right)  
extractor marks on rim, 40X



Item 001 (left), Item 003 (right)  
extractor marks on rim, 40X



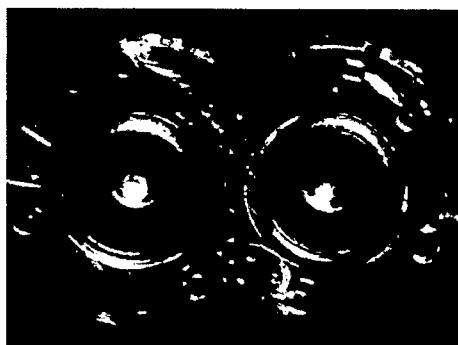
Item 001 (left), Item 004A (right)  
tool marks on head, 10X



Item 001 (left), Item 004A (right)  
extractor marks on rim, 40X



Item 001 (left), Item 004A (right)  
extractor marks on rim, 40X



Item 001 (left), Item 004B (right)  
tool marks on head, 10X

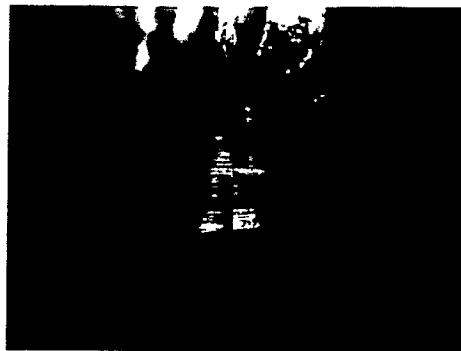
# Exhibit #7 (g)



ISP Laboratory Case: **21L-01263** Request: **0001**

S. Owens PE7330

Agency: FBI - GRIT Agency Case Number: 91A-IP-3453329



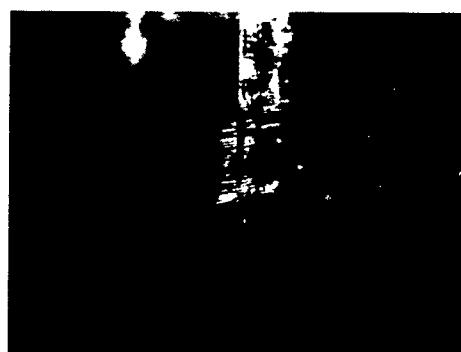
Item 001 (left), Item 004B (right)  
extractor marks on rim, 40X



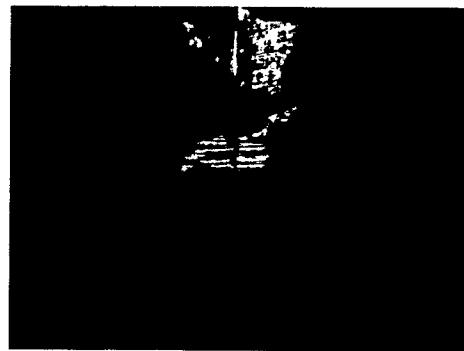
Item 001 (left), Item 004B (right)  
extractor marks on rim, 40X



Item 001 (left), Item 005 (right)  
tool marks on head, 10X



Item 001 (left), Item 005 (right)  
extractor marks on rim, 40X



Item 001 (left), Item 005 (right)  
extractor marks on rim, 40X

# Exhibit #7(h)



ISP Laboratory Case: **21L-01263** Request: **0001**  
S. Owens PE7330  
Agency: FBI – GRIT Agency Case Number: 91A-IP-3453329

FFIU VERIFICATION FORM			
DATE 6/21/2021	CASE EXAMINER Scott Owens. 7330	VERIFIER Roger Michels, 9697	LABORATORY CASE NUMBER 21L-01263
VERIFICATION Based on significant agreement in parallel individual detail present within the extractor marks, the cartridge cases in items 001, 002, 003, 004A, 004B, and 005 were verified as having been cycled through the same firearm.			
INSTRUMENT PERFORMANCE CHECK: Leica comparison microscope (serial no. 283083) performance check completed by verifier.			

## Results

Examination of the cartridge cases in items 001, 002, and 003 revealed each to be a 5.56x45mm caliber cartridge case typical of those manufactured by or marketed as Giulio Fiocchi, Lecco (GFL/Fiocchi).

Examination of the cartridge cases in items 004A and 005 revealed each to be a 223 Remington caliber cartridge case typical of those manufactured by or marketed as PMC Ammunition.

Examination of the cartridge case in item 004B revealed it to be a 223 Remington/5.56x45mm caliber cartridge case typical of those manufactured by or marketed as Federal.

The cartridge cases in items 001, 002, 003, 004A, 004B, and 005 were identified as having been cycled in the same firearm.

The cartridge cases in items 004C, 004D, and 004E were not examined.

## Remarks

**Identification:** An identification opinion is reached when the evidence exhibits an agreement of class characteristics and a sufficient agreement of individual marks. Sufficient agreement is related to the significant duplication of random striated/impressed marks as evidenced by the correspondence of a pattern or combination of patterns of surface contours. The interpretation of identification is subjective in nature, and based on relevant scientific research and the reporting examiner's training and experience.

**Methodology Used to Reach Results/Opinions/Interpretations:**  
Ammunition Component Characterization  
Microscopic Comparison

*Exhibit #2*

AO 91 (Rev. 11/11) Criminal Complaint

UNITED STATES DISTRICT COURT  
for the

Northern District of Indiana

United States of America

v.

HAILEY GIST-HOLDEN

) Case No.

2:21 MJ 104

*Defendant(s)*

**CRIMINAL COMPLAINT BY TELEPHONE OR  
OTHER RELIABLE ELECTRONIC MEANS**

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of JUNE 16, 2021 in the county of LAKE in the  
Northern District of Indiana, the defendant(s) violated:

*Code Section*  
21 U.S.C. § 841(a)(1)

*Offense Description*

On or about June 16, 2021, Hailey Gist-Holden, did knowingly and  
intentionally possess, with intent to distribute, marijuana, a Schedule I  
Controlled Substance.

This criminal complaint is based on these facts:  
See attached affidavit.

*Continued on the attached sheet.*

*Gootee*

Complainant's signature

FBI TFO CHRISTOPHER GOOTEE

Printed name and title

STATE OF INDIANA )  
 )  
 )  
COUNTY OF LAKE SS: )

Exhibit #3(a)

FILED: 6  
SUPERIOR COURT OF LAKE COUNTY  
CRIMINAL DIVISION  
CROWN POINT, INDIANA

File: 6/17/2021 2:14 PM

**Clerk**

STATE OF INDIANA  
V.  
HAILEY DESSALINES GIST-HOLDEN

CAUSE NUMBER. 45

**AMENDED PROBABLE CAUSE AFFIDAVIT**

AFFIDAVIT  
Affiant swears or affirms that he believes and has good cause to believe that

It is good cause to believe that:  
Affiant, Christopher Gootee is a Task Force Officer with the Federal Bureau of Investigation and was assigned the duty to investigate a bank robbery and murder that occurred on 6/11/2021 at approximately 1:07PM at First Midwest Bank, 1975 W. Ridge Road in Gary, Lake County, Indiana.

During the course of the investigation, I learned that on 6/11/2021 at approximately 1:08PM, the Lake County Emergency Communications Center received multiple phone calls reporting a shooting and a robbery at First Midwest Bank at 1975 W. Ridge Road in Gary, Lake County, Indiana. Lake County Sheriff's Department officers responded to the scene, began an investigation and set up a perimeter around the bank.

During the course of the investigation, I met with Michael Tardi, the Physical Security Manager with First Midwest Bank. I believe Tardi to be truthful and credible because he spoke of facts within his own personal knowledge learned during the course of his official duties. Tardi based his knowledge upon interviews with employees on duty at the time of the robbery and his review of video surveillance footage and other documents, all of which are kept in the normal and ordinary course of business of First Midwest Bank.

I reviewed the surveillance footage and saw two males dressed in all black approach the bank from a wooded area southeast of the bank. As they approach the bank, the bank's security guard, later identified by his Illinois driver's license as Richard Castellana, is shot in the face and drops to the ground. The suspects walk past Castellana and one suspect enters the bank, displaying a handgun. The second suspect enters the front vestibule area and fires multiple shots from a rifle into the bank's lobby as the other suspect steals money from the bank's cash drawers in the presence of multiple bank tellers. The suspects then exit the bank and flee on foot to the southeast through the wooded area.

During the course of my investigation, I spoke with Rockell Angelo Griggs-Fullilove, Branch Manager for First Midwest Bank. I believe Griggs-Fullilove to be truthful and credible because she spoke of facts within her own personal knowledge. In summary, Griggs-Fullilove stated that she was sitting in her office when she heard a "boom" sound outside. When she looked up, she saw a black male, approximately 6'2", thin build, wearing a black hooded sweatshirt, enter the bank. The male was yelling "Get down" and telling the bank employees not to move. Two more shots were fired inside the bank and then she heard another person yelling "we gotta go, we gotta go". After the suspects left, Griggs-Fullilove noticed that the bank's security guard, Richard Castellana, had been shot and was lying on the bank's front sidewalk.

Spent rifle ammunition was found near Castellana's body and in the bank's vestibule. EMS personnel

EMS personnel arrived and found that Castellana had an apparent gunshot wound to the face and had no signs of life. It was determined that Castellana's injuries were too severe to attempt resuscitation. Castellana was pronounced dead by the Lake County Coroner at 2:20PM.

Lake County Sheriff's Department and Gary Police Officers established a perimeter and began searching a wooded area south of the bank for the suspects. An Officer on the perimeter near the 4300 block of Grant Street observed a black male wearing a black backpack emerge from the woodline. He gave the male verbal commands to stop moving, and the male ran away. Officers

# Exhibit # 3(6)

continued to use K9's, follow footprints and crushed vegetation and tightened the perimeter until they eventually located the male in a wooded area near 43<sup>rd</sup> Avenue and Garfield Street. The male surrendered and was taken into custody. He was later identified by his own admission as James Anthony King, date of birth 7/2/1996. A backpack containing a .40 caliber Glock Model 22 handgun, serial number RVS475, and approximately \$9,000 in United States Currency was located approximately 25 yards from where King was apprehended. The money was fastened with paper clips, consistent with how it was stored for use in the bank drawers.

King was taken to the Lake County Sheriff's Department where he participated in an interview that was audio and video recorded. I found James King to be truthful and credible, in part, because he spoke of matters within his own personal knowledge, he spoke against his penal interest, and because certain facts have been corroborated with other parts of this investigation. After waiving his civil and constitutional rights, in summary and in part, I believe that King truthfully admitted to participating in the robbery, changing into clothing that would conceal his identity during the robbery, being given and carrying a handgun to and during the robbery, entering the bank and taking money, fleeing the scene and running away from law enforcement.

King further stated that his football coach is the person who shot and killed Castellana during the commission of the robbery. King further stated that if investigators found out who owned the handgun he had, it would lead to Hailey's full name. King was given a six person photographic array and he positively identified Hailey Gist-Holden as the person who killed Castellana with a rifle during the commission of the bank robbery.

During the course of the investigation, First Midwest Bank teller Cenia Falu was interviewed. Falu stated that she was working the drive through station of the bank when a male pointed a handgun at her and stole United States Currency from her drawer and left the bank. My review of video surveillance corroborates this.

On 6/15/2021, I reviewed a written report of interview by FBI Special Agent Elli Bray. I believe SA Bray to be truthful and credible because she spoke of facts within her own personal knowledge learned during the official performance of her duties as a law enforcement officer. SA Bray reported that she and FBI SA Christopher Goodrich conducted an interview with Travis Mogene in Hallandale, Florida. Mogene, who they believed to be truthful and credible, who explained that Hailey Gist-Holden was the owner of a MidStates Football League (MSFL) team, the Illini Panthers. Mogene plays for the Illini Panthers. Gist-Holden invited Mogene to come to the Chicago area to play football for the Illini Panthers and Mogene later invited James King to come play as well. Gist-Holden paid for Mogene to fly to Chicago on 6/3/21 and King on 6/4/21. Gist-Holden paid for their hotel rooms and paid them additional money to play.

When Mogene arrived in Chicago, Gist-Holden told Mogene to room with King. Mogene told Gist-Holden that King had a gun, so Mogene did not want to be roommates with him. King was legally allowed to have the weapon, but Mogene did not want to be around a gun. At a football practice after this, Gist-Holden asked which of the players have been to jail. Mogene noticed that Gist-Holden was having private conversations with players after this and was encouraging King to be included in the conversation.

Mogene realized that the team was in financial trouble. The team was scheduled to play a game and only one referee showed up, so the game was cancelled. Gist-Holden did not refund the fans' tickets for this game and told his girlfriend, Briana White to leave the game with the proceeds from the ticket sales.

Gist-Holden later admitted to the team that the team was running out of funding. Gist-Holden told the team that he would figure it out. Mogene later realized that Gist-Holden was not paying for the team's hotel rooms and the hotel staff began asking the players when they were going to check out. Gist-Holden began joking about committing a robbery to get money to support the team. Gist-Holden asked Mogene if he was just there to play football and Mogene confirmed that he was only there for football. Mogene believed that Gist-Holden recruited King to be part of the robbery because King carried a gun and Gist-Holden presumed that King would be willing to participate in a robbery.

Mogene heard that King was told to get up early so they could look at a bank. Mogene showed agents text messages from King in which he was expressing that he did not want to be involved in a robbery. In summary, King tells Mogene in a text message "Bra he tryna do this to pay for the Telly n

# Exhibit #3(c)

shit". Mogene replies "For tonight?" King sends Mogene a photograph of someone sitting on a couch with what appears to be a rifle sling worn around their neck and a black backpack sitting next to them. Both items are consistent in appearance with the rifle sling and backpack worn by the killer in the bank surveillance video. King continues by telling Mogene "Just be careful brah Gshit" and King replies "Man fuck that ian tryna do that".

On 6/14/2021, I received documentation from the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), which is kept in the normal and ordinary course of business at ATF. The documentation regarding the Glock 22, serial number RVS475, indicated that it was purchased by Briana White, date of birth 7/30/1994 at a Federal Firearms Licensee (FFL) in Calhoun, Georgia on 3/25/2021. I performed a check of a local law enforcement databases and learned that Briana White was listed as the girlfriend of Hailey Gist-Holden and they have a child together. I believe the above ATF document is credible as it is kept in the normal course of business. I also believe that the local law enforcement database is credible as it has been used before and proved trustworthy.

On 6/15/2021, FBI SA Jacob McAdams went to a firearms store in Merrillville, Indiana and learned that Hailey Gist-Holden purchased a 22 round magazine for a .40 caliber Glock 22 on 6/7/2021 and Ammo Inc. brand .40 caliber ammunition on 3/26/2021. I reviewed the description of items seized during this investigation and learned that the magazine found in King's backpack had a capacity of 22 rounds and the .40 caliber ammunition removed from the chamber of the Glock handgun was Ammo Inc. brand. I believe FBI SA Jacob McAdams to be truthful and credible as he spoke of matters within his own personal knowledge and he was acting in his official capacity as a law enforcement officer.

During the course of the investigation, I learned that Hailey Gist-Holden holds a lease with Briana White for the residence at 4656 Buchanan Street in Gary, Lake County, Indiana. Det. Josh Gonzales from GRIT, who I believe to be truthful and credible because he spoke of matters within his own personal knowledge while acting in his official capacity as a law enforcement officer spoke with the property manager of the residence, who indicated that Gist-Holden and White are past due in their rent payments in the amount of \$6219.01 and are facing eviction soon. I viewed the lease, which is credible because it is kept in the normal course of business that verified White and Gist-Holden resided at 4656 Buchanan Street.

On 6/15/2021, FBI SA Jacob McAdams went to a Shoot Point Blank in Merrillville, Indiana and reviewed records kept in the normal and ordinary course of the business, including purchase records and stored video surveillance. SA McAdams reported that Hailey Gist-Holden purchased a 22 round magazine for a .40 caliber Glock 22 on 6/7/2021 and Ammo Inc. brand .40 caliber ammunition on 3/26/2021. I believe that FBI SA McAdams is truthful and credible as he spoke of matters within his own personal knowledge and he was acting in his official capacity as a law enforcement officer.

During the course of the investigation, I reviewed records maintained in the normal and ordinary course of business of U-Haul, which I believe to be credible. These records indicate that on 5/31/2021 in Miami, Florida, Hailey Gist-Holden rented a U-Haul van bearing equipment number BE3251L and Arizona license plate AK12406.

During the course of the investigation, I reviewed records maintained in the normal and ordinary course of business of the Illinois State Toll Highway Authority, which I believe to be credible. These records indicate that the U-Haul van with license plate AK12406 received eleven toll violations on 6/11/2021. The toll violation records support the U-Haul leaving the area of Oakbrook Terrace, Illinois in the morning (8:29AM), going eastbound towards Indiana at 10:12am, and returning to the tollway westbound at 3:11pm, traveling further into Illinois and receiving violations at 3:23pm and 3:38pm. The toll violations capture a photograph of the front and rear of the vehicle. The driver of the U-Haul during the toll violations appears to be a black male with braided hair, consistent in appearance with Hailey Gist-Holden.

On 6/16/2021, I participated in the execution of a search warrant at 4656 Buchanan Street in Gary, Lake County, Indiana. The search warrant was authorized by United States Magistrate Judge Andrew Rodovich. During the execution of the search warrant, an empty box to the Glock .40 caliber, serial number RVS475 and both spent and live 5.56 caliber Fiocchi brand ammunition cartridges were found in the residence. I spoke with ATF Special Agent (SA) Matthew Jones, who I believe to be truthful and credible because he spoke of facts within his own personal knowledge and he was acting in his official capacity as a law enforcement officer.. SA Jones is a trained nexus expert in the identification of firearms and ammunition. SA Jones told me that some Fiocchi brand ammunition has a headstamp of "GFL", which stands for Giulio Fiocchi - Lecco. Giulio Fiocchi is the founder of the company, which is headquartered in Lecco, Italy. Also recovered during this warrant was Ammo

*Exhibit #3(d)*

Inc. brand .40 caliber ammunition. During the execution of the search warrant, I also recognized the living room of this residence to be the same as seen in the photograph that King previously sent to Mogene, to include the presence of the "Battle of the Sexes" board game.

I swear, under the penalty for perjury as specified by I.C. 35-44.1-2-1, that the foregoing is true to the best of my information and belief.

/s/ Christopher Gootee

CHRISTOPHER GOOTEE  
AFFIANT

Subscribed and sworn to before me and approved for prosecution on June 17, 2021.

/s/MICHELLE M. JATKIEWICZ

MICHELLE M. JATKIEWICZ  
DEPUTY PROSECUTING ATTORNEY

# Exhibit #3(e)

06/18/21  
08:27

Wanted Person Table:

10112

Page: 1

Want			
Want Number	21W05096		
Judge	BOKOTA	Process Type	WAR WARRANT Arrest
Cause Number	45G02-2106-MR-00032	Crime Class	FM Felony Murder
Date Issued	06/18/21	Date Returned	/ /
Date Received	06/18/21	Status	ACT Active
Date Expires	/ /	Status Date	06/18/21
Wanted/Alert	I-III: MURDER (FM) III: ARMED ROBBERY (3)		

Wanted Person					
Numbr	19N028388 WARRANT Arrest				
Last	GIST-HOLDEN	Fst	HAILEY	Mid	P
DOB	11/07/94	SSN	347-90-1339	Adr✓	1437 E 51ST AV
Race	B Sx	M Tel	( )	- Cty	GARY
				ST	IN ZIP 46409

Details					
Issuing Court	G02	Superior Criminal	Cash Only?		
Incident			Bond Denied?	Y	
Agency	LCLK Lake County ClerksExtradition				
Officer	IDACS?				
Cash Bond	0.00		NCIC Code	0911	Homicide-Willful-Gun
Surety		0.00	Offense Code		

Offenses 35-42-1-1 (09A) (52)

Attempts

Remarks AT LARGE.

## INVOLVEMENTS:

Type	Record #	Date	Description	Relationship
NM	19N028388	/ /	GIST-HOLDEN, HAILEY D	*WARRANT Arrest

## Wants Offenses Detail:

Want Offenses		Description	Dsp
Seq	Offense Code		
1	35-42-1-1 (09A) (521)	HOMICIDE - MURDER	

0000915



Exhibit #5

New Message

2 months ago

**From:** Katherine Marshall Temp  
**To:** Briana White  
**Subject:** Recertify for Additional Rental Assistance: Response Required

Hi Briana,

According to my records, we have made the following payments:

- Arrears (Jan-Apr 2021): \$3,600, processed 4/28
- May rent: \$900 processed 5/5
- June rent: \$900 processed 6/2
- July rent: \$900 processed 8/4

The payment for August will also be \$900 and is being made ASAP.

Show Less

Reply

# Exhibit #6

## Tenant Ledger

Date	Payer	Description	Charges	Payments	Balance
05/01/2020		Rent Income - May 2020	900.00		900.00
05/06/2020	Briana White	Credit Card Payment (Reference #C64D-F9E0)		450.00	450.00
06/01/2020		Rent Income - June 2020	900.00		1,350.00
06/05/2020	Hailey Gist-Holden	Credit Card Payment (Reference #B16B-3FF0)		1,350.00	0.00
07/01/2020		Rent Income - July 2020	900.00		900.00
07/07/2020	Briana White	Credit Card Payment (Reference #3491-6270)		900.00	0.00
08/01/2020		Rent Income - August 2020	900.00		900.00
08/05/2020		Late Fee - Late Fee for Aug 2020	40.00		940.00
08/12/2020	Briana White	Credit Card Payment (Reference #8557-6CBO)		500.00	440.00
08/14/2020	Hailey Gist-Holden	Credit Card Payment (Reference #DA54-3300)		500.00	-60.00
09/01/2020		Rent Income - September 2020	900.00		840.00
09/05/2020		Late Fee - Late Fee for Sep 2020	50.00		890.00
09/16/2020	Briana White	Credit Card Payment (Reference #5533-A630)		450.00	440.00
09/25/2020	Hailey Gist-Holden	Credit Card Payment (Reference #CB7B-EB20)		500.00	-60.00
10/01/2020		Rent Income - October 2020	900.00		840.00
10/09/2020	Hailey Gist-Holden	Credit Card Payment (Reference #06FF-2430)		400.00	440.00
10/26/2020	Hailey Gist-Holden	Credit Card Payment (Reference #7168-06D0)		450.00	-10.00
11/01/2020		Rent Income - November 2020	900.00		890.00
12/01/2020		Rent Income - December 2020	900.00		1,790.00
01/01/2021		Rent Income - January 2021	900.00		2,690.00
01/01/2021	Briana White	Credit Card Payment (Reference #EA72-6260)		1,000.00	1,690.00
02/01/2021		Rent Income - February 2021	900.00		2,590.00
02/01/2021	Briana White	Credit Card Payment (Reference #FC1F-2C40)		990.99	1,599.01
03/01/2021		Rent Income - March 2021	900.00		2,499.01
04/01/2021		Rent Income - April 2021	900.00		3,399.01
04/22/2021	Hailey Gist-Holden	Credit Card Payment (Reference #5796-8650)		1,000.00	2,399.01
05/01/2021		Rent Income - May 2021	900.00		3,299.01
06/01/2021		Rent Income - June 2021	900.00		4,199.01
06/27/2021	Briana White	Credit Card Payment (Reference #1489-D1C0)		700.00	3,499.01
07/01/2021		Rent Income - July 2021	900.00		4,399.01
07/11/2021	Briana White	Credit Card Payment (Reference #AA26-4D40)		2,300.00	2,099.01
08/01/2021		Rent Income - August 2021	900.00		2,999.01
08/12/2021	Briana White	Payment (Reference #ACH 5/10, 5/17, 6/8 for rent Jan-June)		5,400.00	-2,400.99
08/13/2021	Hailey Gist-Holden	Payment (Reference #Rental Assistance)		900.00	-3,300.99

# Exhibit #7

**Briana White**

**Home**

**Payments**

**Maintenance**

**Contact Us**

**Shared Documents**

**Insurance**

**Property Details**

**Account Profile**

**Help**

**PROPERTY ADDRESS: 4656 Buchanan Gary, MI 48208 | 1100-1104**

**Your Current Balance**

There is nothing for you to pay.

● Attention: You have a credit of \$4,200.99

**Pay Now** **Set Up Autopay**

**November (Next Month)**

Description	Amount
Rent Income Due by 11/31/2021	\$900.00
Your Credits & Prepayments	-\$4,200.99
Total Balance	-\$3,300.99

**Current Lease**

**Lease Dates**

09/06/2019 - 09/30/2020

**Renters Insurance**

Powered by AppFolio Insurance Services

Renters Insurance is now available for purchase in your online portal!

**Purchase Renters Insurance** **Learn More**

**Maintenance Requests**

**Request Maintenance**

You currently do not have any open maintenance requests!

© 2019 AppFolio, Inc.  
215-251-1720  
4401 Brem Street

**appfolio**

Exhibit #8

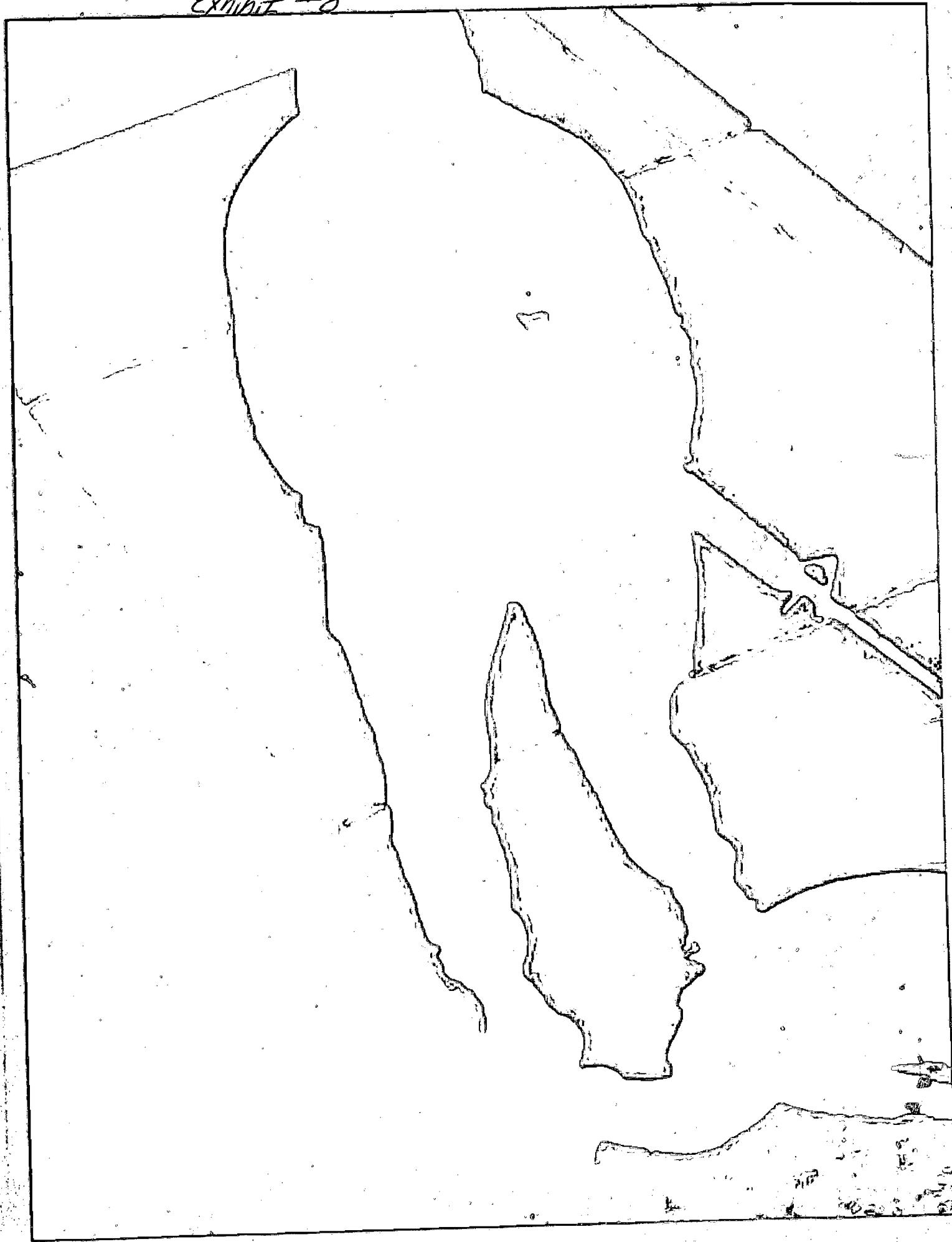




Exhibit #9

00028469

GOVERNMENT  
EXHIBIT  
027



GOVERNMENT  
EXHIBIT  
029

Exhibit #10

00028474



GOVERNMENT  
EXHIBIT  
019

Exhibit #11

Lobby 01.07.05.653 PM (GMT-4:00) 01/12/2021

00001125



Exhibit #12

00028462

GOVERNMENT

EXHIBIT

025

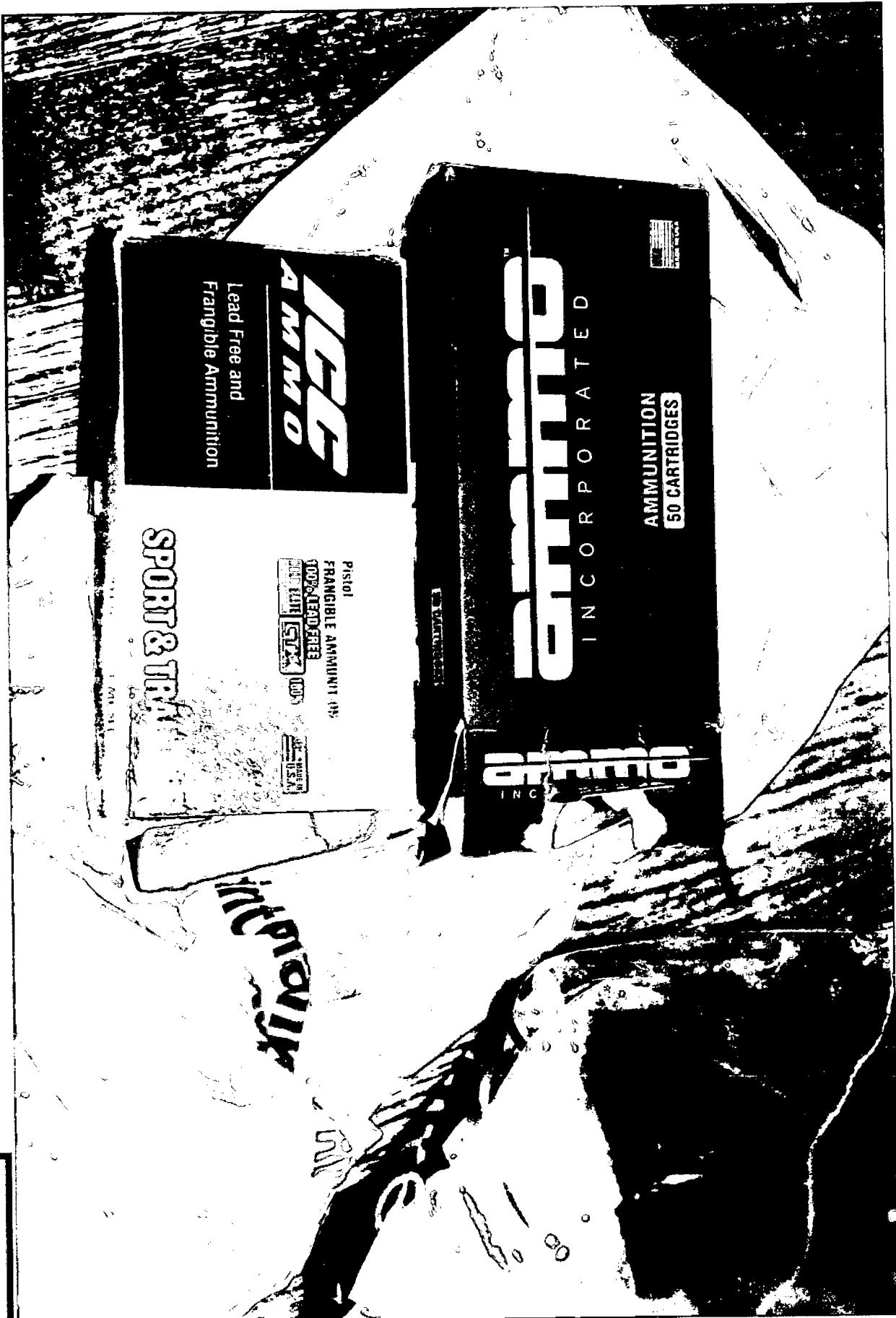
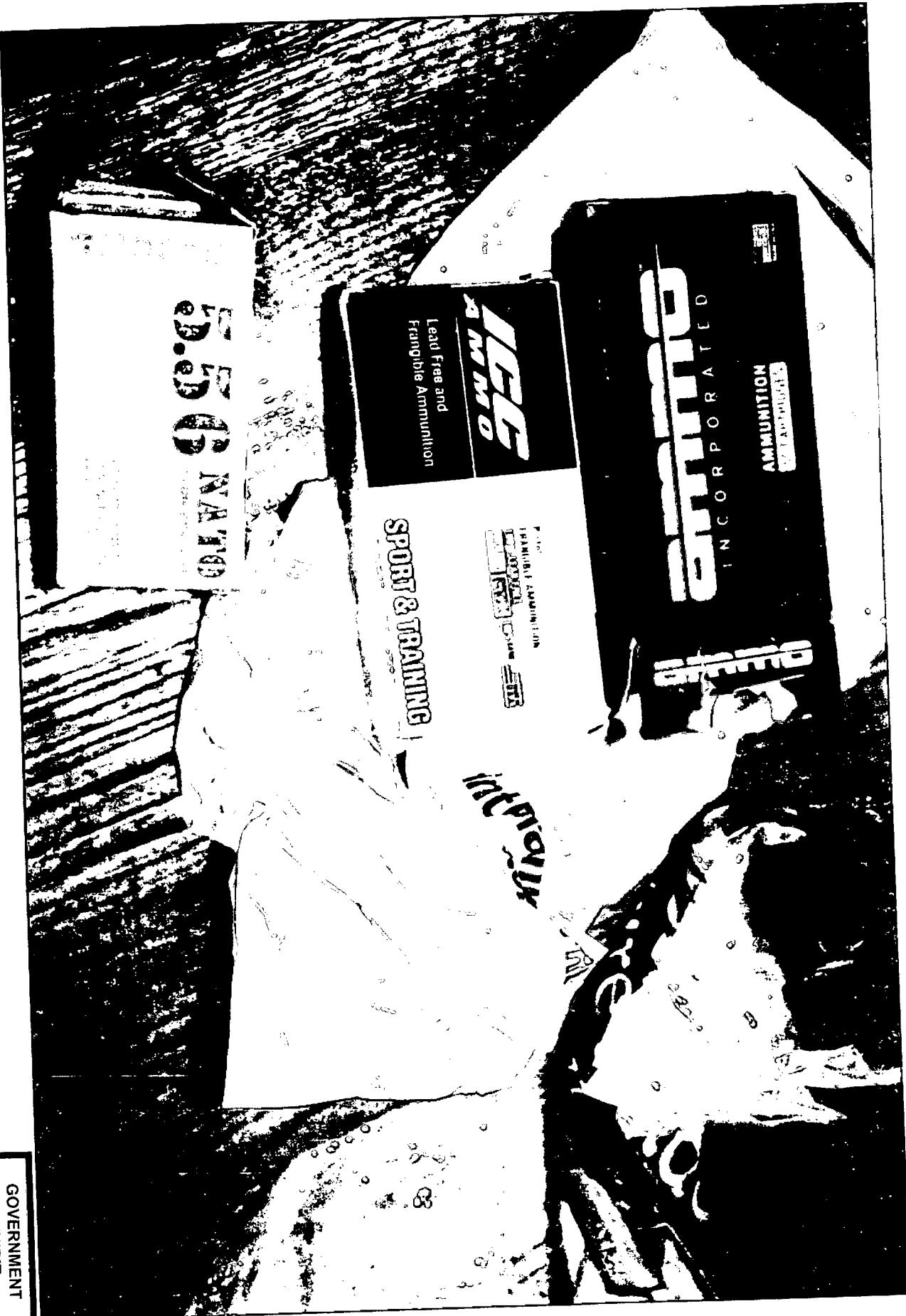


Exhibit #13

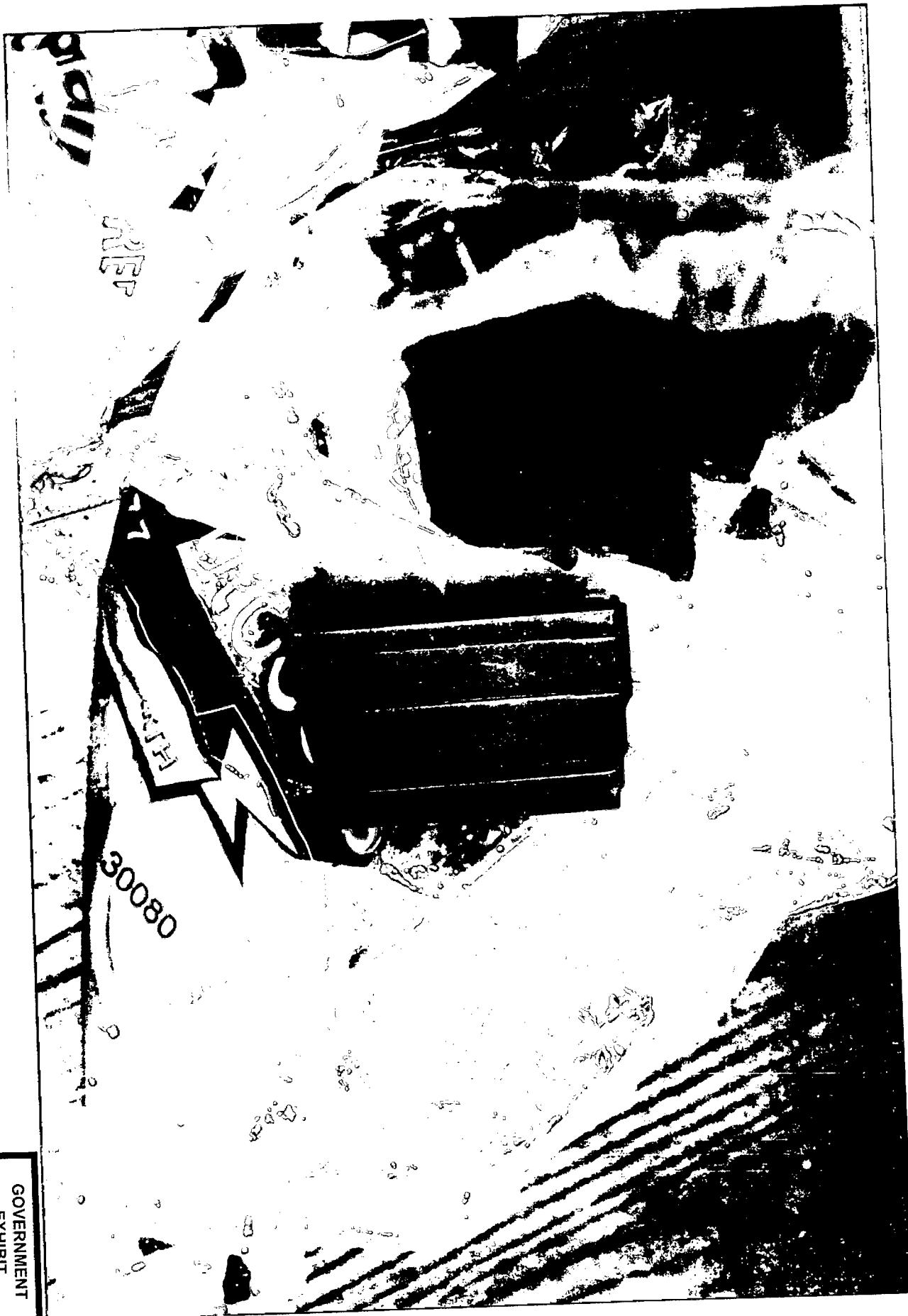
0000095



GOVERNMENT  
EXHIBIT  
217

Exhibit #14

000009



GOVERNMENT  
EXHIBIT  
215

Exhibit #15

00000

GOVERNMENT  
EXHIBIT  
**218**

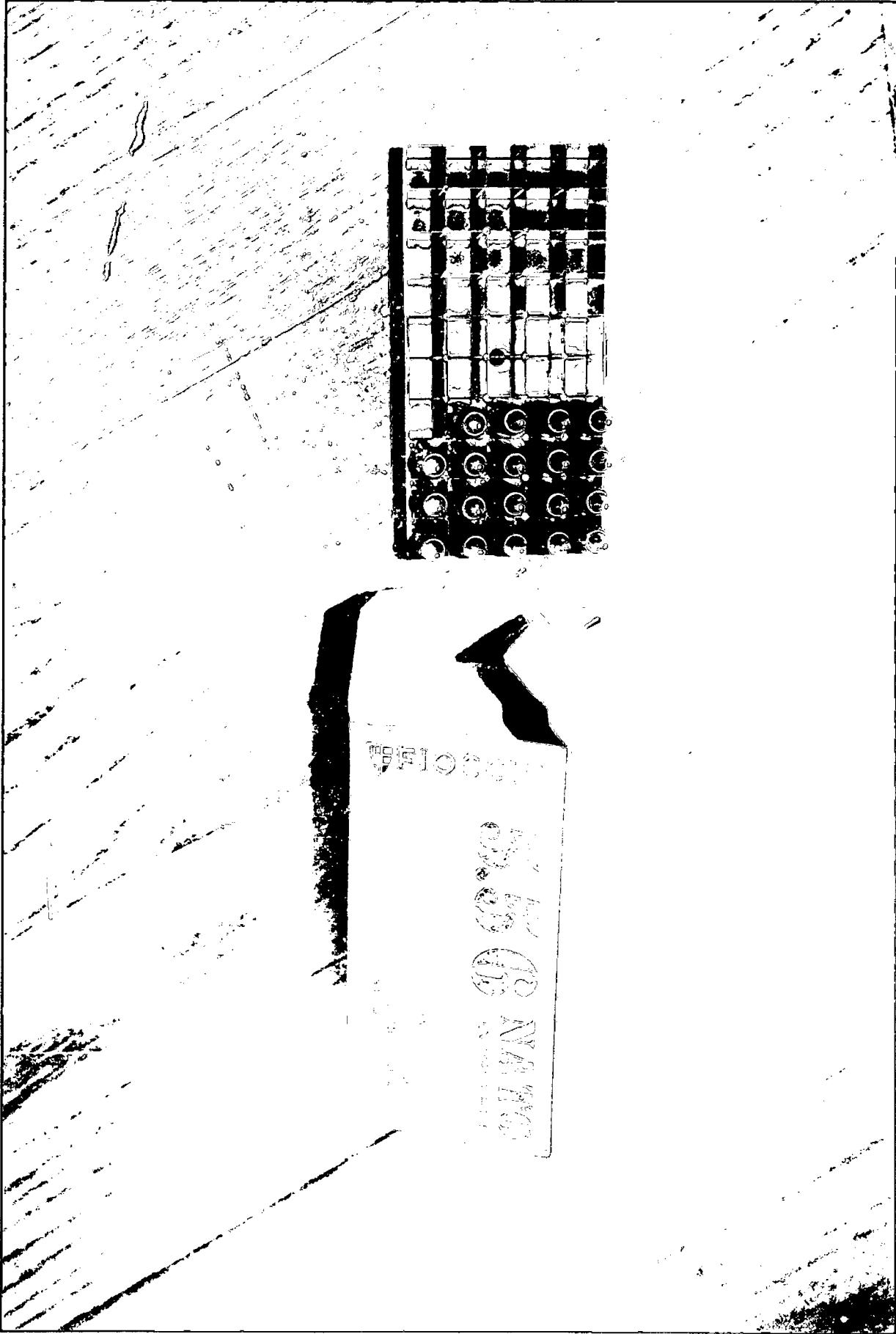


Exhibit #16

00000956



GOVERNMENT  
EXHIBIT  
**214**

Exhibit #17

00000951



Exhibit #18

00000957

GOVERNMENT  
EXHIBIT  
219

## FEDERAL BUREAU OF INVESTIGATION

Exhibit #19(a)

Date of entry 06/30/2021

James Anthony KING, Date of Birth (DOB), **Redacted** home address **Redacted**

**Redacted** cellular phone number, (786) 262 8929, was

interviewed at Lake County Jail. Prior to the interview, KING was advised of his rights under Miranda, via the FBI Advice of Rights form (FD-395). The form was read aloud to KING who then read and signed the waiver portion of the form, indicated that he understood his rights and agreed to waive those rights. Details of the interview are contained in the video recording attached to this FD-302 as a digital and physical 1A Package.

**The below is an interview summary. It is not intended to be a verbatim account and does not memorialize all the statements made during the interview. Communications by the parties in the interview room were electronically recorded. The recording captures the actual words spoken.**

KING stated that he arrived in Chicago from Miami two days ago with a friend, Travis MONTGOMERY, to play semi-pro football for the Illini Panthers. KING flew on American or Spirit Airlines. While he stayed in Chicago KING stayed at either a Holiday Inn or Comfort Inn. Other players from the Panthers, including Travis, were also staying at the hotel. KING did not remember the address of the hotel, but said it was near an indoor skydiving facility near O'Hare Airport.

KING claimed that he didn't know he was in Gary on June 11, 2021, and thought he was still in Chicago. [KING said that he and members of the Panthers went to a nearby basketball court for a team-building exercise] led by Coach Haley (ph). KING claimed that he got into a verbal altercation with other members of the team. [The altercation escalated when the other players physically assaulted him] KING ran away from his teammates after they ripped his shirt off of him. KING stated that he then ran into a wooded area to get away from them. During this time KING stated that he was arrested by police.

---

Investigation on 06/11/2021 at Crown Point, Indiana, United States (In Person)

File # 91A-IP-3453329

Date drafted 06/11/2021

by Andrew Chonowski, JUSTIN MORRIS CLARK

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

00021117

91A-IP-3453329

Continuation of FD-302 of (U) Interview of James Anthony King, On 06/11/2021, Page 2 of 3

Investigators advised KING that they believed that he was not being truthful about the events that led up to his arrest. KING subsequently stated that he was picked up at the hotel by two individuals. KING stated that he was under the assumption that he was getting picked up to go get food and/or meet women. KING was unsure on the make and model of the vehicle that he was picked up in, but later stated that it may have been a dark-colored sedan without tinted windows. KING had never met the driver of the vehicle but knew the front seat passenger. KING was initially reluctant to provide the front seat passenger's name.

KING stated that after driving for a while, the front seat passenger asked him if he was ready to get some money. KING stated that he was unclear as to what the individual meant by that statement. The individual advised KING that they were going to rob a bank. KING claimed that he was reluctant to participate in the robbery. KING stated that the individual provided him with clothing and a handgun for the robbery. KING changed into the provided clothing thereafter.

KING stated that when they arrived near the bank (First Midwest Bank) he and the other individual exited the vehicle and approached the bank. The other individual approached the bank with a rifle and KING approached the bank, armed with a handgun. When they were approaching the outside of the bank, the other individual shot the guard. KING claimed that he was unaware that the other individual was going to shoot the guard. After the guard was shot, KING and the other individual entered the bank.

KING claimed that he did not remember in detail what happened when he entered the bank, but did state that he remembered putting money in a bag and then leaving. Once outside, KING stated that both he and the other individual ran from the bank. KING stated that he got separated from the other individual when they were running.

During the course of the interview TFO Clark asked KING again to provide the identity of the subject that had the rifle and went into the bank with him. KING grabbed the legal pad TFO Clark used to take notes of the interview and circled the words "Coach Haley" that TFO Clark had previously written on the pad. KING then pointed to the name that he circled and advised that this was the person that robbed the bank with him. KING stated that if investigators found out who owned the gun that he was caught with, then they would find

91A-IP-3453329

Continuation of FD-302 of (U) Interview of James Anthony King, On 06/11/2021, Page 3 of 3

out Coach Haley's full name.

1     **A.** Yes.

2     **Q.** She doesn't attend the practices?

3     **A.** They said she did and that she made the uniforms.

4     **Q.** She doesn't talk to them? They don't have a personal

5     relationship with her?

6     **A.** They do. They talk to her and she goes to practices and

7     games.

8     **Q.** She doesn't run that team?

9     **A.** No.

10    **Q.** It's Gist-Holden that runs that team?

11    **A.** Yes.

12    **Q.** And these are football players. They are fairly large

13    men?

14    **A.** Yes.

15    **Q.** Now, you claim that -- or I guess Mr. King claims that

16    Ms. White was participating in the planning?

17    **A.** Yes.

18    **Q.** Now, he took a picture that includes Ms. White, right?

19    **A.** Correct.

20    **Q.** Because they were at the house where Ms. White lives?

21    **A.** Yes.

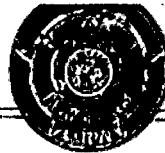
22    **Q.** Now, he didn't record any of the conversation that was

23    going on during that time, did he?

24    **A.** No.

25    **Q.** In fact, in his first interview with you he mentioned

Exhibit #21



LOWNDES COUNTY SHERIFF'S OFFICE  
P. O. BOX 667 • VALDOSTA, GEORGIA 31601-0667 • TELEPHONE (229) 671-2900

ASHLEY PAULK/SHERIFF

Jail Operations Division

Request for Restrictions

(Upon Arrest Only)

I, Dee Nathaniel Law, request that  
inmate Dee Nathaniel Law have the following restrictions imposed for the  
purpose of (select one)  Preliminary Investigation  Detoxification

Please select all that apply

No Phone Calls  No Contact with other Inmates  No Visitation  
 No Contact with Inmate(s) \_\_\_\_\_  
 Other (Specify) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I Request that the above restrictions be imposed for a period of 24 hours.

I understand, as the requesting officer, that once the above inmate has had his/her initial bond hearing these restrictions will be lifted unless otherwise specified.

Dee Nathaniel Law # 1360 6/18/0225  
Requesting Officer's Signature Dee Nathaniel Law # 1360 Date/Time 6/18/0225

Approving Officer's Signature

Date/Time

# Exhibit #22

Share View

> USB Drive (F:) > 20210831GistHoldenProduction > Production Files > Native > 0001

	Name	Date modified	Type	Size
	00001272	6/12/2021 9:58 AM	JPG File	27 KB
	00001274	6/12/2021 11:45 AM	Microsoft Excel W...	10 KB
	00006665	6/12/2021 8:41 AM	JPG File	413 KB
	00006666	6/12/2021 8:41 AM	JPG File	331 KB
	00006667	6/12/2021 8:41 AM	JPG File	324 KB
	00006669	7/14/2021 1:55 PM	AVI Video File (VLC)	336,865 KB
	00006670	7/14/2021 1:47 PM	AVI Video File (VLC)	350,465 KB
	00006671	7/15/2021 8:27 AM	AVI Video File (VLC)	206,091 KB
	00006672	7/14/2021 1:57 PM	AVI Video File (VLC)	336,932 KB
	00006673	7/14/2021 1:49 PM	AVI Video File (VLC)	345,674 KB
	00006674	7/15/2021 8:29 AM	AVI Video File (VLC)	190,639 KB
	00006675	7/14/2021 1:59 PM	AVI Video File (VLC)	353,404 KB
	00006676	7/14/2021 1:52 PM	AVI Video File (VLC)	363,448 KB
	00006978	8/19/2021 7:32 AM	AVI Video File (VLC)	738,935 KB
	00006979	8/19/2021 8:15 AM	AVI Video File (VLC)	1,010,194 KB
	00006980	8/19/2021 8:29 AM	AVI Video File (VLC)	1,060,780 KB
D	00006981	8/19/2021 8:42 AM	AVI Video File (VLC)	1,057,833 KB
	00006982	8/19/2021 8:57 AM	AVI Video File (VLC)	1,036,871 KB
	00006983	8/19/2021 7:46 AM	AVI Video File (VLC)	1,041,840 KB
	00006984	8/19/2021 9:12 AM	AVI Video File (VLC)	978,438 KB
	00006985	8/19/2021 8:00 AM	AVI Video File (VLC)	672,381 KB
ol	00006986	8/19/2021 7:49 AM	AVI Video File (VLC)	175,932 KB
	00006987	8/19/2021 9:18 AM	AVI Video File (VLC)	409,692 KB
	00006988	8/19/2021 9:31 AM	AVI Video File (VLC)	389,393 KB
	00006989	8/19/2021 9:24 AM	AVI Video File (VLC)	377,217 KB
	00006990	8/19/2021 9:34 AM	AVI Video File (VLC)	244,833 KB
N	00006991	8/19/2021 9:37 AM	AVI Video File (VLC)	193,704 KB
A	00006992	8/19/2021 9:44 AM	AVI Video File (VLC)	382,579 KB
	00006993	8/19/2021 9:50 AM	AVI Video File (VLC)	453,305 KB
	00006994	8/19/2021 9:52 AM	AVI Video File (VLC)	130,969 KB

# Exhibit #23

**Synopsis:** (U//LES) License plate reader Information for AK12406 on Uhaul rental van identified going westbound on 80/94 at Cline Avenue on 11 June 2021 at 2:26 p.m.

## Vehicle Detection Report

License Plate Number: AK12406

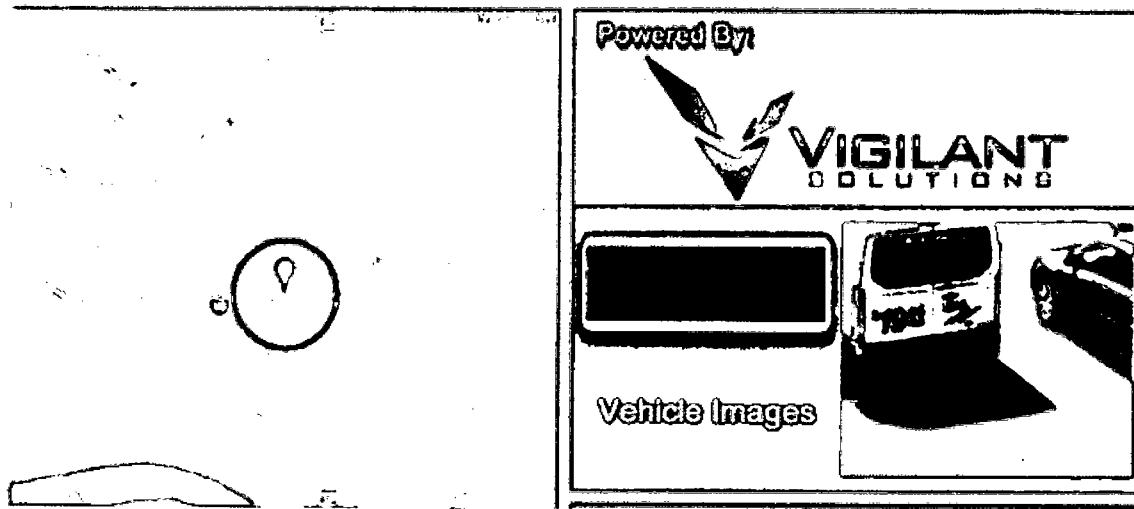


Exhibit #24

**State of Florida  
Department of State**



*Laurel M. Lee*  
Laurel M. Lee  
Secretary of State

00019499

Exhibit #25

00000943



# Exhibit #26

-----  
SentinelCaseId: 91A-IP-3453329  
SentToSentinel: 6/14/2021 5:12:59 PM

Classification: UNCLASSIFIED

=====  
Sent for Approval for RECORD//Sentinel Case 91A-IP-3453329

Please use 6/11/2021.

Thanks

From: IP\_OPSCENTER <IP\_OPSCENTER@fbi.gov.gov>  
Sent: Monday, June 14, 2021 12:12 PM  
To: Gootee, Christopher Warren (IP) (TFO) <Redacted>  
Subject: RE: Felony Vehicle Entry 91A-IP-3453329 -- UNCLASSIFIED

Classification: UNCLASSIFIED

=====  
Sent for Approval for RECORD//Sentinel Case 91A-IP-3453329

Chris,

We found the form! We will also need the date of theft. Also, please note this will persist in NCIC or only 90 days.

Best,  
Callista

From: Gootee, Christopher Warren (IP) (TFO) <Redacted>  
<mailto: Redacted>  
Sent: Monday, June 14, 2021 1:07 PM  
To: IP\_OPSCENTER <IP\_OPSCENTER@fbi.gov.gov> <mailto:IP\_OPSCENTER@fbi.gov.gov>  
Cc: Peasley, Michael S. (IP) (FBI) <Redacted>  
Youmara, Danny A. (IP) (FBI) <Redacted>  
Subject: Felony Vehicle Entry 91A-IP-3453329 -- UNCLASSIFIED

Classification: UNCLASSIFIED

=====  
Sent for Approval for RECORD//Sentinel Case 91A-IP-3453329

Please enter the following vehicle as a felony vehicle with an armed and dangerous flag:

2020 Dodge Charger, VIN/2C3CDXCT1LH221160, Illinois plate CR36394.

Please put in the MIS/ field that no probable cause for an arrest for the occupants exists, this entry is just