

No. 23-3096

IN THE SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

TRENTON JARED POWELL,

Defendant-Appellant.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

APPENDIX TO THE
PETITION FOR A WRIT OF CERIORARI

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 23-3096

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

TRENTON JARED POWELL,

Defendant-Appellant.

Appeals from the Unites States District Court

For the District of Idaho

ORDER AND MEMORANDUM

March 19th, 2025

Before: W. FLETCHER AND NGUYEN, Circuit Judges,
and BENNET, District Judge.

District Court No: 4:21 – CR – 00290 – BLW

The Judgement of the District Court is **AFFIRMED**

Defendant-Appellant Trenton Jared Powell was tried and convicted by a jury trial of six counts of sexual exploitation of a child, two counts of attempted sexual exploitation of a child, and three counts of receipt of child pornography. He appeals from his conviction, arguing that the district court erred in (1) denying his motion to suppress, (2) denying his counsel's motion to withdraw, (3) admitting evidence regarding other acts of sexual misconduct, and (4) excluding evidence regarding the victim's sexual behavior. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. Powell challenges the district court's denial of his motion to suppress based on two separate periods of delay: the six-day delay in obtaining a search warrant following Powell's arrest; and the seventy-one-day delay between the issuance and execution of the search warrant. The district court correctly denied the motion to suppress on both grounds.

To determine whether a delay between a seizure and the obtaining of a search warrant is unreasonable, we "balance the nature and quality of the intrusion of the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." *United States v. Place*, 462 U.S. 696, 703 (1983). "The touchstone is reasonableness." *United States v. Sullivan*, 797 F.3d 623, 633 (9th Cir. 2015). The Supreme Court has found reasonable "a temporary seizure that was supported by probable cause and was designed to prevent the loss of evidence while the police diligently obtained a warrant in a reasonable period." *Illinois v. McArthur*, 531 U.S. 326, 334 (2001).

The parties do not dispute that Pocatello Police Department (“PPD”) had probable cause to search Powell’s phone, or that the government reasonably feared the destruction or erasure of digital evidence upon the phone’s return. There is also no indication that PPD made any unnecessary intrusions into Powell’s privacy interests, given that the phone was locked and in airplane mode during the entire period. We further do not find clearly erroneous the district court’s finding that PPD worked with reasonable diligence in obtaining the warrant. “Even if the government could have moved faster to obtain a search warrant, the government is not required to pursue ‘the least intrusive course of action.’” *Sullivan*, 797 F.3d at 634 (quoting *United States v. Hernandez*, 313 F.3d 1206, 1213 (9th Cir. 2002)). We therefore find the delay here to be reasonable “[u]nder the totality of the circumstances.” *United States v. Johnson*, 875 F.3d 1265, 1276 (9th Cir. 2017).

Powell separately challenges the seventy-one days during which PPD had possession of his phone pursuant to a valid warrant. We find this delay reasonable in light of the fact that Powell’s model of iPhone had been released less than two months prior to its seizure, and the government was anticipating updates to its forensic software to be able to access the phone’s contents. Moreover, concerns of staleness are not present here. Powell lacked any opportunity to modify the contents of the phone until the search was executed. His phone was on airplane mode and in PPD’s possession during the entire period of delay. See *United States v. Gann*, 732 F.2d 714, 722 (9th Cir. 1984) (articulating the test for staleness as

“whether there is sufficient basis to believe . . . that the items to be seized are still on the premises”).

2. The district court did not abuse its discretion in denying Powell’s counsel’s motion to withdraw. A trial court has “wide latitude in balancing the right of counsel of choice against the needs of fairness, and against the demands of its calendar.” *United States v. Gonzalez-Lopez*, 548 U.S. 140, 152 (2006). The motion to withdraw was filed four days before trial, and the court found that appointing a new attorney would delay the trial by at least six months, threatening both the public’s interest in a speedy trial and the victims’ interest in final resolution of the case. The court also found that there were no countervailing concerns regarding the defense’s readiness because Powell’s counsel represented that they were fully prepared for trial.

3. The district court did not abuse its discretion in admitting the testimonies of Jane Doe 1 (“JD1”) and Minor Victim 1 (“MV1”) with respect to Powell’s other past acts of sexual misconduct. We have held that “other act” evidence is admissible under Federal Rule of Evidence 404(b) if “(1) the evidence tends to prove a material point; (2) the other act is not too remote in time; (3) the evidence is sufficient to support a finding that defendant committed the other act; and (4) . . . the act is similar to the offense charged.” *United States v. Romero*, 282 F.3d 683, 688 (9th Cir. 2002) (quoting *United States v. Chea*, 231 F.3d 531, 534 (9th Cir. 2000)). All four conditions are met here.

Both JD1 and MV1 testified that Powell groomed them as young children and recorded visual images of their sexual contact on his phone. This grooming conduct was not part of the charged conduct, but their testimony concerning the conduct was nonetheless admissible. It was material in proving Powell's intent, motive, and identity with respect to his charged offenses, and the acts were sufficiently similar to the charged conduct. See *United States v. Johnson*, 132 F.3d 1279, 1283 (9th Cir. 1997) (finding that "past conduct need not be identical to the conduct charged, but instead need only be similar enough to be probative of intent"). These acts all took place within three years of the charged offenses. Finally, we have held that witness testimony "satisfies the low-threshold test of sufficient evidence for the purposes of Rule 404(b)." *United States v. Dhingra*, 371 F.3d 557, 566 (9th Cir. 2004).

4. The district court did not abuse its discretion in excluding JD1's boyfriend's potential testimony that he had engaged in oral sex with JD1. Federal Rule of Evidence 412 prohibits the use of "evidence offered to prove that a victim engaged in other sexual behavior." Fed. R. Evid. 412(a)(1). Powell argues that the boyfriend's testimony is nevertheless admissible because it would have impeached JD1's testimony and thus falls under the exception of "evidence whose exclusion would violate the defendant's constitutional rights." *Id.* 412(b)(1)(C). We need not reach this issue, however, because Powell failed to make a timely motion to admit the testimony under Rule 412(c)(1)(B).

AFFIRMED.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 23-3096

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

TRENTON JARED POWELL,

Defendant-Appellant.

Appeals from the Unites States District Court

For the District of Idaho

APPELLANT'S PETITION FOR PANEL REHEARING

April 2nd, 2025

Before: W. FLETCHER AND NGUYEN, Circuit Judges,
and BENNET, District Judge.

District Court No: 4:21 – CR – 00290 – BLW

COMES NOW, the Defendant, TRENTON J. POWELL, by and through his attorney of record, Richard A. Hearn, and hereby respectfully submits this Petition for Panel Rehearing. In defense counsel's judgment, the following material points of fact or law were overlooked in the panel's decision:

The decision overlooked the District Court's holding that "exigent circumstances" justified the Government's delay in returning Trenton Powell's cellphone.

The decision overlooked *United States v. Brown*, 785 F.3d 1337 (9th Cir. 2015) when affirming the District Court's denial of counsel for Mr. Powell's Motion to Withdraw.

The decision overlooked the dissimilarity for Rule 404(b) purposes between testimony of MV1 about alleged hands-on sexual contact between MV1 and Mr. Powell and the charged conduct related to sexually explicit pictures of JD1 found on the Defendant's cellphone.

The decision also overlooked Defendant's argument against the District Court's admission of MV1's testimony as relevant pursuant to Rule 414.

The decision overlooked the District Court's refusal to allow impeachment of the alleged victim's testimony during direct examination because defense counsel had not given 14-day notice as required by Rule 412(c).

For the reasons states above, Trenton Powell, through his counsel of record, respectfully asks this Court to grant this Petition for Panel Rehearing.

Dated: April 2, 2025

/s/ Richard A. Hearn
RICHARD A. HEARN
HEARN LAW, PLC.
Attorney for Appellant Trenton J. Powell

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 23-3096

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

TRENTON JARED POWELL,

Defendant-Appellant.

Appeals from the Unites States District Court

For the District of Idaho

ORDER

April 9th, 2025

Before: W. FLETCHER AND NGUYEN, Circuit Judges,
and BENNET, District Judge.

District Court No: 4:21 – CR – 00290 – BLW

The Petition for Panel Rehearing is DENIED.

The panel has unanimously voted to deny the petition for panel rehearing, filed by appellant on April 2, 2025 (Dkt. Entry 52).

The Petition for Panel Rehearing is DENIED.

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

No: 4:21 – CR – 00290 – BLW

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

TRENTON JARED POWELL,

Defendant-Appellant.

Appealed to the United States Court of Appeals

For the Ninth Circuit

MOTION TO SUPPRESS HEARING
EXCEPT OF TRANSCRIPT – ORAL ARGUMENTS

September, 14th 2022

Before: B. LYNN WINMILL

1 many questions. A lot of times I get involved in asking a lot
2 of questions both of counsel and witnesses simply because I want
3 to be able to rule from the bench, but since that's not my
4 objective here, I may not be quite as involved.

5 So with that, let me just indicate -- do either party
6 wish to offer any kind of an opening statement or do you want to
7 just proceed directly to evidence?

8 MR. SHIRTS: Proceed with evidence, Your Honor.

9 THE COURT: Do you agree?

10 MS. LEWIS: Yes, we agree.

11 THE COURT: With that, Mr. Shirts, do you want to call
12 your first witness.

13 MR. SHIRTS: Thank you, Your Honor.

14 The United States calls Mr. Shaun Wright.

15 THE COURT: I assume we have agreed to sequester
16 witnesses?

17 MR. SHIRTS: Yes, Your Honor.

18 THE COURT: If you'd step before the clerk,
19 Ms. Gearhart will place you under oath and then direct you from
20 there.

21 SHAUN WILLIAM WRIGHT, GOVERNMENT'S WITNESS, SWORN

22 THE CLERK: Please take a seat in the witness stand.

23 Please state your complete name and spell your name
24 for the record.

25 THE WITNESS: Shaun William Wright,

1 S-H-A-U-N-W-R-I-G-H-T.

2 THE COURT: You may inquire.

3 MR. SHIRTS: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY MR. SHIRTS:

6 Q. Where do you currently work, sir?

7 A. Say that again.

8 Q. Where do you currently work?

9 A. Currently working for Alliant Insurance.

10 Q. Okay. And were you previously a police officer?

11 A. Yes, I was.

12 Q. And where was that?

13 A. With the Pocatello Police Department.

14 Q. And how long were you a police officer with Pocatello P.D.?

15 A. Just under 15 years.

16 Q. And what time frame?

17 A. 2007 until January of 2022.

18 Q. And during your final period, what were you working, what
19 type of cases were you working?

20 A. I was in investigations working felony crimes, also working
21 Internet Crimes Against Children.

22 Q. And were you a detective at that point?

23 A. Yes.

24 Q. Do you recall a case involving Mr. Trenton Jared Powell?

25 A. Yes, I do.

1 Q. Do you see Mr. Powell here in the courtroom?

2 A. Yes, I do.

3 Q. How did that case come to law enforcement's attention?

4 A. Initially, a female, Ashley Ransom, called in to the
5 Pocatello Police Department to report being the victim of
6 historical sexual abuse by Mr. Powell that had occurred ten
7 years previous to her making the report.

8 Q. So that kind of starts it. We don't have to go into great
9 detail in the investigation, but was this a fairly lengthy
10 investigation?

11 A. Yes, it was.

12 Q. And what drove that?

13 A. Speaking with several victims that had come forward,
14 continuing to try to obtain any evidence, also working with the
15 Prosecutor's Office, the Bannock County Prosecutor's Office,
16 reviewing potential charges.

17 Q. Was there about five victims in this case that had come
18 forward?

19 A. Yes. I believe so.

20 Q. Their allegations were similar and somewhat different -- is
21 that fair -- in what took place?

22 A. Yes.

23 Q. Was there a general -- generally, as far as your
24 investigation, what we're going to talk about today -- a
25 consistent theme: the defendant was using his phone to

1 photograph sexual acts with them?

2 A. Yes.

3 Q. So I want to move into December, December 2nd, Wednesday of
4 2020. Do you recall that day?

5 A. Vaguely, yes.

6 Q. Okay. We have talked about this, right, before?

7 Was that the day that the defendant was arrested in
8 this case?

9 A. Yes. Correct.

10 Q. And what was he arrested for?

11 A. I don't remember the specific charges off the top of my
12 head.

13 Q. Were they from the allegations stemming from these -- the
14 victims?

15 A. Yes.

16 Q. Okay. And was his phone seized from him?

17 A. Yes, it was.

18 Q. You didn't arrest him?

19 A. I did not.

20 Q. Okay. Why was his phone seized?

21 A. Due to the amount of information that we had obtained in
22 the case where he had used his cell phone to take pictures,
23 recordings, the phone did have evidentiary value that we were
24 going to -- we wanted to try to obtain a search warrant for that
25 phone.

1 Q. Okay. And he was arrested, I think, approximately 1640,
2 later in the afternoon on that Wednesday?

3 A. Yes.

4 Q. You come back and work Thursday. I guess, actually, later
5 in the night on that Wednesday, do you receive a call from
6 anybody?

7 A. Yes, I did. From Deputy Weishaar.

8 Q. Who is Deputy Weishaar?

9 A. U.S. Marshals Office.

10 Q. Okay. And what does he report to you?

11 A. He told me that he had -- that Mr. Powell had made a phone
12 call from jail talking to someone about conducting a remote wipe
13 of his cell phone and his iCloud account.

14 Q. What's an iCloud account?

15 A. It's an account that if you have an Apple phone, an iPhone,
16 you have a iCloud account where information would be stored from
17 that device that is particular to that device.

18 Q. And so are the phone and the iCloud, could they be
19 interlinked?

20 A. Yes.

21 Q. So you receive a call from him. What are you thinking at
22 that time?

23 A. At that time thinking that there was a concern that
24 Mr. Powell had items that may be found on his phone for him
25 wanting to conduct that wipe and that we needed to -- that we

1 wanted to get into that phone to see what information could be
2 found.

3 Q. Is it fair to say you want to get in that phone as quickly
4 as you can?

5 A. Yes.

6 Q. Okay. So you come back to work on Thursday, which is
7 December 3rd of 2020. What are you doing on Thursday?

8 A. Beginning the process of writing a search warrant for both
9 the cell phone, also doing a preservation request to Apple for
10 that iCloud account.

11 Q. What's a preservation request?

12 A. It's a request sent to -- in this case a request sent to
13 Apple to preserve any evidence that may be found on that
14 account, and that if a search warrant will be later obtained, to
15 have them release that information to law enforcement.

16 Q. Okay. So you start working on these search warrants as
17 well as this preservation request. So a search warrant for his
18 phone; right?

19 A. Correct, yes.

20 Q. Correct. Search warrant for the iCloud that you were
21 working on that day?

22 A. Yes.

23 Q. And another search warrant for his house?

24 A. Yes.

25 Q. Before -- did you plan to search his house before you

1 intercepted these -- heard these jail calls of him saying he was
2 trying to destroy the evidence?

3 A. Prior to that, no, due to the information previously being
4 given that was so far in the past.

5 Q. Okay. And so you --

6 THE COURT: Counsel, could I just inquire, just to
7 make sure I understand.

8 You said you were writing another -- an application
9 for another search warrant for the defendant's, Mr. Powell's,
10 home. So at the time of his arrest on -- was it Wednesday,
11 December 2nd, 2020?

12 THE WITNESS: Yes.

13 THE COURT: -- you also arrested him, but you had a
14 search warrant at that time as well?

15 THE WITNESS: No.

16 THE COURT: You did not?

17 THE WITNESS: No.

18 THE COURT: So the first search warrant would have
19 been what you were preparing on, I guess, Thursday, December
20 3rd?

21 THE WITNESS: Yes.

22 THE COURT: Okay. Counsel, I just -- the witness said
23 he was preparing another search warrant for his home. It
24 suggested there had been an earlier warrant. I just wanted to
25 make that clear.

1 Go ahead.

2 MR. SHIRTS: Thank you, Your Honor.

3 Q. BY MR. SHIRTS: So he was arrested. You thought you had PC
4 for his phone, but at that time, you didn't think you had PC for
5 the house?

6 A. Yes; correct.

7 Q. But given his conversation on the phone -- excuse me -- on
8 the jail call system, that required, I guess, additional work in
9 the drafting of the other search warrant for his house. Is that
10 fair?

11 A. Yes; correct.

12 Q. Okay. Typically, in your process -- I guess, in this case,
13 for your process of drafting these warrants, how do you usually
14 draft these?

15 A. I -- in this instance, I had an outline that I had used
16 previous for similar cases, at which point I would go in and
17 change or update any information to include the details of the
18 investigation.

19 Q. Okay. So some of this -- and I guess you can -- I know you
20 have the warrants there in front of you. So for the house
21 warrant, some of this is information you had previously?

22 A. Yes; correct.

23 Q. Is that fair?

24 A. Yes.

25 Q. But then, there is also -- I guess on page 8 of

1 Government's Exhibit 2, which we attached to our motion --

2 "Details of Investigation," is that new for every case?

3 A. Yes, it is.

4 Q. Okay. And then that goes, in this case, from page 8, 9,
5 10, 11, 12, 13, into 14?

6 A. Yes.

7 Q. Okay. And so you're -- sounds like a dumb question, but
8 you are sitting typing this out into the warrant to be later
9 read by the judge in this case?

10 A. Yes.

11 Q. Okay. During this time of this investigation, are you also
12 investigating other cases?

13 A. Yes, I am.

14 Q. Approximately how many did you usually carry?

15 A. At that time, it was usually around 20 active cases.

16 Q. Okay. So this obviously -- this wasn't the only thing you
17 were working on?

18 A. Correct.

19 Q. And so you come to work on Thursday. You receive this
20 information that he is trying to wipe his devices. You're
21 getting your search warrants. Do you work on Fridays?

22 A. No.

23 Q. Do any detectives work on Fridays?

24 A. There are some detectives that work on Fridays.

25 Q. Okay. But that was your day off?

1 A. It was, yes. My schedule, at that time, I worked Monday
2 through Thursday.

3 Q. Okay. And so you were off Friday, Saturday, Sunday?

4 A. Yes.

5 Q. And you come back and work on Monday. What are you doing
6 on that Monday, which I believe is the 7th?

7 A. Continuing to work on the warrant, the search warrants, as
8 well as any other calls or caseload that needs attention at that
9 time.

10 Q. Are you working on these as diligently as you can?

11 A. Yes, I am.

12 Q. Why?

13 A. Due to the exigency of needing/wanting to get into the
14 phone with the knowledge from the pre- -- from the jail phone
15 call, wanted to get -- to obtain any evidentiary items as soon
16 as possible.

17 Q. Okay. After you drafted these warrants, does someone else
18 have to take a look at them before they go to the judge, in your
19 typical practice?

20 A. Yes. I would have a member of the Bannock County
21 Prosecutor's Office review the search warrants prior to taking
22 them before a magistrate.

23 Q. And did they do that in this case?

24 A. Yes.

25 Q. And how long does that process typically take?

1 A. Depending on their availability and schedule, it could take
2 several hours.

3 Q. So they reviewed it, and were these warrants then signed
4 the next day, on Tuesday?

5 A. Yes.

6 Q. The 8th. What does that process look like here in Bannock
7 County to have a judge sign the search warrant?

8 A. Taking the affidavit and search warrant before the judge
9 who sits and reads through the document and -- before signing
10 and issuing the warrant.

11 Q. So it appears both that the search warrant for his
12 phone -- excuse me -- the search warrant for his house was
13 signed, I think, at 1:51 on that Tuesday?

14 A. Yes.

15 Q. And that was by Judge Aaron Thompson?

16 A. Yes.

17 Q. And then the search warrant later for his phone, you sent
18 it over at 3:41 p.m. that Tuesday, and it was signed at 5:08
19 that same day?

20 A. Yes.

21 Q. Okay. After you have your warrants signed, what's the next
22 steps you took to search the house in this case?

23 A. I started talking with other members of the investigations
24 division, laying out a date that was going to be available for
25 the most members of the investigation division in order to

1 conduct a safe search warrant execution.

2 Q. Okay. Was there a significant amount of individuals who
3 took part in this search of the house?

4 A. Yes, there were.

5 Q. So you guys go to the house. When was that search of the
6 house done? Thursday, the 10th?

7 A. Yes.

8 Q. So two days after the search warrant, search authorization
9 was granted?

10 A. Yes.

11 Q. After you have the search authorization for the phone, what
12 do you actually physically do with the phone?

13 A. The phone was kept in the forensic -- the forensic cabinet
14 at the Pocatello Police Department due to needing it to be still
15 powered on so no information would be lost.

16 Q. Why does that matter if it's powered on or off?

17 A. Because if the phone gets turned off, then the device that
18 we are attempting to use to get into the phone would no longer
19 be able to access any information.

20 Q. So the phone is on. Did you do anything to protect it from
21 being remotely wiped?

22 A. At the time that it was seized by Detective Sampson, he put
23 the phone into airplane mode before bringing it back to the
24 Police Department.

25 Q. And so that prevents it from someone remotely wiping what's

1 on the phone?

2 A. Yes.

3 Q. I want to just get back to -- just on a small point, you
4 eventually also got that iCloud warrant signed that you were
5 working on?

6 A. Yes.

7 Q. That third warrant?

8 A. Yes.

9 Q. What did you -- did you receive a return from Apple in that
10 case?

11 A. Yes, I did.

12 Q. And what was the -- were there any contents on that return?

13 A. There was nothing of evidentiary value --

14 Q. Okay.

15 A. -- found.

16 Q. And so it would have been -- you can infer that it was
17 wiped?

18 A. Yes.

19 Q. Given the context of the conversations you heard?

20 A. Yes.

21 THE COURT: Counsel, could I -- just so I'm clear --
22 and I apologize, I may have been distracted for a moment and
23 lost something here.

24 So just taking the scenario out -- so on Monday, I
25 think, the 7th, is the day you come back to work, you put

1 together the warrant, affidavit, and application and meet with
2 the prosecutor to go over it? Or did you meet with the
3 prosecutor the next day?

4 THE WITNESS: I don't -- I don't recall. I believe
5 that -- excuse me. I believe I would have met with the
6 prosecutor on the following Tuesday.

7 THE COURT: The following being the 8th?

8 THE WITNESS: Yes.

9 THE COURT: Okay. And the warrant included the search
10 of Mr. Powell's home, and it also included the phone that had
11 been seized at the time of the arrest on the 2nd?

12 THE WITNESS: Yes. Two different warrants.

13 THE COURT: So there is two different warrants.

14 THE WITNESS: Yes.

15 THE COURT: And the -- you used a phrase that you got
16 the warrant on, I think, Tuesday, and then you had authorization
17 to execute the warrant on Thursday. Did I understand that
18 correctly?

19 THE WITNESS: So the warrant was signed -- for the
20 house, the warrant was signed on that Tuesday. And then
21 speaking with my supervisors, after the warrant was signed, it
22 was decided that the best time to do it would be on Thursday.

23 THE COURT: Okay. So the point I was trying to make
24 sure I understood -- "authorization" is more of a manpower or
25 personpower. I mean, it's a -- trying to get the right bodies

1 together to actually execute the warrant. So just having the
2 warrant isn't enough; you need to, within the police department,
3 put together a team to execute the warrant, and that's what took
4 those two days?

5 THE WITNESS: Yes.

6 THE COURT: All right. And at the same time, you also
7 made the request from Apple for preservation of evidence. When
8 did you get that back from Apple?

9 THE WITNESS: That, I don't remember.

10 THE COURT: Well, sometime that week or was it later?

11 THE WITNESS: So the preservation request is done by
12 submitting basic information to them, to Apple, requesting that
13 they hold on to any information that is still there, get a --

14 THE COURT: And when was that issued?

15 THE WITNESS: The preservation request?

16 THE COURT: Yes.

17 THE WITNESS: It was sent -- I believe that I would
18 have -- I would have done it on the Thursday after Mr. Powell
19 was arrested.

20 THE COURT: So the 3rd?

21 THE WITNESS: Yes.

22 THE COURT: Go ahead. I apologize, Counsel. I just
23 wanted to make sure I had some loose ends in my mind that were
24 wrapped up. Go ahead.

25 MR. SHIRTS: Thank you, Your Honor.

1 Q. BY MR. SHIRTS: So nothing came back from that iCloud
2 search warrant?

3 A. Correct.

4 Q. And so it was wiped, effectively?

5 A. That is the belief, yes.

6 Q. So the only evidence you would have had was actually what
7 was physically on the phone when it was seized?

8 A. Yes.

9 Q. So you have authorization. Who do you give that phone to
10 to attempt to search it?

11 A. I had spoken with Detective Christopherson with the Idaho
12 Falls Police Department.

13 Q. Okay.

14 A. Actually, first I had spoken with Special Agent Knight with
15 Homeland Security in regard to who may be able to access that
16 device, and he provided me with the contact information for
17 Detective Christopherson with the Idaho Falls Police Department.

18 I contacted him, and at that time he told me that due
19 to the phone being the newest model of the Apple iPhone, that he
20 did not -- his device did not have the software update at the
21 time to be able to get into it, but that that software update
22 should be coming at some time in the near future.

23 Q. Okay. And so let's unpack that a little bit. The iPhone
24 you had, iPhone 12, at that time in December, was a couple weeks
25 old, maybe a month and a half, or something like that. It had

1 just come out?

2 A. Yes.

3 Q. And so forensically, they didn't have the forensic tools
4 quite yet to be able to get into that phone. Was that your
5 understanding?

6 A. Yes.

7 Q. And so -- but he thought sometime in the near future he
8 would be able to access the phone?

9 A. Yes.

10 Q. Okay. Do you transport the phone to him in Idaho Falls?

11 A. Yes, I did.

12 Q. And so, from that time after you received the
13 initial -- the initial search warrant for the defendant's phone,
14 you get an extension, kind of an extension of that warrant, a
15 new warrant, I believe, four times -- on December 23rd, January
16 7th, January 21st, and February 4th?

17 A. Yes.

18 Q. Why do you do that?

19 A. At the time the -- when the warrant is signed, there is a
20 14-day period in which that warrant needs to be served. If not,
21 then that is why I would take it back every two weeks to update
22 that warrant just to ensure that we did not run into any
23 problems still -- still keeping that phone in our possession
24 while we were waiting for the software update.

25 Q. And so for that entire time until the phone was eventually

1 searched on the 16th of February, every two weeks, you were
2 receiving court authorization?

3 A. Yes.

4 Q. And would you just update in your warrant "Hey, the phone
5 is still in our possession. We are going to search it; we are
6 just waiting for the software update to be able to access it"?

7 A. Yes.

8 Q. You reviewed all those before coming up here?

9 A. Yes.

10 Q. The search warrants that are attached here as Government's
11 Exhibit 4, 5, 6, and 7.

12 So eventually, Detective Christopherson is able to get
13 into the defendant's phone?

14 THE COURT: Before we move on, could I just ask one
15 more question?

16 MR. SHIRTS: Yes.

17 THE COURT: I'm assuming that when you get the 14-day
18 extensions of the search warrant that you have to provide a
19 reason to the magistrate judge. Is that correct?

20 THE WITNESS: Yes.

21 THE COURT: And so did each of these two or three
22 extensions detail the problems you were having getting the
23 forensic tools to examine the phone?

24 THE WITNESS: Yes. Every time that I would apply for
25 an extension, there was another paragraph added in the details

1 of the investigation, saying that as of this date, still the
2 software update, we are still waiting for in order to attempt to
3 get into the phone.

4 THE COURT: Was reference made either in the original
5 application for the warrant or the extensions to the allegations
6 that Mr. Powell had directed family members to wipe the iCloud
7 account and other devices? Do you know if that was referenced?
8 If you don't know -- obviously, I can figure that out.

9 THE WITNESS: I don't recall off --

10 THE COURT: Okay. Go ahead.

11 MR. SHIRTS: I can direct the witness, Your Honor --

12 THE COURT: You may.

13 Q. BY MR. SHIRTS: -- to, I guess -- would you open Exhibit 5,
14 if you have that in front of you, just on page 12. Just let me
15 know when you're there.

16 A. Okay.

17 Q. Were you able to find it?

18 A. Yes.

19 Q. Okay. And so on -- this is just one of the examples of the
20 extension. In paragraph 30, is that your discussion of the
21 defendant was telling his family to wipe his phone and his
22 iCloud?

23 A. Yes.

24 Q. And then below on 34 -- this is one of the updates, just
25 kind of the update on the search of the phone. You said that

1 "Your affiant has not been able to conduct a search of the cell
2 phone due to the software update needed" --

3 (Court reporter requested clarification.)

4 Q. You say that you "have not been able to conduct a search of
5 the cell phone due to the software update needed not yet being
6 available. When notified, the search warrant will be served on
7 the device."

8 A. Yes.

9 Q. And so you're continuously putting that in there --

10 A. Yes.

11 Q. -- in the application?

12 The phone was eventually searched?

13 A. Yes, it was.

14 Q. Were you able to recover data in relation to this case?

15 A. Yes.

16 Q. So it was not wiped. Is that fair?

17 A. Yes, the phone was not wiped.

18 Q. I guess, specifically for these charges, you recovered
19 images of the victim and the defendant together, sexually
20 explicit images?

21 A. Yes.

22 MR. SHIRTS: May I have a quick moment, Your Honor?

23 THE COURT: I'm sorry?

24 MR. SHIRTS: Can we have a quick moment?

25 THE COURT: Yes, certainly.

1 MR. SHIRTS: Nothing further of this witness at this
2 time, Your Honor.

3 THE COURT: Ms. Lewis or Ms. Nester, cross.

4 MS. LEWIS: Yes.

5 CROSS-EXAMINATION

6 BY MS. LEWIS:

7 Q. Good morning, Mr. Wright.

8 A. Good morning.

9 Q. So you testified that at the time Mr. Powell was arrested
10 you had been investigating this case for a lengthy period?

11 A. Yes.

12 Q. And that investigation began approximately in April; is
13 that correct? Of 2020?

14 A. I can't say -- I can't recall the exact date, but that
15 sounds correct; yes.

16 Q. So by the time you arrested Mr. Powell -- or Mr. Powell was
17 arrested, your investigation was complete other than searching
18 any devices that you may have seized from Mr. Powell?

19 A. Yes. At the time of his arrest, the investigation had gone
20 as far as it could due to the information that was available and
21 had been with the Bannock County Prosecutor's Office reviewing
22 for some time.

23 Q. Correct. So the -- I'm sorry. The allegations in this
24 case, as you were aware, were all at least 10 years old; isn't
25 that right?

1 A. Yes.

2 Q. And at the time Mr. Powell was arrested -- well, you said
3 you weren't the one that arrested him. It was an officer -- or
4 Detective Sampson arrested him?

5 A. Yes.

6 Q. Was he involved in the investigation or did he just handle
7 the arrest?

8 A. They -- Detective Sampson was the arresting officer,
9 however, several detectives went out to attempt to serve that
10 arrest warrant on him.

11 Q. All right. Were you there?

12 A. I was not.

13 Q. All right. So at that time, was Detective Sampson, or
14 others there, told that they needed to seize any telephone that
15 was on Mr. Powell?

16 A. Beforehand, no. However, once Mr. Powell was in custody,
17 Detective Sampson called me and asked if the cell phone needed
18 to be seized because he was aware of the investigation.

19 Q. All right. Well, you testified that the investigation was
20 primarily -- the allegations were primarily photographs that
21 were taken on a phone, is what you said before; right?

22 A. That's what the victims had stated; yes.

23 Q. Okay. And so you wanted the phone because you felt that
24 there would be evidentiary value in the phone, possibly?

25 A. Yes.

1 Q. Now, you were aware, though, like you said, the allegations
2 were 10 years previous to this; correct?

3 A. Yes.

4 Q. So you were aware that this very unlikely was to be the
5 same -- it was very unlikely that this would have been the phone
6 that the victims, the alleged victims said was used to take
7 photos of them?

8 A. Yes; correct.

9 Q. People don't keep phones for ten years typically?

10 A. Correct.

11 Q. Do you know what color the phone was that you seized -- or
12 that was seized?

13 A. I believe it was blue and black.

14 Q. Okay. So there may or may have not been evidence on that
15 phone that he possessed on December 2nd?

16 A. Correct.

17 Q. So why -- if you were concerned about telephones and you
18 were concerned that evidence in this case would be on the phone,
19 why didn't you have a search warrant at the time of his arrest
20 for any telephones that he might have?

21 A. At the time we did not know what kind of cell phone that he
22 would have, and from the time the arrest warrant -- the arrest
23 warrant was issued, I did not have the opportunity to attempt to
24 get a search warrant for any phone that he may have in his
25 possession.

1 Q. Well, I mean you could have had it ready to go other than
2 the type of phone; correct? Because everything in the search
3 warrant -- nothing in the search warrant talks about the type of
4 phone except the one paragraph where you say what phone it was?

5 A. Correct.

6 Q. So it could have been ready, and then you could have filled
7 in the phone. There is no reason that couldn't have happened;
8 correct?

9 A. Correct.

10 Q. Particularly given that you knew that what you were looking
11 for were pictures that were taken probably by iPhone or a
12 computer or something of that nature?

13 A. Correct.

14 Q. So you get the phone on Wednesday, December 2nd. And were
15 you contacted -- well, you were contacted, isn't it true, by the
16 prosecutor -- is it Mr. Trammel -- I'm not sure how you say it
17 -- on December 8th; correct?

18 A. Correct.

19 Q. Telling you that Mr. Powell's attorney had requested the
20 return of his phone; correct?

21 A. Correct.

22 Q. And wanting to know if you had a warrant for the phone?

23 A. Correct.

24 Q. Correct. And this was at approximately -- well, it was
25 before noon, probably right before noon or around noon on the

1 8th. Do you recall?

2 A. I don't recall the time, no.

3 Q. All right. If I represented to you that Mr. Davis,
4 Mr. Powell's state attorney, contacted the prosecutor around
5 11:00 a.m. on December 8th in an email, is it fair to say that
6 he probably contacted you fairly shortly thereafter?

7 A. Yes.

8 Q. And by 5- -- between 5:00 and 5:30, you had the search
9 warrant on December 8th?

10 A. Yes.

11 Q. So after he contacted you saying Mr. Powell wants his phone
12 back, you got the warrant pretty quickly; correct?

13 A. I had been in the process of writing and finalizing that
14 warrant.

15 Q. Okay. Let's talk about that.

16 So you said because this is a lengthy warrant, and it
17 took you a number of days, you said, to write the warrant. You
18 had been working on it for days. Isn't that what you said?

19 A. Yes. Time permitting, yes.

20 Q. Okay. This wasn't your first search warrant?

21 A. No.

22 Q. It wasn't your first search warrant for a phone, was it?

23 A. No.

24 Q. Do you have the warrant there in front of you, the
25 December 8th one?

1 A. Yes.

2 Q. So let's look at it. This warrant is, I believe,
3 51 paragraphs -- 50, 50 paragraphs; correct?

4 A. Yes.

5 Q. All right. Paragraph 1 is -- that's a standard paragraph
6 other than adding in the name of the arrested individual. Isn't
7 that right?

8 A. Yes.

9 Q. All right. And paragraph 2, 3, 4, 5, 6, 7 are all standard
10 paragraphs taken from -- that you use lots in every warrant;
11 correct? Other than also, in paragraph 7, you add the name of
12 the individual who was arrested?

13 A. Yes.

14 Q. All right. So paragraph 8, now that may be original. It's
15 a -- how many lines, one, two, three, four, five, six, seven,
16 eight -- ten lines -- nine-and-a-half-line paragraph stating
17 what Mr. Powell is being charged with?

18 A. Yes.

19 Q. So you had to write -- you probably had to write that
20 paragraph at the time?

21 A. Yes.

22 Q. All right. And then paragraphs 9, 10, 11, 12, 13 -- and 13
23 has parts A, B, C, D, and E -- those are all standard paragraphs
24 taken on -- that were used in any search warrant for this
25 particular crime; correct?

1 A. Yes.

2 Q. So you just took those from another search warrant, copy
3 and pasted, or off the --

4 A. Yes.

5 Q. Okay. So that gets us to page 5. Now, starting on page 5,
6 paragraph 14 "computers and child pornography." So this is the
7 part of the warrant where you explain why computers are relevant
8 in these cases?

9 A. Yes.

10 Q. So paragraphs 14 and 15, 16, 17, 18, and 19 would have been
11 the same paragraph in any search warrant that you used for this
12 type of report?

13 A. Yes.

14 Q. And, in fact, as you were writing the ones for the house,
15 the warrants were identical; correct? Or the affidavit, I'm
16 sorry. The affidavit in support of the warrant, were identical
17 other than in the one warrant you put, you know, you want to
18 search the address of the house, and this one you put you want
19 to search the phone. Correct?

20 A. I believe so, yes.

21 Q. All right. So page 7, paragraphs 20 and 21 and 22 and 23,
22 standard paragraphs taken out of another warrant, copy and
23 pasted into this warrant?

24 A. Yes.

25 Q. Now, page 8 "details of the investigation." So this is the

1 part that apparently took you days to write. Is that right?

2 A. Yes.

3 Q. Okay. Let's take a look at that. So the first original
4 paragraph in the warrant is on page 8, which states that you're
5 conducting an investigation of several separate incidents with
6 Trenton Jared Powell, and you say where he resides, and give a
7 six-sentence kind of summary of what you're investigating;
8 correct?

9 A. Yes.

10 Q. So that you wrote for this warrant?

11 A. Yes.

12 Q. All right. Paragraph 24. Now, isn't it true, this
13 paragraph talks about the first person who came forward with
14 allegations, Ashley Ransom, who came forward April 10, 2020?

15 A. Yes.

16 Q. Which was the beginning of this investigation; right?

17 A. Yes.

18 Q. Now, that paragraph, though, isn't that taken out of the
19 police report that was written regarding that interview?

20 A. That, I don't recall, but possibly, very possibly, yes.

21 Q. Do you have the police reports sitting in front of you?

22 A. I do.

23 Q. Mr. Wright, do you have this exact same document that I
24 have that's the police reports?

25 A. Yes. I'm looking at it.

1 Q. So if you could turn to page 8. Well, it's page 8 up in
2 the top corner.

3 A. Yes.

4 Q. I think the Bates stamp is actually 31 on the bottom of the
5 page.

6 A. Yes.

7 Q. So this is the report regarding the interview of Ashley
8 Ransom; correct?

9 A. Yes.

10 Q. And you say in that report -- actually, I don't know. Are
11 you the one that wrote this report or did someone else write
12 this particular report?

13 A. Yes, I wrote it.

14 Q. You wrote it. Okay. The report says, "Amanda Ransom
15 called Pocatello Police Department to report historic sexual
16 abuse regarding her now adult daughter" and that Ashley came
17 into the police department -- I'm going to drop down a
18 paragraph. "I set up a time for Ashley to come in for an
19 interview on April 15th at approximately 9:00 to provide a
20 statement."

21 Now, this is almost very close to what's in the search
22 warrant; correct?

23 A. Yes.

24 Q. Some of it's word for word. Is that right?

25 A. Yes.

1 Q. Okay. So you didn't really have to write this paragraph.
2 You just pulled it out of your report, did a little summary of
3 your report?

4 A. Yes.

5 Q. Because it is shorter; it's much shorter, what's in the
6 affidavit, than the report?

7 A. Yes.

8 Q. All right. So the next one is regarding Morgan Parris, who
9 is the alleged victim in this particular case. So if you go to
10 page 16 of that -- and this is your report, on page 16, of your
11 interview with Ms. Parris?

12 A. Yes.

13 Q. So in your interview, it says "On" -- your report of your
14 interview -- "On May 6, 2020, at approximately 1500 hours, I
15 made contact via phone with Victim Morgan Richardson Parris.
16 She initially had not wanted to provide a statement or be
17 involved, however, she recently changed her mind."

18 A. Yes.

19 Q. And in the affidavit, it says "On May 6, 2020, I made
20 contact with Morgan Parris Richardson who previously had not
21 wanted to make a report, but Parris had changed her mind"?

22 A. Yes.

23 Q. And then as you continue on in your search warrant, again,
24 you say that she is the former stepdaughter of Powell and that
25 she lived with her mother, Tara Degnan, and Powell at an address

1 on -- and you list the address, which, again, comes right out of
2 the second paragraph of your report word for word; right?

3 A. Yes.

4 Q. "Parris said she used to be a stepdaughter to Powell and
5 that she lived with her mother, Tara Degnan, and Powell at the
6 address" --

7 (Court reporter interrupted.)

8 MS. LEWIS: I'm sorry. I know I tend to talk really
9 fast. I will slow down.

10 Where did you lose me?

11 Q. BY MS. LEWIS: All right. So let me back up just a little
12 bit. So in the affidavit, you state "that she is the former
13 stepdaughter to Powell and that she lived with her mother, Tara
14 Degnan, and Powell at an address on," and then you list the
15 address?

16 A. Yes.

17 Q. So this is exactly out of paragraph 2, word for word, of
18 your report; correct?

19 A. Yes.

20 Q. And, in fact, the next sentence also is word for word from
21 your police report?

22 A. Yes.

23 Q. And as we go down, mid paragraph in your affidavit in
24 support part of your search warrant, "After Powell moved and the
25 divorce was final, he managed to convince Degnan to allow Parris

1 to stay with him approximately once a week"; correct?

2 A. Yes.

3 Q. And this is, again, word for word out of paragraph 4 of
4 your police report?

5 A. Yes.

6 Q. All right. So paragraph 25, which would have been the
7 third paragraph that you didn't copy and paste, is word for word
8 out of your police reports?

9 A. Yes.

10 Q. So you did not have to come up with any original language?

11 A. No.

12 Q. All right. Same with paragraph 26; correct?

13 A. Yes.

14 Q. So paragraphs -- we don't really need to go through and
15 read all of these. It's true, though, isn't it, that paragraphs
16 24, 5, 6, 7, 8, the original content was actually not original
17 but comes word for word out of your police reports?

18 A. Yes.

19 Q. All right. Then we get to page 12 of your affidavit in
20 support of your search warrant. And we have 29, 30, 31, and 32.
21 Those are relatively short paragraphs. Where did those come
22 from?

23 A. Those would have just been -- I don't know if you're asking
24 if they were coming from a report that I had written or not. Is
25 that the question?

1 Q. Yes. Did you write those paragraphs -- were these original
2 or did these come from a prior report?

3 A. I can't say for certain.

4 Q. So you're not sure?

5 A. No.

6 Q. But total there is about 15 lines there regarding when he
7 was arrested, in paragraph 29; correct?

8 A. Yes.

9 Q. There is a short paragraph regarding the phone call that he
10 made from jail to his wife?

11 A. Yes.

12 Q. A paragraph stating that you were attempting to preserve
13 the data on the cloud. That's like two and a half sentences;
14 correct?

15 A. Yes.

16 Q. And a paragraph that the phone had been placed in airplane
17 mode and was being held where it was being held?

18 A. Yes.

19 Q. Okay. Paragraphs 33, 34, 35, 36, 37, 38, 39 and 40, 41,
20 42, 43, 44, 45, 46, 47, 48, those are all standard languages
21 that you took from other search warrants used in every search
22 warrant of this type; correct?

23 A. Yes.

24 Q. And then, paragraph 49 is also used pretty much in every
25 search warrant that you're stating a probable cause for the

1 items listed in Attachment A?

2 A. Yes.

3 Q. And then paragraph 50 says what you were planning on
4 searching?

5 A. Yes.

6 Q. So your 18-page search warrant that took you days and days
7 to write was actually -- you only had to write five, six
8 paragraphs of this warrant, maybe?

9 A. Yeah. Correct.

10 Q. But you stated that you were very concerned about getting a
11 warrant for this phone; right?

12 A. Yes.

13 Q. It was an urgent matter?

14 A. Yes.

15 Q. But you were off Friday, Saturday, and Sunday?

16 A. Yes.

17 Q. Do you ever work on your days off?

18 A. No.

19 Q. Never?

20 A. Unless I'm called back in.

21 Q. All right. So it wasn't so urgent that it couldn't wait
22 until the next Monday; correct?

23 A. Correct.

24 Q. And you said you wrote three search warrants during this
25 time, part of what took so long, but all three search warrants

1 were identical; correct?

2 A. For the most part, yes.

3 Q. Other than the very last couple lines as to what exactly
4 you were going to be searching?

5 A. Yes.

6 Q. All right. So you get a phone call from the prosecutor on
7 December 8th saying he wants his phone back. "Where is the
8 warrant," basically?

9 A. Yes.

10 Q. And isn't it true, Detective, that that's when you decided,
11 I really better get this done?

12 A. No. It had already been in the process. There had been
13 conversations between myself and the prosecutor prior to that,
14 while putting the search warrant together.

15 Q. While you were copying and pasting the search warrant --

16 A. Yes.

17 Q. -- from other documents?

18 A. Yes.

19 Q. You testified, though, that sometimes it takes a long time
20 for the prosecutor to review the search warrant, so that could
21 have added time on it; correct?

22 A. Yes.

23 Q. But it happened really quickly once Mr. Powell wanted his
24 phone back; isn't that correct?

25 A. No. The process still takes the time that it takes. I

1 mean, when I submit the search warrant, depending on who the
2 prosecutor is that reviews it and the time that they have
3 available, sometimes it happens very quickly; sometimes it takes
4 several hours.

5 Q. All right. Well, you submitted the search warrant to him
6 on December 8th when Mr. Powell requested his phone back;
7 correct?

8 A. Yes.

9 Q. And you had it signed by the judge, by, what, 5:00 that
10 evening?

11 A. Yes.

12 Q. So I guess when the prosecutor had to do it, he made sure
13 he had time to do it; correct?

14 A. I can't speak to their schedule.

15 Q. That's fair.

16 So this wasn't urgent enough to do over the weekend on
17 your days off, but it did become urgent when Mr. Powell wanted
18 his phone back; correct?

19 A. It had been urgent from the time that the phone was seized,
20 but, yes, I don't work -- I did not work on my days off.

21 Q. All right. But you had Thursday and Monday to copy and
22 paste your affidavit; correct?

23 A. At the time, Thursday and the Monday, there was also other
24 calls that were coming in that I had to be responsible for to
25 assist with --

1 Q. Sure.

2 A. -- you know, to take care of; so as the time permitted, I
3 was working on putting these together to get them submitted.

4 Q. Yes. Everybody is busy; that is absolutely correct.

5 All right. Let's -- I didn't know you were no longer
6 with the Pocatello Police Department. Why did you leave after
7 15-some-odd years?

8 A. Just personal reasons.

9 MS. LEWIS: One moment, Your Honor.

10 THE COURT: Yes.

11 Q. BY MS. LEWIS: So you stated that the phone had been placed
12 in airplane mode?

13 A. Yes.

14 Q. How did that -- how did that happen? How -- well, let me
15 back up. Who put the phone in airplane mode? Do you know?

16 A. I believe it was Detective Sampson, but I can't say for
17 certain.

18 Q. Was the phone password protected?

19 A. Yes.

20 Q. So how was he able to get into the phone?

21 A. With an iPhone, you are able to put it in airplane mode
22 without having a passcode.

23 Q. All right. And then you said that you assumed the cloud
24 had been wiped based on the phone call that Mr. Powell placed to
25 his wife; correct?

1 A. The assumption was, from the phone call, that it was going
2 to be attempted to be wiped.

3 Q. All right. And then you said you didn't find anything of
4 evidentiary value in the cloud?

5 A. Correct.

6 Q. So you assumed it had been wiped?

7 A. Yes.

8 Q. Did you get any confirmation from Apple where -- when
9 things had been removed from the iCloud?

10 A. I did not. There was no information given as to when
11 things had been removed.

12 Q. You're aware that Mr. Powell kept a lot of his business
13 information on that phone; correct?

14 A. I don't know the extent of how much information he kept on
15 his phone, but I -- from the subsequent jail calls that I had
16 listened to, that was his concern is that his business
17 information was on that phone.

18 Q. All right. And isn't that something in the phone call he
19 actually talked to his wife about, his concern about
20 people -- about the government getting into his business
21 information?

22 A. Yes.

23 Q. He didn't tell her "wipe pictures off my phone"; correct?
24 Or off the iCloud.

25 A. I don't remember the specifics of the phone call, but it

1 was -- I believe it was: Get into the -- his iCloud account and
2 wipe the information.

3 Q. And he did discuss, particularly, business information?

4 A. During that initial phone call, I do not recall, but I do
5 not believe so, that that was brought up.

6 Q. So you get the first warrant signed on December 8th, and
7 then you said the warrant would expire every two weeks; is that
8 correct?

9 A. Yes. There is typically a two-week window in which to
10 serve the search warrant.

11 Q. Okay. So if you got it on December 8th, that should have
12 expired on December 22nd; correct?

13 A. I'll go with what you're saying; yes.

14 Q. That's two weeks. I use my fingers. Fourteen days;
15 correct?

16 A. Yes.

17 Q. So it expired? The search warrant expired; correct?

18 A. I'm just looking. Let me look at the dates.

19 Yes.

20 Q. But you didn't give the phone back when it expired;
21 correct?

22 A. Correct.

23 Q. So it expired and you waited an extra day and then renewed
24 the search warrant?

25 A. Yeah. The follow-up search warrant -- or the extension

1 was, yes, on the 23rd.

2 Q. All right. The other ones, looks like two weeks apart, but
3 you did let the search warrant expire, yet you did not return
4 the phone to Mr. Powell?

5 A. Correct.

6 Q. I think I'm about done. Just give me one moment to see if
7 I --

8 MS. LEWIS: May we have one moment, Your Honor.

9 One more question. I say one; then sometimes that
10 turns into two or three.

11 Q. BY MS. LEWIS: Did any of the alleged victims describe what
12 the phone looked like that they said Mr. Powell was taking
13 pictures of them with?

14 A. The only information I recall is that he -- it would have
15 been an iPhone.

16 Q. So an iPhone. That's --

17 A. Yes. And that -- I don't remember which victim told me
18 that he -- whenever there is a new iPhone that comes out, he
19 always upgrades to that.

20 MS. LEWIS: All right. I don't have anything further.

21 THE COURT: Mr. Shirts.

22 MR. SHIRTS: Thank you, Your Honor.

23 THE COURT: Redirect.

24 REDIRECT EXAMINATION

25 BY MR. SHIRTS:

1 Q. I want to start with where defense counsel left off. The
2 first warrant went from December 8th to the 22nd?

3 A. Yes.

4 Q. Is that right?

5 Your thought process on that was 14 days?

6 A. Yes.

7 Q. And then on the 23rd, like, I think, at 10:23 in the
8 morning, you just re- upped it at that point --

9 A. Yes.

10 Q. -- to extend it?

11 A. Yes.

12 Q. We can -- I guess we can argue legally whether it expired
13 or not, but that was kind of your bookend: "Hey, we haven't
14 done it yet in the 14 days." You go to the judge the next
15 morning on the 23rd just to keep this going?

16 A. Yes.

17 Q. Okay. And you, obviously, aren't aware of, like, federal
18 law and how that interacts with --

19 A. Yes. Correct.

20 Q. Under your assumption, under just trying to be as safe as
21 possible, you just kept going to the judge to make sure you had
22 authorization?

23 A. Yes.

24 Q. Defense counsel talked to you a lot about the individual
25 paragraphs in this search, talked to you about, you know,

1 paragraph 24 when you describe how Ms. Ransom had come in and
2 reported what the defendant had done to her for a long period of
3 years?

4 A. Yes.

5 Q. You didn't go into your report and just, you know, copy the
6 whole paragraph and throw it in there; right?

7 A. Right. Correct.

8 Q. How does that process work when you are going back to a
9 previous report and you're putting it into an affidavit?

10 A. Taking out the most pertinent information to put into the
11 details of the investigation to keep it as concise as possible
12 while still outlining the details that are needed.

13 Q. Okay. You just didn't attach your whole report and say,
14 "Hey, here, Your Honor, read all this." You were actually
15 condensing it down for the Court to review. Is that fair?

16 A. Yes.

17 Q. But some of the language is obviously --

18 A. Yes.

19 Q. -- the same things you have taken --

20 A. Yes.

21 Q. That makes, sense, right, that you would have similar
22 language because you want to give the Court accurately what you
23 had reported on previously. Is that fair?

24 A. Yes.

25 Q. And what was reported to you was reflected in your reports?

1 A. Yes.

2 Q. In your mind, could you have done these search warrants any
3 faster?

4 A. Possibly. If I had been taken out of call rotation and
5 allowed to focus solely on these, then yes.

6 Q. But you have other responsibilities?

7 A. Yes. Correct.

8 Q. I mean, being a cop is not an easy job?

9 A. Yes.

10 Q. You didn't -- I want to put this on the record -- you
11 didn't leave Pocatello because you got fired or anything like
12 that?

13 A. No. Nope. My own decision to leave.

14 Q. Tough job?

15 A. Yes.

16 Q. Right? Busy job?

17 A. Yes.

18 Q. And you had other things going on while you were doing
19 this?

20 A. Yes.

21 Q. When you do search warrants, did you feel this was done
22 faster than what you normally do in the process just because of
23 the exigency of what was going on?

24 A. I would say given that while trying to keep up on the
25 caseload that I had, putting the search warrants together, you

1 know, doing preservation requests, three search warrants --
2 trying to get them all outlined correctly, I feel that it
3 did -- did occur, you know, pretty quickly.

4 Q. And you were diligent in how you did these?

5 A. Yes.

6 MR. SHIRTS: Nothing further, Your Honor.

7 THE COURT: Anything else?

8 MS. LEWIS: Sorry. One moment.

9 Nothing further.

10 THE COURT: You may step down.

11 Counsel, could we take just a five-minute break?

12 You have one more witness?

13 MR. SHIRTS: Yes, Your Honor.

14 THE COURT: Just take a five-minute break and then
15 we'll reconvene. All right. We will be in recess.

16 (Recess at 10:11 a.m. until 10:20 a.m.)

17 THE COURT: You may call your next witness.

18 MR. SHIRTS: Thank you, Your Honor. United States
19 calls Detective Kyle Christopherson.

20 THE COURT: Detective Christopherson, if you'll come
21 forward before the clerk, Ms. Gearhart, she will place you under
22 oath and direct you from there.

23 THE CLERK: Please raise your right hand.

24 KYLE CHRISTOPHERSON, GOVERNMENT'S WITNESS, SWORN

25 THE CLERK: Please take a seat in the witness stand.

1 Please state your complete name and spell your name
2 for the record.

3 THE WITNESS: Kyle Christopherson,
4 K-Y-L-E-C-H-R-I-S-T-O-P-H-E-R-S-O-N.

5 THE COURT: You may inquire.

6 MR. SHIRTS: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MR. SHIRTS:

9 Q. Where do you work, sir?

10 A. I work for the Idaho Falls Police Department.

11 Q. What do you do for the Idaho Falls Police Department?

12 A. I'm a detective in major crimes, and I'm a digital forensic
13 examiner.

14 Q. Just generally, what's a digital forensic examiner?

15 A. We forensically analyze computers, mobile devices,
16 different electronics.

17 Q. And have you gone through an extensive training to, kind
18 of, get to that point?

19 A. Yes.

20 Q. And have you testified previously in court and been
21 qualified as a digital forensic examiner?

22 A. Yes.

23 Q. And have you testified previously in federal court?

24 A. Yes.

25 Q. And been qualified as such?

1 A. Yes.

2 Q. Generally, what is your -- when you're doing your digital
3 forensics, what type of cases are coming to you? Are they just
4 local cases or are they from around the state?

5 A. With our capabilities in Idaho Falls, we do cases from all
6 over the region from east Idaho to western Wyoming.

7 Q. And approximately how many cases do you have going at a
8 time?

9 A. At any given time, we may have roughly 50 different devices
10 at one time.

11 Q. Things you're working through to analyze?

12 A. Yes.

13 Q. I want to take you back to December of 2020. Do you
14 remember working on a case involving a phone seized from the
15 defendant in this case, Trenton Powell?

16 A. Yes.

17 Q. And was that an iPhone 12?

18 A. Yes, a 12 Pro.

19 Q. Okay. When was the 12 Pro initially made?

20 A. I believe it was released towards the end of October of
21 2020.

22 Q. So by December of 2020, it had only been out for a couple
23 of weeks?

24 A. Yeah. Roughly a month or so.

25 Q. When you receive the phone in your lab, typically what's

1 the process of actually getting into a phone when you don't have
2 the passcode?

3 A. We have various forensic tools that we use to try to gain
4 access to those devices, and sometimes we have to try multiple
5 tools. Sometimes we have tools we can try, and sometimes we
6 have to wait for software updates.

7 Q. Okay. The software updates are present in this case; is
8 that right?

9 A. Mm-hmm, yes.

10 Q. So in December of 2020, were you able to get into an Apple
11 iPhone 12 Pro?

12 A. We were not at that time, no.

13 Q. Why not?

14 A. None of the forensic tools that we have access to was able
15 to support that phone at that time.

16 Q. And why is that the case?

17 A. A lot of times when new devices are released, it takes time
18 for the forensic tool companies to work through those devices
19 and come up with the exploits that are required to access that
20 device.

21 Q. And so was it your understanding that that was in the
22 process, in the works, that you eventually would be able to get
23 into the Apple iPhone 12?

24 A. Yes. Historically, it was -- there is a delay after the
25 release of every new device, and so I was expecting we would be

1 able to get into it at some point.

2 Q. So you received that phone from Detective Wright?

3 A. Yes.

4 Q. When it's in your lab, what does that process look like?

5 A. It depends from device to device. In this case, the phone
6 was powered on. We kept it powered on. Attempted to access it,
7 was not successful. Basically, continued to try to access it
8 and was still unsuccessful.

9 Q. And so during this time frame, you're actively trying to
10 get into the phone?

11 A. Yes.

12 Q. From when it was seized in December to when you actually
13 were able to successfully get into it in February?

14 A. Yes.

15 Q. And how often would you typically try to access the phone
16 during that time frame?

17 A. Our forensic software updates, on average, come out about
18 every two weeks. Sometimes it's as short as one week; sometimes
19 it's three weeks. But whenever we have an update that we think
20 may help us access the phone, we try again every time we perform
21 an update.

22 Q. And so the phone is not in an evidence locker?

23 A. No.

24 Q. It's on in your lab?

25 A. Yes.

1 Q. And why is it powered on?

2 A. Just by the nature of how -- how the exploits work, the
3 phone has to remain powered on or it limits our ability of what
4 we're able to do with it.

5 Q. And is it usually in airplane mode?

6 A. Yes.

7 Q. What's airplane mode?

8 A. It disables the wireless ability of the phone to contact
9 the network. So it essentially separates it from the network so
10 it can't communicate with the phone provider.

11 Q. So someone can't remotely wipe it?

12 A. Yes.

13 Q. Were you aware in this case that the defendant was -- there
14 was some evidence that he was actively trying to do that?

15 A. I believe Detective Wright mentioned that when he brought
16 the phone.

17 Q. So you have that, at least, in your mind when you were
18 trying to search it?

19 A. Yes.

20 Q. During that time period, were you confident that you would
21 eventually be able to get into the phone as the software was
22 updated?

23 A. Yes. If I thought we couldn't, I would have sent it back
24 with Detective Wright.

25 Q. When you have a phone such as this, you obviously have

1 search authorization. Is it typical for detectives to get new
2 authorizations every 14 days, or do they usually have the one
3 authorization, in your practice?

4 A. Normally, we just have the one that we begin searching the
5 device when we try to access it. Like, when we do exams for
6 other agencies and other jurisdictions, sometimes they prefer to
7 get another warrant or process along the way, but not -- not
8 everybody does. More common than not is we just operate off the
9 original warrant and continue trying to access the device.

10 Q. And are you -- why is that? Why do you just operate off
11 the original even though you are trying to access it past, you
12 know, this, kind of, initial period?

13 A. So in my training in the federal partners that we work
14 with, their guidance from a U.S. attorney they consulted with
15 basically taught us that once we begin the search within the
16 14 days, or whatever the time period may be listed on the
17 warrant, that as long as we don't abandon the search and
18 continue trying to access the device, that the original warrant
19 still is valid.

20 Q. And you know in this case he actually got multiple
21 warrants?

22 A. Yes.

23 Q. Right?

24 But you were actively trying to search it from the
25 beginning?

1 A. Yes.

2 Q. Did you ever abandon that search?

3 A. No.

4 Q. Okay. And you were actively, as updates coming through,
5 trying to get into and access this phone?

6 A. Yes.

7 Q. And were you eventually successful?

8 A. Yes.

9 Q. Was this on the 16th of February?

10 A. Yes.

11 Q. Of 2022?

12 A. 2021.

13 Q. Excuse me, 2021. Thank you.

14 How were you able to access the phone? Excuse me.
15 Access the data which was on the phone?

16 A. So after we had that most recent update and Detective
17 Wright got his most recent warrant, he gave us the go-ahead to
18 download the phone, and it was able to work on that occasion,
19 and so we were able to download a partial file system from the
20 phone.

21 Q. What's a partial file system? What does that actually
22 mean?

23 A. It's not the entire file system, based on the limitations
24 that we don't have the pin to the device; however, it's the
25 majority of the data from the phone minus emails, health data,

1 and location data.

2 Q. So you got a substantial amount but not everything?

3 A. Yes.

4 Q. You got everything you could, though?

5 A. Yes. That was everything that was possible.

6 Q. And what did you do with that data after you extracted it?

7 A. I processed it with Magnet AXIOM forensic software and
8 created a portable case. That forensic software essentially
9 parses out all the data from the file system dump so it puts it
10 in a readable format. And then I created a report version of
11 that that I provided to Detective Wright.

12 Q. And you give it to Detective Wright and eventually to
13 Special Agent Knight?

14 A. Yes.

15 Q. And that just allows somebody to not look at the ones and
16 zeros but actually see, okay, this is what was on the phone?

17 A. Yes. It parses it out into different categories such as
18 messages and images and videos and that kind of thing.

19 Q. And then they -- they do a deep dive into what was actually
20 there after you searched it and retrieved all the information?

21 A. Yes.

22 Q. Why do you do that process instead of you going through
23 line by line?

24 A. We have way too many devices for me to do that on every
25 single one we have. We would be years backlogged if I did the

1 deep dive into every single case I did, and especially with
2 other jurisdictions. We -- we basically provide them that
3 service that we do the extraction, and then we just turn it over
4 to them to investigate.

5 Q. Like in this case where you're helping Pocatello P.D. by
6 accessing this phone?

7 A. Yes.

8 MR. SHIRTS: May I have a quick moment, Your Honor?

9 THE COURT: Yes.

10 MR. SHIRTS: Nothing further, Your Honor.

11 THE COURT: All right. Cross, Ms. Nester.

12 MS. NESTER: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MS. NESTER:

15 Q. Good morning.

16 A. Good morning.

17 Q. Detective Christopherson, how are you?

18 A. Good. How are you?

19 Q. My name is Kathy Nester. I represent Mr. Powell. I do
20 have some questions for you based on what you just went through
21 with the prosecution.

22 First of all, as far as your being qualified, I think
23 Mr. Shirts required -- referred to as a digital forensic
24 examiner. Are you specially certified in any way?

25 A. I have several vendor certifications, but essentially I've

1 completed courses with the United States Secret Service for the
2 majority of my training, and as the course of that, you get the
3 title Digital Forensic Examiner.

4 Q. You're not a certified fraud examiner?

5 A. No.

6 Q. Are you certified by Cellebrite?

7 A. Yes. I have a CCO certification.

8 Q. What about AXIOM?

9 A. AXIOM, I have completed the class, but I did not receive a
10 certification as the Secret Service advised that certifications
11 were kind of on their way out in this industry, and they based
12 everything off of training, knowledge, and experience.

13 Q. In this case, did you run both Cellebrite and AXIOM
14 forensic reports on Mr. Powell's phone?

15 A. I believe I only ran AXIOM reports, but I don't recall
16 100 percent.

17 Q. And you mentioned that the phone that you were given was an
18 iPhone 12 Pro; is that right?

19 A. Yes.

20 Q. And do you remember the circumstances surrounding how you
21 were given that phone?

22 A. As in what way?

23 Q. Was it hand delivered to you?

24 A. Yes.

25 Q. Was it mailed to you?

1 A. It was hand delivered by Detective Wright.

2 Q. And was there any requests that went along with the phone
3 in terms of what they were asking you to do, an evidence
4 transfer form or evidence request form?

5 A. Yeah. We usually have a forensic examination request that
6 they fill out that just has the basic information about the
7 phone, who it belongs to, and their case number so we can track
8 it in our lab so we know who that phone belongs to.

9 Q. Did you get such a form as that in this case?

10 A. I believe so.

11 Q. Do you have it with you?

12 A. I do not.

13 Q. Do you remember the date that you received that form and
14 the phone?

15 A. I do not.

16 MS. NESTER: May I approach, Your Honor?

17 THE COURT: Well, perhaps Ms. Smith --

18 Do you want to hand something to the witness?

19 MS. NESTER: Yes. I just want to show him a form and
20 see if it's the one he is talking about.

21 THE COURT: All right. Well, I was going to say we
22 could use the evidence presentation system, but if it's easier
23 just to do it this way, we can do that.

24 MS. NESTER: Okay. I don't mind hooking up. It might
25 take me just a minute.

1 THE COURT: You just want to show him your screen?

2 MS. NESTER: Uh-huh.

3 THE COURT: The problem is that's not going to be an
4 exhibit for the hearing.

5 MS. NESTER: No. I'm not going to make it an exhibit
6 for right now. I just want to make sure, because I'm not sure
7 this is the right form.

8 THE COURT: If you just want to show it to him, that
9 might be faster.

10 Q. BY MS. NESTER: All right. We are showing you a form now
11 on the screen. Is that an evidence request form?

12 A. I have not seen that form before. That's not our form.

13 Q. Can we scroll down to the bottom of it, if possible.

14 Is that K.C.? Are those your initials?

15 A. That's my initials, but I didn't write that.

16 Q. You didn't write that?

17 A. No.

18 Q. Do you recognize that form at all?

19 A. I do not.

20 Q. The form refers to an attached DVD called "Arbitrator." Do
21 you know what that is?

22 A. I have no idea what that is.

23 Q. Okay. Thank you.

24 So when you got the phone, was it in an evidence bag
25 or --

1 A. Yes. They -- I don't recall which type of bag. We have a
2 lot of people bring us things in Faraday bags, sometimes in
3 other envelopes. I don't recall which exact container it was in
4 on this case.

5 Q. And when you got the phone, was it powered on at the time
6 you received it?

7 A. Yes.

8 Q. And you kept it powered on nonstop from the time you
9 received it until the time you got in it?

10 A. Yes.

11 Q. And you mentioned that the phone was an iPhone 12 Pro; is
12 that right?

13 A. Yes.

14 Q. And I believe you testified with Mr. Shirts that as of
15 December of 2020, you did not have the capability yet to access
16 that phone; is that right?

17 A. That's correct.

18 Q. Are you aware -- are you aware of Cellebrite releasing an
19 article in June of 2019 stating that they were able to crack all
20 iOS 12 versions of the phone?

21 A. So when -- when Cellebrite could do that, that was for that
22 particular generation of the phone at that time. Every time a
23 new iteration of a phone or even an iOS update comes out, it
24 will sometimes break tools. It will make tools no longer be
25 able to access those devices.

1 There was a period of time, if that's when the article
2 says, back in 2019, that they probably could access all iOS
3 devices. I can tell you right now that Cellebrite can't, as of
4 this moment, with the current generation. And I don't know what
5 their capability was back then, but that's also with a suite of
6 software that they have or their own inhouse stuff that we don't
7 have direct access to in our lab.

8 Q. Did you have access to Cellebrite in your lab in December
9 of 2020?

10 A. We had Cellebrite UFED, which does not allow us to get into
11 locked iPhones at all.

12 Q. Did you have UFED Premium?

13 A. No.

14 Q. Are you aware of what UFED Premium is?

15 A. Yes.

16 Q. When did you receive UFED Premium?

17 A. We have never had UFED Premium.

18 Q. All right. And you said that you tried repeatedly to break
19 into the phone. Is that correct?

20 A. Yes.

21 Q. And each time you tried, did you prepare a report?

22 A. No. The GrayKey is just unable to access it, and so we
23 just set it aside and then try again later.

24 Q. So there is no evidence anywhere that you actually made
25 these repeated attempts, nothing in writing?

1 A. No.

2 Q. Is it standard practice for you to prepare a report every
3 time you try to access a phone?

4 A. Not on every attempt, no, just when we complete the access.

5 Q. And when you received the phone from Detective Wright, did
6 he also give you a copy of the warrant that was currently in
7 place?

8 A. Yes.

9 Q. And that would have been -- so do you know what date that
10 was? Did you get it the same day or do you even remember?

11 A. I don't remember.

12 Q. Okay. And then did you ever -- I'm not completely clear on
13 your testimony on this before. Did you ever see any of the
14 subsequent authorizations or renewals?

15 A. Yes. For me -- for me to do the device, I need to look at
16 the warrant to make sure that what I'm doing is, you know, in
17 line with the warrant. And so if he was obtaining a new one,
18 then I wouldn't have proceeded on the phone until I was able to
19 see the warrant. Whether he emailed it or brought it to me, I
20 don't remember.

21 Q. And you testified that the date you got in the phone was
22 February 16th; is that right?

23 A. Yes.

24 Q. And why do you know that?

25 A. Because the device logs it when it was able to access the

1 device.

2 Q. And when you got in the phone, did you contact Detective
3 Wright the same day?

4 A. I don't recall if I did. It was late in the day on the
5 16th so I'm not sure if I talked to him that day or not. It
6 would have been around the time I was leaving for the day.

7 Q. And then he came to visit you personally to go over your
8 findings; is that correct?

9 A. Yeah. He came back up there to pick up the phone and the
10 data.

11 Q. And do you remember what date that was?

12 A. I do not.

13 Q. All right. If I said it was the 25th of February, which
14 would have been about seven days later, would that sound right?

15 A. It could have been. I don't recall.

16 Q. And there is a report that references this meeting between
17 you and Officer Wright, and it claims that you found a hidden
18 folder on the phone. Is that correct?

19 A. I don't remember.

20 Q. All right. I want to talk about what you were and were not
21 able to download, in terms of being in compliance with the
22 warrant.

23 When you got into the phone, you were able to locate
24 some photos that had been in storage on that phone; is that
25 correct?

1 A. In the extraction, yes, it contained photos from the phone.

2 Q. And were you able to determine where those photos were? In
3 other words, were they saved in someone's photo album or were
4 they sort of in a special place?

5 A. I did not go that deep into it, because I wasn't the one
6 investigating the case. I just showed him a few things that I
7 had noticed while reviewing the data to make sure that the
8 software worked correctly.

9 Q. All right. And in particular what did you notice?

10 A. I just note there was a lot of pictures and videos on
11 there. I knew generally, vaguely what the case was about, and
12 so I was just showing him where some of the stuff was so he
13 could review it.

14 Q. Okay. And where was it?

15 A. They were in various places in the phone.

16 Q. Do you have a memory of it being stored as if it were
17 originally in a chat?

18 A. I do -- I do recall that, yes.

19 Q. Tell me what you remember about that.

20 A. We had some discussion about that later, especially with
21 Special Agent Knight. There was a whole -- whole bunch of
22 pictures that were recovered from the phone that were all in
23 chat bubbles that were from an old version of iOS.

24 Q. How old?

25 A. Like, 2013 or before.

1 Q. Okay. And when you look at those versions of stored
2 pictures, all that it shows you is that at some point that
3 picture was involved in a chat either to or from the holder of
4 the account; right?

5 A. Yes.

6 Q. But you can't tell when the picture was created?

7 A. No. Just when the -- the chat bubble version of it was
8 created.

9 Q. And you can't tell from what phone the picture -- the
10 original picture was actually created?

11 A. No. There was just a folder of attachments, those
12 particular ones that were in the chat bubble.

13 Q. So because you found these pictures on the phone does not
14 mean these pictures were created on that phone. Is that fair?

15 A. They were on the phone -- they are on the phone now, but I
16 couldn't tell you where they were created.

17 Q. Or if it was on that phone, even?

18 A. Well, they existed on the phone. I can't -- I can't say
19 where they would have originated from, but at some point they
20 ended up on that phone.

21 Q. And you can't tell if it was someone receiving it or if
22 someone was sending it; right? You can't tell which?

23 A. No. It's just in a folder of attachments.

24 Q. And the folder of attachments is not generally accessible
25 to a person that doesn't have digital forensic training;

1 correct?

2 A. It can be. This was a known flaw in iOS back prior to
3 iOS 6.1. And there was actually a lot of heartache from people
4 about it because they found it themselves on their own phones
5 and in their own phone backups that text messages they had
6 deleted the attachments were all still there. And iOS patched
7 that in 6.1 -- or Apple patched that in iOS 6.1 going forward.
8 But if your phone had performed a backup prior to 6.1, they
9 would remain pretty much indefinitely if you ever restored that
10 backup to future phones.

11 Q. So if someone knew that, they could delete those phones --
12 those items; right?

13 A. Yes. Because of that problem, there was actually software
14 that was out there that people created to specifically delete
15 that folder if people wanted to.

16 Q. But it wasn't deleted on the phone that you reviewed?

17 A. No, it was not.

18 Q. In fact, there was nothing deleted off the phone that you
19 could tell; right?

20 A. Well, based on the type of iOS and the type of extraction,
21 we would not typically get very many deleted artifacts.

22 Q. And back then, they also have what they call "contact
23 cards" on the phone; right? Do you know what a contact card is?

24 A. If you're talking about the contacts --

25 Q. Yes.

1 A. -- listed in the phone, yeah.

2 Q. All right. And in this case you were able to recover some
3 contact cards?

4 A. Probably. I don't recall exactly.

5 Q. And if someone shares a contact with you, was that
6 capability present back then, if someone shared that contact
7 with you?

8 A. I would have to research and see. If you're talking about,
9 like, iOS 6, that's a long time ago. I would have to do some
10 research.

11 Q. All right. And were you ever asked to look at the iCloud
12 account that had been -- that was in the cloud? Did you ever do
13 any research on that or only on the physical phone?

14 A. Just on the physical phone.

15 Q. And when you met with Officer Wright, had you prepared the
16 forensic printout already, the AXIOM printout?

17 A. So I don't provide them a printed report. What I do -- so
18 when I process the case, I process it with -- it's called "AXIOM
19 Process," and then it creates -- the part that we review it in
20 is called "AXIOM Examine," and that's where Process has parsed
21 everything out into Examine.

22 And I usually go through and make sure that everything
23 parsed right, nothing looks strange, there is no anomalies, it
24 looks like everything was correct. And then I -- you have to
25 have a license for Magnet AXIOM to view and examine -- view it

1 in Examine. And so it has a feature where you can export out a
2 portable case, which is a portable version of Examine that they
3 can use that has no processing capability, but it's essentially
4 the same thing I'm looking at, but you don't need a license for
5 that. So that's what I export out and give to them to review.
6 So it's not, like, a PDF or any sort of written report. It's
7 the actual Examine program they can review it in.

8 Q. And you don't have a recollection of doing that with
9 Cellebrite?

10 A. I don't recall doing that with Cellebrite.

11 Q. And did you prepare any written reports about your
12 accessing the phone or what you did on the phone or when you did
13 it?

14 A. I would have to go back and look back. Back in this period
15 of time, we were doing a lot of stuff for other agencies that we
16 were just, you know, assisting them with this. Since then, we
17 have increased the documentation of what we do for outside
18 agencies. So in that period of time, I would have to -- I would
19 have to go through our report system and look to see if I did
20 that or not.

21 Q. Did you return the phone to Agent Wright?

22 A. Yes.

23 Q. Detective Wright?

24 A. Yes.

25 Q. Did you prepare any chain-of-custody documents showing that

1 you returned the phone to him?

2 A. I would have signed the chain of custody, or it would have
3 been written on the actual -- whatever the phone was in.

4 MS. NESTER: Your Honor, at this time, we just would
5 ask the Government to provide us with all reports and
6 chain-of-custody documents that were created by Detective
7 Christopherson in this case.

8 THE COURT: I assume that would be part of discovery,
9 and the Government --

10 MR. SHIRTS: Yes, Your Honor, those are --

11 Sorry, Your Honor. I didn't mean to interrupt you.

12 THE COURT: And the Government will provide that?

13 MR. SHIRTS: Of course, Your Honor, and they are
14 always available for inspection. In fact, for the record, we
15 sat down for four hours yesterday with Special Agent Knight and
16 the defense counsel, making sure we have everything.

17 MS. NESTER: We don't have any of that, so we
18 definitely need to get that.

19 Q. BY MS. NESTER: Have you gone back and looked again at your
20 report since February of '21 or is that the last engagement you
21 had with this case?

22 A. Other than just discussing it briefly with Special Agent
23 Knight, I haven't had much to do with this case.

24 Q. And did you -- when Detective Wright -- you mentioned that
25 he gave some comments that he believed the defendant had tried

1 to wipe the phone; is that right?

2 A. Yeah. He had mentioned that.

3 Q. Tell me what you recall about that conversation.

4 A. He just said that -- he told me that there had been
5 attempts to wipe the device, and he was concerned about that.
6 And so while we had it in our possession in the lab, I kept it
7 locked in a Faraday box just to help prevent that.

8 Q. Can you spell that word for the court reporter, the Faraday
9 box?

10 A. I believe it's F-A-R-A-D-A-Y.

11 Q. And can you explain what that is?

12 A. It's a radio-signal-shielded box that prevents radio
13 signals from coming in or out of it.

14 Q. So at the time you were able to access the phone, you saw
15 no evidence that anything had been done remotely to affect that
16 phone at all. Is that correct?

17 A. That's correct.

18 MS. NESTER: Court's indulgence for just a moment,
19 Your Honor.

20 THE COURT: Yes.

21 Q. BY MS. NESTER: Okay. So just briefly, when you talked
22 about the ability to wipe something remotely, what was your
23 understanding of that capacity in December of 2020? What could
24 people do?

25 A. They could completely wipe the device remotely.

1 Q. And how would they do that?

2 A. They would log on to their iCloud account, and basically
3 it's using the same feature as, like, Find My iPhone. They can
4 access a setting in there where they can do a variety of things.
5 Like, if you had lost your phone, you can have it make noise.
6 One of the options is you can factory reset the device remotely.

7 Q. And none of that had been done to the phone that was given
8 to you on December 8th; is that right?

9 A. That's correct.

10 Q. And are you sure it was given to you on the 8th?

11 A. On the 8th of?

12 Q. December?

13 A. December. I couldn't tell you exactly if that was the day.
14 If that's what Detective Wright said, I would go by that, but I
15 can't remember exactly what day it was.

16 Q. But you do remember that you had a signed warrant when you
17 got the phone?

18 A. Yes.

19 Q. So if the warrant was obtained on the premise that a call
20 had been made to wipe it, that would mean that that call had
21 already been made prior to the time you ever got the phone;
22 correct?

23 A. Say the question again.

24 Q. I know. That was confusing.

25 So if the warrant was obtained on the premise that a

1 call had been made to wipe the phone, and that's why a warrant
2 was being requested --

3 A. Mm-hmm.

4 Q. If you got the warrant, that means that call had happened
5 before you ever got the phone; right?

6 A. I would assume. I can't say that I know when calls were
7 made or anything, but that would make sense.

8 Q. Okay. So you don't know whether the phone had been
9 maintained in a Faraday locker before it came to you; correct?

10 A. I don't know what happened to it before it got to me. I
11 can only say what happened once I had it.

12 Q. Okay. And once you got in there, it was clear that it had
13 not been factory reset; correct?

14 A. That's correct.

15 Q. It had not been wiped; correct?

16 A. Correct.

17 Q. In fact, you found thousands and thousands and thousands of
18 text messages and images and videos on this phone; is that
19 right?

20 A. That's correct.

21 Q. Dating all the way back over a decade?

22 A. Yeah. Pretty far back, yeah.

23 Q. So clearly it had not been wiped?

24 A. It had not. If it had been wiped, we would have gotten
25 zero data.

1 Q. Right. And at the time that you got it --

2 THE COURT: Just so I'm clear --

3 MS. NESTER: Yes, sir.

4 THE COURT: This is really more a question for you.

5 MS. NESTER: Certainly.

6 THE COURT: The phone never came back into the
7 defendant's hands after it was seized on December 2nd until
8 after this work was done by Detective Christopherson; is that
9 correct?

10 MS. NESTER: That is correct, Your Honor. The
11 testimony that was obtained with the previous witness referred
12 to an attempt to remote wipe from a distance. In other words,
13 it would not have to be -- -

14 THE COURT: Thank you.

15 MS. NESTER: -- in the possession of the defendant or
16 anyone in his family. And that's what the testimony was about
17 with Agent Wright.

18 Does that clear that question up for Your Honor?

19 THE COURT: Thank you.

20 Q. BY MS. NESTER: And when you returned the phone to
21 Agent Wright on the 25th -- if that was the date according to
22 Agent Wright's report -- are you aware of whether there was an
23 active warrant at that time that authorized the possession of
24 that phone?

25 A. I would have to look at whatever the last warrant that he

1 had.

2 Q. So if the last warrant that he got was executed on February
3 the 4th and he came to see you on the 25th, that would mean
4 there was no warrant in place when you reviewed what was in the
5 phone with him; is that correct?

6 A. The phone had already been searched and downloaded prior to
7 that.

8 Q. But when you shared the information with Detective Wright,
9 you're not aware that there was actually an authorization
10 authorizing you to do that?

11 A. It's our -- it's our own software that we're reviewing in
12 our own report, so we're not -- the search of the device is
13 already complete so it doesn't really apply.

14 Q. So when you -- did you provide the information from the
15 search to Detective Wright before he came to visit you
16 personally? Did you email it to him or send him a hard drive or
17 anything?

18 A. No. I would have just talked to him about it, whether it
19 would be phone or email, to let him know.

20 Q. Do you remember any conversations like that with him?

21 A. Telling him that he could come get the device, that it's
22 complete, and it's ready to go for him.

23 Q. Right. And so when you turn over all the information that
24 you got from the phone, it was on the 25th when he came to see
25 you?

1 A. If that's when he said he came up there, yes.

2 Q. Again, asking the same question for the benefit of the
3 Court, you're not aware that there was a warrant that covered
4 that period of time that authorized you to give Detective Wright
5 the information; correct?

6 A. No. There wouldn't have been something that specifically
7 covered that, but there wouldn't need to be. Just provide him
8 the data. It was already completed weeks before.

9 Q. But it was completed in Idaho Falls; right?

10 A. Yes.

11 Q. In your office?

12 A. Yes.

13 Q. And when you shared that information with the Pocatello
14 Police Department, it was on February 25th?

15 A. Yes.

16 MS. NESTER: That's all I have. I tender the witness.
17 Thank you, Your Honor.

18 THE COURT: Any redirect?

19 MR. SHIRTS: Just briefly, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. SHIRTS:

22 Q. On this last point, it was searched on the February 16th,
23 right, when you actually finally got all the data?

24 A. That's correct.

25 Q. You don't need a warrant to give this to another law

1 enforcement agency -- is that what you were saying -- later?

2 A. That's correct. Yes.

3 Q. Why is that the case?

4 A. Because the search is already complete. It's just the
5 results of the search. It's the evidence that was obtained in
6 the search, and I am just providing it to Detective Wright.

7 Q. And obviously, you weren't in here for Detective Wright's
8 testimony, but when a phone is seized from somebody, it's
9 typically put into airplane mode. Is that fair?

10 A. It is, if it can be.

11 Q. Okay. And if it can be put in airplane mode, does that
12 prevent a wipe?

13 A. Yes.

14 Q. Why?

15 A. Because it disconnects it from the network. So it has --
16 there is no ability to contact the phone when it's disconnected
17 from the network.

18 Q. You obviously weren't there when the defendant was
19 arrested, but if law enforcement put that phone into airplane
20 mode, and he wasn't able to call out until after -- later for
21 somebody to wipe it, this hypothetical other people who
22 were -- not hypothetical -- his son and his wife -- wouldn't
23 have been able to wipe that phone if it was in airplane mode at
24 that time?

25 A. That's correct. If it was off the network, it wouldn't

1 have worked.

2 MR. SHIRTS: Nothing further.

3 MS. NESTER: Your Honor, may I have one follow-up?

4 THE COURT: You may.

5 RECROSS-EXAMINATION

6 BY MS. NESTER:

7 Q. So Mr. Shirts just talked about the phone being on airplane
8 mode, and that requires you to go into settings and put it on
9 airplane mode; correct?

10 A. You can do it through settings. They wouldn't have had
11 access to settings if the phone was locked. It would involve
12 swiping down and selecting the airplane button, essentially.

13 Q. So how could you get it on airplane mode if the phone was
14 locked?

15 A. Depending on how the phone is set up and depending on
16 different settings, some phones will allow you to still access
17 that menu and do that while it's locked.

18 THE COURT: Counsel, let me -- I have got an iPhone,
19 and you can do that. You can swipe down in the right-hand
20 corner, and you can put it in airplane mode without unlocking
21 it. I only say that, not to be a know-it-all, but just so you
22 know. Just so you know, that's my understanding, and if I'm
23 incorrect in that assumption, you need to clarify that. I have
24 to be the one to make a decision here, and you need to know what
25 I understand to be the case.

1 MS. NESTER: Thanks for sharing that with me.

2 THE COURT: Go ahead.

3 MS. NESTER: Thank you, Your Honor.

4 Q. BY MS. NESTER: Are you aware of whether the iPhone seized
5 from Mr. Powell had that capability to go into airplane mode,
6 that version of the iPhone?

7 A. If they were able to get it into airplane mode, that would
8 be the only way that they could do that.

9 Q. So you're not sure if that -- that function was available
10 on the phone that Mr. Powell had?

11 A. I can't remember that exact device that long ago if that
12 could or couldn't do it. I'm assuming it could if it was in
13 airplane mode.

14 Q. And then once you would remove it from airplane mode, if
15 there had been made a command to wipe, would that command then
16 hit the phone and wipe it?

17 A. Yes. I don't know how long Apple keeps that going for, but
18 at least any sort of reasonable amount of time, yes, it would
19 have instantly wiped the phone.

20 Q. As soon as you got in it and got it connected to a network?

21 A. If it connected to the network, which it never did in my
22 possession.

23 Q. So it was never removed off airplane mode the whole time
24 you had it?

25 A. That's correct.

1 Q. Then how did you access the data from the account when you
2 did your Cellebrite or your AXIOM report?

3 A. I only accessed data on the phone. I did not access any
4 data from the cloud or anywhere else, only what physically
5 existed on the device.

6 Q. Okay. So when you did that, it was outside the Faraday
7 box; correct?

8 A. I had the capability of running it in the Faraday box or
9 out of it. I don't recall which one I did in this case, but I
10 know I stored it in the Faraday box while I had it.

11 Q. Okay. So you can't -- well, strike that.

12 MS. NESTER: That's all I have. Thank you.

13 Tender the witness.

14 THE COURT: Anything else?

15 MR. SHIRTS: No, Your Honor.

16 THE COURT: All right. You may step down. Thank you.
17 Any further witnesses?

18 MR. SHIRTS: No, Your Honor.

19 THE COURT: Any witnesses from the defense?

20 MS. LEWIS: No, Your Honor.

21 MS. NESTER: No, Your Honor.

22 THE COURT: Counsel, brief closing argument.

23 MR. SHIRTS: Just briefly, Your Honor.

24 THE COURT: Counsel, let me indicate, I may rule from
25 the bench. The evidence came in. You don't know what the

1 evidence will be so maybe I'll rule from the bench. I may
2 change my mind after I hear your argument, but at this point,
3 just forewarning you that I may.

4 Go ahead.

5 MR. SHIRTS: Thank you, Your Honor.

6 It's an interesting analysis in this case, but,
7 really, the first part, at least what I see, is the time from
8 when the phone was seized to when the first authorization -- so
9 the phone was seized on Wednesday; the authorization is got on
10 Tuesday.

11 THE COURT: Mr. Shirts, you suggested in your briefing
12 that once the warrant is issued that we don't worry about the
13 time it takes. I'm troubled by that. I mean, there has to be
14 some limit to how -- you know, can the Government hang onto that
15 for five years?

16 MR. SHIRTS: No. I guess I apologize if that was my
17 -- poor writing on my part that implicated that. I think there
18 is still a reasonableness analysis for that portion.

19 THE COURT: All right.

20 MR. SHIRTS: But I think the rule that has been, kind
21 of, put forth is the fact that it's locked in time, and so there
22 is less of a worry that there is going to be some staleness.

23 THE COURT: There is a massive difference once you've
24 had a magistrate judge pass on probable cause that would bear
25 upon the reasonableness. But in other words, taking more time

1 after having the warrant would not be as problematic as just
2 holding onto it without getting a warrant.

3 MR. SHIRTS: Correct.

4 THE COURT: I think that's the point you were making.

5 MR. SHIRTS: Correct.

6 THE COURT: Not to say that you still don't do a
7 reasonableness analysis on both.

8 MR. SHIRTS: Correct, Your Honor.

9 I think the reasonableness is, especially in this
10 case, where it was a brand-new phone, a brand-new operating
11 system, and just they can't break into it. From law
12 enforcement's perspective, you have someone who is calling their
13 relative saying, "wipe the cloud," "wipe the phone," they just
14 can't give it back to them just because at that point they don't
15 have the capabilities, when they know they are going to get it;
16 it's just a matter of time. And here they are actively
17 searching it. They had it plugged in. They are actively
18 trying -- the testimony came out -- weekly. So from the
19 Government's perspective, clearly very reasonable, especially
20 given the facts that had come out.

21 I think the first part of this, as far as the
22 analysis -- I guess the one interesting part for me, which I
23 really couldn't find case law on, is whether he had a strong
24 possessory interest in the phone. Clearly, for someone who has
25 a phone, there is good case law saying "My phone has a high

1 private interest value." But the facts of this case are
2 interesting when someone is -- has access to that same
3 information on the cloud but is deleting it, and someone is also
4 trying to delete that information or telling people to delete
5 that information remotely. And so I don't know where that
6 factor -- I think that factor might lessen a little bit in this
7 fact scenario where he is saying, "I really wanted my phone
8 back," but you were trying to actively delete all that
9 information on your phone. So did you really want your
10 information back, or were you just trying to deter this
11 investigation?

12 I think that should be weighed by the Court.

13 These other factors -- the duration of the delay, what
14 the Government sees as extremely minimal. You have a case where
15 originally they were just going to search the phone, but
16 Detective Wright gets a call from the U.S. Marshals, you know, I
17 think it was 2248 hours, early in the middle of the night,
18 saying, "Hey, this guy is trying to get rid of this stuff."
19 That broadens the scope in a lot of ways. It broadens the fact
20 that he is going to kick out a preservation letter, which the
21 report says he did that Thursday, and then he is drafting these
22 warrants.

23 And granted, I don't think it was ever the
24 Government's argument that he sat down and typed 40 pages just
25 off his head. I don't think, as the Government, we would want

1 somebody to do that. You are going to go back and pull from
2 information from reports previously and put them together in a
3 summary for the Court. I think that's really common. You know,
4 as we draft warrants and help our agents draft warrants, we want
5 them to rely on accurate information that they may have got
6 previously. And in this case it was an eight-month period, and
7 he is condensing it down, and that's going to take some time.
8 Really, from the testimony, he is working on it Thursday and a
9 Monday. He is off for the weekend, off on a Friday. From our
10 view, that is extremely, extremely fast.

11 There is this *U.S. v. Laist* case, which I believe is
12 an FBI case where -- probably a similar case to this, similar
13 affidavit where you have a lot of, you know, standard language,
14 and then you have, I think, four pages of, you know, information
15 that was condensed. I think that was a 20 -- a 20-some-odd day
16 delay -- 25-day delay was held to be reasonable seizure of the
17 device. And so the agent in that case took 10 days to draft one
18 affidavit. Here, this was two days, at best, to draft multiple
19 affidavits, plus do the preservation order, plus on top of that,
20 as he said, was working hard on other cases.

21 I think -- I doubt it's an excuse that this is
22 somebody who has gone to a new job because there is some burnout
23 there. It's a tough, tough job to do day in and day out.

24 And so I think the duration factor in this case is
25 extremely minimal, especially given what was at play in putting

1 these warrants together.

2 Obviously, the third factor -- whether the defendant
3 consented to the seizure; he didn't consent. And he was, you
4 know, by at least that Tuesday, was having his attorney trying
5 to get his phone back. But by that Tuesday, that was already
6 multiple days after he said he was trying to wipe, which I think
7 is a very important factor in this case.

8 It really weighs on the fourth factor, the
9 Government's legitimate interest in holding the property as
10 evidence. The evidence that has come out through this testimony
11 today has indicated that the device -- the stuff on the phone
12 was -- also would have been in the cloud. I think there is an
13 inference of that -- that would have been interconnected. The
14 Government, by Wednesday night, knows that that stuff on the
15 cloud, he has already told his family to get rid of.

16 And so now the Government is in control of the sole
17 possession of what could be of evidentiary value on that phone,
18 things that he wasn't able to access because it would have been
19 in airplane mode. He would have been able to remotely wipe it
20 prior to -- prior to his family finding out he was arrested.

21 So that's a high, high evidentiary value, and if he is
22 already telling people to delete evidence elsewhere, the
23 Government is not going to get -- and we didn't get -- any
24 evidence from the cloud. There was no -- returned from that
25 evidence.

1 You think about it. You got a new phone, you have
2 images from 2012, 2013. He wasn't using that iPhone 12 to take
3 photographs. It's impossible, obviously, because it's a
4 brand-new phone. So that evidence would have come down from his
5 backup on the cloud onto his phone, and so that's where -- and
6 it's stored on the -- on the actual phone itself. And so really
7 that was the only ability for the Government, in this case, to
8 find evidence of this crime, and so there is a high interest in
9 us making sure that we search that device, and they did so
10 diligently.

11 I think there is some case law out there -- you know,
12 we could always make some determination -- we can always fashion
13 determination about how this could have been done sooner in some
14 fashion. In this case, that's not even the standard. And I
15 think it's tough. I think it's a tough sell. Detective Wright
16 diligently put these together, diligently got these signed, and
17 then after they were signed, Detective Christopherson actively
18 tried to access that phone until he was actually able to do so.

19 I think that's all I have, Your Honor. I'll stand for
20 any questions the Court may have.

21 But, I think, at least from the case law, on both
22 sides, the reasonableness from the initial time to the search
23 warrant and from the search to -- the search warrant to the
24 search of the phone, I could not find a single case where this
25 period of time was noted to be unreasonable. And so I think

1 just given how quickly law enforcement responded, and how they
2 were eventually able to search the devices, under the totality
3 of the circumstances, the search of the phone was reasonable in
4 this case, and we would ask the Court deny the defense's motion.

5 I'll stand for any questions.

6 THE COURT: That's fine. Thank you.

7 MR. SHIRTS: Thank you, Your Honor.

8 THE COURT: Ms. Lewis, you are going to argue?

9 MS. LEWIS: Yes, Your Honor.

10 Your Honor, first, I think it's very clear that
11 Mr. Powell has a strong possessory interest in his phone.
12 Anyone has a strong possessory interest in their phone.

13 THE COURT: Ms. Lewis, that's absolutely true. Let me
14 just tell you up front where my concern is.

15 MS. LEWIS: Okay.

16 THE COURT: Here, there are two blocks of time we have
17 to worry about. One, of course, is how long it took to actually
18 apply for the warrant. And as I understand the facts,
19 Mr. Powell is arrested on Wednesday; the phone is seized; the
20 officer works on it on Thursday, but he has other things he is
21 working on related to this case and elsewhere; doesn't finish up
22 the warrant application; has a three-day weekend; comes back on
23 Monday; completes the process. And I'm not absolutely sure if
24 he met with the prosecutor then or Tuesday morning, but it was
25 one or the other. They then submit the affidavit to the

1 magistrate Wednesday afternoon. No, Tuesday afternoon.

2 If I'm to say that is unreasonable, it seems to me it
3 would be putting an almost intolerable burden on law enforcement
4 who are working lots of cases, stretched very thin. And if I
5 say that, that becomes the gold standard, at least in the
6 District of Idaho, for all law enforcement officers. That is
7 really kind of the problem.

8 And then added to that is the fact that by the time
9 Officer -- was it Officer Wright -- was working on the warrant
10 starting on Thursday, he knew -- from I think it was Deputy
11 Weishaar -- that there had been this phone call made by
12 Mr. Powell asking his family members to wipe -- I think he used
13 the word "swipe," but I think he meant wipe -- all these
14 devices.

15 So you have, almost, the exigent circumstance, and
16 that's an exception to the search warrant requirement. If a law
17 enforcement officer comes up to a home of a suspected drug
18 dealer and can hear the toilet running, generally they assume
19 that drugs are being flushed down the toilet, and they can enter
20 the premises without a warrant just to avoid the destruction of
21 evidence.

22 When you add that all together, how do we conclude
23 that taking essentially two business days to complete the
24 warrant, maybe three at the outside, that that's unreasonable
25 under these circumstances? That's the challenge.

1 There is no question, everyone has a huge possessory
2 interest in their phone, and it's clearly important to every
3 single person. I doubt there is a person in this room -- In
4 fact, looking around, I see a lot of people on cell phones. It
5 is. But that's the challenge I have in this case.

6 MS. LEWIS: Well, my response to that would be, first
7 off, I mean, there is not any kind of bright-line rule.

8 THE COURT: No, there is not. It's reasonableness. I
9 understand that.

10 MS. LEWIS: Exactly. And one court may find -- in
11 fact, as they have -- 21 days is not a reasonable amount of
12 time. Another court finds it is.

13 THE COURT: Talk about the six days to start with.

14 MS. LEWIS: All right. So the reason I think six days
15 in this case is unreasonable is -- it's based on the following.
16 And I want to look at the *Burgard* case because that was a
17 six-day delay also, and in that case they did find six days was
18 reasonable. The reason there they found six days was a
19 reasonable time was because the officers in that case were still
20 pursuing their investigation into the defendant.

21 In this case, the investigation was finished by the
22 time they took the phone from Mr. Powell. In fact, as the
23 officer said on the stand, there really wasn't any reason they
24 could not have had the affidavit ready to go on December 2nd.
25 All that needed to be done at that point was to look at what

1 model iPhone he had and plug that in. Every other thing in that
2 affidavit was already complete, or at least they had the
3 information to complete it. All of the paragraphs regarding the
4 case itself did come almost word for word out of his police
5 report.

6 THE COURT: There is no question about that. But that
7 doesn't take away from the fact there was a lot of other stuff
8 going on.

9 MS. LEWIS: Sure, there was other stuff going on.

10 But they are saying -- and particularly, which isn't
11 very clear to me, doesn't make sense to me -- is they are very
12 concerned that he made this phone call asking his family member
13 to wipe or swipe the phone, and that happened apparently, I
14 don't know, on the 2nd or 3rd. Yet, they still didn't see any
15 urgency of getting the search warrant done that day.

16 This search warrant could have been put together in
17 less than an hour. I mean, let's be honest. This is all
18 standard language and language taken out of other reports.

19 The fact that they needed to take six days to do it is
20 just not reasonable. And I would maintain that, really, it
21 didn't become urgent to the officers until they got the phone
22 call, until he got the phone call from the prosecutor saying --

23 THE COURT: It was underway, though. That's really
24 not disputed, is it, that he had started on Thursday?

25 MS. LEWIS: He said that. Yes, he said he had started

1 it, but -- and he also said they were very concerned, and it was
2 urgent because of this phone call, yet that search warrant could
3 have been taken care of immediately.

4 And the other -- the other point I want to make about
5 *Burgard* is -- and I said this in my memo and I would maintain
6 that they didn't have probable cause to take the phone in the
7 first place. They maybe had reasonable suspicion, and that also
8 means they needed to work a lot quicker, because at the time
9 they took that phone, all they knew is people had alleged that
10 he had taken photographs of them at least ten years previously.
11 So the phone on him clearly was not the phone that photographs
12 were taken on.

13 THE COURT: Well, Counsel, you know, again, I have to
14 deal with my own experience. I guarantee you if I opened up my
15 photographs I have in my iCloud account, I will have photos
16 going back at least 15 years. I mean, that's just the way the
17 iCloud works. It keeps those photos available, and I have
18 probably been through four different phones in that time. It
19 goes to the next version. That's just -- and I don't think it
20 takes expert testimony to establish that. It's common knowledge
21 that that's what we do. So we can't assume -- we can certainly
22 assume that that camera on that phone was not the one used to
23 take any pictures.

24 MS. LEWIS: Right.

25 THE COURT: But you can't assume that it didn't

1 contain pictures that may have been taken many years earlier.

2 MS. LEWIS: That's true, but in the earliest versions
3 of the iPhone, that was not true. I don't know if you have
4 pictures from --

5 THE COURT: I know a trip I took 15 years ago, I still
6 have pictures, and how it got there, I don't know. I certainly
7 won't bring that into this case except to say that you do have
8 -- the cloud is a wonderful thing; it's a terrifying thing
9 because those photos are out there. I don't think they are very
10 compromising, but nevertheless every time I get a new phone,
11 they migrate onto the new phone, or at least access to those
12 photos migrate onto that, if they are stored on the cloud. And
13 if it's removed from the cloud, I might not be able to get them
14 back.

15 Go ahead.

16 MS. LEWIS: Interestingly, though, all the photos in
17 this case were not stored that way.

18 THE COURT: Right. And I'm not saying -- I'm dealing
19 with what Officer Wright knew, and I'm assuming he knew what
20 most people assume, and it could have been erroneous. It could
21 be my understanding is completely wrong, but that's what I think
22 people living in the 21st century come to, kind of, expect
23 because that's what they live with. But go ahead.

24 MS. LEWIS: Again, though, I do think that in this
25 particular case six days might not very frequently be too long

1 of a period. But when we're dealing with a matter that the
2 investigation is complete, all the information is there; all he
3 needs to do is put together the warrant, which could have been
4 together on day one. It could have been put together days
5 before the arrest. All that needed to be added in was the
6 phone. He said that the phone was the biggest concern -- or a
7 phone. They wanted the phone. So why do they need to take all
8 that additional time to hold on to something that we all agree
9 someone has a strong possessory interest in, when a warrant
10 could have been put together, if not the first day -- I mean, it
11 could have been put together before they took the phone, and yet
12 they didn't. They waited, and he took off the weekend. And
13 granted, it was his days off, but, let's be honest, if it was an
14 extremely urgent matter, then most people would go in and take
15 care of that on a day off. But I maintain that wasn't even
16 necessary. I mean, he couldn't find an hour sometime in the
17 week prior to the arrest through the Thursday after the arrest
18 before he took the days off? And still on Monday couldn't find
19 an hour?

20 I mean -- and the other thing is, so, he is doing
21 three search warrants, but which one has the most urgency? The
22 one that Mr. Powell has possessory interest in. The one on the
23 home could wait. The one on the iCloud, okay, he needed to get
24 that done. And then the one on the phone. And those two are
25 exactly identical warrants, exactly identical.

1 And I just think this is different than, again, the
2 *Burgard* case where they said six days was fine, and they really
3 put in some clear reasons why six days was fine. The
4 investigation was still ongoing; that he was diligently trying
5 to write the warrant while an ongoing investigation. Not
6 because he had to take other calls, not because he had other
7 work, because he was investigating that particular case in
8 *Burgard*; so, yes, it could take six days to finish the warrant.

9 The work was done here; it was done. He didn't need
10 more than a day to get that warrant together. So to say six
11 days is too long I don't think sets any precedent for the future
12 that, "Oh, Officers, you must get your warrant done
13 immediately."

14 But in a case where everything is ready to go, they
15 have been investigating for months, they know this is what they
16 want -- is the phone -- they know they are going to arrest him
17 and take a phone off him, yet, they still take a number of days
18 to finish that warrant on a piece of evidence that Mr. Powell
19 clearly has the strongest possessory of interest in I think is
20 unreasonable in this particular case.

21 And then there is ongoing problems that it takes
22 months to search the phone. Now, you know, I know Agent
23 Christopherson said that they didn't have the software
24 available, and, you know, I just don't know the answer to that.
25 I mean, unfortunately, we don't have a witness that can tell us

1 exactly when law enforcement was capable of running Cellebrite
2 on the iPhone 12. I mean, we just don't know that. Cellebrite
3 did come out with an article in 2019 saying they already could
4 run it on most iOS 12 devices. We don't know how often he tried
5 to run the software. We don't know when the software was run.
6 We know that -- well, we know on February 16th; so we do know
7 that.

8 I don't think it's meaningless that they let the one
9 warrant expire. Now, I know Mr. Shirts asked him, well -- asked
10 Mr. Wright, "Well, were you familiar with federal law," which,
11 you know, in that case the two weeks maybe wasn't important.
12 But he wasn't operating under federal law; he was operating
13 under state law and clearly wanted to keep the warrant current,
14 which is why he kept applying. But, again, he just lets it go.

15 This is just, I think, an entire situation where law
16 enforcement didn't think it was that big of a deal to get the
17 warrant quickly. And, in fact, I would maintain they wouldn't
18 have got it on the 8th had it not been for the fact that the
19 prosecutor called and said, "We need to get the warrant now. I
20 mean, where is the warrant? We need it. And the attorney is
21 asking for the phone back."

22 In the emails that I attached from his state
23 attorney -- you know, even his state attorney said, "That's a
24 big coincidence. You have a warrant today; the day that I ask
25 you to get the phone back is the day you get the warrant."

1 Maybe it is a coincidence, but I maintain it's not. I would
2 maintain that was when the matter became urgent. So maybe he
3 was working on it before. Maybe he -- you know, I know I work
4 on things. I pull up an old version of something and let it sit
5 on my laptop before I actually take the time to sit down and,
6 you know, make the changes in an old document.

7 But if it's urgent and that's all you have to do is
8 add in some names and replace some paragraphs, this could have
9 been done immediately. Six days wasn't reasonable in this
10 particular case. And I don't -- I mean, there might not be very
11 many cases where six days would be unreasonable, but I think
12 this is one of them. This is one matter where six days was an
13 unreasonable amount of time.

14 I don't know what other questions you have.

15 I was going to point out one other thing, which now
16 I'm not remembering. Unless you have questions.

17 THE COURT: No. That's fine.

18 All right.

19 MS. LEWIS: Thank you.

20 THE COURT: Thank you.

21 Well, Counsel, as I said at the outset, I generally do
22 try to rule from the bench because these cases are fact
23 specific. Taking a month to write a decision doesn't
24 necessarily help anyone. And I originally thought because of
25 the fact-intensive nature of the inquiry here that I would not,

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

No: 4:21 – CR – 00290 – BLW

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

TRENTON JARED POWELL,

Defendant-Appellant.

Appealed to the United States Court of Appeals

For the Ninth Circuit

MOTION TO SUPPRESS HEARING
EXCEPT OF TRANSCRIPT – ORAL DECISION

September, 14th 2022

Before: B. LYNN WINMILL

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22 try to rule from the bench because these cases are fact
23 specific. Taking a month to write a decision doesn't
24 necessarily help anyone. And I originally thought because of
25 the fact-intensive nature of the inquiry here that I would not,

1 but I think after having heard the evidence and having had a
2 number of my questions answered from that evidence, I think I
3 can rule from the bench. But, of course, I reserve the right to
4 review the transcript, and if I feel the need to, I will
5 supplement this with a brief written decision which covers the
6 same points in whole or in part.

7 Just to lay the stage in my understanding of what
8 occurred here, on Wednesday, December 2, 2020, Mr. Powell was
9 arrested in the afternoon and taken into custody. At the time
10 of the arrest, he had this iPhone 12 that was seized. It was
11 brought to the Pocatello Police Department where it was placed
12 into evidence pending a search warrant. There is no challenge
13 here to the seizure itself but only to the delay between when it
14 was seized and the time that a search warrant was obtained. And
15 then the second challenge is as to the time from the issuance of
16 the search warrant to the time that it was actually executed by
17 evaluating and examining the contents of the phone.

18 Later that day, on either Wednesday evening or
19 Thursday morning, Detective Wright learned from Deputy Weishaar
20 that Mr. Powell had communicated with family members to waive
21 his -- to have his iCloud account and perhaps other devices --
22 and, again, the word used was "swipe," but I think they meant
23 wiped. I think the suggestion was that around 9:48 that
24 evening, Mr. Powell had made a telephone call from the jail and
25 instructed his wife and son to swipe the phone and iCloud

1 account.

2 The following day, Mr. Powell was released on bail.
3 He immediately asked for his phone, which was not returned. Law
4 enforcement then prepared to search -- actually, take a number
5 of steps. One was to search Mr. Powell's entire residence for
6 evidence of a crime; also, to issue a preservation request to
7 Apple in attempt to preserve any items of evidentiary value,
8 which, of course, became paramount given the phone call that was
9 made the night before by Mr. Powell to his wife and son. That
10 then was followed -- and also, obtaining a search warrant for
11 the phone itself.

12 So that's December 3rd, which is a Thursday.

13 December 4th, 5th, and 6th which is Friday, Saturday,
14 and Sunday, Detective Wright was off work, and no work was done
15 on this search warrant application.

16 When he returned Monday morning, he completed the
17 affidavit. I'm not absolutely clear when he reviewed it with
18 the prosecutor, but it does -- it clearly was either Monday
19 afternoon or Tuesday morning. I would note that in an email
20 exchange between Mr. Powell's former attorney and a Bannock
21 County prosecutor, the prosecutor reported that Detective Wright
22 began working on the search warrant for the phone on Thursday
23 and then finished the warrant on Monday and got it signed.

24 So I think there is no reason to question that
25 scenario of what occurred. I'm not saying that they didn't

1 perhaps expedite the process after receiving a phone call from
2 Mr. Powell's attorneys on Tuesday, but it's clear that it was in
3 the works, and I don't think that can be seriously disputed.
4 It's also clear that Detective Wright had roughly 20 other
5 active cases pending, plus the work he was doing on this
6 investigation.

7 Then on December 8th, Mr. Powell asked again for his
8 phone back. As I noted, also on that date, later in the day,
9 Detective Wright met with a state court judge to obtain a
10 warrant to search Powell's residence and then later that day
11 brought a completed search warrant for the iPhone to the same
12 judge, who signed it at 5:08 p.m.

13 On December 23rd, 2020, a second search warrant or an
14 extension -- I'm not sure which -- was obtained, and this
15 followed on with either, again, a third warrant or a second
16 extension, and then additional extensions were obtained on
17 January 21st and February 4th, 2021. The reason for that
18 extension was simply that this was a very new model of iPhone
19 that had been released perhaps a month and a half before
20 Mr. Powell's arrest, and therefore Detective Christopherson, who
21 was the forensic specialist who evaluates these phones and
22 attempts to forensically examine them, simply did not have the
23 tools to do so on a phone of this recent issuance.

24 So at this point, that's roughly where the facts are.
25 I would say that both the period, the six-day period between

1 seizure and the obtaining of a warrant, and the time from the
2 issuance of the warrant for roughly 61 -- or two-plus months --
3 days to when it was actually examined forensically and the
4 search warrant was executed I think are all subject to the same
5 reasonableness determination but with different calculations
6 because of the different functions being performed.

7 Now, I'm not going to go back over the Fourth
8 Amendment. You all probably can recite it from memory. But
9 what I think is clear is the case law suggests that when a
10 person is arrested, police can seize the cell phone incident to
11 that arrest, but they cannot search the phone without first
12 obtaining a warrant. That's *Riley vs. California*. "A temporary
13 warrantless seizure supported by probable cause is reasonable as
14 long as" -- and this is very important -- - quote, "the police
15 diligently obtain a warrant in a reasonable period of time,"
16 close quote.

17 So this really turns upon reasonableness; did the
18 police act reasonably in moving suspiciously to obtain the
19 warrant? Simply put, there is no bright line. In fact, the
20 case law is very clear that a bright line is inappropriate
21 because it is so fact intensive of a determination. I did note,
22 though, from the various cases that delays of 21 days, 7 to 23
23 days, 25 days, and 6 days were all deemed to be reasonable, but
24 yet, a 21-day and a 20-day delay was, under other circumstances,
25 determined to be unreasonable, which again just underscores that

1 time is relevant to the problems and circumstances of the case.

2 So as we look at these facts, there are a number of
3 factors we are to look at.

4 One is the significance of the interference with the
5 defendant's possessory interest. There is no question, as I
6 suggested earlier, that an iPhone is probably the single most
7 important item of property that any individual owns today. It
8 drives your life in so many different ways. So it clearly is at
9 its highest.

10 Another factor is the duration of the delay. We have
11 two periods of time: six days from seizure to issuance of
12 warrant, 60-plus days from issuance of warrant to execution of
13 the warrant.

14 Third, whether the person consented to the seizure.
15 Clearly didn't happen here. No question that Mr. Powell was
16 opposed to that.

17 And then finally, the Government's legitimate interest
18 in holding the property as evidence.

19 Now, there are other factors that can bear upon, and
20 I'll mention a couple. I think the phone call from Mr. Powell
21 on the night of December 2nd is probably most critical, because
22 it clearly indicates that if the phone is released to
23 Mr. Powell, whatever evidence that is located there will
24 disappear. I think that's just a logical assumption any law
25 enforcement officer would make, and that's why I made reference

1 to the exigent circumstances exception to the search warrant
2 requirement. That is a significant enough of a factor that it
3 can justify the unwarranted seizure of any property, or at least
4 the entry to avoid destruction of evidence. And I think that's
5 a very important factor in this case that I don't believe was
6 present in any of the other cases that has been cited to the
7 Court.

8 So on balance, I will say, you know, sure, it could
9 have been done more quickly. Detective Wright could have taken
10 his long weekend and worked on it over the weekend and treated
11 it as a more urgent matter, but it's clear he was working on it,
12 that he was working on other things related to this
13 investigation, and that he had another backlog of other cases
14 that also required his attention.

15 It appears that he started on Thursday, the day after
16 the seizure, completed it the next workday for him which was
17 Monday, and then obtained the warrant the day after that.

18 So in my view that is not an unreasonable period of
19 time. And I think for that reason, I cannot find that there was
20 any violation of Mr. Powell's rights because of the six-day
21 delay between seizure and the issuance of the warrant.

22 Turning to the 71-day delay between December 8th,
23 2020, and February 16th, 2021, when Detective Christopherson
24 completed his forensic evaluation of the phone, I will say at
25 the outset from reading the briefing, I was very troubled by

1 that, and I was thinking this was very much a close call and I
2 may very well be inclined to suppress the evidence based upon
3 that. But after hearing the testimony and not being aware that
4 it was a very new model of iPhone 12 -- it had only been
5 released just weeks before it was seized, perhaps a month and a
6 half -- again, I'm no expert on forensic evaluation or
7 examination of telephones, but it does seem reasonable to me
8 that it takes time --

9 Well, and I should add, cell phone manufacturers, I
10 think, are notoriously uncomfortable cooperating with law
11 enforcement so that it -- I'm assuming, and I certainly have not
12 heard any evidence to the contrary, that when Apple issues a new
13 iPhone, they immediately issue a whole suite of forensic tools
14 to be used so that law enforcement can break into phones and --
15 once they are seized. In fact, common sense would suggest to
16 the contrary since phones -- phone manufacturers are dependent
17 upon people believing that the phones are secure. It would seem
18 obvious that it is the forensic examination community that has
19 to develop its own tools in working with each model of iPhone or
20 Galaxy or Samsung phone when its issued.

21 And so it simply makes sense, and it's really not
22 disputed by any other testimony, that law enforcement simply
23 lacked the tools to forensically evaluate or examine the phone
24 immediately after the issuance of the warrant, and that it -- I
25 think Officer -- Detective Christopherson suggested that he was

1 routinely checking it, and as soon as the tools were available,
2 he then conducted the examination, and the search warrant was
3 fully executed.

4 So for that reason, I'll find that that period was
5 also reasonable and was essentially unavoidable.

6 So based upon those factors, I will deny the motion to
7 suppress. As I indicated, I will reserve the right to review
8 the transcript, and if I feel there are some important facts or
9 case law that I need to cite, I'll issue a short written
10 decision to supplement the Court's decision in this matter.

11 All right. Counsel, that will be my ruling. Is there
12 anything else we need to take up at this time?

13 MR. SHIRTS: No, Your Honor.

14 THE COURT: Anything else from the defense?

15 MS. LEWIS: No, Your Honor.

16 THE COURT: All right. If there is nothing else, we
17 will be in recess.

18 (Proceedings concluded at 11:40 a.m.)
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