
No. _____

In the Supreme Court of the United States

JAYLYN DEVELL MCGHEE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

*On Petition for a Writ of Certiorari to
the United States Supreme Court*

APPENDIX

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APPENDIX – TABLE OF CONTENTS

1. *United States v. Jaylyn McGhee*, 129 F.4th 1095, 8th Cir. No. 23-3674, Opinion and Judgment entered February 28, 2025.App. 3
2. *United States v. Jaylyn McGhee*, 8th cir. No. 23-3674, 2025 WL 108554, Petition for Panel Rehearing/Rehearing en Banc denied April 11, 2025.App. 14
3. *United States v. Jaylyn McGhee*, S.D. Iowa No. 3:22-cr-00044-001 at R. Doc. 79; Judgment entered September 19, 2023.App. 15
4. Transcript of March 27, 2023 Hearing on Motion to Suppress, *United States v. Jaylyn McGhee*, S.D. Iowa 3:22-cr-00044-001 at R. Doc. 92.....App. 22

United States Court of Appeals
For the Eighth Circuit

No. 23-3674

United States of America

Plaintiff - Appellee

v.

Jaylyn Devell McGhee

Defendant - Appellant

Appeal from United States District Court
for the Southern District of Iowa - Eastern

Submitted: January 17, 2025
Filed: February 28, 2025

Before LOKEN, SHEPHERD, and KELLY, Circuit Judges.

SHEPHERD, Circuit Judge.

Following a shooting outside Jaylyn McGhee's house, law enforcement obtained a warrant to search his home and found drugs and guns inside. He was charged with drug- and firearm-related offenses. He conditionally pled guilty and was sentenced to 60 months' imprisonment and 3 years' supervised release, and now

appeals the district court's¹ denial of his motion to suppress and application of a sentencing enhancement. Having jurisdiction under 28 U.S.C. § 1291, we affirm.

I.

In July 2021, while sitting with his six-year-old son in a parked vehicle outside his house in Davenport, Iowa, McGhee was shot at. McGhee's son suffered gunshot wounds to his left hand and right wrist, so McGhee drove him to the hospital for treatment. Pursuant to shots-fired 911 calls, law enforcement responded to the scene, not knowing whether any injuries had resulted.

Officers arrived at the scene to find eight shell casings, "a bag of suspected narcotics" that was later identified as heroin and fentanyl, and a loose \$5 and \$1 bill on the street outside McGhee's house. Neighbors and the 911 callers informed law enforcement that a vehicle had arrived at the house and parked on the side of the street for a brief period. Shortly after, another vehicle pulled up next to it. Witnesses reported that they heard eight shots fired, and then saw both vehicles quickly drive away. The hospital in which the child was treated reported that the child had arrived in a vehicle that had "eight . . . spots of damage suspected from being from gunfire." This information led law enforcement to believe the injured child at the hospital might be connected to the shots-fired call at McGhee's house.

Some of the investigators walked up the paved path leading to the front door of McGhee's house and knocked. Meanwhile, another officer, Davenport Police Department Corporal² Murphy Simms, noticed a second door on the right side of the house; he stood in the front yard outside a chain-link fence separating the front and side yards and watched the side door "just for perimeter security to ensure nobody tried to sneak out or run or any of that matter." Just below the side door were three

¹The Honorable Stephanie M. Rose, Chief Judge, United States District Court for the Southern District of Iowa.

²Corporal Simms was a detective rank in July 2021.

steps, which led down to an elevated wooden deck that was a step off of ground level. The fence gate had been left open and the side yard, deck, stairs, and side door were visible through and over the fence.

While observing the side door, the officer noticed “several spots of blood spatter as well as an unknown white or brown powdery substance” on the deck. Corporal Simms then walked through the gate and noticed the blood spatter extended up the stairs and onto the door and its handle, along with the side of the house. He further noted the powdery substance looked consistent “in its makeup” with illegal narcotics and with the substance found in the street amongst the shell casings. Based on the blood spatter and reports from witnesses that no one had gotten out of the victim vehicle, he was concerned there could be a victim in the house or in the backyard who was bleeding. Corporal Simms also learned that another investigator had entered the side yard after Corporal Simms and had peeked through the window and seen a large amount of blood spatter in the kitchen.

In an attempt to determine whether exigent circumstances such as a medical emergency required entry into the home, Corporal Simms called Detective Farra, who was at the hospital with the victim and McGhee. Detective Farra told Corporal Simms that according to McGhee, McGhee had tried to carry his son inside through the side door following the shooting, but the door was locked so he had returned to his vehicle and rushed to the emergency room. In light of this new information, Corporal Simms grew less concerned that someone was inside the house and in immediate need of medical assistance and instead started to think McGhee may have been lying about going inside.

Corporal Simms then sought a search warrant for the home. In his search warrant application, Corporal Simms described what he had seen on the deck in the side yard, saying:

On the porch leading to the side door was a large amount of blood spatter leading from the opening in the fence to the door. The same

blood spatter was also visible on the door, the house next to the door, the door handle, as well as just inside the door on the floor which was visible through a window. Near the fresh blood spatter on the porch was an additional white chalky/powdery substance on the ground.

A search warrant was issued. Upon its execution, law enforcement found a plastic baggie containing 5.48 grams of cocaine base and 17.96 grams of heroin and fentanyl in McGhee's kitchen. The trail of blood extended through the kitchen and into the nearby master bedroom, where two firearms were found. McGhee was later charged with one count of possession with intent to distribute heroin, fentanyl, and cocaine base, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(C), and one count of being a felon in possession of firearms, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2).

McGhee unsuccessfully moved to suppress the drugs and guns found in his house. In relevant part, he argued that the search warrant application was based on evidence that was illegally obtained. The only evidence linking McGhee's home to the crime, McGhee argued, was the blood spatter and powdery substance, and the officers would never have seen either the blood or the powder had they not impermissibly entered McGhee's yard and peered through his window in violation of the Fourth Amendment. McGhee also argued that neither the exigent circumstances nor the good-faith exceptions to the search warrant requirement applied. The Government responded that the officers' actions were justified by the plain-view doctrine and exigent circumstances, that the search warrant affidavit was supported by sufficient evidence even if the evidence at issue was excluded, and that the agents reasonably relied on the warrant in good faith. Following testimony from Corporal Simms and one other officer at an evidentiary hearing on the matter, the district court denied the motion. The court determined that Corporal Simms had not entered the house's curtilage until he walked through the open gate into the side yard. By the time he walked through the gate, the court noted, Corporal Simms had already lawfully seen the blood spatter and white powdery substance from his lawful vantage point outside the fence, which created exigent circumstances, allowing him to investigate further in order to ensure no one was in need of medical attention.

McGhee conditionally pled guilty to both counts, preserving the right to appeal his sentence and the district court's denial of the motion to suppress. Prior to sentencing, the United States Probation Office prepared a Presentence Investigation Report (PSR) in which it recommended a four-level enhancement under United States Sentencing Guidelines (USSG) § 2K2.1(b)(6)(B) for possessing a firearm in connection with another felony offense—in this case, drug trafficking. The fact section of the PSR noted that law enforcement had been investigating McGhee for drug offenses and had conducted several controlled buys from McGhee in the months prior. McGhee objected to the enhancement, contending that the record did not establish a connection between drug activity and firearm use, and further asserting that the commentary to the Guidelines impermissibly broadened the Guidelines and thus should not be applied. The district court overruled McGhee's objection, finding—based on the unobjected to facts in the PSR, the testimony at the suppression hearing, and additional testimony at sentencing—that the firearms found in McGhee's house were connected to drug trafficking in that same house. In coming to this conclusion, the district court noted that McGhee had five times sold drugs (cocaine, heroin, and fentanyl) to cooperating sources or confidential informants during controlled buys in 2020 and 2021, and that following the July 2021 shooting, officers found drugs in the kitchen and guns in the bedroom—“[a]nd the blood trail absolutely show[ed] that the defendant and his son, or at least his son, traversed between those two rooms while bleeding.” The court sentenced McGhee to 60 months' imprisonment on each count, to be served concurrently, and 3 years of supervised release.

McGhee appeals. He first argues the district court erred in denying the motion to suppress because the search warrant was based on unlawfully obtained evidence. He further argues the district court erred in overruling his objection to the four-level enhancement at sentencing, claiming the district court applied the enhancement by relying on commentary to the Guidelines, which he asserts impermissibly expands the Guideline language.

II.

McGhee argues that the district court erred in denying his motion to suppress. He claims the bases for obtaining the warrant—the blood spatter and powdery substance—were observed only after officers trespassed into the curtilage of McGhee’s home. “This [C]ourt analyzes the denial of a motion to suppress under a ‘mixed standard,’ reviewing findings of fact for clear error and legal findings de novo. United States v. Avalos, 984 F.3d 1306, 1307 (8th Cir. 2021) (citation omitted).

“The Fourth Amendment protects the right of people to be secure in their homes against unreasonable searches and seizures.” United States v. Maxwell, 89 F.4th 671, 676 (8th Cir. 2023). “[W]arrants are generally required to search a person’s home or his person unless ‘the exigencies of the situation’ make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.” Brigham City v. Stuart, 547 U.S. 398, 403 (2006) (alteration in original) (citation omitted). “The area ‘immediately surrounding and associated with the home—what our cases call the curtilage—is part of the home itself for Fourth Amendment purposes.’” Luer v. Clinton, 987 F.3d 1160, 1165 (8th Cir. 2021) (quoting Florida v. Jardines, 569 U.S. 1, 6 (2013)).

The first dispute is whether the officers entered the curtilage of McGhee’s home. “Determining whether a particular area is part of the curtilage of an individual’s residence requires consideration of ‘factors that bear upon whether an individual reasonably may expect that the area in question should be treated as the home itself.’” United States v. Bausby, 720 F.3d 652, 656 (8th Cir. 2013) (citation omitted). Those factors (the Dunn factors) include: (1) “the proximity of the area claimed to be curtilage to the home,” (2) “whether the area is included within an enclosure surrounding the home,” (3) “the nature of the uses to which the area is put,” and (4) “the steps taken by the resident to protect the area from observation by people passing by.” Id. (quoting United States v. Dunn, 480 U.S. 294, 301 (1987)).

Here, two distinct areas are at issue: (1) the front yard, and (2) the side yard containing the deck and stairs to the side door. Though the front yard was close in proximity to the home, it was not protected by a fence or any other enclosure, and no efforts were taken to shield the yard from public observation or entry—unlike other parts of McGhee’s yard. The yard contained a paved walkway to the front door, where the mailbox was located. Images of the house show an apparent worn path through the grass from the front door to the chain-link fence separating the front yard from the side yard. Considering the Dunn factors, we conclude the district court did not err³ in determining that the front yard was not within the curtilage of McGhee’s home. See also Bausby, 720 F.3d at 656-57 (determining that a front yard that was enclosed by a chain-link fence but displayed a motorcycle and other items was not curtilage); Reeves v. Churchich, 484 F.3d 1244, 1255 (10th Cir. 2007) (holding front yard was not part of curtilage where there was no evidence that front yard was enclosed, used for intimate activities, or protected from observation); United States v. Hayes, 551 F.3d 138, 145 (2d Cir. 2008) (“The sanctuary of the home simply does not extend to the front yard.”). The side yard, however, was directly adjacent to McGhee’s home, was enclosed by a fence, contained items like a grill that suggested it was for family use, and was partially obstructed from further view by trees and a back fence. Thus, McGhee’s side yard is part of his home’s curtilage. Cf. Dunn, 480 U.S. at 301-03 (determining that barn 60 yards from home and not enclosed by fence was not part of the home’s curtilage).

The second dispute is whether the officers violated the Fourth Amendment by entering McGhee’s side yard curtilage. As a threshold matter, simply viewing the blood spatter and powdery substance while standing in the front yard did not violate

³There is a conflict in this Court’s case law as to whether a district court’s determination that an area is part of a home’s curtilage is a factual finding reviewed for clear error or a legal conclusion reviewed de novo. United States v. Wells, 648 F.3d 671, 675-77 (8th Cir. 2011). We need not resolve that conflict because here, even under de novo review, the front yard was not within the curtilage of McGhee’s home.

the Fourth Amendment. Though the blood spatter and powdery substance were in the side yard, which is curtilage, Corporal Simms first saw it when he was standing in the front yard, which is not part of the home's curtilage. "[T]hat an area is within the curtilage does not itself bar all police observation." United States v. Mathias, 721 F.3d 952, 957 (8th Cir. 2013) (alteration in original) (quoting California v. Ciraolo, 476 U.S. 207, 213 (1986)). Even within the curtilage of a home, there is no reasonable expectation of privacy with respect to police observation of what is plainly visible from a vantage point where the police officer has a right to be. See Ciraolo, 476 U.S. at 213 ("[T]he mere fact that an individual has taken measures to restrict some views of his activities [does not] preclude an officer's observations from a public vantage point where he has a right to be and which renders the activities clearly visible."). Because the officers first viewed the blood spatter and powdery substance from the front yard—a place where they had the right to be—they did not violate the Fourth Amendment in doing so. See also United States v. Gerard, 362 F.3d 484, 488 (8th Cir. 2004) (finding no error in district court's determination that garage was not within farm's curtilage and thus no illegal search when officer climbed a ladder to peer into that garage).

The officers' entry into the side yard following observation of the blood spatter and powdery substance was then justified by the exigent circumstances exception to the warrant requirement. "[A] warrant is not required for a search under the [F]ourth [A]mendment when exigent circumstances exist." United States v. Chipps, 410 F.3d 438, 442 (8th Cir. 2005). Such "circumstances exist if a reasonable law enforcement officer could believe that a person 'is in need of immediate aid.'" Id. (citations omitted). A district court's "findings of historical fact" are factual findings reviewed for clear error, while the "ultimate determination of whether the facts as found constitute exigent circumstances" is a legal conclusion reviewed de novo. United States v. Ramirez, 676 F.3d 755, 759 (8th Cir. 2012). Here, officers arrived on scene in response to shots-fired calls, they found eight shell casings in front of the house, and they had reason to believe there was at least one victim. Furthermore, Corporal Simms testified that the "ultimate reason" that they followed that blood trail was "to see if there were any victims that potentially could have ran

into the house or ran to the backyard who were . . . obviously bleeding.” The evidence here was sufficient to lead a reasonable officer to believe that a person “is in need of immediate aid,” thus triggering the exigent circumstances exception. See Chipps, 410 F.3d at 442-44 (citations omitted) (holding that law enforcement’s observation of blood on the ground in front of a defendant’s front door provided exigent circumstances because the officer who observed the blood could reasonably have believed someone’s life was in danger). Therefore, the district court did not err in denying the motion to suppress.⁴

III.

McGhee also argues that the district court committed procedural error by applying a four-level sentencing enhancement pursuant to USSG § 2K2.1(b)(6)(B). “We review the district court’s application of the Guidelines and imposition of sentencing enhancements de novo” and “review factual findings at sentencing for clear error.” United States v. Foard, 108 F.4th 729, 736 (8th Cir. 2024). We review “for clear error a district court’s finding that a defendant possessed a firearm in connection with another felony offense” pursuant to USSG § 2K2.1(b)(6)(B). United States v. Mitchell, 963 F.3d 729, 731 (8th Cir. 2020). “[S]entencing judges are required to find sentence-enhancing facts only by a preponderance of the evidence.” Foard, 108 F.4th at 736 (alteration in original) (citation omitted).

Under USSG § 2K2.1(b)(6)(B), a defendant is subject to a four-point sentencing enhancement if he “used or possessed any firearm or ammunition in connection with another felony offense; or possessed or transferred any firearm or ammunition with knowledge, intent, or reason to believe that it would be used or possessed in connection with another felony.” In the context of drug trafficking, the commentary to the Guidelines dictates that the enhancement applies when “a firearm is found in close proximity to drugs, drug-manufacturing materials, or drug

⁴Because we resolve this issue on the existence of exigent circumstances, we need not consider whether the good-faith exception applied.

paraphernalia.” Id. comment. (n.14(B)). In most other circumstances, the commentary says the enhancement applies “if the firearm or ammunition facilitated, or had the potential of facilitating, another felony offense.” Id. comment. (n.14(A)).

McGhee argues that the commentary “impermissibly expand[s] the [G]uidelines” and is thus entitled to no deference. Appellant Br. 16. He points to Stinson v. United States, 508 U.S. 36, 45-46 (1993), in which the Supreme Court noted that commentary to the Guidelines is binding “if the [G]uideline which the commentary interprets will bear the construction” but not if the construction is “plainly erroneous or inconsistent with” the corresponding Guideline. Appellant Br. 16 (quoting Stinson, 508 U.S. at 45-46). This Court has repeatedly applied the challenged language post-Stinson without issue. See United States v. Tucker Jackson, 106 F.4th 772, 777 (8th Cir. 2024) (quoting language from commentary note 14(B) in determining the district court did not clearly err in applying the enhancement); United States v. Lopez, No. 22-3203, 2023 WL 6474464, at *2 (8th Cir. Oct. 5, 2023) (per curiam) (same); United States v. Sewalson, 36 F.4th 832, 833 (8th Cir. 2022) (applying the commentary language to a cross-reference question). Thus, the district court did not err in relying on the commentary to apply the enhancement.

To the extent McGhee challenges the factual underpinnings of this enhancement,⁵ the record sufficiently supports the district court’s factual findings. As the district court found, McGhee had sold cocaine, heroin, and fentanyl in five controlled buys previously. Then in July 2021, after McGhee was shot at outside his home, officers found heroin, fentanyl, loose money, and eight spent shell casings on the street outside his home. Furthermore, inside his house, officers found

⁵McGhee does not explicitly challenge the factual underpinnings of this sentencing enhancement, but also does not concede that the enhancement is supported by the record. He says, “[t]he [G]overnment did not put forth any evidence that the firearm was actually used to facilitate the drug trafficking offense,” Appellant Br. 18, which suggests a challenge to the factual underpinnings. Thus, we briefly address the factual basis for the enhancement here.

cocaine, heroin, and fentanyl in the kitchen, firearms in the bedroom, and a trail of blood connecting the rooms. Thus, as the district court found, the blood trail, in combination with the drugs and money found outside McGhee's house, indicate that McGhee "possessed simultaneously [the drugs and the firearms] and that he delayed seeking treatment of his son in order to hide those two items." The district court did not clearly err in determining that this evidence, along with the fact that money and drugs were found in the street, indicated the transaction involved both drugs and guns. Moreover, the guns and drugs were found in close proximity to each other. See United States v. Martinez, 258 F.3d 760, 762-63 (8th Cir. 2001) (affirming application of enhancement where drugs were found in the living room and hall closet and firearm was found on top of wooden chest in dining room). The district court therefore did not err in applying the four-level enhancement to McGhee's sentence.

IV.

For the reasons stated above, we affirm the judgment of the district court.

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 23-3674

United States of America

Appellee

v.

Jaylyn Devell McGhee

Appellant

Appeal from U.S. District Court for the Southern District of Iowa - Eastern
(3:22-cr-00044-SMR-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

April 11, 2025

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Susan E. Bindler

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA

v.

Jaylyn Devell McGhee

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:22-cr-00044-001

USM Number: 29517-510

Nathan A. Nieman
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) One and Two of the Indictment filed on May 10, 2022.☐ pleaded nolo contendere to count(s)
which was accepted by the court.☐ was found guilty on count(s)
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. § 841(a)(1), 841(b)(1)(C)	Possession with Intent to Distribute Heroin, Fentanyl, and Cocaine Base	07/07/2021	1
18 U.S.C. §§ 922(g)(1), 924(a)(2)	Felon in Possession of Firearms	07/07/2021	2

☐ See additional count(s) on page 2

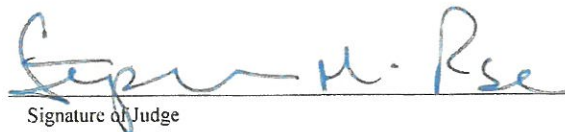
The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

September 19, 2023

Date of Imposition of Judgment



Signature of Judge

Stephanie M. Rose, Chief U.S. District Judge

Name of Judge

Title of Judge

September 19, 2023

Date

App. 15

DEFENDANT: Jaylyn Devell McGhee
CASE NUMBER: 3:22-cr-00044-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

60 months as to each of Counts One and Two of the Indictment filed on May 10, 2022, to run concurrently.

☒ The court makes the following recommendations to the Bureau of Prisons:

The defendant be placed at USP Thompson, in Thompson, Illinois, or at a facility as close to the Quad Cities of Illinois and Iowa area as possible that has First Step Act programming available, if commensurate with his classification and needs.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before _____ on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Jaylyn Devell McGhee

CASE NUMBER: 3:22-cr-00044-001

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

3 years as to each of Counts One and Two of the Indictment filed on May 10, 2022, to run concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: Jaylyn Devell McGhee
CASE NUMBER: 3:22-cr-00044-001

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: Jaylyn Devell McGhee

CASE NUMBER: 3:22-cr-00044-001

SPECIAL CONDITIONS OF SUPERVISION

You must participate in a program of testing and/or treatment for substance abuse, as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Office. At the direction of the probation office, you must receive a substance abuse evaluation and participate in inpatient and/or outpatient treatment, as recommended. Participation may also include compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment. You must not use alcohol and/or other intoxicants during the course of supervision.

You must submit to a mental health evaluation. If treatment is recommended, you must participate in an approved treatment program and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment and/or compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

You shall not knowingly associate or communicate with any active member of the ATL criminal street gang, or any other criminal street gang.

You will submit to a search of your person, property, residence, adjacent structures, office, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), and other electronic communications or data storage devices or media, conducted by a U.S. Probation Officer. Failure to submit to a search may be grounds for revocation. You must warn any other residents or occupants that the premises and/or vehicle may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your release and/or that the area(s) or item(s) to be searched contain evidence of this violation or contain contraband. Any search must be conducted at a reasonable time and in a reasonable manner. This condition may be invoked with or without the assistance of law enforcement, including the U.S. Marshals Service.

DEFENDANT: Jaylyn Devell McGhee

CASE NUMBER: 3:22-cr-00044-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

- ☐ Pursuant to 18 U.S.C. § 3573, upon the motion of the government, the Court hereby remits the defendant's Special Penalty Assessment; the fee is waived and no payment is required.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 200.00	\$0.00	\$ 0.00	\$ 0.00	\$ 0.00

- ☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$0.00	\$0.00
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- ☐ Restitution amount ordered pursuant to plea agreement \$ _____
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ the interest requirement is waived for the ☐ fine ☐ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

*Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Jaylyn Devell McGhee
CASE NUMBER: 3:22-cr-00044-001**SCHEDULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 200.00 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
- All criminal monetary payments are to be made to:
 Clerk's Office, United States District Court, P.O. Box 9344, Des Moines, IA 50306-9344.
- While on supervised release, you shall cooperate with the United States Probation Office in developing a monthly payment plan, which shall be subject to the approval of the Court, consistent with a schedule of allowable expenses provided by the United States Probation Office.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
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☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☒ The defendant shall forfeit the defendant's interest in the following property to the United States:

A loaded .38 caliber Ruger Security-Six revolver, with serial number 157-52572, and a loaded nine-millimeter Glock 19 handgun, with serial number BPEB687, as outlined in the Motion for Preliminary Order of Forfeiture filed on August 1, 2023.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
EASTERN DIVISION

- - - - - X
 UNITED STATES OF AMERICA, :
 :
 Plaintiff, :
 :
 vs. : Case No. 3:22-cr-00044
 :
 JAYLYN DEVELL MCGHEE, : SUPPRESSION HEARING TRANSCRIPT
 :
 Defendant. :
 - - - - - X

Courtroom, First Floor
U.S. Courthouse
131 East Fourth Street
Davenport, Iowa
Monday, March 27, 2023
2:03 p.m.

BEFORE: THE HONORABLE STEPHANIE M. ROSE, Chief Judge.

APPEARANCES:

For the Plaintiff: TORRIE J. SCHNEIDER, ESQ.
United States Attorney's Office
131 East Fourth Street, Suite 410
Davenport, Iowa 52801

For the Defendant: NATHANIEL A. NIEMAN, ESQ.
Nate Nieman Attorney At Law
329 18th Street
Rock Island, Illinois 61201

KELLI M. MULCAHY, CSR, RDR, CRR
United States Courthouse
123 East Walnut Street, Room 115
Des Moines, Iowa 50309

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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For the Government:

Murphy Simms	4	23	36	
Justin King	39	50		

E X H I B I T SGOVERNMENT'S EXHIBITSOFFERED RECEIVED

1 - Body camera video	4	4
2 - Body camera video	4	4
3 - Body camera video	4	4
4 - Photograph	4	4

DEFENDANT'S EXHIBITSOFFERED RECEIVED

A - Search warrant application	57	57
B - Photograph	57	57
C - Google Map photograph	57	57
D - Google Map photograph	57	57
E - Google Map photograph	57	57
F - Photograph	57	57
G - Photograph	57	57

1 P R O C E E D I N G S

2 (In open court, with the defendant present.)

3 THE COURT: Thank you. You can be seated.

4 We are here in the matter of Jaylyn Devell McGhee. It's
5 Case No. 3:22-cr-44. We're here for purposes of a suppression
6 hearing on Defendant's motion to suppress evidence seized in his
7 case. His motion was filed at Docket 41 on February 10th of
8 2023. The Government responded on February 24th of 2023 at
9 Docket 47.

10 The United States is represented by Torrie Schneider. She
11 is joined by Detective Ryan Leabo of the Davenport Police
12 Department. Defendant is personally present and represented by
13 his attorney, Nathan Nieman.

14 In advance of the hearing, both parties submitted exhibits
15 to me. I have reviewed Government Exhibits 1 through 4,
16 including the body camera footage, at least the clips that were
17 provided to me, from Officer Tharp, Officer King, and Officer
18 Simms; and I have reviewed Defendant's Exhibits A through F. I
19 have also reviewed Government Exhibit 4, which was a photograph
20 as opposed to a recording.

21 Ms. Schneider, would you like to present any evidence in
22 this case?

23 MS. SCHNEIDER: Yes, Your Honor. The Government would
24 first offer Exhibits 1 through 4.

25 MR. NIEMAN: No objection.

SIMMS - DIRECT

4

1 THE COURT: Government Exhibits 1 through 4 are
2 admitted.

3 (Government Exhibit Nos. 1 - 4 were
4 offered and received in evidence.)

5 MS. SCHNEIDER: And then the Government calls Corporal
6 Murphy Simms.

7 MURPHY SIMMS, GOVERNMENT'S WITNESS, SWORN

8 THE DEPUTY CLERK: Please have a seat.

9 THE COURT: Thank you, Ms. Schneider. You can begin
10 whenever you're ready.

11 MS. SCHNEIDER: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MS. SCHNEIDER:

14 Q. Good afternoon, Corporal Simms. Can you please state and
15 spell your name for the record.

16 A. Good afternoon. My name is Murphy Simms, M-u-r-p-h-y
17 S-i-m-m-s.

18 Q. And how are you employed?

19 A. I'm currently employed with the Davenport Police Department.

20 Q. In what capacity?

21 A. I am currently assigned to the training bureau as the
22 training supervisor.

23 Q. And as a corporal?

24 A. Yes, ma'am.

25 Q. How long have you been a corporal in the -- assigned to the

SIMMS - DIRECT

5

1 training bureau?

2 A. Fairly recently. So approximately one month. It's a new
3 assignment.

4 Q. For that assignment as well as the promotion to corporal?

5 A. The corporal promotion I've been in for about a year.

6 Q. I assume that you have graduated from the Iowa Law
7 Enforcement Academy previously. Is that right?

8 A. Yes, ma'am.

9 Q. Okay. So what were your -- what was your assignment in July
10 of 2021?

11 A. I was assigned to the major case unit in the criminal
12 investigations division.

13 Q. And what were some of your assignments as a part of that --
14 sorry. What were some of your responsibilities as part of that
15 assignment?

16 A. My responsibilities included the investigation and follow-up
17 of any major events, to include homicides, major assaults,
18 suspicious deaths, that sort.

19 Q. So in the course of your duties in the major case unit, were
20 you on duty on the afternoon of July 7th, 2021?

21 A. Yes, I was.

22 Q. And were you kind of called out to 3213 McKinley Avenue that
23 afternoon?

24 A. Yes, ma'am, I was.

25 Q. And did you respond?

SIMMS - DIRECT

6

1 A. I did.

2 Q. Why did you respond out to that address that afternoon?

3 A. We suspected that a shots-fired call potentially had
4 produced a shooting victim at Genesis West emergency room, and
5 based on the times that those 911 calls were received, we
6 believed them to be related, so I responded to assist in the
7 investigation.

8 Q. So there were multiple 911 calls relating to a shooting?

9 A. Yes, there was.

10 Q. One at 3213 McKinley --

11 A. Yes.

12 Q. -- or in that area?

13 A. Yes.

14 Q. And then one from the hospital?

15 A. Yes.

16 Q. And so you're saying that due to the timing that those calls
17 came in, the police suspected they could be related?

18 A. Yes, ma'am.

19 Q. Did you know that they were related at that time?

20 A. At that time, no, I did not.

21 Q. Okay. As you were responding to the address, did you
22 receive additional information before you arrived on scene?

23 A. Yes, I did.

24 Q. What information did you receive?

25 A. It was relayed over our police radio that several spent

SIMMS - DIRECT

7

1 shell casings had been located in the street of McKinley Avenue
2 directly in front of 3213.

3 Q. So when you arrived in the area of 3213, were other officers
4 already there?

5 A. Yes, there were.

6 Q. What did you do when you arrived?

7 A. I approached the scene. The scene had been blocked off by
8 squad cars to preserve evidence. I approached the scene, and
9 the first thing that I did was I spoke briefly with a
10 neighboring resident who was standing in his front yard.

11 Q. And after you spoke with that resident, what did you do?

12 A. I proceeded closer down to the area of 3213 McKinley Avenue,
13 where I met with several officers that were on scene that had
14 been conducting a canvass.

15 Q. Would you say that those were, like, responding -- you have
16 some water right in front of you too if you need it.

17 A. Thank you. Yeah.

18 Q. Would you say that those were responding officers, patrol
19 officers?

20 A. Yes, ma'am.

21 Q. And who were those officers that you spoke with?

22 A. I spoke with Officer Matt Lovelady; Detective Tharp, who was
23 assigned to patrol that day; and Office Pojar.

24 THE COURT: Can you spell Lovelady and Pojar for me?

25 THE WITNESS: Yes. Lovelady is L-o-v-e-l-a-d-y, and

SIMMS - DIRECT

8

1 Pojar is P-o-j-a-r.

2 THE COURT: Thank you.

3 THE WITNESS: Uh-huh.

4 BY MS. SCHNEIDER:

5 Q. And do you know who was the first officer on scene that day?

6 A. I do not. I do not.

7 Q. What information did those officers provide you at that
8 time?

9 A. They provided me just the details of their brief canvass
10 that they had done; that they had spoke with, one, the 911
11 caller and then several other residents that were at home at the
12 time. They indicated that a vehicle arrived at 3213 McKinley
13 Avenue and remained in front of the house parked on the side of
14 the street for just a brief period of time before an additional
15 vehicle pulled up next to it.

16 At that point, several shots are heard being fired. Both
17 vehicles leave at a high rate of speed, and then a female exits
18 the residence of 3213 and also leaves in a vehicle.

19 Q. And did the officers that you spoke with relay to you any
20 information from the hospital?

21 A. Yes. Yes, they did. That the vehicle in which the child
22 suffering the gunshot wound arrived in was at the hospital and
23 had eight suspected -- spots of damage suspected from being from
24 gunfire.

25 Q. Okay. So at that point, when you received all that

SIMMS - DIRECT

9

1 briefing, so to speak, did you at that point believe that the
2 child at the hospital was, then, related to the shots fired at
3 3213 McKinley?

4 A. Yes, ma'am.

5 Q. After getting this briefing from those officers, what did
6 you do after that?

7 A. After that, there was some talk during that briefing that we
8 needed to make contact at 3213, so several officers branched out
9 to do that. I then looked -- just took a quick examination of
10 our scene. So that consisted of the shell casings that were
11 located, a bag of suspected narcotics, and then some loose
12 money. So I looked at those just very briefly just to get a
13 picture of what was going on.

14 Q. And where was that located?

15 A. That was on the south side of McKinley Avenue, directly in
16 front of 3213 McKinley Avenue.

17 Q. In the street?

18 A. In the street, yes, ma'am.

19 Q. What did you do after you made that quick exam of the
20 evidence?

21 A. I noticed that Detective Tharp, Detective King, and others
22 were attempting to make contact at that residence at the front
23 door. I noticed that there was a side door on the west side of
24 the residence so I entered into the front yard, and I watched
25 that side door as they made contact just for perimeter security

SIMMS - DIRECT

10

1 to ensure nobody tried to sneak out or run or any of that
2 matter.

3 Q. And can you describe the area that you were watching of the
4 house and the area around it?

5 A. I can, yes. That was -- so, again, it was a west-facing
6 side door that was closer to, I guess, the front of the house.
7 There was a -- just below it, there is a set of three concrete
8 steps that lead down to an elevated wooden deck or porch
9 structure that was approximately one step off of ground level.
10 Just in front of that, dividing the front yard from the side
11 yard, was a fence with an open gate that would lead you to the
12 back of the residence.

13 Q. And so you said the gate -- I'm sorry -- the fence had a
14 gate, and the gate was open?

15 A. Yes.

16 Q. I'm going to show you what's been marked as -- or been
17 admitted as Government's Exhibit 4. It's probably kind of hard
18 to see there with the glare.

19 Do you recognize that?

20 A. Yes, I do.

21 Q. And this is taken from Detective Tharp's body camera; is
22 that right?

23 A. That appears correct, yes.

24 Q. Do you see yourself on Exhibit 4?

25 A. I do, yes.

SIMMS - DIRECT

11

1 Q. Can you circle that right there on your screen. It's a
2 touch screen.

3 A. (Witness complied.)

4 Q. So you've circled you're standing kind of in the shadows
5 there. There's a tree to the right of you, and you're also to
6 the left of where the house is, where the window is; is that
7 right?

8 A. That's correct.

9 Q. Is that where you were standing when you were making -- when
10 you were watching that side door as you've just described?

11 A. Yes, it was.

12 Q. And do we see the open gate in this photo?

13 A. Yes, ma'am.

14 Q. Can you circle that, please.

15 A. (Witness complied.)

16 Q. So you've circled the area that's right in front of where
17 you're standing, between yourself and the house?

18 A. Yes.

19 Q. And as you're standing in that area outside of the gate
20 watching the side door to make sure no one flees, what are you
21 looking at?

22 A. I'm looking, one, primarily at that side door to see if
23 anything happens that I need to be there to be responsible for,
24 but my attention is caught to, as I described, the elevated
25 wooden deck area, and I notice at that point several spots of

SIMMS - DIRECT

12

1 blood spatter as well as an unknown white or brown powdery
2 substance that is on the deck as well.

3 Q. And in this Exhibit 4, it appears that you're looking down.
4 Is that fair?

5 A. Yes.

6 Q. Is that, then, what you were looking at, do you believe?

7 A. Yes, ma'am.

8 Q. Thank you.

9 So as you're standing outside the gate and observing the
10 blood spatter and the white-brown substance, what did you do?

11 A. So after that, I immediately pull out my flashlight because
12 it was -- there was tree cover, and it was dark. Pulled out my
13 flashlight, and I moved into that open gate area as I followed
14 what was -- what was that blood trail that I had described.

15 Q. And when you were outside of the gate, did you make any
16 other observations of the blood or the white-brown substance
17 or -- as you were outside the gate?

18 A. No, I did not.

19 Q. Okay. So then you entered the gated area as you're
20 following that, and did you make other observations at that
21 point?

22 A. Yes, ma'am, I did.

23 Q. What were those?

24 A. I noticed that the blood trail -- or that blood spatter
25 created a trail up to that door that I was originally watching,

SIMMS - DIRECT

13

1 where it goes from that elevated wooden deck up the steps, on
2 the door, and then the door handle and some of the siding had
3 spots of blood spatter.

4 Q. And, I'm sorry, I'm going to take you back once. When you
5 were outside of that gate and you saw the blood and this white
6 substance, why was the white substance important to you at that
7 time?

8 A. At that time, it was interesting because we had already
9 located what we suspected to be some form of narcotics. They
10 had yet to be field-tested. I wasn't sure what they were. But
11 the package and the substance itself was consistent with illegal
12 narcotics. We located that out in the street amongst the shell
13 casings. So that powdery substance that I saw on the deck was
14 consistent in how -- in its makeup to what would have been
15 suspected as narcotics out in the street.

16 Q. Thank you.

17 So then after you entered the gated area following this
18 blood trail and then you saw it go up to the steps and the door
19 and the siding, as you've described, why was that -- why were
20 you kind of following that and why was it important to you to
21 make that observation?

22 A. So the ultimate reason that we followed that blood trail is
23 to see if there were any victims that potentially could have ran
24 into the house or ran to the backyard who were -- they were
25 obviously bleeding. We didn't have any information indicating

SIMMS - DIRECT

14

1 that, but that's -- those points of blood spatter were
2 interesting there.

3 So ultimately, it was to look for, locate any victims that
4 potentially could have been there.

5 Q. You said, "We didn't have any information indicating that."
6 What did you mean by that?

7 A. So by that I mean from the canvass that we conducted on
8 scene, we didn't have any witnesses that said, "I saw somebody
9 who appeared to be injured run this direction." We didn't have
10 that information. But, obviously, having the blood there, we
11 knew that an injury took place in some fashion in that area, so
12 to follow that was kind of my first priority.

13 Q. And, in fact, as you were looking at that, shortly after you
14 entered the gate, did another officer go with you?

15 A. Yes.

16 Q. Kind of follow you?

17 A. Yes, ma'am.

18 Q. Who was that?

19 A. Detective King followed me.

20 Q. Okay. And as you were in that area, did he -- a couple
21 minutes later, did he make a further observation?

22 A. He did, yes.

23 Q. And how did you learn about that?

24 A. Detective Deney actually relayed that to me of his
25 observations.

SIMMS - DIRECT

15

1 Q. What did she tell you?

2 A. She told me that they located a large amount of blood
3 spatter inside of that door that we're speaking of, which was
4 the kitchen, a large amount of blood spatter in the kitchen.

5 Q. So what, if anything, did you do after learning that there
6 was blood inside the house?

7 A. Well, at that point I needed to speak with some other
8 detectives that were also investigating that so I made
9 arrangements to speak with the detective that was at the
10 hospital with the gunshot victim and Mr. McGhee.

11 Q. And, in fact, as you had been previously watching that side
12 door, Detective Tharp or King, did they make contact with anyone
13 in the house?

14 A. No, they did not.

15 Q. No one came to the door?

16 A. Correct.

17 Q. Okay. And so you wanted to get more information from the
18 people at the hospital?

19 A. Yes.

20 Q. And who did you speak with?

21 A. I called Detective Farra.

22 Q. F-a-r-r-a?

23 A. Yes, that's correct.

24 Q. What information were you seeking from him?

25 A. I wanted to know if he was getting any information at the

SIMMS - DIRECT

16

1 hospital from those involved, if anybody had gone into that
2 house which would explain the blood spatter that we found.

3 Q. And why was it important for you to know that?

4 A. At this point, we were looking at exigent circumstances for
5 entry into that home, again, to follow that blood trail to
6 ensure that we don't have any victims. We were very close into
7 going into that home to look for victims, because we obviously
8 had information that somebody with an injury was at some point
9 inside that house.

10 Q. So you wanted to know did someone go into that house
11 previously or was someone in that house injured?

12 A. Yes.

13 Q. All right. And so was Detective Farra able to answer those
14 questions in that phone conversation?

15 A. There was two phone conversations that took place. The
16 original one -- or the first one, I should say, I explained to
17 him what I saw on scene, and he needed to ask some clarifying
18 questions to give me a better answer, so then --

19 Q. So he didn't have that information for you in that call?

20 A. Correct.

21 Q. All right. And he said he would get back to you?

22 A. Yes, he did.

23 Q. As you were ending that call, what did you say to him?

24 A. I made a comment. I don't remember verbatim. I don't
25 recall. But I do know that I told him, essentially, that we

SIMMS - DIRECT

17

1 might just enter this home and clear it of any victims; to enter
2 it, search it, make sure there's no victims inside that needed
3 medical aid.

4 Q. And why did you say that?

5 A. Again, it goes back to the exigency that we had there with
6 that blood trail leading right to the -- right to the back door.

7 Q. Now, I think you kind of just touched on this. You had
8 information from the canvass and from neighbors that no one had
9 gotten out of the victim vehicle; is that right?

10 A. Correct.

11 Q. And people reported that a female had left from the home
12 after the shooting?

13 A. Correct.

14 Q. So why were you concerned that there was someone in the
15 home?

16 A. My main concern was the evidence that I was looking at, that
17 blood trail; and then the blood spatter that was visible from
18 outside the home through a window in the kitchen indicated
19 someone with an injury had been in there at some point. So
20 although we didn't have supporting information from witnesses
21 down in that block of McKinley Avenue, I was getting evidence
22 that told me otherwise.

23 Q. Sure. So the witness reports were one thing, but the
24 physical evidence was not consistent with that?

25 A. Correct.

SIMMS - DIRECT

18

1 Q. In your career as a police officer, have you encountered
2 witness statements to be wrong?

3 A. Yes, I have.

4 Q. And, in fact, have you ever encountered two people who saw
5 an incident and reported it differently?

6 A. Yes, ma'am.

7 Q. Like described it differently from one another?

8 A. Yes.

9 Q. So did Detective Farra ever call you back?

10 A. He did.

11 Q. And do you recall -- and we have it, obviously, on the body
12 camera, but do you know approximately how long that took?

13 A. It was approximately two minutes.

14 Q. Okay. So that's a pretty short amount of time, but if
15 you're concerned that there might be someone inside who needs
16 medical help, why did you wait instead of just going in?

17 A. So although we -- I would argue we had exigency at that
18 point to make entry into the home, that's never anything we do
19 on a whim. We want to have as much information as we can
20 because we don't know what we're walking into. We have to
21 clarify information. We have several different people working
22 different aspects of the investigation.

23 So that little -- in that short time frame, the information
24 that I could obtain that could direct me into or away from a
25 space or an investigation or to a different lead, it's fairly

SIMMS - DIRECT

19

1 important for the overall investigation.

2 Q. And, in fact, what information did you learn from Detective
3 Farra when he called?

4 A. I learned that, through his interview with Mr. McGhee, that
5 he reported that he had not made it into the home after the
6 shots had been fired.

7 Q. Did he provide you other information other than just he
8 didn't make it into the home?

9 A. Yes, he did.

10 Q. And what was that?

11 A. That following the shots fired, he realized that the -- that
12 his son had been struck by the gunfire. He attempted to go up
13 to that side door, which he claimed was locked and he could not
14 get inside. He then goes back to his vehicle and then rushes to
15 the emergency room.

16 Q. And he asked a neighbor to call 911?

17 A. Yes.

18 Q. And so receiving that information, was that information
19 consistent with the physical evidence?

20 A. No, it was not.

21 Q. So did you believe it -- believe him?

22 A. I did not, no.

23 Q. Okay. So what did you decide, though, to do at that point?

24 A. At that point, I made an additional phone call to another
25 detective that was assisting in the investigation. We decided

SIMMS - DIRECT

20

1 that we would be getting a search warrant for the residence of
2 3213 McKinley Avenue.

3 Q. So even though the defendant's -- what he told Detective
4 Farra wasn't entirely truthful, were you confident enough that
5 there wasn't anyone injured in the home?

6 A. I was confident enough that we didn't need to go in right
7 that second.

8 Q. Okay. And so did you then go to write a search warrant?

9 A. Yes, I did.

10 Q. And were you the one who drafted it?

11 A. I was, yes.

12 Q. Okay. So, you know, for all intents and purposes in this
13 case, the defendant and his child were the victims of a drive-by
14 shooting; is that fair?

15 A. Yes.

16 Q. So why would you want to search their home?

17 A. I think the main reason is, again, as we've covered, the
18 evidence that I could see inside the kitchen, that blood
19 spatter, indicated some false information on the parts of the
20 victims, if you will, and not to mention that added to, I guess,
21 my concern is that at that point, the most important thing or
22 the priority for them was not rushing the child to the hospital,
23 but it was to go inside the home for some reason.

24 So that, coupled with the narcotics that we -- the
25 suspected narcotics that we located in the street, indicated to

SIMMS - DIRECT

21

1 me that there is potential criminal activity on the part of
2 Mr. McGhee that took place during or leading up to the shots-
3 fired event.

4 Q. And, in fact, let's break that down a little bit. You
5 observed the spent shell casings in the street shortly after you
6 arrived; is that right?

7 A. Yes, ma'am.

8 Q. And then did you later receive more information from the
9 crime scene tech about those shell casings?

10 A. I did, yes.

11 Q. And what was that?

12 A. That they were both -- they were -- consisted of
13 9-millimeter casings; however, they were two different makes.

14 Q. Okay. And then we've already talked about there was a
15 plastic baggie with the suspected controlled substance; is that
16 right?

17 A. Correct.

18 Q. And I think you said -- but at the time you wrote the
19 warrant, had those -- had that been field-tested?

20 A. They had not been field-tested yet.

21 Q. Okay. So what else did you include in your affidavit
22 relating to Mr. McGhee?

23 A. I was made aware of some information or an investigation
24 that took place approximately one month prior, when I spoke with
25 Detective Lalla regarding this case, which indicated that

SIMMS - DIRECT

22

1 Mr. McGhee had recently, within that month, been involved in an
2 additional shots-fired event at which time he was struck by
3 gunfire and one of the individuals that he was with at the
4 hospital had possession of ecstasy, suspected ecstasy, and a
5 decently large amount of cash.

6 Q. Someone with him or he did?

7 A. I -- I cannot recall.

8 Q. Okay. But it would be in the warrant; is that right?

9 A. I believe so, yes.

10 Q. Okay. Detective Simms, was it your intention to have
11 applied for a search warrant even if you had not entered that
12 gated area?

13 A. Yes.

14 Q. Why?

15 A. Because we -- in addition to the two different brands of
16 shell casings, which there is potential there that we have two
17 different guns involved in a shots-fired -- so in addition to
18 that, we also have narcotics in the street as well as some small
19 amount of cash. So those things all together indicated to me
20 that some kind of criminal activity had took place, likely the
21 sale or purchase of narcotics had taken place, prior to the
22 shots fired.

23 Q. You said that the two different brands of ammunition led you
24 to infer that there were two shooters that -- I guess is that
25 also your way of saying that there could have been two guns?

SIMMS - DIRECT/CROSS

23

1 A. Yes.

2 Q. Did you know at that time whether anyone in the victim
3 vehicle had returned fire?

4 A. No.

5 Q. You also referenced the narcotics in the street. In your
6 career as a law enforcement officer, have you been -- have you
7 investigated or responded to shots-fired calls in which they
8 were drug deals gone bad?

9 A. Yes.

10 MS. SCHNEIDER: Thank you. I have no further
11 questions.

12 THE COURT: Mr. Nieman.

13 MR. NIEMAN: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. NIEMAN:

16 Q. Is it Detective Simms or Corporal Simms?

17 A. Currently, it would be Corporal Simms.

18 Q. Okay. I wanted to make sure I got that right.

19 Was it Detective Simms in July of '21?

20 A. Yes, sir.

21 Q. Okay. And when you were serving in that capacity, you got
22 called to a shooting scene on McKinley Avenue in Davenport; is
23 that right?

24 A. Yes, sir.

25 Q. And I assume that when you're en route to the shooting scene

SIMMS - CROSS

24

1 that you're being given information from some source about what
2 you're going to; is that right?

3 A. Yes, sir.

4 Q. And you described that on your direct examination as
5 responding to a shots-fired call; is that right?

6 A. Yes, sir.

7 Q. Now, when you arrive at the scene, are you arriving there by
8 yourself or with anybody else?

9 A. I am -- it was just me in my vehicle.

10 Q. Okay. And so when you arrive at the scene, there are other
11 officers that are currently at the scene when you arrive, right?

12 A. Yes, sir.

13 Q. And when you arrive, you approach those officers that are
14 already there, correct?

15 A. Yes, sir.

16 Q. And while you're approaching them, you activate your body
17 cam, correct?

18 A. Yes, sir.

19 Q. And your body cam records what you did at the scene, right?

20 A. Yes, sir.

21 Q. And have you reviewed your body cam footage in advance of
22 today's testimony?

23 A. Yes, sir, I have.

24 Q. Okay. So everything -- if there's any conflict between your
25 testimony today and the body cam footage, then the body cam

1 footage would be the more accurate version of that, right?

2 A. Well, I think the body camera certainly records the
3 information that's presently available in front of it, so it
4 would be an accurate depiction of what that camera recorded.

5 Q. Sure. And that camera did not record the shooting, right?

6 A. Correct.

7 Q. Because, obviously, no law enforcement was there when the
8 shooting occurred, right?

9 A. Yes, sir.

10 Q. And, in fact, when law enforcement arrived, the victim
11 vehicle had already left, right?

12 A. Yes, sir.

13 Q. The suspect vehicle, or where the shots came from, had
14 already left, correct?

15 A. Yes, sir.

16 Q. And you or other law enforcement officers had spoken to
17 somebody who indicated that a woman had left from the house as
18 well, correct?

19 A. Yes, sir.

20 Q. So when you arrived on scene and you approached those
21 officers that were there initially, the only physical evidence
22 that was left from that shooting were the things that were in
23 that street as far as you could see when you first arrived,
24 right?

25 A. Yes.

1 Q. And of those things that were in the street, it was the
2 markers for the shell casings that were along where the car was,
3 right?

4 A. Correct.

5 Q. And then there was -- according to your testimony and
6 reports, there was some sort of controlled substance that was
7 also in the street along with, did you say, cash on your direct
8 examination?

9 A. Yes, sir.

10 Q. Okay. So you arrived at the scene, and then you spoke to
11 the officers, right?

12 A. Yes, sir.

13 Q. And then I assume that the officers on scene told you more
14 information about what they had done to that point, correct?

15 A. Yes, sir.

16 Q. So by the time that you step into the front yard of the
17 McKinley -- the McKinley Street home, you kind of have a pretty
18 good idea as to what went on in the street, right?

19 A. A general idea, yes.

20 Q. You know that there had been a drive-by shooting, right?

21 A. Yes.

22 Q. You know from witness testimony that eight shots had been
23 fired, correct?

24 A. Yes.

25 Q. You know that officers had located eight shell casings,

1 correct?

2 A. Yes.

3 Q. You know that at least one of the victims is a minor child;
4 is that right?

5 A. Yes, sir.

6 Q. And that the minor child's father had taken him to the
7 hospital and that he was there receiving medical treatment,
8 right?

9 A. Yes, sir.

10 Q. So all those things you knew before you had even stepped
11 foot into the yard; is that right?

12 A. Yes, sir.

13 Q. Okay. Now, how long have you been a police officer?

14 A. Approximately six years.

15 Q. Okay. And has it been in this area, in Davenport?

16 A. Yes, sir.

17 Q. Okay. Now, does the Davenport Police Department get a lot
18 of calls for service from this neighborhood?

19 A. That's, I guess, a difficult question. I will say that
20 beat, which is 2 beat, which is down in the lower west end of
21 the city, is one of our busiest beats. In terms of that block
22 or that area just outside of the block, I don't know for sure.
23 I don't have the numbers.

24 Q. Would you characterize it as a high-crime area?

25 A. I think without having anything in front of me, I wouldn't

1 be able to say yes or no. I just -- I don't know how the crime
2 statistics from our police department relate to that area in the
3 city. I just can't give you a straight answer.

4 Q. That's fair.

5 Now, do you know, when you were talking with other
6 officers, if any of them had told you whether they had searched
7 the perimeter of the house or anything prior to you arriving?

8 A. If they had told me that they had searched the perimeter?

9 Q. Yes.

10 A. No. Nobody had told me that they had searched the perimeter
11 of the residence.

12 Q. Okay. So as far as you know, you were the first person to
13 go into that side yard; is that right?

14 A. Yes.

15 Q. Okay. And then I want to refer you back to Government's
16 Exhibit 4 that we were talking about earlier. You already
17 circled yourself on that exhibit. You remember that?

18 A. Yes, sir.

19 Q. Now, at that point, as the Government pointed out, it looks
20 like you're looking down; is that right?

21 A. Yes, sir.

22 Q. And it was your prior testimony that what you were looking
23 at was blood; is that right?

24 A. Yes, sir.

25 Q. Okay. Now, in this photograph, how far would you estimate

1 you are from the fence?

2 A. Complete estimation, here I would say probably six to seven
3 feet.

4 Q. Okay. Now, on the fence, you testified that there is some
5 yard and then -- not a lot, but there's some yard and then
6 there's like a little deck, right?

7 A. I believe the deck goes right up to the fence, if we're
8 talking about what's past the fence itself in relation to that.

9 Q. Yes, we are talking about that. So it's your testimony that
10 the deck goes all the way to the fence, then?

11 A. I -- I believe so, yes.

12 Q. Okay. So you also testified on direct examination that it
13 was dark where you were standing there, right?

14 A. It was shaded. It was daylight out, but there's quite a few
15 trees above, so some shadows were in play.

16 Q. And that's why you removed your flashlight, right?

17 A. Yes, sir.

18 Q. And I noticed in the video that you raised the flashlight
19 above your head like this (indicating), right?

20 A. I don't recall if I do that or not.

21 Q. Okay. Well, you've reviewed the video, right?

22 A. Yes, sir.

23 Q. Do you recall seeing a part where you raise the flashlight
24 in it (indicating)?

25 A. I don't, no. I'm sorry.

SIMMS - CROSS

30

1 Q. Do you know if you were raising the flashlight towards the
2 back of the yard or if you were raising the flashlight at the
3 porch, I guess we'll call it?

4 A. I know that my attention was at the blood spatter that I saw
5 on the porch, and that's where that flashlight would have been
6 directed.

7 Q. So the flashlight would have followed the blood on the porch
8 as you're looking at it standing on the other side of the fence?

9 A. Yes, sir.

10 Q. Now, do you happen to know how old the child was?

11 A. With certainty, no. I believe at the time the child was 6
12 years old, 8 years old.

13 Q. Okay. And the vehicle -- the victim vehicle that the child
14 was in, where did that end up?

15 A. At originally Genesis West emergency room.

16 Q. Okay. And is that where officers observed the eight bullet
17 holes in the vehicle?

18 A. Yes, sir.

19 Q. Okay. So the physical evidence at the scene, the witness
20 testimony about eight shots -- well, the physical evidence at
21 the scene, which would be the eight shell casings, the eight
22 bullet holes in the vehicle, and then the witness testimony that
23 eight shots were fired during a drive-by shooting, those facts
24 are all consistent with one another, right?

25 A. Yes, sir.

SIMMS - CROSS

31

1 Q. That would suggest that somebody came driving by the victim
2 vehicle, discharged eight rounds into the vehicle, one of the
3 rounds hit the minor child in the vehicle, and that caused his
4 injury; is that right?

5 A. It could, yes, sir.

6 Q. So your testimony was that you followed the blood trail
7 from, I guess, the porch, we're calling it, or at least I am, to
8 the door; is that right?

9 A. Yes, sir.

10 Q. Okay. And then at some point you made a phone call to
11 another officer; is that right?

12 A. Yes, sir.

13 Q. And you were doing that because you were considering
14 breaching the door to see if there were any victims inside?

15 A. Yes, sir.

16 Q. And so who did you call before you decided to do that?

17 A. I called Detective Farra.

18 Q. Okay. And Detective Farra, did he tell you anything that
19 changed your mind about going into the house?

20 A. What he told me was that Mr. McGhee and the gunshot victim
21 approached the rear door but were unable to get inside and then
22 they left to go to the hospital. So, obviously, seeing that
23 there was blood spatter inside, that information was
24 inconsistent to me.

25 Q. Okay. And that's why you decided to get a search warrant as

1 opposed to just breaching the door, right?

2 A. I think based on not only that piece of information, but
3 kind of everything we had at the time that the search warrant
4 was the safest route to go. And we were at that point, after
5 all those things had been satisfied, confident that nobody
6 needed aid inside.

7 Q. Okay. And I want to talk about that for a minute. So
8 you've, I'm guessing, responded to lots and lots of emergencies
9 over the years, right?

10 A. Yes. Yes, sir.

11 Q. And I assume that you've responded to emergencies where
12 there are victims that are in need of assistance in some sort of
13 building, is that right, whether it be a home or a business or
14 whatever?

15 A. Yes, sir.

16 Q. You don't, in those circumstances, take the time to sit down
17 and draft a search warrant, right?

18 A. No, sir.

19 Q. Because your intention in responding to those types of calls
20 is first and foremost to ensure the safety of the victim; is
21 that right?

22 A. Yes, sir.

23 Q. And to render any aid to get them out of there and get them
24 medical treatment, right?

25 A. Yes, sir.

1 Q. Now, when you applied for the search warrant, you were kind
2 of beyond that point, right?

3 A. Beyond exigency or --

4 Q. Yes. You knew that there was not an exigency, correct?

5 A. At that point, yes.

6 Q. Okay. And that's because other officers had conveyed
7 information to you that satisfied you that it was not an exigent
8 circumstance?

9 A. That's correct, yes.

10 Q. So at that point, the search warrant was directed towards
11 locating evidence that could be used to prosecute somebody for
12 this crime; is that right?

13 A. Yes, sir.

14 Q. Now, is it a typical practice for officers to execute search
15 warrants on victims' homes?

16 A. Certainly can be, yes.

17 Q. Okay. And does your department regularly engage in that
18 practice?

19 A. Yeah. I would say it's a frequency.

20 Q. Okay. And in this particular case, you executed the search
21 warrant on the victim home in order to, according to your search
22 warrant, obtain evidence related to firearms, indicia,
23 controlled substances, those kind of things?

24 A. Yes, sir.

25 Q. And that was because of the shooting that occurred outside?

1 A. Yes, sir.

2 Q. Now, aside from the blood trail that came from the door,
3 according to your testimony, onto the deck, was there anything
4 besides the blood that connected that house to the shooting in
5 the street?

6 A. At that time, I believed that that powdery substance that I
7 saw on the deck was of the same substance that we located in the
8 street.

9 Q. Okay. Was it?

10 MS. SCHNEIDER: Objection. It's not relevant to this
11 issue.

12 THE COURT: Overruled.

13 Go ahead.

14 A. It was -- I believe that was field-tested and determined to
15 be not a controlled substance.

16 BY MR. NIEMAN:

17 Q. I guess the powder on the deck, was that collected during
18 the search warrant execution?

19 A. I did not collect it. I do not know whether that was
20 collected by evidence technicians or not.

21 Q. Okay. Do you know when it was field-tested?

22 A. I do not know specifically. I don't believe I was the one
23 that field-tested that.

24 Q. Why was it relevant to you that Mr. McGhee was shot a month
25 prior? Why did you put that in the search warrant?

SIMMS - CROSS

35

1 A. So that was just some historical information because that
2 investigation, as it was described to me, was similar to what we
3 had, what we were looking at on this day, being that the shots
4 fired had occurred, we had an injury to a subject, and then
5 there were narcotics in play.

6 Q. And did you say on your direct examination that you thought
7 that one of the guns used in the shooting might be in the house?

8 A. I don't believe I said that verbatim, no.

9 Q. Can you clarify for me what you did say with respect to
10 that?

11 A. In regards to that, two different brands of cartridge
12 casings or spent shell casings located has, in the past,
13 indicated the presence of two weapons involved in a shots-fired
14 event. So because we had those two different brands of shell
15 casings, that's something that I couldn't rule out as a
16 possibility.

17 Q. Okay. So you thought that somebody might have discharged
18 eight shots into their car and then run the gun into their
19 house?

20 MS. SCHNEIDER: Objection, Your Honor; argumentative.

21 THE COURT: Sustained.

22 BY MR. NIEMAN:

23 Q. That wasn't something that you could rule out?

24 A. At that time, I'd say no, I can't rule that out.

25 MR. NIEMAN: Okay. Can I have a moment, Your Honor?

SIMMS - REDIRECT

36

1 THE COURT: Yes.

2 (Mr. Nieman conferred with Mr. McGhee.)

3 MR. NIEMAN: I have no further questions, Your Honor.

4 THE COURT: Ms. Schneider.

5 MS. SCHNEIDER: Thank you, Your Honor.

6 REDIRECT EXAMINATION

7 BY MS. SCHNEIDER:

8 Q. Corporal Simms, Mr. Nieman asked you toward the beginning of
9 cross-examination that if when you arrived on scene you had a
10 pretty good idea of what happened. Do you remember that
11 question?

12 A. I do, yes.

13 Q. And I think you said you had a general idea. How long were
14 you on scene, approximately, before you entered that gated area?

15 A. Oh, I would say -- I'm trying to recall my review of my body
16 camera video. Approximately 15 minutes. Maybe a little longer,
17 maybe a little less.

18 Q. Understandable. Would you say that 15 minutes into an
19 investigation you have a pretty good idea of all the surrounding
20 facts and exactly what went on?

21 A. No. Absolutely not.

22 Q. Okay. He also asked you whether you knew that eight shots
23 had been fired from the drive-by shooter. Do you recall that?

24 A. Yes, I do.

25 Q. And that that eight shots had been reported by, like,

1 neighbors or the 911 caller. Do you remember that?

2 A. Yes.

3 Q. In fact, weren't there different, like, varying reports of
4 how many shots were fired?

5 A. Yes. Yes, there was.

6 Q. And we have the responding officers who provided you the
7 update or the briefing from the hospital who said that there was
8 a car that appeared to have the eight bullet strikes. Do you
9 remember that?

10 A. Yes.

11 Q. Do you know where those were?

12 A. The strikes on the vehicle?

13 Q. Yes.

14 A. They were on the driver's side of the vehicle.

15 Q. Do you know where they were?

16 A. No, ma'am.

17 Q. Had you observed it?

18 A. I had not, no.

19 Q. Do you know how the officer who drew that conclusion -- do
20 you know how that officer had made those observations?

21 A. That vehicle was at the Genesis West emergency room parking
22 lot. They, through that investigation, identified that was the
23 car the victim arrived in and went out and looked at it.

24 Q. Were you there?

25 A. No, I was not.

1 Q. Yeah. So do you know how they made those observations?

2 A. No. I guess in short, no, I do not.

3 Q. How close were they, how detailed were they, those kind of
4 things, you don't know?

5 A. No, I do not.

6 Q. It wasn't pursuant to a search warrant at that time?

7 A. No.

8 Q. And, in fact, it's possible that one bullet strike to a car
9 could hit it more than once, like off of a rear -- or off the
10 side mirror and a door, for instance; is that fair?

11 A. That's possible, yes.

12 Q. So having eight strikes to a car and having varying reports
13 of how many bullet -- how many shots were fired doesn't mean
14 that all of the shots that were fired in that instance, all of
15 them hit that car; is that fair?

16 A. Yes.

17 Q. That was a really terrible question. Did you understand it?

18 A. I believe I did.

19 Q. Okay.

20 A. And, yes, that's fair.

21 Q. And, in fact, when you arrived on scene, isn't it true there
22 were only seven shell casings that had been marked by the crime
23 scene tech at that time?

24 A. I believe that's correct, yes.

25 Q. Is it fair that your body camera video would show exactly

SIMMS - REDIRECT/KING - DIRECT

39

1 how you held the flashlight more accurately? Would that be a
2 fair statement?

3 A. I think so, yes.

4 MS. SCHNEIDER: Okay. Thank you. Nothing further.

5 THE COURT: Mr. Nieman?

6 MR. NIEMAN: Nothing based on that, Your Honor.

7 THE COURT: Thank you, Corporal. You can step down.

8 (Witness excused.)

9 THE COURT: Does the Government have additional
10 witnesses they'd like to call?

11 MS. SCHNEIDER: Yes, Your Honor. The Government calls
12 Officer Justin King.

13 THE DEPUTY CLERK: Please raise your right hand.

14 JUSTIN KING, GOVERNMENT'S WITNESS, SWORN

15 THE DEPUTY CLERK: Thank you. Please have a seat.

16 THE COURT: Go ahead, Ms. Schneider.

17 MS. SCHNEIDER: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MS. SCHNEIDER:

20 Q. Good afternoon, Officer King. Can you please state and
21 spell your name for the record.

22 A. It's Justin King, J-u-s-t-i-n K-i-n-g.

23 Q. Thank you. How are you employed?

24 A. I'm employed as a police officer with the City of Davenport.

25 Q. And how long have you been with the City of Davenport?

KING - DIRECT

40

1 A. Approximately ten years.

2 Q. What is your current assignment?

3 A. I am a day shift patrolman.

4 Q. How long have you been back on day shift patrol?

5 A. Approximately just over one year.

6 Q. And I assume you graduated from the Iowa Law Enforcement
7 Academy. Is that right?

8 A. I did, yes.

9 Q. All right. What was your assignment in July of 2021?

10 A. I was assigned to the criminal investigations division,
11 the -- specifically the second shift unit.

12 Q. As a detective then?

13 A. Correct. Yes, as a detective.

14 Q. All right. What were some of your responsibilities as part
15 of that assignment?

16 A. We would respond to a multitude of 911 calls, specifically
17 any life-threatening that would involve shots fired or any
18 high-priority calls of that nature.

19 Q. And so was it a part of that -- your role in CID that you
20 were on duty on July 7th, 2021?

21 A. Yes.

22 Q. And responded out to a shots-fired call at 3213 McKinley
23 Avenue?

24 A. I did.

25 Q. That, like, early afternoon?

KING - DIRECT

41

1 A. It was approximately around 1 p.m. when I arrived on the
2 scene, yes.

3 Q. All right. And were other officers already on scene?

4 A. Yes, there were.

5 Q. Did you arrive kind of around the same time as Officer -- or
6 as Detective Simms?

7 A. Yes. Give or take a few minutes, but around the same time.

8 Q. From reviewing your body cam anyway, did that appear to be
9 the case?

10 A. Correct.

11 Q. And so what did you do when you arrived?

12 A. Once I arrived on scene, several detectives and officers
13 gathered, and we talked about what information they were able to
14 ascertain at the time as far as what had occurred at that
15 address of -- on McKinley Avenue.

16 Q. And who were those officers that you spoke with?

17 A. I believe it was Officer Lovelady, Office Pojar, Detective
18 Simms, Detective Deney, and Detective Tharp, who was working as
19 a patrol officer on that specific day.

20 Q. All right. And so is it fair that you would have received
21 then the same information that Detective Simms received as part
22 of that briefing?

23 A. Yes.

24 Q. Okay. So at the conclusion of receiving that information
25 from responding officers, was there a discussion about whether

KING - DIRECT

42

1 anyone was present inside 32 -- wait, I keep getting this
2 wrong -- 3213 McKinley?

3 A. There was a discussion. I believe we were speaking with
4 Office Pojar, and he advised that several residences had been
5 knocked on and spoken to, but the specific address of 3213
6 McKinley, nobody knocked on the door there and spoke to anybody
7 at that residence.

8 Q. Did he say that as part of that conversation out in the
9 street?

10 A. Not in the street, no.

11 Q. Okay. So what did you guys talk about out in the street
12 about whether there had -- about whether anyone was present
13 inside the residence?

14 A. We did not know at the time if there was anybody present at
15 that address --

16 Q. Okay.

17 A. -- what we were speaking about.

18 Q. Okay. So what, if anything, did you do as a result?

19 A. As a result, myself and Detective Tharp walked up to the
20 front door of 3213 McKinley in order to try to make contact with
21 anybody that may have been inside.

22 Q. And as you were making that walk, did you locate an unmarked
23 casing in the street?

24 A. I did.

25 Q. Great. So when you were walking up to the house, why was it

KING - DIRECT

43

1 important to you to try to make contact with the residents?

2 A. Detectives on the scene had not spoken, to my knowledge at
3 least, with anybody on scene involved in the incident that
4 resided at that address. We didn't know if there was anybody
5 inside that needed attention, whether medical or needed to be
6 spoken to in regards to the incident that occurred there.

7 Q. And so I think you said it was you and Detective Tharp who
8 approached; is that right?

9 A. Yes.

10 Q. Okay. Who actually knocked on the door?

11 A. Detective Tharp did.

12 Q. Okay. And at some point did a patrol officer come up behind
13 you guys?

14 A. Yes. I believe Office Pojar did.

15 Q. Okay. And this is probably what you were talking about
16 before. What did he advise you regarding that residence?

17 A. He had said that he had knocked on the doors next door to
18 3213 but he did not knock on 3213 specifically.

19 Q. So up to the point when you and Detective Tharp were trying
20 to make contact, no one had made -- tried up to that point?

21 A. Correct.

22 Q. Okay. Ultimately, did anyone answer the door?

23 A. No.

24 Q. Okay. What did you do after trying to make contact at the
25 door?

KING - DIRECT

44

1 A. As I was standing at the front door, I looked over to my
2 right-hand side, which would be the west side of the building,
3 of the residence, and I observed Detective Simms. He was
4 standing at the threshold of the chain-link fence that is
5 located on the west side of the residence which had a side door
6 on the west side.

7 Q. I'm going to show you -- I'm going to show you what's been
8 admitted as Exhibit 4. This is from Officer Tharp's body cam.
9 It looks like she's right up there at the door. Where would you
10 have been if she was right up there at the front door?

11 A. I would have been standing behind her.

12 Q. Okay. Do you see Detective Simms in this photo?

13 A. I do.

14 Q. Okay. And is that where he was -- what you were just
15 describing, where he was located?

16 A. Correct.

17 Q. Thank you.

18 So after you saw Detective Simms outside of that fenced
19 area, what did you do?

20 A. I approached to where he was. He seemed to be looking at
21 something in that direction towards the house, towards the side
22 door. And then I met up with him and I looked, and I observed
23 blood on the ground just past the gate that was open of that
24 chain-link fence. I observed blood on the door which was
25 located on the west side of the building, and I observed what

KING - DIRECT

45

1 looked like to be plastic bags with some sort of powdery
2 substance on the steps leading up to that door.

3 Q. Okay. So you see Detective Simms over there, it appears
4 like he's looking at something, and so you go and join him. Did
5 you make any of these observations -- sorry. Strike that.

6 Did you enter the fenced area?

7 A. Yes.

8 Q. Did you make any of the observations that you just told us
9 about before or after you entered the fenced area?

10 A. It was approximately as I was walking into the fenced area.

11 Q. And was Detective Simms already walking into or had he
12 entered the fenced area?

13 A. He had already entered into it by the time I had reached the
14 threshold and walked into it.

15 Q. Okay. And so you walked into the fenced area, and sort of
16 contemporaneously is when you saw the stuff you just described?

17 A. Yes.

18 Q. Okay. When you said you saw plastic bags containing a
19 powdery substance, was it just a bunch of plastic bags?

20 A. They were like baggies. Like it was -- I guess a way to
21 describe it would be plastic wrap, maybe, that appeared to be
22 packaged tightly. And I think there was, like, maybe a hole in
23 one of the bags with the powdery substance spilling out of it,
24 and I observed, like, another chunk of the white substance
25 outside of the bag as well on the ground.

1 Q. So some of the white substance was outside, like on the
2 ground or on the deck and stuff?

3 A. Correct.

4 Q. Okay. Where exactly did you observe the blood that you were
5 talking about?

6 A. Specifically, on the ground. It was concrete at that point
7 where the plastic bags were, almost like steps that lead up to
8 the side door on the west side. I saw blood there. And in
9 addition to, I saw blood on the door itself.

10 Q. Did you see any on, like, the wooden decking?

11 A. I believe so, yes. The wooden decking that leads to the
12 steps.

13 Q. Right. Some call it a -- we've called it a porch --

14 A. Porch.

15 Q. -- we've called it wooden decking. I'm not sure what you
16 would call it.

17 A. Yeah. Wooden decking, porch, sure.

18 Q. Okay. Shortly after -- you've watched your body cam, is
19 that right, before testifying today?

20 A. Yes.

21 Q. Shortly after you entered that area -- this fenced area
22 following Detective Simms, did you make a remark to him?

23 A. I did. I said, "I believe we need to get paper," and I was
24 referring to obtaining a search warrant for the residence.

25 Q. And why did you believe you would need a search warrant at

KING - DIRECT

47

1 that time?

2 A. Based on the information that we had at the time and the
3 blood evidence and what I believed at the time possibly to be
4 drugs, I believed that something had occurred outside -- well, I
5 know that something occurred outside with the shooting, and that
6 something to do with that or as a result of, somebody who was
7 bleeding entered into that residence, and there may be items of
8 evidence inside that residence that we would be interested in.

9 Q. What did you do after making that comment and kind of
10 checking out the stuff that was on the ground there?

11 A. I walked the length of the wooden patio, wooden flooring, to
12 the south, which is the backyard. I checked around the backyard
13 to make sure there was no people or persons, as well as no door
14 on the south side of the building.

15 Q. Why did you want to make sure there were no people in the
16 back there or along that side or in the back?

17 A. Just to make sure that the building itself was secure. As
18 we were applying for or going to apply for a warrant, we wanted
19 to make sure there was nobody within that part where there was
20 no officers located. Just to secure the scene, essentially.

21 Q. What was your understanding about the facts at that time?

22 A. At that time, we knew that there had been a shooting that
23 occurred in the street, that there was shell casings that had
24 been recovered in the street, as well as, I believe, bags of
25 suspected drugs or suspected drugs. I believe that at that time

KING - DIRECT

48

1 I knew somebody had been injured as a result of that. I believe
2 it was a child.

3 And from there, we were not sure what occurred, other than
4 people had left, so we did not know if there was anybody inside
5 that house, and we did not know if anybody involved in the
6 shooting out front had gone inside that house at that time,
7 other than what the evidence showed with the blood being on that
8 door.

9 Q. In fact, had there been some witness statements that said
10 that people had left and not gone up to the house?

11 A. There had been, yes.

12 Q. In fact, did you kind of talk to the other -- Detectives
13 Simms and Deney about that?

14 A. Yeah. I asked those detectives if we had any information
15 that said anybody had entered into that house following the
16 suspected shooting, and they were not aware of anybody saying
17 that.

18 Q. But is it fair to say that the physical evidence that you
19 just described was not consistent with some of those witness
20 reports?

21 A. Correct.

22 Q. Okay. So what did you do, then, after that?

23 A. I believe Detective Simms made a call or was on his radio
24 trying to coordinate a search warrant to be issued in regards to
25 that, and I spoke with Detective Deney about -- no. I take that

KING - DIRECT

49

1 back.

2 I approached the side door, and I looked and I observed
3 through the -- sorry -- I looked and I observed there was blood
4 on the handle of the door, and after that I looked inside the
5 glass. It had a glass on the side door that you can look
6 through. And inside I saw blood on the floor directly inside
7 the door. I believe it was the kitchen floor.

8 Q. All right. So after you guys have that conversation, then
9 you looked -- you saw the blood on the door handle, and then you
10 look in the window and saw that there was blood inside the
11 house?

12 A. Yes.

13 Q. What did that lead you to believe?

14 A. It led me to believe that somebody did, in fact, go inside
15 that house following the shooting that was initially reported.

16 Q. At that time, did you know whether anyone was still in that
17 house in need of aid?

18 A. I did not know for sure if anybody was or was not. And I
19 believe I made a comment to Detective Simms or he made the
20 comment we didn't know if we should make an exigent entry to the
21 residence or not to see if there was anybody hurt inside the
22 house.

23 Q. And I think you previously started to say that he then
24 started investigating that aspect; is that right?

25 A. Yes.

KING - DIRECT/CROSS

50

1 Q. Okay. Did you go then -- at that point did you locate blood
2 anywhere else on scene?

3 A. Following what I had just spoken to, I exited from the side
4 on the west side of the building and I went back through the
5 front yard and I went to -- down to where the sidewalk is that
6 runs parallel to the street, and it was a straight shot from the
7 gated fence.

8 So I walked straight down to the north to the sidewalk, and
9 on that sidewalk I located blood drops, and just to the south of
10 the sidewalk, in the grass there, I saw what I believed to be a
11 blood drop as well.

12 Q. Did you point that out to anyone?

13 A. I pointed that out to, I believe it was, Officer Hatfield,
14 who was our police officer evidence technician.

15 Q. And what was his reaction?

16 A. That he was aware of it. And I think he said that he had
17 already possibly swabbed it for DNA.

18 MS. SCHNEIDER: Thank you. I have nothing further.

19 THE COURT: Mr. Nieman.

20 MR. NIEMAN: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. NIEMAN:

23 Q. Good afternoon, Officer King.

24 A. Hello.

25 Q. You were dressed a little bit differently on that day,

1 correct?

2 A. Yes, I was.

3 Q. You were dressed in street clothes doing investigation?

4 A. Correct.

5 Q. Okay. Now, Ms. Schneider's gone over a lot of the sort of
6 preliminary stuff, but I wanted to ask you some follow-up
7 questions.

8 So you talked to other officers at the scene when you got
9 there, right?

10 A. Correct.

11 Q. And they kind of gave you a rundown as to who they had
12 talked to, what was going on at the scene, what they think
13 happened?

14 A. Yes.

15 Q. So at that point, you had sort of a rough idea as to what
16 might have happened in that street?

17 A. A very rough idea, yes.

18 Q. At least you knew that somebody had been the victim of a
19 drive-by shooting?

20 A. Yes.

21 Q. That much you knew to be true?

22 A. Yes. We knew that somebody had been shot either in the
23 street or near it, correct.

24 Q. Okay. And you knew prior to walking up to the house that
25 the victim and his father were at the hospital, right?

KING - CROSS

52

1 A. I don't know that I personally knew that. I knew that there
2 were people present at the hospital.

3 Q. Okay. And you said that you've reviewed your body cam
4 video?

5 A. Yes.

6 Q. And at one point another officer confirms to you that
7 nobody's in the house. Do you recall that?

8 A. I believe so, yes. I think that was Office Pojar that was
9 speaking at the time.

10 Q. And on your body cam, somebody, another officer, also
11 identifies the McKinley house as the, quote-unquote, victim's
12 house. Do you remember somebody identifying the house in that
13 way?

14 A. Yes.

15 Q. Okay. And in your body cam video, we've gone over this a
16 little bit, you can see -- you can see Corporal Simms in the
17 side yard, right?

18 A. Yes.

19 Q. And that's from your body cam -- I'm sorry. In the front
20 yard, right?

21 Well, let me take a step back. When you approached the
22 McKinley Avenue home, you went to the front door first, right?

23 A. Yes.

24 Q. And you were accompanied by a female officer who knocked on
25 that door?

1 A. Correct.

2 Q. And nearly contemporaneously with that, your body cam is
3 faced to the front yard, but I guess it would be between the
4 street and the back -- or side yard, I guess?

5 A. Yeah. It's facing to the west, I believe.

6 Q. Okay.

7 A. Yes.

8 Q. And on your body cam, my point is that you can see Detective
9 Simms -- or Corporal Simms starting to look into that side yard,
10 right?

11 A. Yes.

12 Q. And you can see him pull up a flashlight at some point and
13 look at something in that yard, right?

14 A. I don't specifically recall the flashlight, but I do
15 remember him being located at that spot, yes.

16 Q. Okay. And after you -- well, first of all, did anybody
17 answer the front door?

18 A. No.

19 Q. Okay. So after that unsuccessful attempt to reach somebody
20 at the front door, did you then follow Corporal Simms into the
21 backyard?

22 A. Yes.

23 Q. And --

24 A. Well, sorry. To the side yard, yes.

25 Q. I'm sorry. I misspoke. I meant the side yard.

1 You followed Corporal Simms to the side yard?

2 A. I went to where he was located at, yes. Yep.

3 Q. And you would have entered that side yard in the same manner
4 as Corporal Simms, correct?

5 A. Yes.

6 Q. And that would be through that gate that we've seen
7 depicted; is that correct?

8 A. Yes.

9 Q. So by the time that you entered the gate, Corporal Simms was
10 already in that side yard?

11 A. Yes.

12 Q. Where was he standing?

13 A. He was standing past the gate, I believe just off to -- if
14 I'm facing the south, I believe he's facing just off to the
15 right, inside past the gate.

16 Q. Is he standing on that deck or what we've called a deck or a
17 porch?

18 A. Yeah. I believe he's on, like, the wood-paneled porch, I
19 believe.

20 Q. Okay. And as you walk through the gate, does he mention
21 anything to you about what he found?

22 A. I believe he mentioned the blood specifically that I had
23 spoken about earlier.

24 Q. Okay. So you had told him about blood before he identified
25 it?

1 A. No.

2 Q. Okay. Well, can you explain to me what you mean by your
3 last answer?

4 A. I believe he is the one that out loud verbally said that he
5 observed the blood while on scene. I observed it, but he
6 mentioned something about the blood, and then I said we needed
7 to get paper, meaning a search warrant, for the residence.

8 Q. Okay. Now, when you were walking through that gate, did you
9 observe the blood on the deck?

10 A. Yes.

11 Q. Okay. Did you also observe the powder?

12 A. Yes.

13 Q. Now, from a standing position, you could see the powder,
14 right?

15 A. Yes.

16 Q. Could you see the blood on the deck specifically from a
17 standing position?

18 A. Yes.

19 Q. Okay. So you didn't need to kneel down to look at that?

20 A. I did not, no.

21 Q. Okay. And at some point, then, you said that we're going to
22 have to get paper. Do you remember that?

23 A. I do.

24 Q. And that would mean that you would need to get a search
25 warrant; is that right?

1 A. Correct.

2 Q. Now, if there's blood on the door and the porch, why not
3 just break down the door and see if there's any victims inside?

4 A. We had no indication that there was anybody inside. We did
5 not hear anybody inside, and we attempted to make contact
6 already at the front door. Being as there was a shooting, there
7 was blood possibly from a shooting that leads into the house,
8 and the contradictory statements other officers were getting
9 from the victims involved in the shooting, specifically that
10 nobody had entered into the house following the shooting, we
11 believed that there possibly was items of firearms or any kind
12 of weapons involved inside the house.

13 Q. Okay. Now, you testified that there was also a knife handle
14 that was in the front yard; is that correct?

15 A. I -- there was a knife, a broken -- it was like a silver
16 knife handle for, like, a folding knife --

17 Q. Okay.

18 A. -- that was located in the front yard.

19 Q. Did it have blood on it?

20 A. It did.

21 Q. And was that located near the deck?

22 A. No. That was located on the sidewalk directly to the north,
23 like a straight shot from the fenced-in area with the open door
24 to the side yard.

25 Q. Whose blood was on the knife?

KING - CROSS

57

1 A. I do not know.

2 Q. Okay. Likewise, you didn't know whose blood was in the
3 backyard either, right?

4 A. Correct. Or the side yard, yes.

5 MR. NIEMAN: I have no further questions, Your Honor.

6 THE COURT: Ms. Schneider?

7 MS. SCHNEIDER: Nothing, Your Honor.

8 THE COURT: All right. You can step down.

9 THE WITNESS: Thank you.

10 (Witness excused.)

11 THE COURT: Any additional evidence you'd like to
12 offer, Ms. Schneider?

13 MS. SCHNEIDER: No, Your Honor. The Government rests.

14 THE COURT: Mr. Nieman, any evidence you'd like to
15 offer?

16 MR. NIEMAN: Your Honor, I would offer Exhibits A
17 through G, which are appended to my motion to suppress that was
18 filed.

19 THE COURT: Any objection to those?

20 MS. SCHNEIDER: No, Your Honor.

21 THE COURT: A through G are admitted.

22 (Defendant's Exhibit Nos. A - G were
23 offered and received in evidence.)

24 THE COURT: All right. Any argument the parties would
25 like to make?

1 Ms. Schneider?

2 MS. SCHNEIDER: Yes, Your Honor.

3 Regarding the probable cause and nexus issue, Your Honor,
4 the Government has established a fair probability that
5 contraband or evidence of a crime would be found in the home,
6 particularly drawing reasonable inferences both from law
7 enforcement and the judge who signed the warrant.

8 You know, law enforcement wants to know who did this
9 shooting and why, and based on the useful evidence -- or based
10 on the evidence on scene, the items that they were wanting to
11 find in the home were -- would be useful evidence to this crime.

12 You know, the defense's view, you know, of this offense is
13 very narrow, and it ignores the drugs and the cash in the
14 street. It ignores the substance on the deck. It ignores the
15 two brands of ammunition.

16 But, rather, as we heard Corporal Simms testify, reasonable
17 inferences were -- could be and were drawn from that evidence.
18 This appeared to be or certainly could have been a drug-related
19 shooting. It could have been a drug rip. And given the drugs
20 in the street, the white powdery substance which could be viewed
21 from outside of the gated area, and then the two brands of
22 ammunition, certainly could have suggested two shooters.

23 They didn't know within 15 minutes of arriving on scene
24 what all the facts were, and, in fact, the evidence was clear
25 that someone had entered that home after that shooting. The

1 blood evidence was clear. So then the question is why.

2 This child was shot, and instead of immediately taking this
3 child to the hospital, there was something that was more
4 important to go into that house for. Was it to stash drugs?
5 Was it to stash a gun? Was it to stash clothing or other
6 evidence that was related to this offense? We don't know. The
7 officers didn't know.

8 But in drawing reasonable inferences from all of that
9 information and all of that evidence, it was clear that there
10 was some very important reason for the defendant to have gone
11 into that home and then subsequently lie about it to law
12 enforcement when they asked, "Did you go into this home? We're
13 trying to decide if there's exigent circumstances to go into
14 this home. Is there someone inside?"

15 And he said, "Oh, I went up to the door, but I didn't go
16 in," because he didn't want the officers to know that he had
17 gone in for whatever reason.

18 So it is very clear that the evidence on scene demonstrated
19 that fair probability that contraband or evidence of a crime
20 would be found in the home, which also establishes the nexus.

21 Regarding the curtilage issue, obviously, warrantless
22 searches of a home, including a curtilage, are presumptively
23 unreasonable, but, as we all know, the Fourth Amendment
24 touchstone is reasonableness.

25 Looking at the warrant exceptions, what we have here is

1 exigent circumstances and plain view. Particularly, the *United*
2 *States vs. Chipps* case, C-h-i-p-p-s, from the Eighth Circuit, in
3 which they said -- when law enforcement was in a
4 constitutionally unobjectionable area and they saw a blood
5 trail, followed the blood trail, and found a bloody sweatshirt,
6 the Eighth Circuit said even if that blood trail was in the
7 home's curtilage, it was -- it indicated that someone needed
8 assistance, and so if the officer -- there was a reasonable
9 belief that someone needed assistance, particularly given there
10 was a report of an assault at that location.

11 That's exactly what we have here, Your Honor. Corporal
12 Simms was outside of that fenced-in area. He was in a
13 constitutionally unobjectionable area. He saw the blood, and
14 then he followed that trail into the curtilage, which he was
15 permitted to do.

16 We look at this question from an objective standpoint; not
17 what was in these officers' minds, but objective -- objectively.
18 It is objectively reasonable to believe that someone was in
19 there in need of assistance.

20 But also, subjectively, these officers were -- they had --
21 they had enough to go into that house. They had exigency to go
22 into that house based on what they had there. They were trying
23 to be careful given the conflicting information, and so they
24 actually acted with more care and more caution to call up to the
25 hospital to try to make sure before just going into that home.

1 And if the Court disagrees, that this wasn't exigent
2 circumstances and plain view, they would have applied for the
3 warrant anyway, and if you take out that portion from the search
4 warrant -- which I know I said in my memo that would -- it was
5 less than a sentence. I wasn't exactly sure at the time what
6 Detective Simms could see from outside of the gate, if he
7 could -- if he noticed it on the side of the house and whatnot,
8 and his testimony today was he did not. So I believe that means
9 you take out one sentence from the affidavit.

10 So you had both of these detectives say that they intended
11 to get a search warrant, and if you redact that sentence, the
12 affidavit still supports probable cause, and so it's the
13 Government's contention that this probable cause was not based
14 on illegally obtained evidence, and it is -- the warrant is
15 still supported by probable cause, even if you take that
16 sentence out.

17 And, of course, the officers acted in good faith relying on
18 that warrant, and that if the Court disagrees on the probable
19 cause issue, that that just reinforces the detectives' reliance
20 on that warrant.

21 Thank you.

22 THE COURT: Mr. Nieman.

23 MR. NIEMAN: Thank you, Your Honor.

24 Your Honor, this is kind of an unusual case. Normally,
25 when you have a search warrant execution, there's been a

1 shooting that has either taken place on the property or inside
2 the home, but here all of the illegal activity that took place
3 occurred in the street, and what connects the home to the
4 illegal activity in the street is the trail of blood that the
5 officer observed in the side yard.

6 But the thing about this case is the officers -- while
7 their knowledge of the circumstances were incomplete, it was
8 well formed enough to know that there was nobody in danger in
9 that home. And there's lots of speculation on the part of the
10 Government as to whether Mr. McGhee went in there with the
11 child. There's no evidence of that. There's no evidence that
12 the blood that's in the house is from the shooting or that it's
13 not related to the knife, or something, that's in the front
14 yard.

15 But the fact of the matter is, though, even though officers
16 observed this blood on the back porch, they knew at the time
17 that they observed it that the crime had already occurred and
18 that nobody in the house was in danger, but they requested a
19 search warrant anyway for firearms indicia, photographs of the
20 scene, fingerprints, DNA, drugs, paraphernalia, cell phones,
21 electronic surveillance equipment, clothing, blood, DNA.

22 All of that stuff because there was blood on the deck
23 leading into the side door, even though -- even though
24 Mr. McGhee had given law enforcement an explanation for why the
25 blood at least had gotten on the door.

1 Now, he did not tell law enforcement that he went into the
2 home, but for reasons that I'll discuss in a minute, I don't
3 think that that's material.

4 There must be a connection to the nature of the crime and
5 the reasonable, logical likelihood of finding evidence here. So
6 the nature of the crime was a drive-by shooting here and the
7 possession of a controlled substance if you want to incorporate
8 that into the drive-by shooting crime. So then there has to be
9 some connection between those crimes in the street and the place
10 to be searched.

11 Here, the shooter is gone. The victim is gone. The victim
12 car is gone. Just shell casings and blood are present outside
13 of the home when police show up. There's no reason to think
14 that there's going to be a firearm or other drug evidence in
15 that house based on what police observed from outside of the
16 house and incorporated into the search warrant.

17 The Government argues in its response that there's a
18 reasonable inference supporting probable cause nexus that
19 someone from the vehicle, the victim vehicle, was in possession
20 of drugs and entered the house to stash them, but there's
21 physical evidence in the case that would actually be in the
22 search warrant application that would directly contradict that
23 reasonable inference, and that's the fact that the drugs were
24 left in the street.

25 If McGhee was going to go to the trouble to hide illegal

1 items that he had on him, whether they were firearms or drugs,
2 then why would he leave drugs in the street?

3 The Government also argues that a reasonable inference can
4 be drawn that someone from the victim vehicle was in the
5 possession of a firearm, entered the home to stash it before
6 proceeding to the hospital, and the Government makes that
7 argument because there's two brands of ammunition. But for that
8 to be true, then McGhee would have also had to have shot his own
9 car and his own son, which I don't think the Government would
10 suggest would be a reasonable inference to draw from those
11 facts.

12 What we do know is that there were eight bullet strikes on
13 the driver's side of the car, there was a 911 caller who heard
14 eight shots and saw cars speeding off, and that officers located
15 eight 9-millimeter shell casings. Everything from the shooting
16 is right there. Besides pure speculation, what more could a
17 judge infer from this, other than the fact that there had been a
18 drive-by shooting?

19 The Government argues that the blood evidence clearly shows
20 that Mr. McGhee entered the home before bringing his son to the
21 hospital. But Mr. McGhee wasn't shot; his 6-year-old son was.
22 And there's no evidence that's in the search warrant application
23 or that was adduced today that shows that the son didn't run
24 into the house himself.

25 The judge can infer that Mr. McGhee's son went into the

1 home, but if there's no evidence that Mr. McGhee did, I'm not
2 entirely sure how the blood evidence related to the shooting
3 would assist law enforcement in their investigation.

4 Even if Mr. McGhee did lie to law enforcement about going
5 into -- going into the house with his son, there's also a number
6 of reasons, innocent reasons, why Mr. McGhee might have lied
7 about that, about going into the home.

8 Namely, there could be a number of reasons why he didn't
9 want a search warrant executed at that house. When search
10 warrants are executed at homes, officers typically are not --
11 they're there searching for something. They're not careful. He
12 basically could have told the officers that he didn't enter the
13 home so that the officers wouldn't enter the home so they
14 wouldn't ransack it searching for evidence of this crime that
15 occurred outside.

16 So the number of reasons that the Government lists for
17 inferring both probable cause and nexus, those are based on
18 speculation. They're not inferences. And the same innocent
19 inferences and speculation can be made by Mr. McGhee.

20 So in looking at the search warrant in a commonsense way,
21 as a magistrate judge would, then I don't think that the search
22 warrant -- that the search warrant contains the probable cause
23 and the necessary nexus to search the house.

24 Now, with respect to the application containing evidence
25 that was illegally obtained, what the evidence shows -- the most

1 accurate evidence is the body cam evidence. So if you look at
2 Officer Simms, when he's, according to his testimony,
3 approximately seven feet out from the chain-link fence, he holds
4 up his -- he holds up his flashlight in a downward fashion so
5 he's looking down at the deck from that area. You can see that
6 he looks at it for a while.

7 But if you switch to his body cam, you can actually see
8 what he's looking at with the flashlight, and what the -- what
9 he's looking at with the flashlight is the powder. He's not
10 looking at blood on the deck; he's following the powder with his
11 flashlight. That powder is leading towards a grill that is --
12 that is also on the deck and that can be depicted in the actual
13 video.

14 So the blood spatter evidence obtained from this area,
15 which is the only evidence linking the shooting to the house,
16 wouldn't have been discoverable had detectives not went through
17 the gate uninvited into that side yard and onto the porch
18 outside the door. I think that the evidence shows that the
19 blood was -- it was initially the powder that caught the
20 officer's attention, and later, when he went to inspect the
21 powder, is when he noticed the blood.

22 So I don't think that the officers were able to determine
23 that, from their vantage outside of the curtilage, there was
24 blood spatter that would -- that would be leading up to the
25 backyard.

1 Lastly, the good faith exception in this case doesn't
2 apply. Our argument is based on the exception to the good faith
3 exception where a search warrant application is so lacking in
4 indicia of probable cause to render its belief entirely
5 unreasonable and also that the good faith exception does not
6 apply because the search warrant application was based on
7 illegally obtained evidence.

8 So for those reasons, we would ask the Court to grant our
9 motion to suppress.

10 Thank you.

11 THE COURT: Thank you.

12 MS. SCHNEIDER: May I be heard, Your Honor, briefly?

13 THE COURT: I don't think you need to be.

14 MS. SCHNEIDER: No? Thank you.

15 THE COURT: Let me ask this: Is the child okay?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Okay. All right. My analysis in this case
18 is the same as the Government's on all three of the key legal
19 issues.

20 First, I do think the search warrant supports probable
21 cause. This isn't a drive-by shooting. This is a shooting that
22 happens in front of a house. The car's parked there. Another
23 car approaches that car, at least according to all the witness
24 information, and then there's shots fired.

25 Now, they have witnesses that say there were three shots,

1 they have witnesses that say there were four shots, they have
2 witnesses that say there were eight shots. It is clearly a
3 confusing situation. We don't know whether there's overlapping
4 shots. We don't know whether four shots came from one gun and
5 four shots from another gun and whether those guns were firing
6 at one another and they all went into the defendant's car. It's
7 a mess. We don't know that only eight shots were fired.

8 What the officers know when they arrive is there were
9 eventually eight rounds recovered from that area. They come
10 from two different guns. There are drugs laying in the street.
11 There is cash laying in the street. The witnesses report
12 contrary to what the defendant tells law enforcement: one, that
13 it's his house, and he says it's not; and, two, that he went in
14 the house, and he says he didn't.

15 Now, what makes it into the search warrant are neither of
16 those two things, but the fact of the matter is those are both
17 on tape. The witnesses describe that, in fact, this is the
18 defendant's home and that he lives there with the child and that
19 adult females come and go from that residence.

20 And the neighbor -- the elderly couple sitting next door
21 reports that the defendant did go into the home and left in a
22 hurry, and, in fact, left in such a hurry that he left the gate
23 open, despite the fact that he usually carefully closes it so
24 the dog doesn't escape, and that that happened after the
25 shooting.

1 The defendant claimed that the mother of his child wasn't
2 home and that's why he couldn't get into the locked house, but,
3 in fact, you know, neighbors report she fled shortly after the
4 shooting happened in a different vehicle than he was in.

5 Now, when you look at the search warrant itself and the
6 information they had, plenty of probable cause, in my view, that
7 ties that event which involved drugs and guns and victims to
8 that particular house, and that's before we even get to the
9 white powder trail and blood evidence.

10 And if you look at these officers' videos, you hear them
11 talking about the fact that this is fresh, wet blood; that
12 there's been rain recently that would have washed it away if it
13 wasn't fresh, wet blood.

14 When you look on the video camera footage, you can see that
15 white powder that's really spread all over the place on that
16 porch and near those steps. It is similar to, and you hear the
17 officers discussing this, the white powder or grayish powder
18 that's in the street.

19 In my view, the blood spatter, the blood trail, and the
20 powder that can be seen are all exigent circumstances leading to
21 the side of that home. But even, in my view, if you remove that
22 information from the search warrant, you've still got probable
23 cause. And even if, again, ultimately somebody decided there
24 weren't probable cause, I think good faith supports this
25 particular search of the home.

1 So the motion's going to be denied. I will get a written
2 order on file.

3 Anything else we need to take care of today?

4 MS. SCHNEIDER: No, Your Honor. Thank you.

5 MR. NIEMAN: No, Your Honor. Thank you.

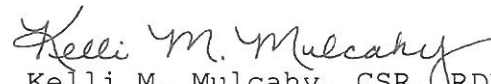
6 THE COURT: All right. We are adjourned.

7 (Proceedings concluded at 3:38 p.m.)
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C E R T I F I C A T E

I, Kelli M. Mulcahy, a Certified Shorthand Reporter of the State of Iowa and Federal Official Realtime Court Reporter in and for the United States District Court for the Southern District of Iowa, do hereby certify, pursuant to Title 28, United States Code, Section 753, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated at Des Moines, Iowa, this 11th day of June,
2024.


Kelli M. Mulcahy, CSR, RDR, CRR
Federal Official Court Reporter